

FCMP 143 / 2016

IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
FAMILY COURT
MISCELLANEOUS PROCEEDINGS NO. 143 of 2016

IN THE MATTER OF SG, female, a child
born on the 12 day of June 2012 in Hong
Kong, a Minor

and

IN THE MATTER OF Sections 3
(1)(c)(i), 10(2), 13(3) of the Guardianship
of Minors Ordinance. Cap. 13

and

IN THE MATTER OF Order 90 rule 1 of
the Rules of the District Court (Cap 336H,
Laws of Hong Kong

BETWEEN

D, A

Applicant

and

SJG

Respondent

Coram: Her Honour Judge Sharon D. Melloy in Chambers (Not open to
Public)

Date of Hearing: 6 December 2016

Additional documents received: 9 December 2016

Date of Judgment: 22 December 2016

JUDGMENT
(Interim maintenance)

Introduction

1. This is a summons issued by an Applicant mother for interim financial support for the parties' 4 year old daughter, S, a girl born on the 12 June 2012 in Hong Kong. In her summons dated the 7 November 2016 the mother seeks an order for the daughter as follows:

- a) a monthly rental for an apartment in Repulse Bay including utilities and household expenses in the sum of HK\$49,000; and
- b) the rental deposit and expenses incurred for the mother and child to move into the new accommodation.

2. In addition she seeks interim maintenance for the child, to include school fees, food, clothes etc in the sum of HK\$42,388.33 per month plus an additional HK\$31,000 per month as a carers allowance.

3. By the time the parties came to court some of the issues had been narrowed somewhat and the Respondent father undertook during the course of the hearing to pay for the following:

- a) school fees at the Hong Kong International School;
- b) school bus fees if necessary;
- c) ballet lessons and extracurricular activities generally up to a maximum of HK\$3,000 per month (Please note that it will be directed that such activities are to be agreed between the parties ahead of time and that such agreement shall not be unreasonably withheld);
- d) medical insurance for S and
- e) a rental deposit and moving fees for S and the mother

4. Further the father also undertakes to enter into a lease for the mother and child, so that the only issues that remains with respect to accommodation is the appropriate area for the flat and quantum. It should also be noted that sensibly the father has suggested that the parties divide up their existing furniture in the Repulse Bay flat.

5. This application is made pursuant to s.10(2)(b) and s 13(3) of the *Guardianship of Minors Ordinance*, Cap 13. The mother has filed two summonses in support of her claim. In the first dated the 12 July 2016 she seeks maintenance including a carers allowance for S, plus a lump sum payment including a sum of money for the reimbursement of liabilities and expenses. She also asks for a transfer of property order. In the second summons dated the 7 November 2016 she seeks interim financial support and further particularizes her claim as set out above.

The issues

Issues

6. There are a number of issues that now require urgent determination namely:

- (1) What is an appropriate level of monthly maintenance for the father to pay for S on an interim basis?
- (2) Should a property be rented for S and the mother in the Repulse Bay area?

Background

7. Given that time is of the essence I do not intend to go into too much detail with respect to the background of this case but suffice it to say that the parties met in July 2010 when the mother came to Hong Kong on a

trip. She is a Thai national. Although there is some dispute about this it seems fairly self evident that a relationship soon developed and shortly thereafter on the 16 October the mother came to Hong Kong and began to live with the father. The father is British.

8. Both parties have been married before and each has children. The mother has one child, a daughter who currently lives with her grandmother in Thailand. The father has an older daughter who is now 24 years old from a former relationship and two further children from a former marriage. He continues to support his former wife and the two children from his marriage. It is the wife's case that she would also send money to her mother and daughter from time to time and that this was with the father's agreement and understanding.

9. The father is a successful businessman in the engineering field and he has an interest in two companies – he owns one smaller company ALL outright and he has a 50% stake in a second company called PA Ltd.

10. The couple did not marry and the mother has until recently always been in Hong Kong on a dependant's visa, sponsored by the father. It follows that she cannot work in Hong Kong. In June 2016 the father wrote to the Immigration Department informing them that he was no longer willing to sponsor the mother. She is presently in Hong Kong on a renewable 30 day tourist visa.

11. Although not married the parties had S, their daughter, on the 12 June 2012 in Hong Kong. It is the mother's case that she has always been S's full time caretaking parent. This is seriously disputed by the

A
B father who has gone to quite extraordinary lengths to prove his point. In
C October 2015 the relationship began to falter amidst accusations by the
D mother that the father had formed a relationship with someone else.
E Recently the father has likewise accused the mother of being unfaithful –
F something that she vehemently denies. Notwithstanding the obvious
G tensions between the parties they have continued to live under the same
H roof. In part this is because the mother has no means of her own and she is
I completely dependent on the father financially.
J

K 12. In May 2016 the father stopped providing the mother with a
L cash allowance. Previously he had paid her HK\$12,000 per month. He also
M cancelled her supplementary credit card. It is the father's case that he gave
N the domestic helper funds to buy all essential items for the household
O including food. The mother's for her part says that she had no option but to
P borrow some funds from friends. The father says that he cancelled the
Q mother's credit card because she had overspent. This in turn is denied by
R the mother.
S

T 13. In any event the matter was originally set down for a hearing
U in January whereupon the father without further recourse to the mother
terminated the lease on the property in which they are currently living.
This caused the matter to be dealt with – completely unnecessarily in my
view – on an urgent basis.

R 14. On the 23 November 2016 the parties reached agreement at a
S Children's Dispute Resolution hearing that the parties would have joint
T custody of S, with interim care and control to the Mother and interim
U reasonable access to the father. The father will have access to S every

Wednesday evening from 6:00pm – 8:00 pm and on alternate weekends from 1:00 pm on Saturday to 6:00 pm on Sunday. The school holidays are to be divided 50:50. The matter is to come back before the court in March 2017 and in the meantime a child psychologists report is to be provided on the care arrangements for S going forward. The father has issued a summons seeking joint custody and shared care of S. He says that he will be assisted in this by his mother and a domestic helper. The mother for her part wishes to have sole care and control of S.

The financial arrangement between the parties prior to the breakdown of the relationship

15. It does not appear to be seriously disputed that the mother is totally reliant on the father financially and that he has historically provided both mother and child with a very comfortable standard of living during the course of the relationship including housing in Repulse Bay, regular overseas trips, schooling at a very prestigious and expensive international school and two domestic helpers including from time to time a driver (although it is of note that the father says that the driver was employed by the company and was utilized for work purposes almost exclusively). In addition he provided the mother with a supplemental credit card and HK\$12,000 cash per month.

The Law

16. *The Guardianship of Minors Ordinance*, Cap 13 and the *Guardianship of Minors (Amendment) Ordinance* 2012 governs this application and for completeness sake I have set out in full the relevant sections below.

3. General principles

(1) In relation to the custody or upbringing of a minor, and in relation to the administration of any property belonging to or held in trust for a minor or the application of the income of any such property

(a) in any proceedings before any court (whether or not a court as defined in section 2) the court -

(i) shall regard the best interests of the minor as the first and paramount consideration ...

10. Orders for custody and maintenance on application of either parent

(1)

(2) The court may as regards a minor, on the application of a person with whom, whether by virtue of an order under subsection (1) or otherwise, custody of the minor lies at law, make in respect of the minor any one or more of the following orders-

(a) an order requiring payment to the applicant by the parent or either of the parents of the minor of such lump sum (whether in one amount or by installments) for the immediate and non-recurring needs of the minor or for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the minor before the making of the order to be met, or for both, as the court thinks reasonable having regard to the means of that parent;

(b) **an order requiring payment to the applicant by such parent or either of such parents of such periodical sum towards the maintenance of the minor as the court thinks reasonable having regard to the means of that parent;**

(c) an order requiring the securing to the applicant by such parent or either of such parents, to the satisfaction of the court, of such periodical sum towards the maintenance of the minor as the court

| | | | |
|---|---------|---|---|
| A | | | A |
| B | | thinks reasonable having regard to the means of that parent; | B |
| C | (d) | an order requiring the transfer to the applicant for the benefit of the minor, or to the minor, by such parent or either of such parents, of such property, being property to which the parent is entitled (either in possession or reversion), as the court thinks reasonable having regard to the means of that parent; | C |
| D | | | D |
| E | | | E |
| F | (e) | an order requiring the settlement for the benefit of the minor, to the satisfaction of the court, of such property, being property to which such parent or either of such parents is so entitled, as the court thinks reasonable having regard to the means of that parent. (Replaced 80 of 1997 s. 78) | F |
| G | | | G |
| H | | | H |
| I | (13)(3) | On an application under section 10 the court may, in any case where it adjourns the hearing of the application for more than 7 days, make an interim order, to have effect until such date as may be specified in the order and containing— | I |
| J | | | J |
| K | (a) | provision for payment by either parent to the other, or to any person given the custody of the minor, of such periodical payments towards the maintenance of the minor as the court thinks reasonable having regard to the means of the parent on whom the requirement is imposed; and | K |
| L | | | L |
| M | (b) | where by reason of special circumstances the court thinks it proper, any provision regarding the custody of the minor or the right of access to the minor of either of his or her parents, | M |
| N | | | N |
| O | | but an interim order under this subsection shall not be made to have effect after the end of the 3 months beginning with the date of the order or of any previous interim order made under this subsection with respect to the application, and shall cease to have effect on the making of a final order or on the dismissal of the application. | O |
| P | | | P |
| Q | | | Q |
| R | | | R |
| S | 17. | In addition counsel for the mother referred me to - <i>LCTK v TKKP FCMP 173 of 2009</i> , unreported dated 25 June in which HH Judge Chu (as she then was) summarizes the legal principles thus: | S |
| T | | | T |
| U | | | U |

THE LEGAL PRINCIPLES

5. The Court has power under s.10(2) of the Guardianship of Minors Ordinance ("GMO") to make various forms of financial provision for a child, which includes periodical payments towards such child's maintenance.

6. There are no equivalent statutory matters as those set out in s. 7 of the Matrimonial Proceedings and Property Ordinance which the Court has to have regard to in exercising its discretion in making financial orders for a child under the GMO and the test is simply what is reasonable having regard to the means of the parent on whom the requirement is imposed (s. 10(2)(b)).

7. Under s. 13 (3) (a) of the GMO, the Court has the power to make an interim order, but such interim order shall only have effect for 3 months from the date of the order, and shall cease to have effect on the making of a final order or on the dismissal of the application.

8. Our GMO is based on the UK Guardianship of Minors Act which is now incorporated in Schedule 1 of the Children Act 1989. Paragraph 9 of Schedule 1 relates to interim orders. However, there is now no 3 month limitation for an interim order in the UK provisions. Why there still remains in our legislation this limitation is not quite clear, but there seems to be nothing to stop the Court to make a further interim order, upon the cessation of the first one.

9. There is no dispute between the parties as to the general legal principles. This being an interim application, and not having had the benefit of seeing the parties in the witness box with their evidence tested, the Court will have to adopt a broad brush approach. The Court will not take a long term view and what matters is the immediate and reasonable financial needs of the Child.

With respect it seems to me that that remains the position now.

Discussion

What is an appropriate level of monthly maintenance for the father to pay for S on an interim basis?

18. The father complains, and with some justification it seems to me that the mother's original budget has shifted as this application has progressed. In any event he says that both parties should move to the Wanchai area and that two properties can be leased for approximately

HK\$25,000 each. He says that he cannot afford for the mother to continue to reside in the Repulse Bay area. Since the domestic helper has recently resigned he also says that he will not at present employ a new one. He says that he will employ a local domestic helper who will work for four hours per day five days per week. During the hearing his counsel suggested that this helper could perhaps be shared.

19. The present position of each party was helpfully summarized in Mr Hughes's written submission thus:

37.1 General

| Item | Mother's Position <i>4th Dawsuk §35</i> [2:473] | Father's Position <i>2nd Grant §40</i> [2:440] |
|---|--|---|
| Rent | \$53,000/ \$65,000/ \$55,000 | \$25,000 |
| Utilities (electricity, gas, rates, telephone & water | \$5,000 | \$5,000 |
| Management fees | Nil | Nil |
| Food | \$10,000 | \$7,000 |
| Household expenses | \$5,000 | Nil |
| Domestic helper | \$5,288.33 | Nil |
| Total | \$78,288.33/ \$80,288.33/ \$90,288.33 | \$37,000 |

37.2 Personal

| | | |
|-----------------------------|---------|-----|
| Transport | \$1,500 | Nil |
| Clothing/shoes | \$6,000 | Nil |
| Personal grooming | \$2,000 | Nil |
| Entertainment/ presents | \$3,000 | Nil |
| Holiday | \$4,000 | Nil |
| Contribution to parents | \$500 | Nil |
| Dependent family members | \$500 | Nil |

| | | |
|---|-----------------|----------------|
| Others (specify) - Cash payment for R | \$12,000 | Nil |
| Total | \$29,500 | \$7,500 |

37.3 S

| | | |
|------------------|-----------------|-------------------------|
| School fees | \$17,500 | \$17,500 |
| Extra-curricular | \$1,100 | \$1,000 |
| Clothing/shoes | \$3,000 | \$3,000 |
| Insurance premia | \$2,000 | \$2,000 |
| Transport | \$3,500 | \$1,200 (School Bus) |
| Total | \$27,100 | \$24,700 |

TOTAL \$134,888.33/136,888.33/146,888.33 \$69,200

In summary then the mother seeks in the region of between HK\$135,000 – HK\$147,000 per month for S, inclusive of a carers allowance for herself, and the husband offers approximately HK\$70,000 per month.

20. The biggest disparity between the parties relates to rental. It is not clear to me on what basis the husband is proposing a budget of HK\$25,000 per month each when at present he is paying HK\$66,000 per month for the recently terminated lease. This, when divided equates to HK\$33,000 per month, which is already more than the HK\$25,000 per month proposed. Further I do not understand why he is proposing that the parties reside in Wanchai, which as far as I can tell is not on a school bus route, save for a stop outside the Convention Plaza apartments and would not generally be considered to be a very suitable area for a young child. It is of note that the father is not suggesting that the mother live in a very prestigious block in any event.

21. Given the circumstances and bearing in mind the standard of living enjoyed by S prior to the breakdown of the relationship I will allow a budget of HK\$40,000 per month for rental. The mother has said that on occasions it is possible to get a leasehold for that sum in the Repulse Bay area. If so, so much the better. If not she should be able to find something reasonable in an area that is reasonably close to the school and which is also on a school bus route. (I note that S would still need to be taken to school by the mother in any event as she is attending the later morning sessions).

22. A budget of HK\$40,000 per month will still enable the father to rent something for himself in the region of HK\$25,000 per month, without going above his original housing budget of HK\$66,000 per month. It is of course open to him to pay a little more than that if he should so choose. The sum of HK\$40,000 per month should be inclusive of management fees.

23. In so far as the other general expenses are concerned I will allow the following sums in addition plus the rent as set out below:

37.1 General

| Item | |
|---|---------------|
| Rent | 40,000 |
| Utilities (electricity, gas, rates, telephone & water | 5,000 |
| Management fees | Nil |
| Food | 8,000 |
| Household expenses | 5,000 |
| Domestic helper | 4,000 |
| Total | 62,000 |

24. I have allowed HK\$4,000 per month for the mother to also employ some part time help. On the father's calculation this would allow the mother some part time help three times per week for four hours a session. It is for the mother to decide who to employ and when. In total then I will allow the mother HK\$62,000 per month to cover the general expenses for S.

25. As indicated above the mother has historically received HK\$12,000 per month in cash plus the use of a supplemental credit card. I have now had the opportunity to check the credit card statements going back to December 2015. In the main these do not show excessive expenditure, but rather regular payments for food, clothing and other such items. Some of these amounts have been allowed for in the mother's schedule of expenses referred to above. The father proposes that the mother receive an additional sum of HK\$7,500 per month to cover her own expenses. According to the schedule in paragraph 19 above the mother seeks HK\$29,500 per month, although the figure given during the course of the hearing was slightly different at HK\$31,000 per month (i.e. HK\$12,000 plus an additional HK\$19,000 per month). As indicated the credit card statements do not support the wife's case that she spent an additional sum of HK\$19,000 per month. Thus on a broad brush basis I will allow the mother an additional sum of HK\$8,000 per month to cover her own expenses. This will form part of the carers allowance.

26. As regards S's additional expenses given the father's undertakings set out in paragraph 16 above, I will allow an additional HK\$5,000 per month to cover S's other miscellaneous expenses.

27. Thus in total the father shall pay the sum of HK\$75,000 per month. In addition he shall undertake to pay for school fees at the Hong Kong International School, the school bus fees if necessary, ballet lessons and extracurricular activities generally up to a maximum of HK\$3,000 per month and medical insurance for S. As indicated above it is also directed that the extracurricular activities are to be agreed between the parties ahead of time and that such agreement by the father shall not be unreasonably withheld.

Should a property be rented for S and the mother in the Repulse Bay area?

28. The main thrust of the mother's argument is that she should not be expected to move out of the Repulse Bay area given that S has always lived there and it is close to her school and friends. Although I accept that remaining in the Repulse Bay area would be optimal, it seems to me that it almost goes without saying that on the breakdown of any relationship there is generally an accompanying reduction in each party's standard of living. This case is no exception. By the same token I am also alive to possible attempts to artificially reduce S's standard of living prior to there being a full hearing on the matter.

Can the father afford to pay this sum?

29. It seems to me that the father should be able to afford to pay this sum. He is a successful businessman with an income, even on his own case of just under HK\$225,000 per month plus an additional HK\$30,000 per month from ALL and a dividend, which in 2015 amounted to an additional HK\$80,000 per month. Although it is accepted that the profit in his business, as with any business, may fluctuate and that he has significant

financial commitments including those to his former wife and children, I am satisfied that this is within his ability to pay.

Costs

30. Lastly, on the question of costs, it is fair to say that the mother had no option but to issue the summons given that the father stopped paying her and then unilaterally gave notice on their Repulse Bay apartment. In such circumstances I shall make an order nisi to be made absolute in 28 days time that the father do pay the mother's costs of and occasioned by this application on a party and party basis to be taxed if not agreed. There shall be certificate for counsel.

Order

31. Upon the Respondent's undertakings to:

- a) pay for S's school fees and school bus fees directly to the school and the school bus company concerned;
- b) pay for S's extracurricular activities including ballet lessons directly to the stakeholders concerned upon prior agreement, such agreement not to be unreasonably withheld in the total sum of not more than HK\$3,000 per month;
- c) pay for the premiums of S's medical insurance and
- d) pay for the rental deposit and moving costs of S and the mother and enter into a lease on their behalf.

IT IS ORDERED THAT

- 1) The Respondent shall pay interim periodical payments to the Applicant for S in the sum of HK\$75,000 per month inclusive of a carers allowance, such payment to be made on the 1

January 2017 and subsequently to be paid on the 1st day of each succeeding month pending further order;

- 2) There shall be an order nisi to be made absolute in 28 days time that the Respondent do pay the Applicant's costs of and occasioned by this application on a party and party costs to be taxed if not agreed. There shall be certificate for counsel.

(Sharon D. MELLOY)
District Judge

Mr. S Hughes instructed by Payne Clermont for the Applicant

Mr. P Barnes instructed by Messrs Tang, Wong & Chow for the Respondent