

HONG KONG / JUDGMENT

WML v. LCK

COURT

Court of First Instance

DECIDED

28 April 2015

CASE / FILE NUMBER

HCMP3011/2014

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CACV 82/2014 and HCMP 3011/2014 CACV 82/2014 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL CIVIL APPEAL NO. 82 OF 2014 (ON APPEAL FROM FCMC NO. 5663 OF 2011) BETWEEN WML Petitioner and LCK Respondent AND HCMP 3011/2014 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL MISCELLANEOUS PROCEEDINGS NO. 3011 of 2014 (ON AN INTENDED APPEAL FROM FCMC NO. 5663 OF 2011) BETWEEN WML Petitioner and LCK Respondent Before : Hon Cheung, Chu JJA and Poon J in Court Date of Petitioner's Written Submissions : 25 March 2015 Dates of Respondent's Written Submissions : 2 March and 1 April 2015 Date of Decision : 28 April 2015 D E C I S I O N Hon Cheung JA (giving Decision of the Court) : On 27 February 2015, the Court allowed the husband's appeal, set aside the judgment below and ordered a retrial. We further ordered on a nisi basis that there will be no order as to costs of the appeal and below and also of the wife's application for leave to appeal out of time ('the wife's leave application'). The husband now seeks to vary the costs nisi order. We now deal with the matter on paper having received the written submissions of the parties. The husband accepts that there should be no order as to costs below but contends that he is entitled to the costs of the appeal and the costs of the wife's leave application. We will not vary the costs nisi order. Although we had also addressed the issue of constructive trust, the main reason for allowing the husband's appeal is due to the fact that he did not receive a fair trial below. This was not due to the wife's fault. Further, the wife's leave application was only briefly addressed at the hearing and did not add much to the costs of the appeal. Overall the order that there should be no order as to costs is appropriate. Although the wife herself did not apply by a separate summons to vary the costs order, she argued that she is entitled to the costs of the appeal and below and also of her leave application. We fail to see on what basis she is entitled to such costs. Accordingly her application is refused. There will be no order as to costs of this application. The wife's own costs to be taxed according to Legal Aid Regulations. (Peter Cheung) (Carlye Chu) (Jeremy Poon) Justice of Appeal Justice of Appeal Judge of the Court of First Instance Written Submissions by Mr Andy Hung, instructed by Stephen Lo & P. Y. Tse, assigned by Director of Legal Aid, for the petitioner Written Submissions by Mr Patrick Chong, instructed by Au & Vrijmoed, for the respondent

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