



CNPupdate

COVID-19 and its effect on maintenance obligations

Can maintenance obligations be reduced in difficult times? This article examines how the Courts have responded to applications for a variation of maintenance after the SARS crisis in 2003.

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COVID-19 AND ITS EFFECT ON MAINTENANCE OBLIGATIONS

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We live in unprecedented times in which the COVID-19 crisis has led to economic instability, layoffs, pay cuts and loss of income which has hit the lives of many in a fast and furious manner. On the home front, families may struggle to make ends meet as a result of the situation. Former spouses with obligations to pay maintenance to their former spouse and children under Court orders made previously in divorce proceedings may inevitably face difficulties in meeting their maintenance obligations. Can maintenance obligations be reduced in such circumstances?

This article will take a look at how the Courts have responded when former spouses went to Court in a bid to reduce their maintenance obligations after the SARS crisis in 2003.

The legal test for a variation of maintenance orders

Under Section 118 of the Women's Charter (Cap. 353), the Court has power to vary orders for maintenance where it is satisfied that there has been a material change in circumstances. Generally, a variation will not be allowed if the adverse change in circumstances was self-induced. This would be the case if the applicant had deliberately resigned from a job.

Cases on variation in the aftermath of SARS

In *Tan Sue-Ann Melissa v Lim Siang Bok Dennis* 3 SLR(R) 376, an ex-husband applied to Court for a variation of a consent order he had entered into with his ex-wife to pay

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maintenance of \$2,000 per month. Unfortunately, the ex-husband struggled financially to meet his maintenance obligations under the order as he could only earn an income of \$3,000 per month. Despite his best efforts, he was unable to generate more income due to unfavourable economic conditions, the September 11 crisis and the SARS outbreak in 2003. His work performance was also hampered by a spinal injury and he could only work 3 or 4 days per week. There was also evidence from the ex-husband that he had chalked up substantial debt to assist him to pay the monthly maintenance.

The High Court judge hearing the application at first instance allowed the variation on the basis that the ex-husband had, with the best intentions, overestimated his future earnings and made assumptions of his prospective earning capacity which subsequently proved to be unattainable despite reasonable efforts on the ex-husband's part. The judge found that the ex-wife was aware of this assumption and optimistic forecasts at the material time. As such, the judge reduced the amount of maintenance payable to \$1,100 per month. The judge also observed that the ex-wife would have to find some gainful employment and trim her expenses. The judge's decision was upheld by the Court of Appeal in an appeal filed by the ex-wife.

The case of *Tan Sue-Ann Melissa v Lim Siang Bok Dennis* was subsequently cited in *DB v DC* SGDC 145 wherein District Judge Lim Hui Min was instructive on the applicable legal principle in an application for variation:

"The principle seems to be that when the breadwinner encounters a misfortune and experiences a loss of income, his responsibility to provide for the family does not cease, but the whole family should partake of some of his misfortune. He cannot be expected to suffer alone, squeezing blood from stone, while his family live in the comfort they have always been accustomed to—but, of course, he will be expected to suffer along with them. In an application for a downward variation of maintenance, the court has to balance each party's needs with the available income, and arrive at a result where everyone experiences a reduced standard of living, in an equitable manner. In general, I am of the view that the children's needs should have a greater priority in such a situation, than the needs of the adults. The parents must expect to sacrifice some of their personal comforts so that the children do not have to experience too great a fall in their standard of living."

In *DB v DC*, an application was made by an ex-husband for a downward variation of maintenance. As a result of a job switch, the ex-husband's monthly income was reduced by approximately \$2,500. He also lost the employment benefits offered by his previous employer which included the children's education and related expenses, annual return airfare for him and his family to their home country, health insurance, income tax and

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accommodation. The ex-husband explained that he decided to leave his former employer due to a restructuring exercise and the likelihood of being retrenched. His explanation was accepted by the District Judge who held that it was reasonable for the ex-husband to leave a job with plenty of perks for one with none unless he felt he had to, in order to preserve his income stream. The maintenance for the children were reduced from \$2,600 to \$2,200 while the wife's maintenance was reduced from \$2,800 to \$2,000.

In another case of *Li Kong v Cheng Lai Nar*, an appeal was brought on the orders made in the division of matrimonial assets and maintenance. In respect of the appeal on the maintenance orders, the husband said that his income had fallen significantly from \$5,700 per month to only \$2,000 per month due to the tribulations suffered by the poultry industry which was hit by the SARS outbreak and a subsequent ban on live poultry from Malaysia which was imposed in August 2004. The High Court judge hearing the appeal accepted that the husband was facing hard times but recognized that his previous record indicated his proven ability to earn more. As such, she ordered that the children's maintenance be reduced from \$1,700 to \$1,400 a month and directed parties to apply for a variation if the situation changes.

Conclusion

While the cases cited above show that the Courts are sympathetic towards the loss of income and financial hardship as a result of a crisis and extraneous events, it must be emphasized that the applicants in those cases had shown reasonable efforts taken to increase their income in order to cope with their maintenance obligations.

With the present circuit breaker measures in place and the economic uncertainty brought by the COVID-19 pandemic, it is reasonable to expect some practical difficulties in finding employment with the same income level within a short timeframe for those who have been laid off or given a paycut. Those who are being owed maintenance by their former spouses should therefore try to cope financially with the cash payouts and various financial help schemes from the Singapore government to alleviate the financial stress faced by both parties in such difficult times. Further information on the financial help schemes available can be found on the Ministry of Social and Family Development's website:

<https://www.msf.gov.sg/assistance/Pages/covid19relief.aspx>

In accordance to the principles set out in *DB v DC*, the family will have to adjust to a reduced standard of living in hard times by reducing their expenses, where possible. It may also be reasonable to extend the time given to a former spouse to make payment of maintenance and/or maintenance arrears.

In view of the foregoing, it is advisable for a variation application to be made only when it is clear that the financial strain and the adverse effect on one's income will be sustained for a much longer-term.

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