

HONG KONG / JUDGMENT

TCW v. LC

COURT

Court of Appeal

DECIDED

21 March 2007

CASE / FILE NUMBER

CACV139/2006

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bjbj CACV 139/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL CIVIL APPEAL NO. 139 OF 2006 (ON APPEAL FROM fcmc nO. 12816 OF 2004)

BETWEEN TCW Respondent (Appellant) and Petitioner (Respondent)

Before: Hon Cheung JA, Yeung JA and Sakhrani J in Court Date of Hearing: 21 March 2007 Date of Judgment: 21 March 2007 J U D G M E N T Hon Yeung JA (giving the judgment of the court): On 1 December 2006, this Court handed down a judgment allowing the husband s appeal and dismissing the wife s cross appeal. The court made an order nisi that there be no order as to costs. The husband now seeks to vary the order nisi on costs. Mrs Liza Remedios, on behalf of the husband argues that even in family cases, costs should prima facie follow the event, except perhaps in children cases. Mrs Remedios relies on *Gojkovic v Gojkovic* (No. 2) [1992] 1 All ER 267. She submits that the wife s request for the maintenance of the children was unreasonable and unsupported. Mrs Remedios further points out that shortly after the start of the appeal hearing, the parties had a discussion to see if the wife was willing to accept shares in lieu of cash to satisfy in whole or in part the balance of the award and whether she would agree to allow the husband to obtain refinancing on the property/properties. However, the wife rejected the suggestion. Mrs Remedios emphasizes that the order made by this court has the effect of allowing the husband to pay part of the lump sum by shares and that the husband was further allowed to obtain re-financing on the properties, very much in line with his offers to the wife at the discussion. She says the situation was comparable to a situation where a Calderbank offer was accepted. As Mr Egerton for the wife quite rightly points out, the husband had sought to reduce the award from \$22 million to just over \$15 million and only conceded at the hearing that the wife should be entitled to about \$21 million. The husband even objected to the wife and the children having a new car. Despite the husband s earlier open proposal of only cash payment of \$1.5 million, he indicated in the course of the hearing that he was prepared to pay \$6 million over a period of five years. It may not be necessary to re-visit all the issues raised at the earlier hearing, but some of

the other grounds advanced by the husband in the appeal were rejected. The question of costs is always a discretionary matter, particularly in family cases. We are satisfied that the costs order nisi is all the circumstances, fair and reasonable. We therefore confirm the costs order nisi. We also order that costs of today to be part of the appeal costs, i.e. there will be no order as to costs. (Peter Cheung) (Wally Yeung) (Arjan Sakhrani) Justice of Appeal Justice of Appeal Judge of the Court of First Instance Ms Lisa Remedios instructed by Messrs Tsang, Chan & Wong for the Respondent(Appellant) Mr Robin Egerton instructed by Messrs Simon C W Yun 1udk 1udk 1Vt^ H; < ?"w(M & 6" ABC final.dot setup Microsoft Word 9.0 Judiciary Title Source Erica Microsoft Word Document MSWordDoc Word.Document.8

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