

HONG KONG / JUDGMENT

YSG (YX) v. LYAG**[2022] HKFC 44****COURT**

Family Court

DECIDED

18 February 2022

CASE / FILE NUMBER

FCMC15288/2015

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bjbj FCMC 15288 / 2015

**[2022] HKFC 44 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NO 15288 OF 2015**

BETWEEN YSG (YX) Petitioner and LYAG Respondent

Coram: Deputy District Judge Peter Barnes in Chambers (Not Open to Public) Date of Ruling: 18
February 2022**R U L I N G**

On Tuesday 15 February 2022 the Petitioner/Wife () began her evidence. After the formality of verifying her various affirmations, the majority of her oral evidence-in-chief was devoted to confirming and at times commenting on the material produced by her for the purposes of cross-examination of the various Single Joint Experts (SJE s) pursuant to the Order of 4th January 2022. Towards the end of the day she then sought to produce a number of charts she had prepared to support one of the integers of her case, namely that the Respondent/Husband () has syphoned off and hidden away a large amount of money from his earnings during the marriage and, as indicated in one of the charts, before the marriage. Her counsel Mr. Marwah then applied for leave for these charts to be adduced. The Respondent opposes the application. The production of charts to assist the Court to navigate and comprehend often substantial volumes of material are frequently allowed and are useful: one example being those used during the evidence of Mr. Wainwright, the wine expert. In this case, the charts rely at least in part on additional documents not already in evidence. W explained that she had only recently discovered these documents

which she found in a box in her apartment; she had previously assumed the box contained only her own documents. Her solicitors (PC Woo & Co ()) wrote to H s solicitors (CRB) on 8 February 2022 announcing that W had found the documents last week (i.e. the week commencing 31 January 2022) and that they related to the family s assets in Singapore which remain unaccounted for . This Trial began on 4 February 2022, with the first witness being called on Monday 7 February 2022. On 10 February 2022 PCW wrote to the Court proposing to update the trial bundles including with this new evidence. This was immediately objected to by CRB by letter of the same date. Today, W confirmed that she had discovered the documents during Chinese New Year and had immediately informed her solicitors of the discovery. She also explained that she had modified the charts to incorporate this new material. The charts were prepared with the assistance of an accountant. I have taken W s application, made from the Bar Table, to be an application not simply to use these charts but also to adduce the new evidence discovered by W. Mr. Marwah has confirmed, today, that this was the nature of the application. To be clear, the proposed bundle updates consist of three items which I understand are not contentious: E3/Tab 170.15 a letter dated 7 February 2022 from PCW to CRB concerning the packaging of H s wine collection; E4/Tab 170.17 a letter dated 9 February 2022 from PCW to CRB concerning H s query on W s possible inheritance from her father and mother W has already given evidence on this topic; and updates to the G Bundle adding documents which have already been supplied by H. Mr. Todd for H opposed the application on the following grounds: The Black hole argument is now raised, 6-7 years into the litigation. To the extent she was, and remains intent on pursuing it, it was beholden on W to present particularised questions for H to respond to; The October 2021 Order embodies W s agreement to limit the extent of her enquiry; The written evidence for the trial is closed. At the PTR in December 2021 W was refused leave to adduce professional evidence to assist the audit of the marital finances. In any event, such an audit runs contrary to the principle that the Court should not countenance a retrospective raking over the coals of a failed marriage, per LKW v DD; W could have, and should have discovered these documents long ago, and in any event before the close of the parties written evidence. Her explanation is unsatisfactory; Some of the contents of the charts are not factual, but argumentative; In the context of the parties AR claims, this is well outside the scope of the proper enquiry the court should be conducting. Relevant background This matter was originally commenced by H s petition dated 28 August 2014. The suit was defended but on 25 November 2015 it was compromised on the basis that the matter would proceed with W filing a fresh petition (1 year s separation plus consent). It is therefore not in dispute that the parties have been and remain separated since 2014. There then followed several years of litigation concerning the two children, culminating in the Order dated 13 August 2019. The parties then shifted their focus to the question of ancillary relief. After the unsuccessful FDR, W sought further disclosure by H of documents relating to H s earnings prior to separation. On 5 July 2021 she applied by Summons for orders for discovery of these documents, spanning from 2001 (the year after their marriage) to 2013 (the year before they separated). This was the first sign she was intending to run the case that she is now putting forward. Nothing in her maintenance pending suit () principal affidavit or reply affidavit suggests it. In her affidavit supporting the specific discovery () summons, (her 8th) she explained that the documents were needed to confirm her assessment that, having regard to

H s estimated earnings during the marriage, and taking into account the expenditure during the marriage and for the 2 years after separation necessarily another estimate the likely assets in H s name were HK\$230 million, much more than he had declared in his first Form E filed in 2015, which was HK\$165.69 million. Adjusting further for those she said should be excluded, the two Singapore landed properties being among them, she said that this represented a staggering shortfall of HK\$122.2 million (paragraphs 61-63). CRB wrote immediately in response by letter of 7 July 2021 [E1/1890] referring to discovery request as extraordinary , and based on a flawed analysis. In H s affirmation in response to the Summons (his 6th) he further elaborated on this labelling it as a fishing expedition (para 6), and the theory of the missing millions as wishful thinking without a rational basis (para 8). W s reply (9th) affidavit responded to these assertions by maintaining the necessity for the disclosure of the documents. The matter was resolved by Consent Order dated 20 October 2021 recording H s agreement to file an affirmation exhibiting some of the documents sought, i.e. limited to (a) compensation summaries issued to H by his employer for the years 2007 to 2013; (b) accounting pay statements issued by the same employer at the end of the years 2006 to 2013; and (c) final tax assessments issued by the IRD to H for the FY 2009/10, 2010/11 and 2011/12. In this respect it is relevant to note that W had said in her principal (8th) Affidavit that 2007 was the year when the marriage began to break down and that from 2008 onwards H s bonus payments were not paid into the parties joint account as they had been before then [A/90, paras 54, 55]. The Consent Order began with a recital recording the parties agreement that: The Order is entirely without prejudice to either party s contention as to whether W s Summons was necessary; W acknowledged that she had no pending or intended application for discovery, subject to the disclosure made by H in compliance with the Order; The Trial hearing dates, which had by then been fixed, would be preserved. (I note, parenthetically, that there has been some adjustment to the dates for trial, inter alia to take into account W s change of counsel, but the month of the trial February 2022 has been preserved.) H says that paragraph (2) of the Recital to the Consent Order was a firm statement that W would not be making any further applications for discovery at least insofar as H s income during the marriage was concerned. I agree. Two weeks later, on 3 November 2021 W filed her narrative affidavit (her 10th) for the Trial. It includes paragraphs under the heading Section F: Undeclared Assets to be Added Back and/or Brought into the Computation Analysis . This Section of the Affidavit is further sub-divided and includes a passage paragraphs 170 to 177 of the Affidavit in which W alleges, in essence, that starting from early on in the marriage H had syphoned-off large sums of money from a joint Singapore bank account totaling HK\$154.1 million. She produced a large number of bank statements of the joint HSBC Singapore Loan and Bank Accounts, and questioned why H was still making auto payments from this account to service his Singapore credit card when they had already relocated to Hong Kong. She asks semi-rhetorically in the next paragraph How did [H] manage to use his Singapore credit card to drain monies away from our matrimonial funds? . At paragraph 173 she queries transactions of auto-deposits into his DBS Account (statements of which she exhibits) and concludes at paragraph 174 that all these documents demonstrate a systematic draining of the Singapore accounts to an undisclosed location or in the form of undeclared assets (para 177). At the PTR on 13 December 2021, W s counsel confirmed that they were additional concerns to those raised by her 8th Affidavit (paragraph 27 of W s counsel s Note).

The same Note applied (again absent a Summons) for the Court to allow W to engage and call as a witness a forensic accountant to aid her analysis and reconstruction of the alleged missing money/assets. Her application was not granted. What should then have happened, if W wished to obtain further documents connected with her black hole theory, e.g. credit card statements connected with the alleged draining of matrimonial funds, she should have applied for an order that they be produced, or leave to issue a further questionnaire. Of course, this would have been inconsistent with her confirmation in the October 2021 that she had no pending discovery application, but it should have been made. Instead, she now seeks to adduce the documents to bolster her case. On 15 February 2022, in response to a question from the Court, W confirmed that her black hole theory of secret dissipation or syphoning off by H was limited to the period during the marriage i.e. before separation. PCW's letter describes these newly discovered documents as H's letter to the Singapore Ministry of Defence 24.9.2019 showing that H knew NXXX will go into the army, and H stated that I am responsible for the financial needs of NXXX; Documents showing H's XXXX salaries and bonuses; Joint Citibank account statements from April 2002-May 2006, showing the deposits of XXXX bonuses, withdrawals and some KXXX rentals; H's UOB statements showing H's joint account with his mother, which he did not declare; H's UOB Singapore statements for the period after the family removed from Singapore, showing expenses and withdrawals; H's HSBC Singapore credit card statements for the period after the family removed from Singapore, showing there were monthly charges of ITX-Income Tax's DBS statement for the period after the family removed from Singapore, showing monthly deposits of SGD20,000; and H's UOB Singapore credit card statement showing summary 1 year of expenses. W's application is extremely late and not made properly it should have been made by Summons with a supporting Affidavit explaining why the Court should allow the documents to be adduced and how their production is consistent with her related duties of promptitude and full and frank disclosure, and their relevance to her case. I refuse the application to adduce the new evidence with one exception. I will allow the production of item 1, being the letter to the Singapore Ministry of Defence. All documents for which leave is refused are to be removed from the Trial Bundles. As I have allowed that single letter, I grant leave to the Respondent (if so advised) to file an affirmation dealing with that letter and exhibiting any other emails/documents he wishes, before he commences his evidence. I will hear from Counsel as to a specific date. Leave is given to W to produce amended charts before she completes her evidence. Peter Barnes (Deputy District Judge) Mr. Azan Marwah instructed by P.C. Woo & Co. for the Petitioner Mr. Richard Todd instructed by CRB for the Respondent 1udk [t|l|bZb h:)_ h:)_ gdW7 gduQ wbMA ieiei]iYU i h@GB gdW7 gdW7 gdW7 h>&@ h>&@ h>&@ gdW7 gdW7 gd@GB gdW7 gdW7 h[X h[X h[X gdW7 gdW7 gdW7 gdW7 h[X h[X h[X mH <sH <' gdW7 gdW7 gdW7 gdW7 h& 4 h& 4 gd@GB gd@GB gd& 4 gdW7 gdW7 gdW7 h& 4 h& 4 h& 4 h& 4 h& 4 &`#\$ gd@GB 1udk gd@GB [Content\_Types].xml \_rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/theme1.xml \$O}) Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8}d- qyI@ j!Q\_ jyV` |PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r *~P(5 .}x E /,EE\} theme/theme/_rels/themeManager.xml.rels 5 6? \$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/theme/themeManager.xmlPK theme/theme/theme1.xmlPK theme/theme/_rels/themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1"

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