

HONG KONG / JUDGMENT

T, RH v. K, CS

[2024] HKFC 151

COURT

Family Court

DECIDED

6 August 2024

CASE / FILE NUMBER

FCMC8704/2023

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bjbj FCMC 8704/2023

[2024] HKFC 151 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NO. 8704 OF 2023

BETWEEN T, RH Petitioner and K, CS Respondent

Coram: H.H. Judge C.K. Chan in Chambers (Not Open to Public) Date of Hearing: 10 May 2024
Date of Handing Down Judgment: 6 August 2024

J U D G M E N T (Maintenance Pending Suit and Interim Maintenance)

Applications In the Respondent Mother (s summons dated 15 December 2023 (A/1-4), she asked for:

- (1) Permanent relocation of the 2 children of family to Korea by early August 2024 (paragraph 1 of the summons); and
 - (2) Upon various undertakings to be given by the Petitioner Father (), there is to be a maintenance pending suit () order for M in the sum of HK\$463,600 per month; an interim maintenance () order for the 2 children of family in the sum of HK\$478,833 per month; or such sum as deemed appropriate by the Court (paragraph 2 of the summons).
2. F initially defended the relocation application but I was recently informed that he no longer opposed on condition that the parties dispute on access could be sorted out. But since the window for relocation this summer has already been closed, the earliest time for relocation would be in December 2024 or January 2025, if school places could be secured by that time,

but if not, then by the summer of 2025. It is not seriously disputed that after relocation, the monthly expenses of both M and the children will be very different and most probably be less. In other words, any MPS or IM orders to be made will last for about 4 to 5 months if relocation is to take place by end of 2024 or early 2025, or for about 12 months if relocation is to take place in summer 2025.

3. At the call-over hearing on 26 January 2024, this court, based on certain undertakings given by F, granted an order for F to pay interim maintenance at HK\$150,000 per month until further order of the court, and further directed the substantive hearing of M's applications to be heard today.
4. At today's hearing, F offered the same previous undertakings with an additional offer of HK\$162,962 as MPS and IM. On the other hand, the claims of M now include a slightly different set of undertakings requested from F with a monthly sum of HK\$1,063,833 as MPS and IM. Brief Background
5. The parties were married in 2004 but separated on 31 May 2023. It was a marriage lasting 19 years. F took out divorce proceedings on 1 August 2023. A decree nisi of divorce was granted on 26 April 2024.
6. Within wedlock, 2 children were born. The elder boy () is aged 12 and the younger boy () now aged 9. Both of them are students of S School but in different classes and campuses. Although the parties failed to reach a settlement at the MCDR hearing, as recent events unfold, it now seems likely that they could reach some form of agreement on joint custody with care and control to M. Unfortunately, there is still a huge gap on the issue of access.
7. As stated above, the issue on relocation has become less controversial as F is likely to give his consent provided the issue on access could be resolved. The claim for MPS/IM is more controversial and has to be fully argued at this hearing. Legal Principles
8. The general legal principles on MPS/IM are not in dispute.
9. In *HJFG v KCY*, Hartmann JA, at paragraphs 37 and 38 of the judgment, gave a succinct summary of the law in this area by referring to the judgment of Mostyn QC, sitting then as a Deputy Judge of the High Court in England, in *TL v ML* [2006] 1 FLR 1263, 1289:
37. The principles that have been emerged over time to guide judges in matters of interim maintenance have been fashioned in the main to ensure fairness. This is well illustrated in the judgment of Nicholas Mostyn QC, sitting then as a Deputy Judge, in *TL v ML* [2006] 1 FLR 1263, 1289, in which, having looked at earlier authorities, he derived the following principles that speak specifically to fairness or are based on the need to ensure it. For present purposes, it is sufficient to cite the relevant principles without citing the Judge's reference to the source of those principles: The sole criterion to be applied in determining the application is reasonableness, which is synonymous with fairness. A very important factor in determining fairness is the marital standard of living. This is not to say that the exercise is merely to replicate that standard. In every maintenance pending suit application there

should be a specific maintenance pending suit budget which excludes capital or long-term expenditure, more aptly to be considered on a final hearing. That budget should be examined critically in every case to exclude forensic exaggeration. Where the affidavit or Form E disclosure by the payer is obviously deficient, the court should not hesitate to make robust assumption about his ability to pay. The court is not confined to the mere say-so of the payer as to the extent of his income or resources. In such a situation, the court should err in favour of the payee.

38. Finally, it is to be noted that in application for interim maintenance, when the amount to be paid is for a limited period only and not all the evidence is necessarily before the court, it is not appropriate, nor indeed in most cases possible, for the court to conduct a detailed investigation into the finances of the parties. While, in order to determine what is or is not reasonable, some analysis is always required, that analysis can be conducted on a broad-brush basis.
10. Therefore, the overriding considerations for such applications are reasonableness and fairness. In order to achieve these objectives, the Court has to balance the reasonable needs of the applicant and the ability to pay of the respondent on an interim basis: LJ v LWHH [2003] 3 HKC 455 at 461D.
11. In undertaking this balancing exercise, the Court will adopt a broad brush approach, and not a detailed investigation of the financial positions of the parties. Scope of the Parties Disputes
12. As can be seen from the parties respective submission, there are 4 main areas of dispute:
 - (1) The undertakings to be given by F;
 - (2) The reasonable needs of M and the children;
 - (3) F s ability to satisfy those reasonable needs; and
 - (4) M s own ability to satisfy those reasonable needs. F s Undertakings
13. At the call-over hearing, this court has accepted F s following undertakings to cover certain parts of M and the children s needs (s current undertakings). It would be helpful to repeat them here for reference:
 - (1) to procure to the best of his ability, the continued occupation and use of the former matrimonial home () and car parking space #173 (CP Space) by M and the 2 children of the family;
 - (2) to procure to the best of his ability settlement of all reasonable outgoing expenses in relation to FMH and CP Space as a result of the occupation by M and the children, including but not limited to utilities (including electricity, gas, rates, water, phone and internet services), the management fees, government rent and rates, and any necessary repairs and maintenance;

- (3) to procure to the best of his ability the exclusive use of mobile no. 6xxx xxxx by M and pay and/or cause to be paid all reasonable local expenses pertaining to the phone plan thereto;
 - (4) to procure to the best of his ability the availability of private transportation for the children s needs and reasonable related expenses (including fuel, tunnel tolls) to and from school and extra-curricular activities;
 - (5) to pay or cause to be paid to the best of his ability all reasonable expenses of the private vehicles nos. AT 38XX and CD 38XX (i.e. car insurance, registration fees and repairs) directly to the providers registered under the name of M;
 - (6) to procure to the best of his ability the use and enjoyment of one (1) driver by M and the children, with any over-time of the driver pre-agreed;
 - (7) to pay and/or cause to pay to the best of his ability for the children s medical insurances directly to the providers as currently arranged;
 - (8) to pay and/or cause to pay to the best of his ability for all the children s reasonable medical, dental and optical expenses (inclusive of glasses) directly to the providers and/or make reimbursements to M for these reasonable expenses within 7 days upon production of receipt provided that M sought F s prior written consent for procurement of such services;
 - (9) to pay and/or cause to pay to the best of his ability for the children s reasonable education expenses directly to the providers as follows: School fees at S School, including all reasonable school related expenses, such as school meals, school trips and school bus fees; Extra-curricular activities mutually agreed between M and F, including all reasonable related expenses; and Necessary material and equipment needed for the children s education.
14. At the hearing, M asked for some variations to F s current undertakings. Her main ground was that the implementation of some undertakings was problematic and so she asked them to be modified, failing which the court should allow a fixed sum instead. In order to support her claim of problematic implementation, I was referred to M s 9th Affidavit (A/167-182). I do not propose to repeat them here in order not to lengthen this judgment unnecessarily.
15. The stance of F is that his current undertakings are sufficient as they have already catered for the needs of M and the children for (i) accommodation and related expenses; (ii) M s mobile phone expenses; (iii) drivers and car-related expenses for the children; (iv) children s medical insurance; (v) the children s medical, dental and optical expenses; (vi) children s school fees and related expenses; (vii) mutually agreed ECAs of the children. My Views

16. It is important to bear in mind that undertakings have to be given by a party voluntarily. This court will not adjudicate on the parties different versions of proposed undertakings and then make mandatory orders on them. Therefore, what this court will do is to see whether the undertakings now proposed by F (in terms of his current undertakings) are reasonable in the circumstances. If not, and if appropriate, the court may make monetary orders in lieu of those proposed undertakings.
17. In my view, an important feature of this case is F's own financial inability to cater for M and the children's needs. It is common ground that this family's very high standard of living in the past was solely dependent on the financial support from F's parents. Therefore, it is not a matter of whether F was willing or able to make the financial provisions. It is more a case of whether he was able to persuade his parents to continue those very generous financial support, by way of undertakings or otherwise. Of course, at present there is no credible evidence that the grandparents are prepared to stop the financial support and that is why F was still able to fulfil the current undertakings given by him at the last hearing. However, this court has to recognise that there may be limitation on how he may structure the undertakings to be given.
18. Another consideration is the rather short duration of the MPS/IM to be ordered. Any undertaking and monetary provision will likely to last for only about 5-12 months, after which practically all of them have to be re-visited in accordance with the then circumstances after relocation. Therefore, it may not be a fruitful exercise to go into a detailed discussion on the so-called problems as disclosed in M's 9th Affidavit. After all, some of the problems as encountered by M, though seem minor, but actually might not be so easy to resolve by way of a monetary order. For example, the 1st problem encountered was the fact that M was only given 1 access card to the FMH. She said she needed 7 cards. I do not see how that problem could be resolved by granting a monetary order in lieu. It could only be resolved by the parties adopting reasons and common sense. In this regard, I would expect F to provide additional access cards to M, if that has not already been done.
19. By adopting a broad-brush approach, I tend to agree with Ms. Booth's submission that F's current undertakings are already very extensive, catering for accommodation, transport, medical, school and ECA expenses. M may not be entirely satisfied with some of the detailed arrangement but this court is not minded to substitute any of them with monetary orders. I am satisfied that F's current undertakings are reasonable and are accepted by this court for the relatively short period that they are supposed to cover. Reasonable Needs of M and the Children
20. On top of the undertakings, M now asks for a monetary MPS/IM order as follows: General Expenses Item Amount (HK\$) Food 80,000 Household 30,168 Repair and maintenance 41,800 Car expenses 61,500 Domestic Helpers 31,000 2 Drivers 65,000 Mercedes EQS 34,862 Sub-total: HK\$344,330 Personal Expenses Item Amount (HK\$) Meals out of home 62,000 Transport 2,000 Clothing/shoes 100,000 Personal grooming 48,000 Entertainment/Presents 36,000 Holiday 100,000 Medical/dental 10,600 Club memberships 6,070 Sub-total:

HK\$364,670 Children Expenses Item Amount (HK\$) Extra tuitions and ECA 162,000 Lunch/pocket money 3,500 Clothing/shoes 20,000 Personal grooming 5,000 Entertainment/Presents/Books/Stationery 20,000 Holiday 133,333 Medical/dental 11,000 Sub-total: HK\$354,833 Grand-total: HK\$1,063,833 Discussion General Expenses Food

21. M claims for food under general expenses in the sum of HK\$80,000 per month.
22. F argues that there is insufficient documentary evidence for such a high figure.
23. Over all speaking, I accept that this family did enjoy a very high standard of living, if not a luxurious one. This could be seen from the fact that just for donations to school and educational institutions, they amounted to over HK\$1,000,000 a year. I also have to bear in mind that this family employs 3 domestic helpers. In other words, the monthly expenditures on food are to feed a total of 6 people. Still, a monthly sum of HK\$80,000 on food at home seems on the high side. A daily sum of HK\$2,000 sounds more reasonable, i.e. HK\$60,000 per month, bearing in mind that M also claims for meals out of home, which will be discussed later in this judgment. Household Expenses
24. M claims for HK\$30,168 per month as household expenses.
25. F suggests that HK\$16,000 is more reasonable as M could not produce documentation to support such a high figure.
26. At 52-56 of M's 5th Affidavit (A/49-50), M tried to explain her claim of HK\$30,000 per month for household expenses. She referred to the high hygiene standard that they adopted at home; how they utilized hospital-level IQ air filters; using high-standard personal consumables; paying repair and maintenance expenses for wear and tear of appliances, equipment and furniture. She also included HK\$168 monthly expenses on internet. However, there was no breakdown to show how she arrived at HK\$30,000 or HK\$30,168 per month.
27. On the other hand, I do not see any written submission on how F arrived at his suggested figure of HK\$16,000.
28. Overall speaking, for a family which had enjoyed such a high standard of living before separation, a monthly sum of HK\$30,000 on general household expenses could not be regarded as unreasonable. Repair and Maintenance
29. M claims for HK\$41,800 for repairs and maintenance of the FMH.
30. F refused saying that this part of the expenses should have been covered by the current undertakings.

31. I accept that these expenses of the FMH should have already been covered by the undertaking in relation to the FMH. After all, I note that for the general household expenses, which have already been allowed in full, there is already an element on repair and maintenance expenses for the wear and tear of appliances, equipment and furniture in the FMH . Therefore, this separate item on repair and maintenance is not allowed. Car Expenses
32. M claims for car expenses at HK\$61,500 per month, in lieu of F s undertaking on transportation.
33. This court has already accepted that F s undertakings are reasonable and so M s claims of HK\$61,500 for private transportation must fail. Domestic Helpers
34. M claims for 3 domestic helpers at a total costs of HK\$31,000 per month.
35. F said 2 domestic helpers are enough, proposing HK\$15,000 per month for this item.
36. I accept that M is currently employing 3 domestic helpers with one of them being in employment for almost 10 years. It is not unreasonable for M to pay them something more than the legal minimum. I will allow HK\$24,000 per month for 3 domestic helpers with an average of HK\$8,000 each. Drivers
37. M claims for HK\$65,000 per month for 2 drivers.
38. This has already been covered by F s current undertakings and nothing will be allowed in this regard. Mercedes EQS
39. M claims for HK\$34,862 per month, to which F raised no objection. This item is allowed in full. M s Personal Expenses Meals out of Home
40. M claims HK\$62,000 for meals out of home.
41. F objected by saying that M could not produce sufficient documentation to support such a high figure.
42. In my view, requiring M to provide proof on every dollar and cent of her interim need on meals out of home is not reasonable, nor practicable. All these figures are necessarily rough estimates. But I accept that M spending an average of over HK\$2,000 on each every day of the month for meals out of home is a bit on the high side. I would reduce it to HK\$30,000 per month. Transport
43. M claims HK\$2,000 per month for personal transport, to which there is no objection. This item is allowed. Clothing/shoes
44. M claims HK\$100,000 per month on her own clothing and shoes.
45. F objects and suggests HK\$10,000.

46. I accept that both parties did purchase expensive clothing and shoes before separation, but a monthly sum of HK\$100,000 is still on the high side. I would allow HK\$50,000 per month which I consider to be more reasonable. Personal Grooming
47. M claims HK\$48,000 per month on personal grooming.
48. F suggests HK\$8,000 per month.
49. I think a monthly sum of HK\$20,000 is more reasonable as an interim measure. Entertainment/presents
50. M claims HK\$36,000 per month as entertainment and presents.
51. F suggests HK\$5,000 per month.
52. I think a monthly sum of HK\$20,000 is reasonable. Holidays
53. M claims HK\$100,000 per month on her holidays. It is noted that she also claims for HK\$133,333 per month as the children's travelling costs, which will be dealt with later in this judgment. She said before COVID, the family travelled to Korea every year 5-6 times. They also went for skiing trips in places like Niseko, Japan and Whistler, Canada, during which they would engage top-notch private instructors for each child. At 76 of her 5th Affidavit (A/54-58), she even set out a table of their 10 overseas trips between Christmas 2022 and October 2023, with an estimated spending of HK\$2,800,000. This did not include the costs to Seoul with a further estimate of HK\$200,000.
54. F objects and suggests HK\$10,000, instead.
55. I note that M's estimation of total travelling costs at about HK\$3,000,000 covered the period from Christmas 2022 to October 2023. It was an estimated figure without documentary support. Doing the best as I could, I allow HK\$50,000 per month for M's holidays. Medical/dental
56. M claims HK\$10,600 per month as her medical and dental costs.
57. F suggests HK\$3,100 saying that this is enough for M to maintain necessary medical insurance.
58. I note that at 77-80 of her 5th Affidavit (A/58-59), M set out her needs item by item, averaging HK\$8,100 per month. Arguably, some of them may not be medical in nature. One obvious example was health supplements. Glass lens also might not be needed every year, certainly not every month. Moreover, it might not be practical to purchase medical insurance just covering such a short period of time from now to December 2024, or summer 2025 the latest. For this item, I would allow HK\$5,000 per month. Club Memberships
59. M claims HK\$6,070 per month for her membership fees at the American Club and Hong Kong Country Club, which amounts used to be paid out from the parties joint account.

60. I am satisfied that M's continued enjoyment of these club membership is justified and the amount is allowed in full. Children Expenses Extra tuitions and ECA
61. M claims HK\$162,000 per month for the children's extra tuitions and ECA.
62. F objects saying that they have already been covered by the F's undertakings.
63. I accept that the undertakings are sufficient to cover the children's expenses in these 2 areas and so no monetary awards will be made. Lunch and Pocket Moneys
64. M claims HK\$3,500 per month for the children's lunch and pocket money.
65. F objects and relies on the undertakings.
66. Since the sum involved is comparatively small. I am minded to allow this sum at HK\$3,500 per month. Clothing/shoes
67. M claims HK\$20,000 per month for the children's clothing and shoes.
68. F objects and suggests HK\$2,000 instead.
69. I think HK\$2,000 is too little. I allow HK\$10,000 per month. Personal Grooming
70. M claims HK\$5,000 per month for the children's personal grooming.
71. F suggests HK\$2,000.
72. I accept F's proposal being reasonable. HK\$2,000 per month is allowed. Entertainment/presents/books/stationery
73. M claims HK\$HK\$20,000 per month for the children in these items.
74. F proposes HK\$5,000.
75. I allow HK\$10,000 per month. Holidays
76. M claims HK\$133,333 per month for the children's holidays.
77. F proposes HK\$10,000.
78. I have allowed HK\$50,000 per month for M's holidays. For the children, I would reduce it slightly to HK\$40,000 per month for each child, making it HK\$80,000 for 2 children. Medical/dental
79. M claims HK\$11,000 per month for the children's medical and dental expenses.
80. F suggests nil as they have already been covered by undertakings.
81. I have allowed HK\$5,000 per month for M as medical and dental expenses. Medical expenses for children might not be less than adult. I would also allow HK\$5,000 for each child, making it HK\$10,000 per month as children's medical and dental expenses. Summary of reasonable monthly expenses as found by this court

82. By way of summary, the reasonable monthly expenses of M and the children as found by this court in addition to F's undertakings are HK\$447,432. They are summarized as follows: General Expenses Item Amount (HK\$) Food 60,000 (- 20,000) Household 30,000 (-168) Repair and maintenance Nil (- 41,800) Car expenses Nil (- 61,500) Domestic Helpers 24,000 (- 7,000) 2 Drivers Nil (- 65,000) Mercedes EQS 34,862 (- 0) Sub-total: HK\$148,862(-195,468) Personal Expenses Item Amount (HK\$) Meals out of home 30,000 (- 32,000) Transport 2,000 (- 0) Clothing/shoes 50,000 (-50,000) Personal grooming 20,000 (- 28,000) Entertainment/Presents 20,000 (- 16,000) Holiday 50,000 (- 50,000) Medical/dental 5,000 (- 5,600) Club memberships 6,070 (- 0) Sub-total: HK\$183,070 (-181,600) Children Expenses Item Amount (HK\$) Extra tuitions and ECA Nil (-162,000) Lunch/pocket money 3,500 (- 0) Clothing/shoes 10,000 (- 10,000) Personal grooming 2,000 (- 3,000) Entertainment/Presents/Books/Stationery 10,000 (- 10,000) Holiday 80,000 (- 53,333) Medical/dental 10,000 (- 1,000) Sub-total: HK\$115,500 (- 239,333) Grand-total: HK\$447,432 (- 616,401) s Ability to Pay
83. In addition to the undertakings, F offers to pay HK\$162,962 per months as monetary MPS/IM. The difference between this and the reasonable needs of M and children as found above is HK\$284,470 per month (HK\$447,432 HK\$162,962 = HK\$284,470). The next question is whether F has the ability to pay this additional HK\$284,470 per month.
84. As stated above, there is no dispute on F's own financial inability to support this family's very high standard of living in the past. He only received about HK\$75,000 per month as director fees from the family company () and RB. Undoubtedly, very generous financial support has been given by F's parents. According to M, such financial support was given in mainly 3 areas:
- (1) Direct payments by F's parents: They include the provision of the FMH; 2 drivers and related expenses; ad-hoc expenses including large amount of donations; the use of family yacht and the apartment at Century Tower.
 - (2) Direct spending on supplementary cards and club memberships: The family always ordered takeaways from various clubs and those bills would customarily be booked to F's parents. The family always used the supplementary cards given to F by his parents. M was also given a BEA supplementary card by F's father. The family purchased gifts, such as antique from art dealers and galleries and such bills would be sent to F's parents directly.
 - (3) Reimbursements: There was an additional HK\$500,000 monthly budget given to F who would transfer money into the parties joint account. Out of the HK\$500,000, payments would be made towards the children's miscellaneous and ad-hoc expenses, children's ECA and the balance to be paid into F's company (RB). F's parents would also give lai-sees to the family every year.
85. At 21 of F's 4th Affirmation (A/112), he admitted that his parents did provide the following financial assistance to the family:
- (1) Accommodation at the FMH and transportation.

- (2) Children's school fees and ECAs.
 - (3) Medical and dental expenses.
 - (4) Family daily expenses of HK\$60,000.
 - (5) Use of supplementary credit cards.
86. At 33-37 (A/115-116), there was also no dispute that F's mother did provide a monthly budget of not more than HK\$500,000 to the family. However, he said such assistance was no longer available and he had to seek assistance from a relative. At 35, F said:
35. My mother has used a cap of HK\$500,000 per month with her accountant to RB and my family. The amount includes HK\$60,000 for daily family expenses, reimbursements for ECA and a loan to RB to sustain its business activities. The loan will have to be repaid by RB the company. The amount owed by RB to my parents was set out in my Form E, and now that my mother is no longer willing to loan for RB due to the amounts, I have to seek a family relative to keep the company afloat.
87. There was no credible evidence on the cessation of financial assistance from F's mother, except his mere say so. There was also no mention of which family relative is now supporting F in place of his mother. On the other hand, the fact that F is able to offer the current undertakings is a strong indication that financial assistance is still forthcoming from his family. On balance, I am satisfied that F's family is continuing to provide financial assistance to the family as in the past, which includes a monthly budget of not more than HK\$500,000.
88. However, one has to bear in mind that this HK\$500,000 monthly budget must have included some of the items now covered by F's proposed undertakings. Moreover, the budget was provided to support the whole family including F and his company RB, but not simply for M and the children. There was not clear evidence on how much of that HK\$500,000 is now being used to cover F's current undertakings; or how much of it could still be used as direct monetary contribution towards M and the children's interim reasonable needs. Doing the best as I could, I am prepared to assume half of that sum, namely HK\$250,000 is still available to be used as such direct monetary contribution. In other words, this court is of the view that apart from F's current undertakings, he does have ability to make direct monetary contribution in the sum of HK\$250,000 towards the interim reasonable needs of M and the children. M's own ability to satisfy her and the children's needs
89. The last and more controversial issue is M's own ability to satisfy her and the children's interim reasonable needs.
90. I think it is fair to say that M herself is not a person without means. Arguably, M is a richer person (as compared to F) in her own right. In her Form E dated 6 October 2023, she stated at Part 5.1 that (A3/523): As per Part 5.5, I have inherited an interest in a total of three properties in Korea from my late father who passed away in 1997. One of the properties is

set out in Part 2.2. The remaining two are commercial properties, and my interest in both properties is 20%. The said two properties in Korea have been sold in the past 36 months. One sale took place on 27 June 2022. The sale price was KRW 27,400,000,000 (approximately HK\$158,920,000) and my share is 20%. I had transferred about HK\$20 million to the Petitioner on the understanding that he would hold the money for me for investment. But the Petitioner refused to return it to me after our separation despite my request. That is the sum of money that I set out in Part 2.9 above that the Petitioner owes me. The other sale was conducted on 4 August 2023. The sale price was KRW 17,200,000,000 (approximately HK\$99,760,000) and my share is 20%. The sale proceeds are payable to me by instalments. About HK\$1.97 million was received on 4 August 2023, and HK\$5.93 million was received on 5 October 2023, and the payments are now held by my mother for me. She could only transfer the same to me after settling the tax payment upon the completion of sale. The sale proceeds stated are subject to 40% government tax and costs incidental to the sale including real estate agent's fee, lawyer's fee, and accountant fee. The sale proceeds will be used to pay for my legal costs in these proceedings.

91. Even in her own words, M is having assets at least as follows:
 - (1) 40% in a property in Seoul, Korea HK\$7,080,000
 - (2) Sale of Korean property on 27/6/2022 (20%) HK\$31,784,000
 - (3) Sale of Korean property on 4/8/2023 (20%) HK\$19,952,000 HK\$58,816,000
92. Even assuming M has to pay 40% of Korean tax for the sale of 2 properties, she still has received or about to receive HK\$31,041,600 $(\text{HK\$}31,784,000 + \text{HK\$}19,952,000) \times 60\% = \text{HK\$}31,041,600$.
93. According to M, out of those sale proceeds, she has entrusted HK\$20,000,000 with F for investment. At the hearing, it was mentioned that the trusted money with F has now been reduced to about HK\$16,000,000 but that is still quite a big sum by any standard. In the Form E, M alleged that F refused to return the money upon request. But the irony is that at the call-over hearing, F has already through counsel offered to return the money but his offer was flatly refused.
94. It seems that M also has another source of income and that is an annuity of HK\$65,000 per month. That is also a financial resource that could be used towards the interim reasonable needs of M and the children.
95. At the hearing, there was hot debate on whether or how M's wealth would impact on her MPS/IM application. Ms. Yip on behalf of M submits that even if M is having assets, that does not mean that no MPS or IM could be granted. I was referred to CWK v. YCHS, CKY (unrep., FCMC 6082/2014, 10/12/2015) in which HHJ Own ordered the husband to pay maintenance on a level that he previously had been paying during marriage. Ms. Yip further submits that M's assets are non-matrimonial in nature because they represent her inheritance which have always been kept separate from the family's own finances.

Therefore, it is unreasonable to request her to use her resources of a non-matrimonial nature to meet the on-going needs. Ms. Yip also submits that M is not claiming legal cost provision at the moment and any financial resources currently retained by her are destined for such purpose. My Views

96. I have no issue with the proposition that even if a party does have her own means, that does not bar him or her from claiming MPS or IM. However, it is my firm view that if a party does own substantial assets, whether matrimonial or otherwise, that is a factor that needs to be taken into account in deciding whether or what sort of MPS or IM orders are to be made. It may be true that in the final ancillary relief hearing, assets of a non-matrimonial nature may receive different treatment from joint marital acqust. Sometimes, non-matrimonial assets may even be ring-fenced from distribution in appropriate cases. But it is never the law that a party's financial resources should never be taken into consideration in ancillary relief proceedings, even if they are of a non-matrimonial nature. This must be the case by virtue of section 7(1) (a) of the Matrimonial Proceedings and Property Ordinance, Cap.192 (MPPO) in that:
- (1) It shall be the duty of the court in deciding whether to exercise its powers 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;
97. Therefore, it is my view that M's own substantial financial resources, in particular her monthly annuity of HK\$65,000 and the HK\$16,000,000 now held by F on her behalf, could also be used towards her and the children's interim needs.
98. Moreover, it is quite clear that M's mother has also given substantial financial assistance to M. M actually confirmed this at 45 of her 6th Affirmation (A/84):
45. Although I am fortunate enough to have financial assistance from my mother M also stated at 103(a) of her 9th Affidavit (A/167) that her mother have given financial assistance (allegedly a loan) to her in the sum of HK\$3,082,400.
99. I suppose that M's mother is a person of substantial means as she should also have received a large legacy from M's father's estate. If F's parents financial assistance could be regarded as a financial resource of F, there is no reason why the same treatment should not be given to M's mother's financial assistance.
100. Based on the above discussion, I am of the view that both M's own financial resources, including her mother's financial assistance could also be used to satisfy M and the children's interim reasonable needs. Conclusions and Orders
101. After hearing submissions, this court has come to the following conclusions:
- (1) The current undertakings given by F are reasonable and therefore, accepted by this court.

- (2) In addition to those undertakings, the interim reasonable needs of M and the children amount to HK\$447,432.
 - (3) It is accepted that during the course of marriage, most if not all family expenses were paid by F with financial assistance provided by his parents. F's mother had also provided financial assistance up to a monthly sum of HK\$500,000, which was inclusive of such payments as school fees and ECAs. As far as F's ability to pay, the court is satisfied that he has such ability to make monetary contribution of up to HK\$250,000 per month towards the interim reasonable needs of M and the children in addition to the current undertakings.
 - (4) At the same time, M's own assets (in particular the HK\$16,000,000 now held by F on M's behalf) and her monthly annuity of HK\$65,000 could also be utilized towards M and the children's interim reasonable needs.
102. Based on these conclusions, it is fair for M and the children's interim reasonable needs of HK\$447,432 to be shared between the parties equally. For this purpose, I am minded to order F to pay a monthly sum of HK\$225,000 as MPS/IM for M and the children, with the balance to be borne by M from her own resources.

Orders

103. Based on F's undertakings:

- (1) to procure to the best of his ability, the continued occupation and use of the FMH and CP Space by M and the 2 children of the family;
- (2) to procure to the best of his ability settlement of all reasonable outgoing expenses in relation to FMH and CP Space as a result of the occupation by M and the children, including but not limited to utilities (including electricity, gas, rates, water, phone and internet services), the management fees, government rent and rates, and any necessary repairs and maintenance;
- (3) to procure to the best of his ability the exclusive use of mobile no. 6xxx xxxx by M and pay and/or cause to be paid all reasonable local expenses pertaining to the phone plan thereto;
- (4) to procure to the best of his ability the availability of private transportation for the children's needs and reasonable related expenses (including fuel, tunnel tolls) to and from school and extra-curricular activities;
- (5) to pay or cause to be paid to the best of his ability all reasonable expenses of the private vehicles nos. AT 38XX and CD 38XX (i.e. car insurance, registration fees and repairs) directly to the providers registered under the name of M;
- (6) to procure to the best of his ability the use and enjoyment of one (1) driver by M and the children, with any over-time of the driver pre-agreed;

- (7) to pay and/or cause to pay to the best of his ability for the children's medical insurances directly to the providers as currently arranged;
- (8) to pay and/or cause to pay to the best of his ability for all the children's reasonable medical, dental and optical expenses (inclusive of glasses) directly to the providers and/or make reimbursements to M for these reasonable expenses within 7 days upon production of receipt provided that M sought F's prior written consent for procurement of such services;
- (9) to pay and/or cause to pay to the best of his ability for the children's reasonable education expenses directly to the providers as follows: School fees at S School, including all reasonable school related expenses, such as school meals, school trips and school bus fees; Extra-curricular activities mutually agreed between M and F, including all reasonable related expenses; and Necessary material and equipment needed for the children's education. It is ordered that F shall pay the following MPS/IM on the 1st day of every month, starting 1 September 2024 until further order of the court:
- (i) HK\$75,000 as MPS for M; (ii) HK\$75,000 as IM for A; and (iii) HK\$75,000 as IM for O. Costs
104. M has to come to court before she could obtain the present MPS/IM orders and therefore arguably, she should be regarded as the winner of this application. She should be given costs, including costs reserved with certificate for 2 counsel. This is in the form of an order nisi to be made absolute after the expiry of 14 days from the handing down of this judgment. Within 14 days of costs order being made absolute, M is to submit a costs statement limited to 2 pages of A4 paper for the court's summary assessment and F be at liberty to submit a list of objections also limited to 2 pages of A4 paper 14 days thereafter for the court's consideration.
105. Lastly, I thank counsel for their assistance. C. K. Chan District Judge Representation: Ms. Madeleine Booth, Barrister-at-law, instructed by Messrs Hugill & Ip, solicitors for the Petitioner Ms. Anita Yip SC, leading Ms. Lily Yu, Barristers-at-law instructed by Messrs. Withers, solicitors for the Respondent
- [2012] 1 HKLRD 95 PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V gd9N hnTS ^M^<*# hnTS gd6h {gV{B hU [gd9N gd9N gd9N o\oIoIo6o H^H^ hqvv hqvv hs>; hqvv hqvv hqvv hs>; gdxqv {d{Q h_S@ h>!0 h>!0 h_S@ h_S@ h_S@ hqvv hqvv hH.V t^K6 kd< kdL kd\ t^E/ hH.V hPN4 hs>; CVC0C h`u9 hPN4 hPN4 hPN4 hPN4 hPN4 hPN4 uOuOu qZCZCZCZ r_I3 hIEC hxF' hxF' ytd+ ytd+ ytd+ ytd+ ytd+ ytd+ ytd+ ytd+ q^I4 gd]5 gdxF' ytd+ ytd+ gd]5 gd]5 ytd+ ytd+ gd]5 ytd+ gd]5 ytd+ gd]5 ytd+ ytd+ gd]5 ytd+ gd]5 gdD+ gdxF' ytd+ gd]5 wbL5L gdD+ gdD+ ytd+ ytd+ gdD+ gdD+ ytd+ ytd+ gdD+ ytd+ gdD+ gdD+ ytd+ gdD+ gdD+ ytd+ gdD+ gdD+ ytd+ ytd+ gdD+ _L_9 & h#dF gd#dF gdxF' ytd+ h#dF h#dF h#dF h#dF hwd# hwd# hwd# hv=? h#dF gdwd# gd#dF vHVh h~c/ s\sEs\ h|'c h|'c h|'c axJx3x h@B3 h:QH EsEs h@B3 h:QH h@B3 h@B3 h@B3 h7it h7it h7it tJL;* gd4xN ~skbZQFQF5 &`#\$ r_rM h%I1 ytd+ ytd+ ytd+ ytd+ ytd+ ytd+ ytd+ ytd+ ytd+ ytd+ ytd+ ytd+ ytd+ ytd+ ytd+ ytd+

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