

HONG KONG / JUDGMENT

T v. C

COURT

Family Court

DECIDED

17 December 2007

CASE / FILE NUMBER

FCMC3907/2004

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bjbj FCMC3907/2004 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION MATRIMONIAL CAUSES NO. 3907 OF 2004 BETWEEN T Petitioner (Judgment Creditor) and C Respondent (Judgment Debtor) Coram: H H Judge S. D. Melloy in Court Date of Hearing: 17 December 2007 Date of Judgment: 17 December 2007 J U D G M E N T This is an application by a wife for an attachment of earnings order and judgment summons in relation to the arrears of maintenance for the child of the family in the total sum of HK\$97,000. The husband originally agreed to pay \$4,000 per month by virtue of an interim order at a first appointment hearing. An interim order was originally made on 2 August 2004. This became a final order of the court on 5 June 2005. The husband made one payment and subsequently defaulted. On 27 March 2006 the husband undertook to pay the arrears, which then stood at HK\$68,000, by instalments of \$1,000 per month. Maintenance was reduced, by consent, to \$2,000 per month. Again the husband made one payment and then defaulted. On 9 July 2007 the husband agreed to an attachment of earnings order with respect to the ongoing maintenance of \$2,000 per month. However, there was no agreement in relation to the outstanding arrears. The issue before the court today is how should those outstanding arrears be dealt with? Imprisonment is considered a last resort in the Family Court, even where the default has been wilful and one that is not considered unless all other avenues have been exhausted. In this instance the wife seeks not imprisonment, but that the arrears be attached to the husband s income at the HKJC at a rate of \$1,000 per month. Can then the husband afford to pay \$1,000 per month in addition to the \$2,000 per month that he presently pays? It appears from the three Form Es filed by the husband that he was previously in gainful employment. He has worked for DK and L G&J Limited. His salary from these full-time jobs has varied, but he has in addition worked part-time for the HKJC. During cross-examination the husband admitted that his total income from both jobs had varied from about \$13,390 per month to approximately HK\$11,000 per month. However, the husband was also heavily in debt. In February 2005 he was adjudged a bankrupt. Therefore at times his income did not match his outgoings. He confirmed, however, that since he was adjudged a bankrupt he has not been required to pay any contribution to the Official Receiver s Office. In February 2007 the husband, of his own volition, resigned from his full-time job with L G&J Limited. He is frank about this. He explains that he is in the process of applying for a public housing unit, and therefore that his salary cannot be greater than between \$6,000 to \$7,000 per month. He is, therefore, simply

relying at present on his part-time job with the HKJC. During cross-examination he said that this income varied, but that generally he can work for a maximum of a 120 hours per month at \$50 per hour, or in other words \$6,000 per month. This is the maximum that he can earn, although there have been exceptions in the past when the HKJC was short of staff and then he earned slightly more. The employer s certificate shows that he earned just over \$31,000 for a period from April to September 2007, or approximately \$5,175 per month. It seems to me that the husband has an earning capacity far in excess of this amount and that he has simply decided not to seek full-time employment until his application for public housing has been processed. That be as it may, for the time being I accept that the husband has an actual income of between \$5,000 and \$6,000 per month. According to his most recent Form E, he has no other outgoings apart from the \$2,000 per month deducted at source as maintenance for his child and \$2,000 per month for his parents. Consequently the husband has between \$1,000 and \$2,000 per month surplus, although that amount probably varies. He also has to meet his own expenses, although at present it appears that rent and basic outgoings are provided for by his family. He is presently living with his parents and younger brother. In these circumstances, I will order that a further \$500 per month be attached to the husband s income with the HKJC until payment has been made in full. That will be for over a period of 194 months. I am confident that he can afford to pay this sum and, in making this order, I am of course aware that his obligations to his parents should not take precedence over his legal obligations to his child. As I have said above, I am also of the view that he has an earning capacity which far exceeds the HK\$5,000 to HK\$6,000 per month that he is presently earning. As the husband refused to negotiate or to make any reasonable offers, I will also order that the husband pay the wife s costs, the wife s own costs to be taxed in accordance with legal aid regulations. (S. D. Melloy) District Judge Ms D Chu of Legal Aid Department, for the Petitioner Respondent, in person, present PAGE - PAGE CRT4/17.12.2007/NB FCMC3907/2004/ Judgment 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 & `#\$ Normal.dot setup Microsoft Word 9.0 Judiciary Hong Kong SAR Title Microsoft Word Document MSWordDoc Word.Document.8

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