

HONG KONG / JUDGMENT

T v. W**[2020] HKFC 199****COURT**

Family Court

DECIDED

22 September 2020

CASE / FILE NUMBER

FCMP38/2007

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bjbj FCMP 38/2007

**[2020] HKFC 199 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MISCELLANEOUS PROCEEDINGS NO. 38 OF 2007**

IN THE MATTER OF an application under Section 6 of the Parent and Child Ordinance (Cap 429) and Section 10(2) of the Guardianship of Minors Ordinance (Cap 13) and IN THE MATTER OF FNJ and SCJ, minors

BETWEEN [T] Applicant and Respondent

Coram: HH Judge C.K. Chan in Chambers (Not Open to Public) Dates of Hearing: 8 August, 27 September 2019 Date of Applicant s Closing Submissions: 18 October 2019 Date of Respondent s Closing Submissions: 18 October 2019 Date of Judgment: 22 September 2020

J U D G M E N T (VARIATION OF MAINTENANCE)

For this trial, I have to deal with the following applications:

- (1) The Applicant (the mother s summons dated 18 January 2019 asking for an upward variation of the minors maintenance now payable by the Respondent (the father) from \$50,000 to \$75,000 per month and a lump sum payment of \$817,020.80 (the mother s variation summons);

- (2) The father's summons dated 25 February 2019 (limited to paragraphs 1 and 3 only) asking for a downward variation of the children's maintenance from \$50,000 to 28,000 per month starting from 1 March 2019 (the father's 1st variation summons); and
- (3) The father's summons dated 28 June 2019, except paragraph 2 which has been adjourned sine die pending the outcome of the parties variation applications (the father's 2nd variation summons), asking for:
 - (i) a downward variation of the children's maintenance from \$50,000 to \$16,500 per month; and
 - (ii) the mother to be ordered to give certain undertakings concerning her employment and repayment of her indebtedness to the father. It is quite clear that the father's 1st variation summons has already been superseded by his 2nd variation summons. Therefore, on 8 August 2019, the father withdrew the application under his 1st variation summons, which application was thereby dismissed.

Background

This case has a rather long history. The mother was aged 43. The father was aged 54. The parties met in 2003 and thereafter developed a romantic relationship. They were not married as the father was already a married man with a family and 2 children of his own. Out of the parties romantic relationship, 2 minors were born in October 2006. The minors were twins (the daughter and the son) and they are now 13 years of age, turning 14 very shortly, residing with and being looked after by the mother. The parties relationship actually ended sometime in early 2006, even before the birth of the minors. In February 2007, the mother took out legal proceedings asking for the minors maintenance to be payable by the father. After a contested hearing lasting for 14 days, HH Judge Bruno Chan handed down a judgment on 26 August 2008 in which the learned Judge granted the following orders in favour of the mother:

- (1) The father shall continue to pay a monthly sum of \$34,000 as maintenance for the minors until 1 October 2008 after which the sum shall be reduced to \$28,000 per month (\$14,000 per each minor), until they reach the age of 18 or cease full time education, whichever is later, or until further order of the court.
- (2) The father shall pay a lump sum of \$290,000 on or before 15 September 2008 for the balance of the expenses reasonably incurred by the mother in maintaining the minors since their birth.
- (3) The father shall pay half of the costs of the mother in the proceedings. Despite the handing down of the judgment, the parties disputes ensued cumulating in various hearings and orders from the learned Judge, many of which concerned with the issue of enforcement. On 14 September 2015, the mother issued a summons asking for:
 - (1) An increase of the minors maintenance from \$28,000 to \$59,000 per month; and

- (2) A lump sum of \$356,356 plus setup fee and moving costs of the home for the minors. This round of litigation resulted in HH Judge Bruno Chan fixing trial dates firstly on 6-7 September 2016, which were adjourned to 28-29 September 2016 due to the father's absence. The father was absent again on 28 September 2016 resulting in the trial being proceeded with in his absence. The learned Judge heard the mother's evidence and delivered his judgment on 5 October 2016 (the 2016 Judgment) ordering that:
- (1) The minors maintenance to be increased to \$50,000 per month payable on or before the 1st day of the month commencing October 2016 until further order of the court; and
- (2) The mother's application for a lump sum to be adjourned to 18 January 2017. It is noted that the reason for the adjournment of the mother's lump sum application was due to the rather unsatisfactory disclosure of the father's finances making it impossible for the court to make a determination thereon. At paragraph 63 of the 2016 judgment, the learned judge said:
63. In the circumstances while [the mother] has every reason to suspect that [the father] has been far from being full and frank as to his financial disclosure, for which certainly he should be required to come to court to fully explain himself and to address the many shortcomings or defects of such disclosure to avoid any further adverse inferences to be drawn against him, there seems to be no other alternative but to adjourn this part of [the mother]'s application to the next earliest day with an order for [the father] to attend that hearing with a penal notice and a stern warning of the consequences he is at risk to face should he fail to do so, but in the meantime there is no reason why I should not make an interim order for him to increase the periodical payment for the minors to HK\$50,000 per month to start from this month in October 2016, with any payment already made to be set off, and thereafter on the 1st day of each month until the next hearing, which is 18th January 2017 at 10 am with one day reserved for the hearing. The penal notice seems to have worked. When the matter resumed on 18 January 2017, the father was present and an order was made firstly recording the undertaking of the father to sign a new tenancy agreement on behalf of the mother, followed by a consent order made by HH Judge Bruno Chan for the father:
- (1) To pay a lump sum of \$160,000 by 2 instalments, presumably to deal with the mother's application for a lump sum payment (as there is no allegation that the said lump sum has not been paid, I will assume that this part of the order has been fully performed); and
- (2) To continue to pay the \$50,000 monthly maintenance for the 2 minors (\$25,000 for each minor) that was previously ordered on 5 October 2016, which order will continue until the minors attaining the age of 18 or complete their full time education, whichever is the later. According to the court's record, in the year of 2015, the father petitioned for divorce with his former wife in FCMC6200/2015. In that case and at a hearing before another Judge on 17 October 2016, the father consented to pay a monthly sum of \$70,000 as maintenance for his former wife and the 2 children from that marriage. In other words, just 12 days after the 2016 Judgment (when Judge Bruno Chan ordered the father to pay \$50,000 for the minors

monthly maintenance), he still agreed to pay the \$70,000 monthly maintenance for his former wife and children. At the return hearing on 18 January 2017, the father continued to agree to the said monthly payment of \$50,000, together with a lump sum payment of \$160,000 by 2 monthly instalments for the minors. All these indicated that in about January 2017, the father could well afford to pay both the maintenance for the minors and for his former wife and children at the same time, in the total monthly sum of \$120,000. Exactly 2 years from the Judgment and on 18 January 2019, the mother's variation summons was issued, asking for:

- (1) The minors monthly maintenance to be further increased from \$50,000 to \$75,000; and
- (2) A lump sum of \$817,020.80 including the setup fee and moving costs of the minors residence from Chai Wan to Happy Valley. This was followed by the father's 1st variation summons on 25 February 2019 asking for the minors monthly maintenance to be reduced to \$28,000, which application has now been withdrawn and replaced by the father's 2nd variation summons. The father's 2nd variation summons was issued on 28 June 2019, in which he asks for:
 - (1) The minors monthly maintenance to be further reduced to \$16,500;
 - (2) A lump sum of \$2,091,000 payable by the mother being her share of contribution towards the maintenance of the minors from their birth to 30 June 2019 as the father feels that the sole responsibility for maintaining the minors should never have fallen on his shoulders alone; and
 - (3) An order that the mother should undertake to seek and commence gainful employment and to repay her indebtedness to the father by monthly repayment at a rate of no less than \$8,000, or such monthly sum of \$8,000 to be deducted from the monthly maintenance that is payable by the father for the maintenance of the 2 minors. On 10 July 2019, I ordered that the father's claim for a lump sum of \$2,091,000 to be adjourned sine die pending the result of his application for variation. The trial of the mother's variation summons and the father's 2nd variation summons was heard on 8 August and 27 September 2019, after which the parties made their respective final written submissions on 18 October 2019. Judgment was then reserved which I now give. The Legal Principles on Variation The law giving the court's jurisdiction to vary a maintenance order in respect of a minor born outside wedlock is found in section 10(4) of the Guardianship of Minors Ordinance, Cap. 13 ():
- (4) An order under subsection (1) or an order under subsection (2) (other than an order for a lump sum payment in one amount, for a lump sum to be paid in instalments where all such instalments have been paid or for the transfer of property) may be varied, discharged, suspended or revived after being so suspended, by a subsequent order made on the application of either parent or after the death of either parent on the application of any guardian under this Ordinance, or (before or after the death of either parent) on the application of any other person having custody of the minor by virtue of an order under subsection (1). On how to exercise the court's discretion, helpful guidance can be found

from similar cases brought under section 11 of the Matrimonial Proceedings and Property Ordinance, Cap. 192 (MPPO) for children born within wedlock together with the relevant case laws. In the case of *AEM v. VFM* , Cheung JA has explained the modern approach in dealing with such an application at paras 14.4-8 of the Judgment:

4. The modern approach, as required by section 11(7), is for the Court to consider all the circumstances of the cases. The Court is not required to proceed from the starting point of the original order but look at the matter afresh: *Flavell v. Flavell* [1997] 1 FLR 353 at 357B following *Lewis v. Lewis* [1977] 1 WLR 409 and *Garner v. Garner* [1992] 1 FLR 573.
5. Any change in any of the matters to which the Court was required to consider when making the original order was one of the circumstances to be considered.
6. Almost invariably, an application to vary an earlier periodical payment order will be brought on the basis that there has been some changes in the circumstances since the original order was made, for example, continuing inflation; the increased costs in supporting a growing child and that one party may be more adversely affected than another by the increase in the costs of living: *Garner v. Garner*.
7. An increase in the wealth of the husband was a relevant factor to be taken into account: *Primavera v. Primavera* [1991] 1 FLR and *Cornick v. Cornick (No. 2)* [1995] 2 FLR 490.
8. At the same time the basis and intended effect of the original order are relevant factors to which the Court on variation should pay regard and there should not be a radical departure from the approach taken by the parties themselves when they had entered into an agreement embodied in a consent order: *Boylan v. Boylan* [1988] FLR 282. As to the weight to be attached to the original order, Tang VP (as he then was) said in the case of *HCTT v. TYYC* [2008] 5 HKC 86 at paras 15-16:
15. But as *Garner v. Garner* [1992] FLR 573 shows that does not mean that the earlier order, whether made by consent or not, carries no weight. How much weight should be given to the earlier order must depend on the circumstances. Cazalet J said in the English Court of Appeal: Almost invariably, an application to vary an earlier periodical payment order will be brought on the basis that there has been some change in the circumstances since the original order was made; otherwise, except in exceptional circumstances, the application will, in effect, be an appeal. If an order is not appealed against, or is made by consent, then the presumption must be that the order was correct when made. If it was correct when made, then there will usually be no justification for varying it unless there has been a material change in the circumstances. However, because of the impact of continuing inflation, because children grow older and cost more to support and because, for example, the cost of living in its increase may hit one party harder than another, it will usually follow that, if time has passed, there will inevitably have been changes in the circumstances, of the parties concerned. Following *Lewis v. Lewis*, by which decision this court is bound, a court on the hearing of an application to vary is fully entitled to look at all the relevant matters set out in s.25 of the Matrimonial Causes Act 1973. On occasions, the court may be slow to

accede to an application to vary a consent order; not least because the parties solicitors might otherwise be deterred from either seeking to negotiate such a provision or to achieve finality. Another factor which may influence a court will be the time that has passed since the original order was made. If an application consequent on an order is brought very soon after that order has been made, the court, in normal circumstances, is likely to attach more weight to the earlier order than if it had been made some years previously. Likewise, the court would expect to pay full regard to any special terms agreed between the parties at the time the original order was made- as, for example, when endorsements on briefs or contemporaneous correspondence show that an agreed order has, for some particular reason, been set at an artificially low figure. Shortly stated, the court must decide what weight it should attach to the original order and all the surrounding circumstances. However, once an application to vary is before it, the court is fully entitled to make an order considering all the circumstances afresh, paying such regard to the older order as may be appropriate.

16. Thus, although the jurisdiction to vary is untrammelled, normally the earlier order would not be varied unless there has been a material change in the circumstances. I shall bear the above principles in mind when I come to consider the facts of this case. The Issues After hearing the parties, I am of the view that these are the issues to be determined by this court:
 - (1) The reasonable needs of the minors.
 - (2) The financial circumstances of the mother.
 - (3) The financial circumstances of the father. Reasonable Needs of the Minors In the mother s variation summons, she is asking for the maintenance for the 2 minors to be increased from \$50,000 per month (\$25,000 each) to \$75,000 per month, presumably also apportioned equally between the 2 minors at \$37,500 each. She also asked for a lump sum of \$817,020.80. However, in her Closing Submissions, the lump sum application was revised to \$1,000,566.70 which were made up of the following items:
 - (1) Relief for the mother s indebtedness \$164,655.70
 - (2) Previous agreement for study tour, etc. \$160,000
 - (3) Purchase of necessary items \$159,703
 - (4) Studies and living costs 2016-19 \$516,208 \$1,000,566.70 In her Form E dated 18 January 2019, the mother has enclosed a 2-page spread sheet listing a lot of figures which were not entirely easy to follow. Upon the request of the court, the mother has presented a table (by using the template of the Form E) (Exhibit A1) on 8 August 2019 to list out her overall monthly expenses as follows: General Expenses Rent \$25,000 Public Utilities \$2,700 Food \$10,000 Miscellaneous expenses \$2,000 \$39,700 Personal Expenses Meals out of home \$3,000 Transportation \$1,500 Clothing/shoes \$1,000 Personal grooming \$800 Entertainment/presents \$2,000 Holidays \$1,000 Medical/dental \$1,300 Contribution to parents \$3,000 \$13,600 Children School fees \$5,800 Extra tuition \$15,800 School books and stationery \$1,800

Transportation to school \$5,000 Medical/dental \$450 Extra-curricular activities \$10,000 Holidays \$7,500 Clothing/shoes \$1,800 Lunch and pocket monies \$2,000 Other transportation \$2,000 School uniforms \$1,000 \$53,150 Total: \$106,450 In a separate section, the mother also indicated that as from 14 January 2020, the monthly rent would be increased to \$28,000. It was not entirely clear how the mother has apportioned the general expenses between her and the 2 minors so as to come up with her present overall claim of \$75,000. If she has taken out 1/3 of the general expenses as her share, the remaining 2/3 for the minors would be \$26,466. Adding that to the minors other expenses of \$53,150, that would give us \$79,616.67 ($\$26,466 + \$53,150 = \$79,616$), instead of \$75,000. The Father's Challenges The challenges raised by the father could be seen in a table at page 5 of his Closing Submissions. General Expenses Under the section on general expenses, the father raised the following objections to the mother's claims: Item Claim on Exhibit A1 on Agreed to be reasonable 18.1.19 8.8.19 by father Rent \$26,908 \$25,000 \$16,000 Public utilities \$2,267 \$2,700 \$2,700 Food \$8,205 \$10,000 \$8,205 Miscellaneous \$1,427 \$2,000 Nil (no receipts) \$26,905 Deduct 1/3 for mother's share - \$8,968 \$17,937 My Views Rent There is no dispute that the mother and the minors used to reside at a flat in Chai Wan (the Chai Wan flat) at a monthly rent of \$16,000. The father said there was no satisfactory explanation for the mother to move to the present residence at Happy Valley at a monthly rent of \$25,000, resulting in an increase of 50% in monthly rental payment. The mother stated in her Closing Submissions (the 5th paragraph at page 5 of her Closing Submissions) that the new home for the minors was reasonable as research on living standard in Hong Kong showed that the average rental was around \$28,000 and the new home was also near to the minors schools. I note that the mother has not produced any evidence on the so called living standard in Hong Kong and there was also a general lack of evidence on the new home in Happy Valley. I was not given the minors residential address even when I asked for it in court. I was only given a commercial address in Mong Kok as the mother's address for service. This is highly unsatisfactory as the lack of those information would prevent the court from having a fair assessment on the reasonableness of the mother's claim for accommodation for the minors. But on the other hand, I note that the father also refused to disclose the address of his present residence. The only thing I know is that the father used to reside in a flat at the Peak and according to him, the monthly rent then was \$52,000. He said the tenancy ended in March 2018 and his present rental payment is \$30,000 (as per his Form E dated 13 March 2019). I further note that the present rental allowance of \$16,000 was based on the rental payment of the Chai Wan flat which had not been changed for many years. The minors have grown and a larger place for them may not be unreasonable. There is also a need to allow for inflation. I would say that a monthly rent of \$20,000 is about right. This represents a 25% increase from the rent previously allowed. If the mother insists on renting a place beyond this sum, I am afraid that she may have to find some other source of financial support in this regard. Food The father submitted that for the item on food, a monthly sum of \$8,205 is more reasonable. I note that the minors are now in their teens and their consumption on food may not be less than that of a full grown adult, if not more. For a family of 3, a monthly bill of \$10,000 on food is not unreasonable. I will allow \$10,000 on food in full. Miscellaneous items The father argued

that no receipts for miscellaneous items were being produced and therefore, this item should not be allowed. It is not realistic to require the mother to keep each and every receipt on these small items. Experience tells us that the non-production of receipts does not mean that those outgoings did not exist. I have no hesitation in allowing this rather small sum of \$2,000 in full. Deduction of 1/3 as the Mother's Expenses It is the father's case that at least 1/3 of the general expenses should be deducted representing the mother's share which should not be borne by him. There is some force in this argument as the parties were not ex-spouses and there is no legal requirement for the father to maintain the mother. Although the mother was not claiming a carer's allowance, she was criticised for not disclosing her close relationship with a Mr. Ng who had appeared for her in previous hearing as a Mackenzie Friend. It transpired that Mr. Ng had provided a stable source of financial support for the mother. Under these circumstances, I think it is only fair that the mother should bear her own 1/3 share in the general expenses. General Expenses Allowed Based on the above discussion, I will allow the following sums under the heading of general expenses:

Item	Reasonable Sums	Rent	\$20,000	Public utilities	\$2,700	Food	\$10,000	Miscellaneous	\$2,000
	\$34,700	$\times 2/3 =$	\$23,133	Wife's Personal Expenses	According to the mother, there is no claim for a carer's allowance. Therefore, I will not go into a detailed discussion of the mother's personal expenses.				

The Minors Expenses In the father's Closing Submissions, he raised the following objections in respect of the minors expenses:

Item	Claim	on Exhibit A1	on Agreed to be reasonable	18.1.19	8.8.19	by father	School fee	\$5,800	\$5,800	\$5,800	Extra tuition	\$15,434	\$15,800	Nil (no receipts)	Books/stationery	Nil	\$1,800	\$150	School transport	\$5,285	\$5,000	\$2,000	Medical	Nil	\$450	\$450	ECA	Nil	\$10,000	Nil (no receipt)	Holidays	Nil	\$7,500	Nil (no receipt)	Clothing	Nil	\$1,800	Nil (no receipt)	Lunch	Nil	\$2,000	Nil (no receipt)	Other transport	Nil	\$2,000	\$500	School uniforms	Nil	\$1,000	\$100	\$9,000	My Views	Extra Tuition
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It is the mother's case that she is claiming a monthly sum of \$15,800 as the minors expenses on extra tuition. At trial, this item was hotly debated and the mother submitted a debt confirmation note from a private tutoring service called [AU] Classroom to prove a debt of \$40,000 owed by the mother, covering a period of 10 months from February to November 2018, averaging \$4,000 per month (exhibit EE (xvii) in the mother's supporting affirmation). The mother has also produced a document (among a bunch of documents in Exhibit A2, S52) from Ms. Cheung of [AU] Classroom indicating that the tuition fees for the minors to be \$13,600 (\$6,800 each) for the month of September 2019. On the face of it, it was not entirely clear whether this was an invoice pending payment or as a receipt of actual payment. Upon clarification, Ms. Cheung testified and stated that they were the tuition fees to be charged for the month of September 2019. The father did not only challenge the quantum, but also the existence or legality of the tutoring service as he claimed not being able to locate the business at its reported address. The mother explained that the private tutoring service has changed address, which was supported by the evidence of Ms. Cheung. After hearing the evidence of Ms. Cheung, I am satisfied that the mother did engage her to provide private tutoring service to the minors. Although one may argue that private tuition for children in Hong Kong is not a must, the fact remains that many Hong Kong families do provide their children, especially those at the primary and secondary levels, with private tuition in one

way or the other. It all boils down to a parent's personal judgment on whether such academic assistance is needed for his children. After hearing the mother in court, and also the evidence of Ms. Cheung who confirmed that the minors were in need of academic assistance by way of private tuition, I am satisfied that the provision of private tuition to the minors was reasonable. The only issue is the quantum to be allowed. According to Ms. Cheung's evidence, it seems that she had previously charged the mother for \$4,000 per month back in 2018 for her private tutoring service. I am of the view that this is a more reasonable amount as compared to the tuition fees of \$16,800 being charged for September 2019 (\$16,800 represents 34% of the current monthly maintenance of \$50,000). But in view of the fact that the minors are 2 years older now and allowing for some level of inflation, I would suggest that a monthly sum of \$5,000 for the minors' private tuition is reasonable under the circumstances of this case.

School Books and Stationery The mother claims for \$1,800 per month as the minors' expenses on school books and stationery. The father objects and offers \$150 only. His offer is totally unreasonable. I will allow \$1,000 per month, meaning that each minor will have \$500 per month, i.e. \$6,000 per annum. That should be enough for school books and some stationery for a year.

Travelling Expenses to School (School Bus) The mother claims for \$5,000 per month as the minors' travelling expenses to school. The father objects and offers \$2,000 only. At trial, I was not directed to the relevant documentary evidence on this item and there was also no specific reference in the parties' respective written submissions. I note that in the mother's supporting affirmation, she has enclosed some documents on the school bus charges from [P] Transportation Co. Ltd. which was the school bus company for the boy S, indicating that the school bus fee in 2018 was \$2,450 a month. As for F, the school bus provider was Tsang Ming Coach Limited, and the school bus fee for F in 2018 was \$2,310. However, they were fees charged in 2018 when the minors were still in their primary school. They are now secondary school students and have moved to a new place of residence. Obviously, they are no longer using the same school bus service. They may even have changed to other modes of transport to school as they grow older. Doing the best as I could, I would suggest that a monthly sum of \$3,000 is about right for the minors' travelling expenses to school, i.e. \$1,500 each.

Extracurricular Activities The father objects to the claim of \$10,000 as the minors' monthly expenses on extracurricular activities. I accept that the mother was not in a position to provide clear documentary evidence or receipts to prove the quantum. But even in Judge Bruno Chan's judgment back in 2016, the learned judge did not reject the mother's claim in this regard. I accept that there must be some expenses on the minors' extracurricular activities and doing the best as I could, I would say a sum similar to that of private tuition fee, namely \$5,000 per month for both minors, is reasonable in the circumstances of this case.

Holidays The father objects to the claim of \$7,500 as the minors' holidays expenses as the mother fails to produce any receipts to prove the quantum of such expenses. The father's objections are valid, at least to a certain extent, as the non-production of any receipts and other documentary evidence will hamper the court's ability to assess the reasonableness of the claim. However, that does not mean that the minors have no such need. I would allow a monthly sum of \$3,000.

Clothing/ Shoes The mother claims for \$1,800 per month as the minors' expenses on clothing and

shoes. The father objects on the ground of no receipts being produced. I am satisfied that the minors do have such needs for clothing and shoes. I will allow the item of \$1,800 in full.

Lunch Expenses The mother claims for \$2,000 per month as the minors expenses on lunch. The father objects on the ground of no receipts being produced. I am satisfied that the minors do have such needs for lunch expenses. I will allow the item of \$2,000 in full.

Other Travelling Expenses The mother claims for \$2,000 per month as the minors other travelling expenses. The father objects and proposes \$500 only. I am satisfied that the minors do have such needs for travelling other than going to school, but at a monthly rate of \$1,000 only (i.e. \$500 each).

School Uniforms The mother claims for \$1,000 per month as expenses on the minors school uniforms. The father objects and proposes \$100 only. I am satisfied that the minors do have such needs and the offer of \$100 from the father is unrealistically low. I will allow \$500 per month, i.e. \$250 for each minor. This will give each minor \$3,000 per year for school uniforms which I believe is sufficient even for a fast growing youngster.

Summary of the Minors Reasonable Expenses By way of summary, I am satisfied that the minors have reasonable monthly expenses of \$51,683 which sum is made up of: General Expenses Rent \$20,000 Public Utilities \$2,700 Food \$10,000 Miscellaneous expenses \$2,000 $\$34,700 \times 2/3 = \$23,133$ Minors Expenses School fees \$5,800 Extra tuition \$5,000 School books and stationery \$1,000 Transportation to school \$3,000 Medical/dental \$450 Extra-curricular activities \$5,000 Holidays \$3,000 Clothing/shoes \$1,800 Lunch and pocket monies \$2,000 Other transportation \$1,000 School uniforms \$500 \$28,550 Total: \$51,683 For the ease of calculation, I would round this up to \$52,000.

The Mother's Claim of a Lump Sum of \$817,020.80 As I have set out in paragraph 12 above, in the mother's summons for variation, she has also made a claim for a lump sum of \$817,020.80 including the setup fee and moving costs of the minors residence from Chai Wan to Happy Valley. In her Closing Submissions, the mother raised that lump sum to \$1,000,566.70. No prior leave was sought, nor granted for the mother's summons to be amended. Therefore, I will only consider the mother's claim of a lump sum up to the original amount of \$817,020.80. According to the mother, the tenancy of the former home at Chai Wan was signed by the father some years ago. There were occasions that the landlord requested for rent increase but new tenancy agreements have never been signed. In December 2017, the mother was given notice of termination so that the landlord could deal with the leakage problem. Therefore, the mother decided to take up the present tenancy at Happy Valley. She had contacted the father for the rental deposit of the new home and also furniture replacement costs but had received no positive response. The mother also wanted to sue the old landlord for the return of the rental deposit, but since the father was the tenant who refused to take any action, the claim at the Small Claims Tribunal had to be abandoned. The mother is now claiming against the father for the setup and moving costs incurred by her for the new home at Happy Valley. However, in reading the mother's affirmation dated 18 January 2019, it was not easy to identify the evidence in support of such a claim of \$817,020.80. Towards the end of the affirmation at page 4, there was reference to some figures but not matching the amount of \$817,020.80: May the court take these into consideration and grant: To increase the monthly maintenance payment to HK\$75,000; To grant lump sum of HK\$707,000 in order to relieve [the mother] from her indebtedness

arising of the minors, the moving costs and the rental deposit [Household and Setup Expenditures Exhibit a to y], [Misc. for Minors Exhibit A to J], Education fees and Extracurriculars for Minors EE (i to xviii)], [Loan Exhibit 1 to 13]; and HK\$160,000 in the retention of [the mother] for oversea vacations of the minors and as reserves for future unexpected expenses [Future Purchase Exhibit I to XI]. One would note that these figures refer not only to setup and moving costs, but also to other general expenses. There was also a sum of \$160,000 for vacation and reserves for future expenses. At page 6 of the mother's Closing Submissions, the mother asked for the following lump sums: Purpose Amount

- (1) Relieve the mother's indebtedness from \$164,655.70 raising the minors, moving costs, setup fees and rental deposit
- (2) Overseas study tour and vacations \$160,000
- (3) Necessary items for minors \$159,703
- (4) Study and living costs from 2016-2019 \$516,208 \$1,000,566.70 The Mother's Indebtedness from Raising the Minors, Moving Costs, Setup Fees and Rental Deposit: \$164,655.70 For the mother's claim of indebtedness arising from the raising of the minors, I note that there is little evidence produced in support of the same. If one should look at Part 2 of the mother's Form E, it was stated there that the mother's liabilities were \$516,208, which was the same figure being the minors study and living costs from 2016-2019 as claimed under sub-paragraph (4) in the preceding paragraph. Obviously, there is duplication of these 2 claims. In the circumstances, I will leave the mother's indebtedness for raising the minors for discussion when I come to consider the minors study and living costs for 2016-2019. As far as the setup and moving costs are concerned, the relevant evidence was contained in exhibit (a) to (y) among a big pile of documentary exhibits attached to the affirmation. In these 25 pieces of paper, there were copies of receipts for various payments, including the purchase of household items, electrical appliances, furniture, computer equipment, moving services, etc. I accept that some of these expenses related to the setup or moving costs for the minors new residence in Happy Valley, but not all. For example, in exhibit (a), it was a receipt from a company called Francfranc concerning the purchase of dining table, but the date of purchase was 6 May 2017, which was 7 months before the termination of the old tenancy. This could not be regarded as setup and moving costs of the minors new residence. Another example was exhibit (n) which was a payment of \$1,942 on 10 October 2018 for electricity. Again, this was normal monthly household expenses 10 months after moving, but not part of the setup and moving costs. Another example was exhibit (x) on which there was 2 receipts from Hong Kong Professional Teachers Union dated 16 January 2019, which was 1 year after moving. Among the items purchased, some were facial masks, food and stationeries. These could not be regarded as setup and moving costs. It is regrettable that the mother has decided to present her evidence in this rather convoluted way, making it extremely difficult for the court to make a fair assessment of the minors real needs in the setup and moving costs. I have thought of dismissing the mother's claim in this regard due to the deficiency in the presentation of her evidence. But at the end of the day, I am satisfied

that the minors moving to a new residence was necessary and reasonable, and an outright dismissal of this claim would be unfair to them. In the circumstances, I would allow a lump sum of \$100,000 which would include all expenses arising out of the minors new residence, including rental deposits (of \$50,000) and other incidental outgoings. Overseas Study Tour and Vacations: \$160,000 Another item under the lump sum claim was for the minors study tour and vacations. At page 6 of her Closing Submissions, the mother s claim under this head was described as: (iii) HK\$160,000 for overseas study tour and vacations of minors which [the father] agreed on the out of chamber settlement on or about year 2012/2013. (underline added) In my view, even if there was such an agreement (which is doubtful in view of the lack of evidence), the parties have already gone through a few rounds of court proceedings and came to an agreement on the minors maintenance in 2017. I am not convinced that the mother could now go back to an agreement in 2012/2013 (if any) to found the present claim for a lump sum payment for the minors overseas study and vacations. Furthermore, the mother s Closing Submissions was somewhat different from page 1 of her supporting affirmation when she said the agreement was made in 2017, but not 2012/2013: In or about the beginning of January 2017, [the father] agreed verbally to increase the monthly maintenance payment from HK\$28,000 to HK\$50,000 (i.e. the amount granted by the Court s interim order), plus (i) allowances for overseas vacations during summer and Christmas for the minors; (ii) (underline added) Apart from the discrepancy on the year of agreement, there was also a general lack of evidence to prove the quantum of such claim. At page 4 of the mother s supporting affirmation, she seems to have combined the minors overseas study and vacations with reserves for future unexpected expenses to come up with the sum of \$160,000. I am not convinced that the father should be ordered to pay such reserve for future unexpected expenses which have yet to materialise. I am not satisfied with the mother s evidence on this claim of \$160,000 and such claim is hereby dismissed. Necessary Items for Minors: \$159,703 At page 6 of the mother s Closing Submissions, she claimed for a sum of \$159,703 as purchase of necessary items for the minors. I was not directed therein on the evidence in support. I have also checked with the mother s supporting affirmation but could not find this figure being mentioned anywhere therein. In the circumstances, the mother s claim under this head is dismissed. Study and Living Costs from 2016-2019: \$516,208 The last item is the mother s claim for a lump sum of \$516,208, which was described at page 6 of her Closing Submissions as:

- (v) to [grant] a sum of HK\$516,208 for the studies and living costs for minors incurred in the year 2016-2019. If one should read the mother s supporting affirmation, I am afraid that this figure of \$516,208 was again nowhere to be found. There was a claim for a lump sum of \$707,000 (at page 4 of the affirmation) but this figure was described as: (ii) to grant a lump sum of HK\$707,000 in order to relieve [the mother] from her indebtedness arising from raising of the minors, the moving costs and the rental deposit [Household and Setup Expenditures Exhibit a to y], [Misc. for Minors Exhibit A to J], Education fees and Extracurriculars for Minors EE (i to xviii)], [Loan Exhibit 1 to 13]; I think what the mother was trying to say was that she had incurred some liabilities to cover the expenses of the

minors for the period from 2016-2019 and she now sought a reimbursement of the said sum from the father. This should be the case because in Part 2 of the mother's Form E, she stated her total liabilities at \$516,208 as follows: Citibank Credit Card 4791-1010-0927-4482 Appro.. 130,000 [AU] Classroom 40,000 DBSPD school fee 98,208 Personal Loan ([MN]) 180,000 Personal Loan ([MM]) 68,000 516,208 In support of such a claim, the mother put in 13 pages of deposit or transfer slips of various banks as Exhibit 1 to 13 in her supporting affirmation. My first observation is that all these bank slips are far from adding up to \$516,208. For the alleged loans of \$180,000 and \$68,000, I was not referred to any loan documents and there was not any credible evidence to show how those so called loans (if any) were related to the reasonable expenses of the minors. Furthermore, if the sum was related to the general maintenance of the minors from 2016-2019, it has to be noted that the parties have already come to an agreement on the minors maintenance on 18 January 2017. Anything before that date should not be re-litigated. As for the period from 2017-2019, again, the level of the minors maintenance should not be re-opened within such a short period of time, unless there are very exceptional circumstances. I think the setup and moving costs could be regarded as something exceptional (for which provision has been made in paragraph 65 above) but not the other general expenses of the minors. In the circumstances, the mother's claim under this head is also dismissed.

Conclusions on the Mother's Claim of Lump Sums

By way of conclusion, I am only satisfied with the mother's claim for a lump sum of \$100,000 being the reasonable setup and moving costs of the minors, but not the others.

The Financial Circumstances of the Mother

The mother is aged 43 and is looking after the minors on a full time basis. In her Form E, she stated that she had no income and owed various debts in the total sum of \$516,208. According to her, she has also suffered from depression. In support of this, she has produced various sick leave certificates from a private doctor and referral letter and appointment slips from the Department of Psychiatry of the Pamela Youde Nethersole Eastern Hospital. I note that those documents were all given in the year of 2017 and judging from the mother's appearance in court and her ability to conduct the hearing in person, I have reasons to believe that her depression should no longer be a serious health concern for her. It is an important facet of the father's argument that not only he has no obligations to maintain the mother as they were not ex-spouses, but as envisaged in Judge Bruno Chan's 2 earlier judgments, the mother was supposed to find gainful employment after securing the service of a domestic helper to look after the minors. In that event, the mother is required to contribute her half share to the maintenance of the minors as that duty should not be fallen on his shoulders alone. I think it is fair to say that in the 2016 Judgment of Judge Bruno Chan (paragraph 34, page 14 of the Judgment), His Honour did hint that the mother should be able to return to gainful employment after the minors entering secondary education. However, the ironic fact remains that the minors are only 13 years of age requiring the care and attention of the mother, which to a large extent still prevents her from seeking open employment. I understand that it has also been argued before HH Judge Bruno Chan that the mother could employ a domestic helper to take up the caring duties so that she could re-enter the labour market herself. Of course, that may be one way to look at the matter. But one must not lose sight of the fact that when the mother

did have full time employment more than a decade ago, she was employed as a secretary. We all know that secretary is a diminishing occupation and companies tend to hire less staff in this area of employment. It is simply not easy for her to get an employment, as a secretary or otherwise, with a decent income after an absence of over a decade from the labour market, not to mention the current economic crisis that Hong Kong is facing as a result of various social events and the recent public health situation. Under these circumstances, requiring the mother to provide financial contribution to the maintenance of the minors is simply not a feasible option at this stage. The father may argue that Mr. Ng is now financially supporting the mother, or indirectly through her, the minors as well. It may be true to a certain extent, but I must remind myself that Mr. Ng, unlike the father, has no legal obligations to maintain the minors. As the mother is not claiming a carer's allowance from the father, and 1/3 of the minors general expenses has already been deducted as the mother's share of those expenses, meaning that a rather heavy financial burden has already been placed on Mr. Ng. Under these circumstances, it may not be fair to place further financial burden on Mr. Ng and require him to support the minors financially. The Father's Financial Circumstances

The last topic is the father's financial circumstances, which is highly controversial. The father is now aged 54. He is highly educated with a law degree and also a MBA. In his Form E, he stated his occupation as a Corporate Finance Advisor but at the same time claimed to be unemployed since November 2018. He further explained that he used to be a financial advisor to various listed companies and sat in those companies board of directors. But due to a tenancy dispute with the landlord of the Chai Wan flat (the [W] Group) caused by the mother (the father was the official tenant whilst the mother was occupier and actual user) in 2018, resulting in debt collectors attending his work place (the [W] Incident), his reputation was badly damaged causing him to lose many of those company directorships. In the Form E (dated 13 March 2019), he stated that he remained as non-executive director of 3 companies ([K] Ltd., [A] Limited and [C] Holdings Ltd.) yielding a monthly income of \$23,667 only. I note that this was somehow different from paragraph 2 of his previous affirmation in opposition less than a month ago (dated 18 February 2019) in which he said he only had 2 non-executive directorships: As explained in more detail below, as a result of [the mother]'s failure to pay for accrued rental to her previous landlord, [W] Group, which led to subsequent harassments by the debt collection agency of [W] to my place of work in Central, and also harassment by phone and fax to the offices of my two remaining non-executive director roles as set out on pages 10, 18 and 20-27 of the Exhibits. In Part 3 of the Form E, the father stated that his present average income was \$50,000 per month. If one should add the father's additional income from his non-executive directorship, his total income should be \$73,667 ($\$50,000 + \$23,667 = \$73,667$) per month. In Part 4 of the Form E, the father stated his monthly expenses being \$141,000 including the following items: General Expenses Rent \$30,000 Food \$6,000 \$36,000 Personal Expenses Meals out of home \$4,000 Transportation \$3,000 Maintenance to his ex-spouse \$70,000 \$77,000 Children Maintenance for the minors \$28,000 \$28,000 Total: \$141,000 In Part 2 of his Form E, the father stated that he had liabilities in the sum of \$1,450,000, making up of: Citibank \$150,000 HSBC Overdraft \$200,000 Personal loans/debts to family and friends

\$800,000 Owing to Matrimonial ex-spouse under maintenance \$300,000 \$1,450,000 Finally, he said his financial position was severely impacted by the substantial increase in maintenance payment for the minors from \$28,000 to \$50,000 since 2017 and the [W] Incident has also caused substantial loss to his regular income. He said any further deterioration in his earning capacity could lead to his bankruptcy which would further reduce his earning capacity to nil. In paragraph 3 of the father's affirmation dated 18 February 2019, he said he could only afford to pay a monthly sum of \$28,000 as from 1 March 2019, instead of the then existing order of \$50,000 per month. However, in a later affirmation dated 28 June 2019, the father said he could now only afford a monthly sum of \$16,500 starting from 1 July 2019. Discussion Legal Principles on Financial Disclosures It is trite that a party has to give full and frank disclosure on all his finances in financial application proceedings. As pointed out by Mr. Justice Mostyn in *NG v SG* (appeal: non-disclosure) [2011] EWHC 3270 (Fam):

1. The law of financial remedies following divorce has many commandments but the greatest of these is the absolute bounden duty imposed on the parties to give, not merely to each other, but, first and foremost to the court, full frank and clear disclosure of their present and likely future financial resources. Non-disclosure is a bane which strikes at the very integrity of the adjudicative process. Without full disclosure the court cannot render a true certain and just verdict. Indeed, Lord Brandon has stated that without it the court cannot lawfully exercise its powers (see *Livesey (formerly Jenkins) v Jenkins* [1985] FLR 813, HL). It is thrown back on inference and guess-work within an exercise which inevitably costs a fortune and which may well result in an unjust result to one or other party. In breach of such a duty, adverse inferences will be drawn against the party who is in default. As Mr. Justice Mostyn continued in *NG v GS* (appeal: non-disclosure), *supra*, at paragraph 3:
3. As Thorpe LJ observes the phenomenon of non-disclosure is regrettably commonplace. Its treatment in the authorities stretches back at least to the famous decision of Sachs J in *J-P C v J-A F* [1995] P 215. From that case can be identified the origin of the duty of the court to consider drawing adverse inferences where non-disclosure is found. That duty has been reiterated in many subsequent decisions. Sachs J memorably stated: In cases of this kind, where the duty of disclosure comes to lie on a husband; where a husband has- and his wife has not detailed knowledge of his complex affairs; where a husband is fully capable of explaining and has had opportunity to explain, those affairs, and where he seeks to minimize the wife's claim, that husband can hardly complain if, when he leaves gaps in the court's knowledge, the court does not draw inferences in his favour. On the contrary, when he leaves a gap in such a state that two alternative inferences may be drawn, the court will normally draw the less favourable inference especially where it seems likely that his able legal advisers would have hastened to put forward affirmatively any facts, had they existed, establishing the more favourable alternative. the obligation of the husband is to be full, frank and clear in that disclosure. Any shortcomings of the husband from the requisite standard can and normally should be visited at least by the court drawing inferences against the husband on matters the subject of the shortcomings insofar as such inferences can be

[properly drawn]. Although the case concerns with financial disclosures between former husband and wife in matrimonial proceedings, I am of the view that the same principles should apply equally to financial applications for minors born outside wedlock under the Guardianship of Minors Ordinance, Cap. 13 (). Before I leave the legal principles on financial disclosures, I must point out that when Judge Bruno Chan dealt with the mother's earlier application for variation in 2016, His Honour has already given a very detailed explanation of the legal requirement on financial disclosures in paragraphs 46-52 of the 2016 Judgment (TKLK v WKJ, FCMP 38/2007, unreported, date of Judgment: 5 October 2016), by citing the comments in Rayden and Jackson on Divorce and Family Matters, 18th Edition at Chapter 17.28 and various authorities which all reiterated the same principles as can be found in NG v GS (appeal: non-disclosure), supra. I have no intention to lengthen this judgment by repeating Judge Bruno Chan's discussion on those authorities, but it is abundantly clear to me that the father must be well aware of this duty to give full, frank and clear disclosure on his finances. Even without such a prior detailed explanation by the court on financial disclosures, I am sure that the father, as a practising solicitor, must be fully aware of the existence of such a duty. The Father's Financial Disclosures In the mother's Closing Submissions, there was much criticism on the level of financial disclosures given by the father. After considering the father's evidence and his testimony in court, I tend to agree that there was indeed serious deficiency in his financial disclosures, especially in the following areas:

- (1) His interest and directorships in various listed companies;
- (2) His return to legal practice as a consultant of a local solicitors firm;
- (3) Failure to adequately account for his income or to give proof on his income; and
- (4) Inadequate production of bank statements and non-production of credit card statements. The father's Interest and Directorships in Various Listed Companies Under Part 3.2 of his Form E, the father listed out the source of income from his position as non-executive director in 3 listed companies:
 - (1) [C] Limited \$12,000
 - (2) [K] Limited \$10,000
 - (3) [A] Limited \$1,667 \$23,667 I have already alluded in paragraph 85 to the fact that in his other affirmation which was affirmed and filed on 18 February 2019, the father said he was a director of 2 listed companies only. But more importantly, the mother was able to produce a printout from a database named Webb-site Who's Who on 27 September 2019 (s Who) (Exhibit A4), which contains the history of the father's career in the financial industries. I note that the father has raised no objection to the accuracy of the information as contained in that database. From those information, one could see that the father has or had been a director of a total of 12 listed companies since 2008, most of them being Independent Non-executive Directors (INED) (8 out of a total of 12). The others being one as Executive Director

(ED), 2 Non-executive Directors (NED) and one just being a Director (Dir). It is true to say that out of these 12 listed company directorships, the father had already resigned from 7 of them. In other words, the father was still a director of at least 5 listed companies in Hong Kong and they are:

- (1) [A] LIMITED (INED)
- (2) [C] Limited (NED)
- (3) [G] Limited (Dir)
- (4) [K] Limited (INED)
- (5) [S] Limited (KY) (INED) The father could offer no explanation on why he has missed to report his directorship in [G] Limited and [S] Limited. As far as [S] Limited is concerned, it may be true to say that the father's appointment to the Board of Directors was only announced on 25 September 2019 (i.e. 2 days before the resumed hearing on 27 September 2019), but common sense tells us that the recruitment or negotiation process for such appointment had to have started well before that date. There was no attempt by the father to supply this additional information to the court at any stage of the litigation, not even on 27 September when the trial resumed. If the mother has not made a search at the Who's Who on 27 September morning, the father's appointment as a director of this listed company will never be revealed. The Father's Legal Practice The same applies to the father's legal practice at a local solicitors firm. The database in Who's Who records the fact that the father has become a Consultant for the solicitors firm called since September 2019. Again, this piece of information has never been revealed by the father at any stage of the litigation, not on the first day of trial (8 August 2019), nor when the trial resumed on 27 September 2019. There is no dispute that the father was qualified as a solicitor in the year of 1992 and is currently holding a practicing certificate. I accept the fact that the father's legal practice might have been put on hold in the past 20 years or so, but his return to legal practice will certainly have an important bearing on his future income, which is a material fact that needs to be disclosed. It is noted that if not for the mother's production of the data base in Who's Who at the resumption of trial, this fact will never come to light. Failure to Account for the Father's Income or to Give Proof of Income In Part 3.1 of the father's Form E, he stated his present average monthly income to be \$50,000. I note that this is a section requiring him to provide details of his income as the heading of that section clearly states: Earned Income: Give details of your income. Attach copies of proof of income for the last 3 months or contract of employment, if any, and tax returns for the last 2 years. However, there was no attempt by the father to give any details or breakdown of his average monthly income of \$50,000. No copies of proof of income for the last 3 months, nor any contract of employment, nor any tax returns for the last 2 years were ever produced. At trial, no explanation on such failure was forthcoming from the father. Inadequate Production of Bank Statements and Non-production of Credit Card Statements In Part 2.3 of the father's Form E, he was required to give details of all his bank accounts, including those accounts which have already been

closed, and to attach copies of his bank statements covering the last 12 months. Under that section, the father stated that he had one account at the HSBC (Savings/Current) of account number 172-XXXX-XXX with a balance of \$7,000. At the end of Form E, the father did enclose a 1-page bank statement of his HSBC account dated 21 January 2019, showing he had an overdraft of \$199,931.68. I note that this statement should have 2 pages and only page 1 was produced. Moreover, the father has failed to produce the other 11 months bank statements which are required under Form E and he has not given any explanation for such failure. As far as credit card statements are concerned, the father was required under Part 2 of the Form E to provide copies of the latest 3 months credit card statements. No credit card statements were given, except a letter from Citibank (Hong Kong) Limited dated 6 October 2018 saying that the balance of \$148,041.61 in his credit card account was overdue. Again, there was no explanation on why the credit card statements could not be produced.

Conclusions on the Father's Financial Non-disclosures In the preceding paragraphs, I have already described how the father has failed to provide full and necessary disclosures under 4 different categories, namely, (1) his directorships in various listed companies; (2) his legal practice; (3) his account for and proof of income; and (4) inadequate or non-production of bank and credit card statements. Despite such failures, no explanation was given as to why those information could not be produced. In this regard, I must remind myself that the father is a highly educated professional. He is a financial advisor sitting on the board of directors of various listed companies. He is a practising solicitor and should be well aware of his duty to give full, frank and clear financial disclosures. More importantly, in the parties' previous trial on the mother's variation application, HH Judge Bruno Chan has already stated in the 2016 Judgment (in paragraphs 46-52 therein) in clear and unequivocal terms of the requirement for full and frank disclosures and the father's failure in that regard. At paragraphs 53-55 of the 2016 Judgment, the father has already been criticised for failing that duty:

53. In the present case, whilst there is no suggestion, at least not at this stage, that [the father] has committed the kind of serious fraudulent misrepresentations or conducts as in those cases cited above, I agree with [the mother] that his disclosure so far has fallen well below even the minimum requirements, that there is simply no valid proof or information as to his income and resources to meet [the mother]'s claim, and that his failure to attend most of the hearings in particularly the trial originally scheduled for 6th September 2016 or its subsequent adjourned hearing on 28th September 2016 without any valid reasons nor supported by any documentary evidence certainly do not help his case.
54. As already noted above, [the father]'s income disclosed in his Form E was not, and according to him could not be corroborated by any of his employers which seems to me simply incredible given the fact that they are apparently reputable or public listed companies, while the stated amount even in its entirety would not be sufficient to meet [the mother]'s present claim, let alone its net amount after taking into account of [the father]'s own needs and spending. Furthermore, his unexplained absence at the trial has obviously robbed [the mother] the right to cross-examine him and to extract further information as to his true

income position. In the premises this court is left with no alternative but to draw such adverse inferences against him, where appropriate, from the very limited evidence available before it, starting with those limited bank statements produced by him.

55. These bank statements of his only disclosed account with HSBC, which were well short of the preceding 12 months as required by Form E, and where incomplete for some of the months with only the first or second pages of the full set for the month and were provided on 2 separate occasions, show the following limited information as to payment-in or deposits: Month No. of Deposits Total Amounts September 2015 (2 of 3 pages) 3 HK\$207,765 October 2015 (1 of 2 pages) 2 HK\$17,125 November 2015 (1 of 3 pages) 4 HK\$49,500 December 2015 6 HK\$106,000 January 2016 5 HK\$67,917 February 2016 6 HK\$132,918 March 2016 5 HK\$120,917 April 2016 (2 of 3 pages) 7 HK\$186,917 Total: HK\$889,059 Average/Month: HK\$111,132 I am satisfied that the father was fully aware of his duty to give full, frank and clear disclosure of his financial circumstances, but yet he has chosen not to do so. Worse still, if one should compare his disclosure on bank statements this time with those in 2016, one would realise that back in 2016, the father had at least given 7 months bank statements (albeit with some pages and some months missing). But at the present trial, he saw fit only to produce one page (with the second page missing) of the bank statement of January 2019. Without any reasonable explanation given for such default, I have come to a conclusion that such failure on the part of the father must be deliberate with an obvious intention to frustrate a reasonable investigation into his proper financial circumstances. Should any Adverse Inferences be Drawn Against the Father? In view of the father's wilful default in giving full, frank and clear disclosure with an obvious attempt to frustrate a reasonable investigation into his finances, the next question to be asked is: what, if any, inferences to be drawn in view of such wilful default? In my judgment, a natural and reasonable inference to be drawn is that the father must be in a much better financial position that is presently claimed or otherwise there is no need for him to hide his income or financial resources. In view of such an adverse inference being drawn, I have also come to the conclusion that the father is not a truthful witness on his claim of impecuniosity or inability to pay the minors reasonable maintenance and his evidence in that regard must be rejected. Although there is no evidence on the actual financial capability of the father, I am prepared to draw the further inference that he must be able to afford the reasonable monthly expenses of the minors which is now slightly increased from \$50,000 to \$52,000 per month, and the setup and moving costs of \$100,000. The Father's Application for the Mother to give Undertakings In paragraph 3 of the father's 2nd variation summons dated 28 June 2019, he asked: 3 for an order that the mother to undertake to do the following:
- (i) seek gainful employment immediately and to commence such employment from 1 September 2019 the latest, which employment shall at least legally comply with the Hong Kong Government Law of Statutory Minimum Wage (that had come into force since 2011);
 - (ii) commence repayment of [the mother's] indebtedness to [the father] (as defined in [the father's] affirmation dated 1st October 2019 onwards and on the 1st day of each month thereafter until the full amount of [the mother's] indebtedness to [the father] is repaid, for

which [the mother] s monthly repayment amount to [the father] shall at least be no less than HK\$8,000; (iii) falling short of any repayment not being received by [the father] due to [the mother] failure to repay for any certain month, a minimum of HK\$8,000 or more will be automatically deducted from the following month s amount of maintenance to be contributed by [the father]. I think what the father is saying is that the mother has deliberately chosen not to work for the past 12 years, and thus failing to share the maintenance of the minors. In his supporting affirmation dated 28 June 2019, the father basically said that the burden of maintaining the minors should not be borne by him alone and upon his calculation, the mother should repay a sum of \$2,091,000 to him. He wanted the mother to obtain gainful employment and to start repaying him by way of monthly instalments of \$8,000 each until full repayment. My View The father is now asking the court to order the mother to give certain undertakings. But by its very nature, an undertaking has to be given by a party voluntarily, but not to be ordered. Although the court has the powers to make certain orders under the relevant statutes (in this case the GMO), but nowhere in the statutes empowers the court to order an undertaking to be given by a party to the litigation. Therefore, the father s application for an order of undertaking must fail. Moreover, as the parties have already settled on the amount of the maintenance payable in January 2017, the father s present claim for repayment of the minors expenses since birth has no merits at all. Conclusions and Orders Based on the above discussion, I am satisfied that the reasonable needs of the minors have now increased from \$50,000 to \$52,000 per month. They have also incurred setup and moving costs of \$100,000 for their new residence in Happy Valley. I am of the view that the father was in serious default of his duty to give full, frank and clear disclosure of his financial circumstances, and the natural and reasonable inference to be drawn is that he must be hiding his income or other financial resources. In the circumstances, I am satisfied that the father is in a position to pay for the reasonable needs of the minors as varied in the above rulings. I hereby grant the following orders. For the mother s variation summons dated 18 January 2019:

- (1) The periodical payment payable by the father to the 2 minors to be increased from \$50,000 per month (\$25,000 each) to \$52,000 per month (\$26,000 each) payable on the 1st day of every month starting 1 February 2019 until the minors attaining the age of 18 or complete their full time education, whichever is later.
- (2) The father shall pay a lump sum of \$100,000 being the minors setup and moving costs within 14 days from the day of this order.
- (3) The mother s claim for the other lump sum payments to be dismissed. For the father s 2nd variation summons dated 28 June 2019:
 - (1) The father s application for a downward variation of the minors maintenance from \$50,000 to \$16,500 per month to be dismissed.

- (2) The father s application for an order of undertakings to be dismissed. Costs The mother succeeds in some but not all of her applications, but it is quite clear that she has to come to court before she could get those orders. The mother should be given costs of these applications, including all costs reserved. I see that both parties are acting in person and the actual costs incurred should not be substantial. I am minded to assess those costs in the sum of \$2,000 payable by the father to the mother forthwith. This costs order (for both liability and quantum) is in the form of an order nisi to be made absolute if no application for variation is received within 14 days from the handing down of this Judgment. Way Forward Despite the conclusion of this trial, I note that there are still other outstanding matters, one of which is paragraph 2 of the father s 2nd variation summons in which he asks for the payment of a lump sum of \$2,091,000 from the mother. In view of the results of this trial, the father should consider whether he would pursue that particular application. Another matter is the mother s Judgment Summons issued on 29 May 2019 (mistakenly dated 29 May 2016). In light of the above rulings, the mother may consider to issue further enforcement proceedings. If the mother should like to restore the Judgment Summons in its current form, she is at liberty to write to court for such restoration. C.K. Chan District Judge Representation: The Applicant acting in person The Respondent acting in person

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Prepared on 29 October 2026 · Esheria