

HONG KONG / JUDGMENT

THY v. C,HFR

COURT

Family Court

DECIDED

8 November 2016

CASE / FILE NUMBER

FCMC11061/2014

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bjbj FCMC 11061 / 2014 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION MATRIMONIAL CAUSES NO.11061 OF 2014 BETWEEN THY Petitioner and C, HFR Respondent Coram: Her Honour Judge Sharon D. Melloy in Chambers (Not open to public) Date of Hearing: 18 October 2016 Date of Ruling: 8 November 2016

RULING

(Leave to file a new petition)

AUTONUMOUT This is an application by the petitioner wife dated the 13 April 2016 as follows: The Petitioner s Petition for divorce filed herein on 20 August 2014 be dismissed and leave be granted to the Petitioner to file a fresh petition for divorce on the basis of two years separation (fresh Petition for Divorce). Immediately upon the filing of the Petitioner s application for directions for trial of the main suit in the fresh divorce proceedings, the proceedings arising from the original Petition herein be transferred to the fresh Petition for Divorce. The existing Petition filed on 20 August 2014 and the Respondent s existing Cross-Petition filed on 20 October 2015 be stayed upon the pronouncement of the Decree Nisi of the fresh Petition for Divorce save and except that both parties are at liberty to make applications on access and ancillary relief to the Court for further directions or order should any need arise between the date of the Order to be made herein and the issuance of the fresh Petition for Divorce. All existing orders and documents (including but not limited to the marriage certificate, pleadings, summonses, affidavits, social investigation report and all/any other court documents) under these proceedings FCMC 11061/2014 shall stand and remain valid under and be transferred to the proceedings to be commenced by the fresh Petition for Divorce. Personal service of the fresh Petition for Divorce be dispensed with and service of the fresh Petition for Divorce upon the Respondent s solicitors or alternatively (if the Respondent is acting in person at the relevant time) upon the Respondent by ordinary post (as the case may be) shall suffice. The following costs be awarded to the Petitioner: Costs of the main suit in the proceedings herein; Costs of issuance of the fresh

Petition; and Costs of this application. Any other directions or orders as the Court sees fit.

2. As indicated during the hearing I intend to make an order largely as sought which seems to me to be a case management decision in any event.
3. Further and for the avoidance of doubt I should add that I agree almost entirely with the submissions filed by the Wife's former lawyers dated the 11 and 17 October 2016. In particular I accept that where parties have been separated for two years (and that cannot be disputed) and further where, as here, it is clear that the marriage has broken down irretrievably, then it follows that there is no requirement on the court to investigate into the alleged unreasonable behaviour of either party. It is possible to grant a decree nisi as of right.
4. The husband put forward a number of arguments concerning the best way to approach the alleged financial misconduct by the wife. I do not accept most of what was said on his behalf. In particular I do not accept the suggestion that it would be more cost effective to air such matters in a contested divorce suit. With respect it seems to me that such an approach is both outdated and out of touch with social norms. Further I accept as is stated in the wife's submissions that: The test adopted by the Court to consider the parties conduct in relation to the divorce is different from the tests and principles to be applied when the Court considers whether or not the alleged conduct or misconduct of either party affects a party's ability to take care of the children and on any financial relief issues. It is trite law that the divorce and ancillary relief are two separate issues.

Background

5. By way of background reference can be made to the maintenance pending suit/interim maintenance judgment dated the 12 May 2015 where I said as follows: Background to the marriage and the litigation generally
2. By way of background, the parties married on XX November 2006 and the divorce petition was issued on the 20 August 2014. The husband is a Dr by profession and he apparently comes from a well known banking family. He is said to be wealthy. The wife for her part is a full time mother and part time makeup artist. She, with the husband's financial support, has also set up her own business in the air brush branding and make up product space.
3. Unfortunately the husband has taken a very extreme position with respect to these proceedings. In essence he wishes the wife to admit to committing adultery. The inference being that he believes rightly or wrongly that the wife's alleged lover has conspired with her to cheat him out of his money. Consequently the husband has simply refused to comply with court orders and to date he has not filed either his Form E or an affidavit in reply to the wife's affidavit in support of her application for maintenance pending suit. Standard orders were made on the 10 November 2014 giving the husband 28 days to file his Form E and 42 days to file an affirmation in reply. The husband did not comply with that order. On the 26 January 2015 the husband was given extensions of time to file both days to file his Form E and 28

days to file his affirmation in reply. Again he chose not to file. A further extension of 14 days was given for both documents on the 10 March 2015 and again the husband did not comply. On the 9 April 2015 a directions hearing for committal was adjourned to the 21 April. On that date he was found guilty of contempt but was given a further 7 days to purge his contempt by filing the said documents.

4. I am told that to date the documents have not been filed. The rather unfortunate impression given by the husband on the last occasion is that he almost seems to welcome the possibility of spending time in prison. In the meantime I am asked to determine the wife's application for maintenance suit in the absence of any disclosure from the husband. The husband did however appear at the hearing and he did make short submissions. The wife seeks HK\$67,800 per month for herself and HK\$84,000 per month for the two children of the family or HK\$42,000 per month each. This amounts to HK\$151,800 in total.
6. The matter subsequently proceeded to the Court of Appeal where leave was given for the husband to file an Answer out of time and to purge his contempt generally which he did. Since then the issue of the divorce itself has sat in abeyance. Order
7. I will therefore make an order in terms of paragraphs 1-5 of the wife's summons referred to above. Costs Costs of the main suit
8. In so far as costs are concerned it is of note that this was a case that started off on the wrong foot
 - in that the original divorce petition dated the 20 August 2014 was, in my view, unnecessarily aggressive. The wife confirmed during the hearing that as far as she was aware no pre-action letter was sent. Consequently I accept, as suggested by the counsel for the husband, that it could have been reasonably anticipated that the husband might have wished to defend that petition. What was not anticipated was the way in which he reacted thereafter. I accept however that his behavior with respect to the filing of the Answer etc has largely already been dealt with during the course of the other related litigation. Consequently given all of the above I will make an order that the husband do pay half of the wife's costs of and occasioned by the main suit on a party and party basis to be taxed if not agreed. Costs of the issuance of the fresh petition
9. The issue of the costs of the second suit shall be dealt with at the decree nisi hearing in the normal way. Costs of this application
10. In so far as this application is concerned - the wife has been wholly successful. She attempted to compromise the issue with the husband but without success. In such circumstances I can see no reason why costs should not follow the event. Therefore the Respondent shall pay the wife the costs of and occasioned by her summons dated the 13 April 2016 on a party and party basis to be taxed if not agreed. (Sharon D. MELLODY) District Judge The Petitioner appeared in person Mr Edward H M Tang instructed by S W Tai & Co appeared for the Respondent 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

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