

HONG KONG / JUDGMENT

W v. T

COURT

Family Court

DECIDED

8 August 2007

CASE / FILE NUMBER

FCMC13554/2006

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bjbj% FCMC 13554/2006 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION MATRIMONIAL CAUSES NO. 13554 OF 2006

BETWEEN Petitioner Respondent

Coram: Deputy District Judge K.W. Wong in Chambers (not open to public) Date of Hearing: 27th
July 2007 Date of Handing Down of Decision: 8th August 2007

DECISION

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1. This an application by the Petitioner wife (Wife) by way of a summons dated 7th June 2007 for an order that leave be granted to withdraw a sum of HK\$200,000 from the money paid into Court by the Respondent husband (Husband) for the purpose of paying the school fees, boarding fees and other expenses necessary for the eldest daughter of the family (Daughter) to study Form 6 in United Kingdom in September 2007.
 2. At the hearing of the said summons, the Wife applied to amend the said summons to the effect that a further sum of HK\$200,000 for payment of similar expenses for the Daughter in September 2008 be paid on 1st August 2008. Both the amendment and the substantive applications were opposed by the Husband.

Background

3. The Wife was married to the Husband in Hong Kong on 8th September 1988. There were two children born of the marriage, respectively the Daughter on 9th May 1989 and a boy () on 16 March 1992. The Daughter and the Son are respectively aged 18 and 15 at the time of the application. The Daughter and the Son have just respectively finished Form 6 and Form 3 this summer.
4. There were previous divorce proceedings in Hong Kong instituted by the Husband in July 2000. The parties later reconciled and the petition was dismissed in December the same year.
5. On 20th July 2006, the Wife moved out of the matrimonial home in Sceneway Garden, which was registered in the sole name of the Husband. It was the Wife's case that since then the Husband had failed to pay any maintenance to her despite request.
6. The Wife said that on 27th October 2006, she discovered her Husband had sold the said matrimonial home without informing her. It is her case that the Husband was disposing of the family assets with a view to avoiding her ancillary relief claims.
7. The present divorce petition was presented by the Wife on 28th October 2006 based on the Husband's unreasonable behaviour. She asked for custody of the Daughter and the Son, ancillary relief for herself and for the children.
8. On the very day the petition was presented, the Wife also applied for an ex parte injunction restraining, inter alia, the disposal of the sale proceeds of the matrimonial home and all bank and investment accounts of the Husband. An ex parte interim injunction in terms of the application was granted on the same date.
9. The matter was later heard inter parte on 7th November 2006. A consent order was made, inter alia, for:
 - i) a sum of HK\$2.5 million be paid into Court by the Husband in exchange for the discharge of the injunction against the disposal of the sale proceed; and ii) a sum of HK\$20,000 per month be paid out of the said money deposited into Court as interim maintenance, as to \$8,000 to the Wife and \$6,000 to each of the children of the family.
10. The said consent order also provides for payment out of the deposited money for legal costs of the parties.
11. Leave was later granted to the Husband to file and serve his Answer on 6th December 2006. His Answer was filed on 19th December 2006.

12. On 12th January 2007, it was directed that a social welfare report be called for regarding the issues of custody and access. The said report was submitted to the Court on or about 8th March 2007. It was recommended in the said report that the custody of the Daughter, (then aged 17) and the Son (then aged 14) is given to the Wife with reasonable access to the Husband.
13. The custody of the two children of the family in terms as recommended in the report were granted to the Wife with reasonable access to the Husband on 30th March 2007 by the Court.
14. The Daughter is now studying in a matriculation college and has just completed Form 6. It is the intention of the Wife and the Daughter that the latter will go to United Kingdom this September to do a two-year matriculation course in B College. The Daughter will be repeating Form six in UK.
15. The Husband initially said in his first affirmation filed in connection with this matter that the Daughter had been doing well in Hong Kong. At the hearing, counsel for the Husband Miss Jennifer Tsui agreed that the Daughter's examination result in her present school was not good. It is not in dispute that the Daughter has to repeat Form six anyway even if she continues to study in Hong Kong.
16. The Daughter considers her study in Hong Kong very competitive. There are no extra-curricula activities at all organized by her present school. She wants to pursue study in law or medicine in university. She considered that the Hong Kong A-level has a more difficult syllabus than the UK GCE A-level. She is not optimistic that she would achieve an examination result good enough to enable her studying law or medicine in Hong Kong if she continues her study locally. It is her intention to take the GCE A-level in UK with a view to obtain better results because of the less difficult syllabus. She will then be applying from UK to universities in Hong Kong through the non-JUPAS scheme for overseas students.
17. On 7th June 2007 the Wife took out the present summons for payment of HK\$200,000 being expenses to be incurred for the first year of the course together with various expenses for maintenance and legal costs of the parties.
18. The said summons was returnable on 12th June 2007. Prior to the hearing the Husband filed two affirmations (respectively dated 9th and 11th June 2007) to oppose the application.
19. On 12th June 2007, all except this education expenses application have been disposed of. It is the Wife's case that after deduction of the interim maintenance and legal costs drawn so far drawn from the said money, there is still a sum of HK\$2,020,000 together with interest with the Court.
20. The Court directed that the issue of education expenses be adjourned for trial and that further affirmation evidence, including one from the Daughter be filed. Accordingly the Daughter filed her affirmation on 5th July 2007 and the Husband responded with an affirmation on 19th July 2007. The Hearing

21. At the hearing, both Mr. Cheng, solicitors for the Wife and Miss Jennifer Tsui, counsel for the Husband agreed that the parties are at the interim maintenance stage. It would be impossible and unnecessary for the court to do a microscopic investigation of all issues and means of the parties at this interim stage.
22. However issues have arisen as to whether the Daughter should go to the witness box for examination. It is Mr. Cheng's contention that at the call-over stage solicitor then representing the Husband requested cross-examination of the Daughter. Even though Miss Tsui has withdrawn such request before the hearing and submitted against this idea at the hearing, Mr. Cheng insisted to ask the Daughter to explain to the Court in the witness box her wishes, as well as the reasons for writing a nasty letter to her father's sister (page 232 of the correspondence bundle), which was relied on by her father to oppose her application.
23. After hearing submissions of Mr. Cheng and Miss Tsui, I disallowed the Wife's application to call the Daughter. Firstly, the hearing is only an application for maintenance of the child of the family in the interim stage. Usually at this stage the court is not called upon to make any thorough investigation of the income and financial capabilities of the parties, nor to do finding of relevant facts. A broad-brush approach will be adopted.
24. Secondly, the document intended to be adduced by the Daughter, namely the Daughter's HKCEE result, was not opposed by Miss Tsui. Thirdly, the Daughter has already filed a lengthy affirmation. In fact her two lengthy letters to her father have also been exhibited by the Wife. She has already made out her case clearly. Although she does not have a chance to explain why and under what circumstances she wrote that nasty letter, I accept the submission of Miss Tsui and believe that the damaging effect of counsel cross-examining a child of the family in front of her parents and upon the instruction of her father far exceeds the benefit to be gained from such examination. It only serves to add to the emotional trauma to which the parties are already subject, and add to the bitterness and hostility (if any) the Daughter may have against her father.

Applicable Principles

25. Section 5 of the Matrimonial Proceedings and Property Ordinance (MPPO), Cap 192, provides that in proceedings for divorce, the court may order a party to the marriage to make payment for the benefit of a child of the family. Such order may be made before, on or after the granting of the decree of divorce, and may be made from time to time, subject to section 10. The relevant provisions are set out as follows: 5(1): Subject to the provision of section 10, in proceedings for divorce, nullity of marriage or judicial separation, the court may make any one or more of the orders mentioned in subsection (2) Before or on granting the decree of divorce, of nullity of marriage or judicial separation, as the case may be, or at any time thereafter;

- (2) The orders referred to in subsection (1) are - an order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, or to such a child, such periodical payments and for such term as may be so specified; an order that a party to the marriage shall pay to such person as may be so specified for the benefit of such child, or to such a child, such lump sum as may be so specified. . .
 - (5) While the court has power to make an order in any proceedings by virtue of subsection (1)(a), it may exercise that power from time to time;
26. Section 10 of MPPO stipulates that:
- (1) Subject to subsection (3) no order under section 5, 6(a) or 8 shall be made in favour of a child who has attained the age of 18; and the term for which by virtue of an order under section 5 or 8 any payments are to be made or secured to or for the benefit of a child may begin with the date of the making of an application for the order in question or any later date but shall not extend beyond the date the child will attain the age of 18.
 - (3) The court may make such an order as is mentioned in subsection (1)(a) in favour of a child who has attained the age of 18 and may include in an order made under section 5 or 8 in relation to a child who has not attained that age a provision extending beyond the date when the child will attain that age the term for which by virtue of the order any payments are to be made or secured to or for the benefit of that child, if it appears to the court that that child is, or will be, or if such an order or provision were made would be, receiving instruction at an educational vocation, whether or no he is also, or will also be, in gainful employment; or there are special circumstances which justify the making of the order or provisions.
27. The matters which the court is to have regard in deciding what orders to make under section 5 are set out in section 7(2) of the MPPO: 7(2): Without prejudice to subsection (3), it shall be the duty of the court in deciding whether to exercise its power under section 5, 6 or 6A in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say the financial needs of the child; the income, earning capacity (if any), property and other financial resources of the child; any physical or mental disability of the child; the standard of living enjoyed by the family before the breakdown of the marriage; the manner in which he was being and in which the parties to the marriage expected him to be educated; and so to exercise those powers as to place the child, so far as it is practicable and having regard to the considerations mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of section (1), just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.

28. The two further factors referred to in section 7(2) MPPO are set out in subsection (1)(a) and (1)(b) which are as follows: 7(1)(a) 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;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future; Considerations set out in section 7(3) of MPPO concern a child of the family who is not a child of the parties and are irrelevant to the present case.
29. There is no dispute the Daughter is still receiving full-time education now. The Court therefore has power to make an order for the benefit of the child of the family against any of his parents even if that child is over 18, if such order is within the scope of section 10(2). These principles are not disputed by the parties. It is Miss Tsui's submission that it is not a must for the Court to make any order as per the Wife's summons unless it is reasonable and just in the circumstances to make such order. The UK study plan is more a wish than need and there will be serious financial implication on the means of the Husband. The gist of Mr. Cheng's submission is that this is a real need of the Daughter, not merely a wish. Taking into consideration of the family assets, the Husband can afford these expenses. Financial Need of the Child
30. It has been submitted by Miss Tsui that there is a need to continue the education of the Daughter. However, to study in UK is only her wish, not her need. While a wish or fantasy should not be criticized, it needs not be materialized if it is not practical in the circumstances. It is Miss Tsui's submission that after taking into consideration of all the circumstances of this particular case, her wish of studying abroad needs not be satisfied. The Daughter has every opportunity to and should study in Hong Kong.
31. Miss Tsui submitted that according to the affirmation of the Daughter, the matriculation college she was studying in Hong Kong was in fact a good school. The Daughter felt pressure and did not have the confidence to do well. The Daughter believed she could do better in the UK because of a more relaxed environment. Miss Tsui submitted that the Daughter's belief that she could do well academically in UK was a misconception. UK was as competitive as Hong Kong for good universities and GCE A-level was no easier than its Hong Kong counterpart. The Husband position was that the Daughter might not have worked hard enough last year. Going abroad was not the proper way to deal with the problems. The Daughter should try her best to cope with her difficulties in Hong Kong instead of taking an easy way out by escaping to the UK. If at the end of the days the Daughter could not enter any university in Hong Kong, the Husband would be willing to support the Daughter abroad, preferably in Canada, where the Daughter was born and where she had quite a number of paternal relatives to take good care of her, or even at a part of Canada without the relatives.

32. Miss Tsui also commented that given the school results of the Daughter this year was poor, it was unrealistic to expect herself to enter Cambridge or Oxford or good local universities to do law or medicine, which would be highly competitive. Furthermore, judging from the letter from the Daughter to the Husband's sister, the Daughter in fact was rather immature and her decision to go abroad may not be a thoroughly thought one.
33. It is not in dispute that the Daughter is science major and scored 3B and 3C in her HKCEE in 2006, which included all the three science subjects. Although it is not a particularly outstanding result, it is a rather satisfactory result. However, when she was in Form 6, her position in class is 27th out of 30 and 84th in her stream of 92. She failed in Physics in the first term and Physics and Chemistry in the second term. This result is far from satisfactory.
34. The Daughter offered explanation for her poor performance in her affirmation filed herein on 3rd July 2007. She said although the matriculation college she was now attending is an outstanding one, it was a spoon-feed style one with a lot of examinations and tests. There was a total lack of extra-curricular activities, as the college simply had no such facilities. She said she had already tried her best, yet the result was disappointing and not as expected. She got a lot of pressure and the study was unhappy. She did not have confidence to score grades that get her in university of her choice.
35. I have gone through the two letters written by the Daughter as well as her said affirmation, which is basically a repeat of what is said in the two letters. The views and feeling expressed in these letters shows that the Daughter is mature and is with sufficient understanding and intelligence to know what she is doing. These letters are written by a daughter to her father with a view to persuading him to pay for her study expenses in UK. I have no reason to doubt her sincerity. These letters demonstrate her understanding of her own abilities and limitation. In my judgment, she is able to set a realistic goal for herself. She was eager to do law or medicine in the university. Given her HKCEE results, I do not think that such goal is unrealistic and is beyond her ability. Now that she has tried her best and encountered a setback. What can she do?
36. I have no quarrel with the values behind the Husband's advice to the Daughter when he said the Daughter has to overcome her difficulties in Hong Kong with courage and should work harder. Life is full of challenges and difficulties and no doubt one has to face one's life with courage and perseverance and work hard. The Daughter obviously needs counseling and encouragement to face her way ahead. However, being well equipped with these good qualities does not mean that any tactical move is unnecessary. At the end of the day it boils down to whether, as a matter of assessment, studying A-level in UK is a realistic plan for the Daughter to have her goal achieved, taking into consideration of her ability as well as the financial capabilities of her parents.
37. Now that she has tried hard (which I have no reason to doubt) for a year in Hong Kong but with a disappointing result. I do not believe that she has not put in sufficient effort because she thinks there is always an option to study abroad, as alleged by the Husband. In a letter

written by the Daughter to her father (page 128 of Bundle A), it is shown that she knows perfectly well that her father is in control of everything, including the family's finance. She knows that her father is strict and demanding. Whenever money is required she has to look upon his father. Given her understanding of her father I do not believe that she has not tried her best. She knows the consequence for not doing so. She has been unhappy in her study and feels very frustrated but now comes up with a study plan by sitting the GCE A-level in UK, a course she considers to be easier and has confidence to cope with. For a young person who is at the crossroad of an important station of life, she should be given opportunity to achieve her goal. With due respect to Miss Tsui, I do not think that her study plan is merely her unrealistic wish and fantasy.

38. I am not saying that GCE A-level is an easy one. However I do accept the Daughter's assessment that the GCE A-level examination is not as difficult as the Hong Kong counterpart. She has done her own research by meeting friends who all confirm that her plan will increase her chance of getting in good universities. Witnesses sharing with her confirm her plan to be realistic and workable. Furthermore B College is an outstanding college. According to the material exhibited by the Daughter, the overall passing rate at A-level is 98% whereas the average rate for grades A & B is almost 49%. I have gone through the brochure of this college and consider the academic results of this college remarkable. There were 32 students gaining 3As last years in the A-level examination. The Daughter will be taking Physics, Chemistry, Biology and Mathematics in the coming year. I have done a simple survey: the rates for grades A and B for these four subjects are respectively 72%, 56%, 57% and 57%, which are very impressive. I believe that if she is given a chance to study in this college she can score good results, and she stands a better chance to enter the university and study the subjects of her choice.
39. There is suggestion by the Husband that the Daughter has other local alternatives. If one is aiming at doing law or medicine in university one will immediately find them not alternatives at all.
40. There has also been suggestion that the Daughter is immature and is incapable of making good judgment otherwise she would not have written such a letter to her paternal aunt. I have read that letter. It is full of anger, hatred, bitterness and abusive language and is written in an insulting tone. It demonstrates the divide, unhappy and troubling situation that exists in the relationship between the Daughter and her aunt, and perhaps between the Wife and the paternal family members. One can gather from this letter that the Daughter was referring to something allegedly done by the aunt prior to the letter. Obviously when she was writing that letter she was furious, raging with fire and fuming against her aunt. It is an impolite and nasty letter for anyone at any rate. And I think Miss Tsui is right in saying that this kind of letter should never have been written by the Daughter, who was brought up in a traditional Chinese family, to a senior member of the paternal family.

41. I am unable to form a view as to the reasons for the Daughter's hostility towards her father's sister and what has actually been said and done by anyone prior to this letter. However, apart from being a piece of evidence showing how bad the relationship is between the writer and recipient, and perhaps between the Wife and the children with the paternal family members, I do not think this letter affects my judgment that the Daughter has sufficient maturity, understanding and intelligence to know her ability and limitation, and forms her own judgment as regards her education plan.
42. I do not think it necessary for me to do a comparison of which of the Hong Kong, the Canadian or the UK system is better. Suffice it to say that the Daughter has suffered frustration here despite efforts, and would like to avoid conflicts with her paternal relatives in Canada. UK has an education system similar to Hong Kong. It certainly stands out as a better alternative than the other places.
43. In my judgment, the Daughter should be given a chance, a chance that is realistic in the circumstances, to achieve her goal. It is therefore a real need on the part of the Daughter, and thus her financial need arises.
44. I also do not think it necessary to discuss the financial resources of the child. She simply does not have any means of her own to satisfy her need. Standard of Living Enjoyed Before Family Breakdown
45. I do not think that there is any dispute as to the standard of living enjoyed by the parties prior to the breakdown. Miss Tsui submitted that this is an average family. However, I would describe the family as a more than average mid-class family in Hong Kong as the Husband can afford to send the Wife to Canada when she gave birth to the two children of the family. Furthermore, I also notice that when the matrimonial home was purchased in 1992, it was purchased without assistance of any mortgage (see page 29 to 33) although the Wife indicated in her Form E they had taken out a mortgage in favour of the Hang Seng Bank. Such mortgage was not found in the Land Register. It was only towards the end of 2002 when the Wife suffered loss in stock trade that a mortgage was taken of the matrimonial home. Both the Wife and the Husband are now self-employed.
46. The Wife is an insurance and financial consultant. The Husband operates his own renovation contractor business. They used to live in a 900 square feet apartment in Sceneway Garden, a large private housing estate in Kwun Tong with club facilities. They used to have one domestic helper, and went on short trips to China about twice a year.
47. The Daughter and son have respectively finished Form 6 and 3. According to the Form E of the Wife, their school fees and other tuition fees are as follows: Daughter School Fees \$976 \$300 Extra Tuition Fees \$2,500 \$2,100 Sub-total: \$3,476 \$2,400 Total living expenses (including the above education expenses) \$8,601 \$6,254

48. According to the breakdown of expenses to be incurred for the UK study (page 36 of Bundle B), the annual tuition fee alone is 4,750. It is equivalent to about HK\$76,000 (4,750 at an exchange rate of 1:16). It is about double that of the Hong Kong expenses of HK\$41,712 (\$3,476 x 12) for Hong Kong. Manner of Education and Expectation of Parents
49. According to evidence filed by the parties, it is common ground that the parties want their children to be educated overseas. This is evident from the fact that the Husband has planned in advance for his two children to be born in Canada, so that they could get their citizenship entitlement of inexpensive but high quality education. However, it is submitted on the Husband s behalf that the Daughter should go to Canada, if there is a need to go overseas.
50. Frankly, I have difficulty to understand the Husband s genuine reasons revealed his three affirmations in opposing his daughter s plan except those set out in paragraph 55.
51. In his first affirmation filed in opposition (6th Affirmation), he put forth a number of reasons against the Daughter s study plan, such as Hong Kong can provide good bilingual education; Hong Kong can provide good Putonghua training; she is too young to leave family; she may be subjected to bad influence and acquire bad habit; she may be home-sick; she can leave after completing A-level locally; she has no right of abode in UK; B College not as good as Eaton and Cheltenham; she has no relative in UK; she has relatives in Canada that can take good care of her; her mother may take the money away without actually paying to the school, etc.
52. Shortly after the 6th affirmation and on the same day, he filed another affirmation (7th Affirmation) saying on reflection, he wanted the Daughter to receive university education in Hong Kong anyway. It is because there being not much job opportunities in Canada. Furthermore, it is a world trend for professional moving to work in China and her bilingual education here will give her an edge over others. He also raised his concern that he wants to save up sufficient for his retirement.
53. In his last affirmation (8th Affirmation) he said the Daughter may have other options than going to UK, namely repeating Form 7 locally, taking the Associate Degree, or even going to a part of Canada where the Daughter can avoid the relatives she cannot get along with. On the other hand, the Father admitted that \$200,000 is not big sum. It is the basis that is most important.
54. The Husband in his affirmation acknowledged that the Daughter had good school results in the past. However there is not a word from him whether studying law or medicine is an unrealistic goal of the Daughter. It can therefore be inferred that the Husband shares his daughter s goal. As I have said above, if he has really addressed his mind to the Daughter s goal, he will immediately find out his so-called options really not options at all. On the other hand, after reading the Daughter s letters all written in Chinese, my assessment is that she has already acquired a reasonable standard of Chinese, and I do not think studying in UK inconsistent with the Husband s requirement for bilingual training. The Daughter, being brought up in a bilingual culture in the past 18 years, has already got sufficient edge over

other who has no such opportunity. I also do not consider that law and medicine are now being taught in Chinese in Hong Kong or UK.

55. From the three affirmations of the Husband, he forms a view that local bi-lingual education is better and provides more opportunities than overseas education. Overseas education is the last resort, and if resorted to, Canada is the only choice. As I have said, the Daughter has already attained a reasonable standard in Chinese. Furthermore, the fact that the Daughter can study in a part of Canada where she can avoid her paternal relatives defeats almost all the Husband's argument in favour of Canada, except the monetary consideration. In my judgment, this ground, or perhaps the fact that the Husband, being the father and head of the family, has not been consulted prior to her deciding on the matter, are the Husband's genuine reasons to oppose the Wife application. All other are dress-up reasons. The Daughter has sufficiently dealt with all these other reasons in her affirmation in reply. Financial resources of the parties and their expected obligations in the near future
56. According to Form E, the Wife earned an average of about \$11,000 per month in last 12 months. Her estimate of the net worth of her assets amounts to \$1.07 million. Her assets include two landed properties in Guangzhou, which are in joint names with the Husband, respectively a shop at Li Wan Plaza (Li Wan Shop) and another shop at the Computer Centre of the Tin Ho District (Computer Centre Shop).
57. According to the Form E filed by the Husband, he claims to have an average monthly earning of about \$9,000 (\$110,100 for the last 12 months). He initially claimed (after deduction of debts to his father of \$0.2 million and one Mr. Chow of 0.8 million) to have a net asset of about HK\$5.17 million. His assets comprise:
- i) Li Wan Shop (50%); ii) Computer Centre Shop (50%); iii) a flat in Po Shing House of Yuen Long (Po Shing House) (50%) in joint names with the Husband's father; iv) a flat in Yuen Long Mansion (100%) (Yuen Long Mansion) in his sole name;
 - v) \$2.5 million deposited in Court after sale of the matrimonial home; vi) about 0.71 million cash in Hong Kong currency and Reminbi; and securities of about 0.63 million.
58. Later by way of affirmation, he adjusted the net assets downward to \$4.18 million. He said Po Shing House was registered in his and his father's names as joint tenants. He said this property was purchased by his father using his father's own money. This property is now being occupied by his father rent free. His father said it was to be divided by his 5 children when he passed away. Anyway he revised the same by attaching a to the valuation of Po Shing House.
59. As regards the Yuen Long Mansion, he said that the property is now generating rental income of \$3,200 per month which is used to maintain his father. Likewise, Yuen Long House will be equally shared by all the 5 children of his father when the latter passed away. As such, instead of 0.8 million, it should be 0.16 million.

60. Miss Tsui of the Husband confirmed that the Li Wan Plaza is now generating rental income of RMB20,000 per month. The rental previously was RMB12,100. It appears that the Computer Centre Shop is not generating any rental for the time being.
61. Mr. Cheng for the Wife also drew to the attention of this court that there was a transfer of \$1.5 million on 6th June 2006 by the Husband to his sister in Canada, allegedly to settle a debt incurred by the Wife's false trading of securities in 1998. He said it is doubtful and if that is taken into account, the family assets are more than sufficient to pay for the Daughter's educational expenses.
62. It will be difficult at this stage to determine whether the Husband's allegations concerning the debts, the repayment of part hereof in the sum of \$1.5 million and the arrangement of the Po Shing House and Yuen Long Mansion are true. In any event, I consider there being no reason to reduce his share in Po Shing House from half of the interest (0.35 million) to nil. One-fifth of the value (0.14 million) should be attached. After the adjustment, tentatively his net asset value should be around \$4.32 million. As such the total family assets are worth about \$5.39 million. I shall round it up to 5.4 million.
63. Counsel for the Husband submitted that the education expenses would be recurrent until the Daughter finished university. Furthermore, the son will likewise ask for studying in the UK. The total family wealth will then be used up entirely. For the reasons set out in the following paragraphs, though I do think it a valid concern of the Husband, the situation may not be as bad as painted by the Husband.
64. Based on letters from B College (pages 38 to 41 of Bundle B), the Wife comes up with her estimate of HK\$200,000 per annum particulars of which are sent to the Husband's solicitors and repeated as follows:
- i) Annual tuition 4,750 ii) Accommodation - 100 per week for 42 weeks 4,200 iii) Book Deposit 60 iv) Purchase of books 100
 - v) Transportation 675 9,785 vi) Round trip air ticket HK\$ 11,000 vii) Laptop Computer HK\$ 10,000 viii) Clothes and daily necessity HK\$ 10,000 HK\$ 32,000 ix) Lump sum due before 2nd semester
 - Round trip air ticket HK\$ 11,000
 - x) Monthly expenses
 - Pocket money 120
 - Food and laundry costs 33 153
65. Mr. Cheng conceded that the Daughter could return to Hong Kong once a year. Adopting an exchange rate of 1:16, the expenses for a 10-month stay in UK per academic year will be HK\$188,560 (9,785 x 16 + HK\$32,000), rounded up to HK\$190,000 instead of HK\$200,000. The monthly expenses of 153, equivalent to about HK\$2,500 (rounded-up figure) can be satisfied

out of her monthly maintenance, which is presently \$6,000. Mr. Cheng also conceded that when the Daughter is in UK, her monthly maintenance will be around HK\$4,000, which is the aggregate of her monthly expenses of 153 (rounded up to HK\$2,500) plus a further sum of around HK\$1,500 being her medical, insurance and other sundry expenses such as glasses as set out in the Wife's Form E (page 146 of Bundle A). Furthermore, I do not see why she needs another laptop for her second year of study. It will therefore be \$180,000 for the second year.

66. Although it is the intention of the Daughter to study only the 2-year GCE A-level in UK and pursue her university study in Hong Kong, the worse scenario is that both the Daughter and the Son may be doing their matriculation and university in the UK. The estimated expenses are around \$0.37 million (\$0.19 + \$0.18 million) for the entire matriculation course. There is for the time being no material to do an estimate of the university expenses. According to Form E, the Wife pitched it at \$0.35 million per year. By the time the Daughter completed university (assuming it is a 4-year course for law) in UK, a sum of \$1.77 million will be incurred. The expenses for the Boy (assuming a 2-year matriculation and a 3-year university course) will be \$1.42 million. Assuming both children go overseas to study and the total expenses are wholly drawn from the family assets, roughly about 2.21 million (5.4 - 1.77 - 1.42 million) will remain after both children have graduated from university.
67. I notice that the Computer Centre Shop is not producing any rental for the time being. I see no reasons why it will not be rent-generating in the near future. Furthermore, when the Husband was interviewed by the social welfare officer when the issue of custody is in hot dispute, the Husband said to the said officer that his income is steady and his monthly income is around \$13,000 instead of around \$9,000. His financial situation in fact is not that bad. In addition, I am sure Li Wan Plaza will continue to be producing good rental income, presently at RMB20,000 per month (previously RMB12,000), for maintenance of the parties in the interim. Of course the parties may need to continue working for the a few more years before they can retire. Even in this scenario, the financial position is not that worrying. It should not be forgotten that it is the Daughter's intention to come back to Hong Kong after her 2-year UK study. The scenario set out in the preceding paragraph is only for the purpose of analyzing the worse position which may have troubled the Husband. From the evidence available now, it cannot be said to be a probable one. Conclusion and Order
68. I have done a balancing exercise taking into consideration all the circumstances, including the factors in section 7 of the MPPO. Although it is entirely legitimate for the Husband to raise the concerns which I have dealt with in the preceding paragraphs, including the way he prefers his daughter to be educated using his money, for the above reasons I consider that there is really a need for the Daughter to study in UK for the next two years. In the best interest and for the benefit of the Daughter, I make the following orders: leave granted to the Wife to amend the summons dated 7th June 2007 in the manner as per the draft handed in on the date of hearing; service of the Amended Summons be dispensed with; leave granted to the Wife to withdraw a sum of HK\$190,000 forthwith from the money already paid into

court by the Husband for payment of school fees, boarding fees and other necessary expenses for the Daughter s study in UK from September 2007 to July 2008; and leave also be granted to the Wife to withdraw a further sum of HK\$180,000 on 1st August 2008 from the said money paid into court by the Husband for payment of school fees, boarding fees and other necessary expenses for the Daughter s study in UK from September 2008 to July 2009.

69. For the reasons which I have set out in the preceding paragraph, I think it is fair to make no order as to costs, and accordingly I make an order nisi that there be no order as to costs of these applications, which order is to become absolute in 14 days, unless either of the parties applies to Court to vary the same. (Wong King-wah) Deputy District Judge Mr. Alvin Cheng of Alvin Cheng & Rosaline Choy for the Petitioner Miss Jennifer Tsui, instructed by Chaine, Chow & Barbara Hung for the Respondent - PAGE A B C D E F G H I J K L M N O P Q R S T U V 1udk Qc. |!&< F"9. ZNh` zC|~ l)}4 Qc. 68r1 Normal.dot setup Microsoft Word 9.0 Judiciary Hong Kong SAR Title Microsoft Word Document MSWordDoc Word.Document.8

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