Wong Ser Wan v Ng Cheong Ling
[2005] SGHC 218

Case Number : D 2545/1999, MSS 6483/2000, 6641/2000, 22/2001

Decision Date : 28 November 2005

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Ang Cheng Hock and Tan Xeauwei (Allen and Gledhill) for the petitioner; Loh Wai Mooi and Neda Namazie (Bih Li and Lee) for the respondent

Parties : Wong Ser Wan — Ng Cheong Ling

Family Law – Maintenance – Child – Application for maintenance for child above 21 years of age on ground of mental or physical disability of child – Application for maintenance for child above 21 years of age receiving instruction at tertiary educational establishment – Whether court should grant applications – Sections 69(5)(a), 69(5)(c) Women's Charter (Cap 353, 1997 Rev Ed)

Family Law – Matrimonial assets – Division – Agreements made between husband and wife during marriage regarding ownership and division of matrimonial assets – Whether agreements made in contemplation of divorce – Section 112(2)(e) Women's Charter (Cap 353, 1997 Rev Ed)

Family Law – Matrimonial assets – Gifts – Whether gifts of shares and property from husband's father constituting matrimonial assets – Whether gifts from husband to wife during marriage constituting matrimonial assets divisible on divorce

28 November 2005 *Judgment reserved.*

Judith Prakash J:

Introduction

1 There are several related matters for decision before me. All arose out of the breakdown of the marital relationship between Mdm Wong Ser Wan ("the wife") and Mr Ng Cheong Ling ("the husband"). The main proceedings concern the ancillary matters arising out of their divorce and the others concern maintenance of the wife and children.

2 The parties were married in January 1976. They had three children: a son, Ng Ezine ("Ezine"), born on 16 June 1977, a daughter, Ng Eharn ("Eharn"), born on 14 September 1979 and another son, Ng Ewe ("Ewe"), born on 6 May 1986. In 1999, the wife filed the petition in the main proceedings. The husband did not contest the petition and a decree *nisi* was granted to her on 1 August 2000. Custody of the youngest child was given to the wife. The marriage had lasted for 24 and a half years. The wife is now 57 years old while the husband is 54 years old.

3 The matters in issue in the ancillary proceedings are the division of the matrimonial assets and the wife's claim for future maintenance of herself and Ewe. The maintenance summonses concern Ezine and Eharn's claims for maintenance from the husband and the husband's application for variation of the existing consent maintenance order made on 14 August 1996 ("the consent maintenance order") to nothing. The wife had also filed Maintenance Summons No 1269 of 2001 to enforce payment of arrears under the consent maintenance order but that summons is not before me for decision.

4 The facts in this case are somewhat different from those that usually present themselves in

applications of a similar nature. There are two reasons for this. First, the breakdown of the marriage took place over a prolonged period of time during which the parties had various dealings with each other in relation to maintenance and property. Such dealings resulted in written agreements on these matters. One of the main issues before me is the extent to which such agreements should be recognised now that the decree *nisi* has been granted. Second, the parties were involved in two previous sets of court proceedings, *viz,* District Court Suit No 600011 of 2001 ("the DC suit") and High Court Suit No 310 of 2003 ("Suit 310") in which findings were made that may have an impact on this decision.

Background

5 The breakdown of the marriage started in 1993 when the wife discovered that the husband was having an affair. Subsequently, there were problems about maintenance and in December 1995, the wife filed a maintenance summons against him. This summons was withdrawn in March 1996 after the husband promised to give the wife maintenance of $12,000 a month. The situation deteriorated thereafter and in July 1996, the wife filed a fresh maintenance summons. At the hearing of this summons on 14 August 1996, the parties, both of whom were represented by solicitors, agreed on the consent maintenance order. This provided for the husband to pay the following sums to the wife:

(a) $15,000 per month for the maintenance of the wife and the three children comprising:

(i) $7,000 for household expenses, children's day-to-day expenses, salaries of maids and cost of groceries; and

(ii) $8,000 for the personal expenses of the wife;

(b) all expenses incurred by the wife in relation to overseas travel including airfare, transport and accommodation expenses;

(c) the credit card expenses of the wife,

(i) in the case of overseas expenses, comprising expenses for car rental, taxis, dining, and shopping for the children; and

(ii) in the case of expenses in Singapore, limited to $2,000 a month;

(d) all the medical, educational, travel and overseas living expenses of Ezine;

(e) all the medical, educational and travel expenses of the other two children;

(f) all the wife's medical expenses and her expenses at the American Club; and

(g) all wages for the driver and gardener, and all petrol expenses for the car.

6 The husband did not, however, fully meet his obligations under the consent maintenance order. Additionally, in October 1996, he admitted to the wife that he had continued his adulterous affair. Shortly thereafter, the wife filed a divorce petition grounded on adultery. Three months later she filed a maintenance summons against the husband for arrears in maintenance.

7 Following a letter from his solicitors which expressed the desire of the husband to save the marriage, the parties began negotiations. These discussions eventually led to the signing of an agreement termed the "Financial Agreement" on 1 December 1997. By the terms of the Financial

Agreement, the husband agreed to cease his relationship with the co-respondent named in the divorce petition and to carry out his moral and financial obligations towards the wife and the children. By cl 7, the husband agreed that he would continue to pay the wife monthly maintenance in accordance with the terms of the consent maintenance order. The Financial Agreement also contained a whole list of gifts to be made by the husband to the wife. These were as follows:

(a) the husband agreed to give to the wife absolutely and irrevocably the following immovable properties:

(i) 5633 Chancellor Boulevard, Vancouver, BC ("Chancellor Boulevard");

(ii) 4756 Drummond Drive, Vancouver, BC ("Drummond Drive");

(iii) #3-1919 Beach Avenue, Vancouver, BC ("Beach Avenue"); and

(iv) 3 Cluny Hill, Singapore ("Cluny Hill").

(b) he agreed to repay the sum of C$1.23m secured by Beach Avenue by 31 December 2003;

(c) he agreed to pay the mortgage instalments for Cluny Hill and to discharge all indebtedness relating to that property within the next three years;

(d) he agreed to give her the sums of S$2.5m and US$320,000 in the following instalments:

(i) the US$320,000 was to be paid within seven days of the date of the Financial Agreement;

(ii) S$500,000 was to be paid within three months;

(iii) S$1m was to be paid by 30 November 1998; and

(iv) the remaining S$1m was to be paid by 30 November 1999.

(e) he agreed to transfer to her all shares then held by him in a company called Lei Garden Restaurant Pte Ltd, such transfer to be completed no later than 15 February 1998.

8 The husband fulfilled some but not all of the provisions of the Financial Agreement. He did not transfer the shares in Lei Garden Restaurant Pte Ltd to the wife by 15 February 1998 but on 10 February 1999, he paid over to her the sum of S$2,646,000 which he had received from a third party on the sale of these shares and the wife accepted this sum in satisfaction of the husband's obligation in respect of the shares. He did transfer to her all the immovable properties but he did not pay off the mortgage on Beach Avenue or that on Cluny Hill. Further, he failed to pay all the mortgage instalment repayments accruing in respect of Cluny Hill and the wife had to pay those. In respect of the cash gifts, the husband did not pay the wife the sums of $1m due on 30 November 1998 and 30 November 1999. Finally, he did not comply fully with the consent maintenance order.

9 In the meantime in mid-1998, the husband sold certain assets. The first was a property at 764 Mountbatten Road, Singapore ("the Mountbatten property") which he sold to a company called Ng Bok Eng Holdings Pte Ltd ("NBEH") for US$2m. The second comprised shares in NBEH which he sold to another company called Bian Bee Company Pte Ltd ("Bian Bee") at the price of US$1m. Both Bian

Bee and NBEH are companies owned and controlled by the husband's family. In Suit 310, sitting in the High Court, I found that the two conveyances of these assets had been made by the husband with the intent of defrauding the wife and declared the conveyances to be void. This decision was affirmed by the Court of Appeal in Civil Appeal No 87 of 2004.

10 On 8 July 1999, the parties entered into a deed of separation ("the Deed"). By this deed, they agreed to continue to live separately and apart at Cluny Hill and made provision for the wife to have care and control of the children and for the husband to have liberal access to them. The Deed provided that the terms set out in the consent maintenance order and the Financial Agreement should continue to apply. It was also agreed that if either party was in breach of any of the provisions of the Deed, the other party might proceed to take such legal action, including the presentation of divorce proceedings, as if the Deed had not been made. After the Deed was signed and pursuant to its terms, the wife withdrew the divorce petition that she had filed in 1996.

11 Shortly thereafter, however, the wife learnt that the husband had been seen again with the woman he had previously had the affair with. Suspecting that he was not keeping his promise to cease improperly associating with other women, the wife began recording the husband's telephone conversations at his office at Aromate Pte Ltd ("Aromate"). After listening to some of these conversations, she believed that he was planning to dissipate his assets so that she would receive a smaller share of the matrimonial assets in the event of a divorce. She was so upset that she filed a fresh divorce petition on 8 October 1999 (the petition in the present proceedings) and instructed her solicitors to apply for a Mareva injunction to prevent the husband from dissipating his assets. A Mareva order was granted in her favour in March 2000.

12 In the meantime, the husband had filed an application in the Magistrate's Court for a downward variation of the consent maintenance order on the basis of his poor financial position and the wife's alleged abuse of the order. The husband was cross-examined on the affidavits he had filed in support of his application and, after the evidence was taken, his application was dismissed. This happened on 13 April 2000.

13 Shortly before that, on 18 March 2000, the husband had filed an originating summons in the High Court against the wife for a declaration that the Financial Agreement was null and void. The eventual basis of this application was that the Financial Agreement had been procured by undue influence and misrepresentation on the part of the wife. The originating summons was subsequently converted into a writ action and transferred from the High Court to the Family Court where it became the DC Suit. After a ten-day trial, the DC Suit was dismissed in December 2001.

14 In November 2000, the husband stopped paying maintenance to the wife. He has not paid any maintenance to her since then. Instead, on 20 November 2000, he made an application in the Magistrate's Court by way of Maintenance Summons No 6483 of 2000 for variation of the consent maintenance order, to naught. This is one of the applications that is before me.

15 On 7 December 2000, Eharn (who was by then 21 years old and studying in a tertiary institution) filed her own maintenance summons, Maintenance Summons No 6641 of 2000 against the husband. In January 2001, the wife filed Maintenance Summons No 22 of 2001 ("MSS 22/2001") for and on behalf of Ezine (who was by then over 21 years of age and studying in a tertiary institution in the United States) against the husband for maintenance. These summonses are also before me.

16 In October 2002, the husband was made a bankrupt on a petition brought by Aromate at the instance of the wife. In High Court Suit No 1396 of 2001, Aromate had obtained a judgment against the husband for the sum of $3,797,298, and damages and costs due to a breach of fiduciary duty on

the part of the husband. The Aromate action was conducted by the wife who was also a shareholder and director of Aromate. The husband failed to pay the judgment sum, thus leading to the bankruptcy proceedings. To date, the husband remains a bankrupt. The Official Assignee has yet to adjudicate the proofs of debt filed by 20 alleged creditors (most of whom are the husband's relatives and friends) and amounting to approximately $12.987m (out of which $10.897m are debts claimed by Aromate and the wife), HK$15.6m, RMB985,651 and US$3.6m. Since the debts in foreign currency are, very roughly, equivalent to S$9.6m, the husband's total indebtedness stands in the region of S$21m. It is interesting that the husband admits all the debts that have been claimed except for those made by the wife and Aromate.

Division of matrimonial assets

17 The first task facing the court when it has to decide how to divide the matrimonial assets between the parties is to ascertain what matrimonial assets each of the parties owns and the value of those assets.

18 In May 2004, in preparation for the hearing of these proceedings, each of the parties filed an updated affidavit of means. The husband's affidavit was short. He referred to the statement of affairs that he had submitted to his former Trustee in Bankruptcy in late 2002. In that statement, the husband estimated his total realisable assets at $23,954,905.08 and his total indebtedness at $16,473,391.09. The figure of $23,954,905.08 included the amount of $15,707,960 that the husband said was the value of the assets transferred to the wife under the Financial Agreement. In his affidavit, the husband excluded that amount from the calculation and declared that the estimated deficiency in his estate as at October 2002 was $7,631,513.99. It should be noted that whilst the husband set out a list of his assets and liabilities in the statement, he did not attach to it documents supporting his valuations of his assets. Further, this affidavit represented quite a change in the husband's situation since he had in previous affidavits produced reports that showed his net asset position to be positive rather than negative. These reports were prepared by one Mr Foong Daw Cheng, an accountant, whom he had employed to value his assets.

19 The husband's assets comprise his interests in some 36 private companies in Singapore, Hong Kong, China, Canada and the British Virgin Islands plus the Mountbatten property and the NBEH shares. For convenience, I shall from time to time hereafter refer to these companies as "the NCL group" although in many of the companies the husband owned 50% or less of the issued shares. There are two issues here: the more minor one is whether all these assets are matrimonial property, and the more important one is whether the husband has correctly valued his interests in these assets.

The status of the NBEH shares and the Mountbatten property

20 In relation to the first issue, the husband's case is that the NBEH shares and the Mountbatten property are not matrimonial assets. He does not dispute the status of any of his other assets.

21 The husband said that his holding of the NBEH shares resulted from a gift from his father in 1970, some six years before the marriage. He submitted that even if the shareholding had changed over time, there was no evidence that he had paid or was paid for any of the shares that were in his name from time to time. At the end of the day what the husband had remained the same – 60,000 shares in NBEH. The wife did not dispute that the husband's original shareholding in NBEH had been a gift from his father. She submitted that, in view of the changes in the shareholding over the course of the marriage, it could not be said that the NBEH shares presently held were the original gift made by

the father. She pointed out that in Suit 310, I had observed that I could not determine whether the 60,000 shares that the husband held in 1998 were the original 60,000 shares given to him by the father or were transferred to him in 1988 when his shareholding had increased to 120,000 NBEH shares. The wife submitted that there was insufficient evidence to show that the NBEH shares constituted a gift from the father. In any case, she submitted, even if the shares were a gift from the father, it was clear from the changes in the shareholding over the years and from the husband's role as a director of NBEH that the husband must be deemed to have substantially improved the value of the shares during the marriage. It followed from that that the NBEH shares had to constitute a matrimonial asset.

22 It is clear that the original 60,000 NBEH shares that the husband held were a gift from his father. The origin of the subsequent acquisitions is not so clear. In 1979 he had 100,000 shares; in 1980, 120,000 shares; by 1983, he was back to 60,000 shares; in 1988 he had 120,000 shares; and in 1993 his shareholding fell back to 60,000 shares. The issue I had to decide in Suit 310 was whether these 60,000 shares belonged to the husband beneficially or were held on trust for his father. I decided they were the husband's but that decision is not determinative of whether the NBEH shares constitute a matrimonial asset. I have concluded that these shares have, for the purposes of these proceedings, to be treated as if they were the original block given to the husband. This is because throughout the marriage the husband has never held less than 60,000 shares in NBEH. Thus, whatever share movements there may have been, these could easily have been accomplished without impinging in any way on the original holding. The husband came to the marriage with 60,000 NBEH shares and, in view of the annulment of the purported sale of shares in Suit 310, on the dissolution of the marriage he still had 60,000 NBEH shares. Since the husband has shown that the NBEH shares were a gift made before the marriage, the onus shifts to the wife to show that these shares were nevertheless a matrimonial asset under s 112(10)(*a*) of the Women's Charter (Cap 353, 1997 Rev Ed) ("the Act") because the husband had substantially improved them during the marriage. In my judgment, the wife has not discharged that onus. She has not produced evidence that the value of the 60,000 shares increased substantially during the marriage as a result of the efforts of the husband. The NBEH shares therefore do not constitute a matrimonial asset.

23 As far as the Mountbatten property is concerned, as this court had found, it was bought in 1980 for S$988,404. It was, the husband submitted, bought as a gift for him by his father who had paid the upfront cash payment and had thereafter serviced the monthly instalments due under a mortgage loan taken from a bank. The mortgage was discharged in 1986 when the father had paid it up in full. The husband maintained that he had no money to pay for this property himself as he had completed National Service in 1976, had married that year and had thereafter had a family and had had to support them. The husband referred to the wife's allegations that the husband himself had paid for the Mountbatten property. He submitted that the various versions of fact given by the wife were contradictory. On the one hand, the wife claimed that he was an impoverished young man when she had married him, so much so that she had to buy their first matrimonial home at Beverly Mai and she had to set up a boutique in order to help meet expenses. The husband argued that if this was to be believed, how could he have been able to obtain $1m to pay for the Mountbatten property between 1980 and 1986? He submitted that while he had had the means to support the family, he did not have enough to also buy the Mountbatten property and discharge the mortgage by 1986. These arguments do not, however, assist the husband's case. I had found in Suit 310 that there was no evidence to substantiate the husband's bald assertion that the Mountbatten property was a gift to him from his father and accordingly had found that it was acquired by the husband himself. This finding was affirmed by the Court of Appeal. The husband was a witness in Suit 310 and documents relating to the purchase of the Mountbatten property were adduced in that action. The husband did not adduce any additional evidence in this action relating to the acquisition of the Mountbatten property. Thus, the finding that the Mountbatten property was acquired by the husband himself must stand. I further

find, for the purposes of this action, that since it was purchased during the marriage, the Mountbatten property is a matrimonial asset.

The value of the husband's matrimonial assets

24 Mr Foong's reports tabulate the husband's worth as at 31 December 1999. The first report is dated 4 December 2000. There, Mr Foong estimated the husband's gross worth to be approximately $27.6m. Of this sum, about $11.1m came from the value of the husband's interest in the NCL group and a further $15m came from his valuation of the assets listed in the Financial Agreement ("the FA assets"). The husband's net worth after deduction of his liabilities was approximately $17.1m. Mr Foong's second report was produced on 8 February 2001 and in it Mr Foong dealt with various points raised by the wife in an affidavit commenting on the first report. He ended by adjusting the net worth of the husband slightly upwards to $17.3m. That meant the husband was worth about $2.3m after deduction of the FA assets.

25 On 2 May 2001, Mr Foong produced a revised report on the husband's net worth. This report was specifically stated to supersede his earlier reports. Mr Foong also took the opportunity of dealing with various comments made by the wife's accountant, Mr Chan Ket Teck, who had scrutinised the first two reports, and to justify his choice of the "net tangible assets" ("NTA") method to value the private companies in which the husband was interested. Mr Foong concluded that the husband's net worth was approximately $18.2m (or $3.2m if one excludes the FA assets). He valued the NCL group at $12.3m.

26 There was a brief report in June 2001 noting that audited financial statements for six companies had been received and that the information in these statements would have an impact on the husband's worth. Mr Foong issued his fifth report on 13 December 2001. In it, whilst he reduced the values of some of the companies in the NCL group so that the total value of the husband's interests in the NCL group came up to $9.5m, he made other adjustments to take into account advances made by the husband to related companies and the amount representing the undervalues at which the husband had sold the Mountbatten property and the NBEH shares. He also reduced the husband's liabilities by some $2.6m. As a result, the husband's net worth was increased to $22.6m or $7.6m after deduction of the FA assets. There was, thus, quite a difference between the husband's estimates of his wealth as at October 2002 and Mr Foong's estimates of the husband's wealth as at the end of 1999.

27 Ms Loh Wai Mooi, counsel for the husband, submitted that the expert's reports were historical data of little value because of the husband's bankruptcy and the effluxion of time, the latter being an important fact because of the very nature of many of the assets, *ie*, they were shares in private companies. In valuing the husband's net worth, Mr Foong had used the NTA basis of valuation. Indeed, although Mr Chan, the wife's expert, had criticised this method of valuation, he had also adopted the same in his reports on the husband's net worth which he concluded to be around $34m. Ms Loh submitted that since a significant part of the husband's assets comprised shares in private companies, the NTA value of these shares had to be substantially discounted as those shares were not easily realisable or marketable. She went on to contend that since the husband's assets were now in the hands of the official receiver, the best evidence of the value of the same would be available when they were realised by the official receiver. Basically, what Ms Loh's submission amounted to was that the husband did not know the current value of his assets. He thought that he was in a negative position if the FA assets could not be included as part of his assets. He did not accept that Mr Foong's last report represented the true position as so much time had passed since the date of the financial reports Mr Foong had relied on, and also the shares that represented the bulk of his assets were not easily marketable. In addition, Mr Foong's estimate of his liabilities was out

of date and inaccurate as they only reflected amounts owing as of the end of 1999. By this year 2005, the husband's liabilities, including the amounts he would have to refund to the purchasers of the Mountbatten property and the NBEH shares, totalled approximately $19.4m.

28 Mr Ang Cheng Hock, counsel for the wife, did not place much trust in the various figures put forward on behalf of the husband. Looking at the reports and the husband's own statement, he said that if all those calculations were to be believed, it would appear that the husband's net worth had increased by $4.4m (or approximately 2.8 times) from 2 May 2001 to 13 December 2001. Thereafter, for reasons that the husband had not explained, the husband's net worth rapidly decreased by $15m to a deficit of more than $7m in October 2002. Further, Mr Chan's estimate of $37m had been given after he had reviewed and critiqued Mr Foong's valuations on the basis of the information available in Mr Foong's third report and in financial documents disclosed by the husband. Mr Ang submitted that given the great divergences in the valuation of the husband's net worth by the husband himself in his statement of affairs and by Mr Foong and Mr Chan in their respective reports, it was clearly not possible for anyone to accurately estimate the husband's full net worth.

29 Mr Ang further submitted that the husband had failed to provide full and frank disclosure of his assets and that it followed from this that any determination of his net worth based on the information he had given must be speculative and inaccurate. Mr Foong's reports had to be inaccurate since, as regards many of the companies that he had valued, Mr Foong had had to rely on draft accounts or informal management accounts or outdated accounts to do his valuations. This was despite the fact that the husband, as a controlling shareholder or director of many of these companies, must have had the latest audited accounts in his possession or power. Based on Mr Foong's fifth report, companies which Mr Foong had valued using informal, unaudited management accounts included Can Pacific Limited, Trump Pacific Resources Inc, GP Holdings Ltd and Bestland Investments Inc. Companies which he had valued based on draft audited accounts included Goodwood Resources Pte Ltd, Allied Pacific Hotels Limited ("APHL"), Greatwood Limited ("Greatwood Ltd") and Aromate. In fact as far as Aromate was concerned, Mr Foong agreed during cross-examination that its draft audited accounts as provided to him might not have been accurate because they had not been confirmed by the directors. Further, the husband had not provided any accounts whatsoever for the purpose of valuing his shareholdings in NJR Investments Ltd, Dynamic Pacific Ltd and Goodwood Holdings BVI Ltd.

30 Other deficiencies in the information provided to Mr Foong were also pointed out. These were that Mr Foong had to rely on qualified auditors' accounts in valuing the husband's shareholdings in APHL, Fustar Chemicals Ltd ("Fustar") and Goodwood Limited ("Goodwood Ltd"). The auditors of the three companies had qualified their accounts as a result of a lack of information and/or proper accounting records as regards the subsidiaries of the companies. Mr Foong maintained that the fact that the accounts for Allied Pacific Hotels Ltd and Fustar were qualified did not affect his valuation of either company as the qualification related to the financial affairs of the subsidiaries. He took the same view in respect of the qualification of the accounts of Goodwood Ltd. Under cross-examination, he did agree, however, that what the auditors of the companies were saying by qualifying the accounts was that the accounts did not contain sufficient information about subsidiaries or associated companies to provide a true and full view of Goodwood Ltd and its subsidiaries and associated companies. Notwithstanding that, Mr Foong maintained that it was still possible to make an informed decision whether to provide for the value of the investment in the two companies.

31 Mr Ang contended that, at the end of the day, apart from what was contained in the deficient documents and accounts provided to Mr Foong by the husband, Mr Foong's reports were clearly based on information provided by the husband. For example, Mr Foong agreed in cross-examination that his valuations were based on either audited accounts or on management accounts

that had been given to him by the husband. He agreed that he had proceeded on the basis that this information provided by the husband was accurate. In respect of some of the NCL group companies that were investment holding companies, for example, Can Pacific Limited, Dynamic Pacific Ltd and NJR Investments Ltd, the only information that Mr Foong had on the investments held by those companies was provided to him by the husband. He did not receive information from any other sources as to what other assets those companies might have invested in. He also conceded that he had accepted at face value what the management told him as regards two Chinese subsidiaries of Fustar and had accordingly made provision for Fustar's investment in those subsidiaries.

32 Mr Ang also criticised the method which Mr Foong had used to determine the value of the NCL group. He said:

(a) Mr Foong did not give consideration to the future earnings potential of the companies because he thought that since such potential was subjective, it should not be taken to account in determining the value of a company;

(b) Mr Foong had failed to consider that the NTA value would be the break-up value of the company upon liquidation and therefore would not reflect the real value of the company as it did not take into account the goodwill of the business and its future earning potential;

(c) Mr Foong's assumptions that firstly, if a debtor company had a negative NTA then the debt was not fully recoverable and, secondly, if an investee company's NTA was less than the cost of investment in that company, then the cost of the investment must be written down to the NTA value, were simplistic and flawed, as to make a fair assessment of whether a debt was fully recoverable, a number of factors had to be taken into account; and

(d) many of the companies were related parties who had borrowed from each other and Mr Chan had disagreed with many of the provisions made by Mr Foong for doubtful debts in respect of such companies. Mr Chan's view was that the debts should be regarded as good debts since, as a director acting in good faith and in the best interests of the companies concerned, the husband would not have caused such companies to continue making loans to other companies which had no means of repaying the same.

33 It should be noted that in court Mr Foong stated that he had used the NTA method because he had assumed that the husband's shares would have to be disposed of on a "forced sale basis" in the divorce proceedings. He agreed that if the husband could keep his shares in the NCL group the NTA method would not be the most appropriate method of valuing these shareholdings. In that case, Mr Foong would have valued trading companies in which the husband was the majority shareholder using the price-earning method, while for hotel-owning companies, he would have used the cash-flow projection method. He maintained that the NTA method would still have applied to property-owning companies and dormant companies. In this connection, Mr Ang submitted that since the wife was not asking to be given a share of the husband's interest in any of the NCL group companies, their value to the husband should not be assessed on the NTA basis.

34 Another submission made on behalf of the wife was that even if the final valuation by Mr Foong was not flawed and it accurately reflected the husband's true net worth, much of the apparent deterioration in the financial affairs of the NCL group was a direct consequence of his deliberate mismanagement of such companies. Many of these companies had their values drastically reduced after substantial provision for doubtful debts had been made. From the cross-examination of Mr Foong, it was apparent that when he made the provision for doubtful debts he assumed that, since the husband was a shareholder of all the borrowing and lending companies, the loans were

simply a situation of the husband "transferring money from one pocket to another". The wife used this evidence to make a rather odd argument. She said that "if indeed" the husband had caused some of his companies to continue to make loans to other companies which had negative NTA values and had treated such loans as a mere transfer of money from one pocket to another, he would have failed to act in the lender companies' best interests. The use of the words "if indeed" in that submission indicates that the wife was speculating. She built on this speculation by then submitting that "such mismanagement of the companies is deliberate and [the husband] had caused his companies to make apparently unrecoverable loans to his other companies so as to ostensibly reduce the values of such companies and, consequently, his own net worth".

35 The wife gave, as a prime example of how the husband had run down a profitable company, his alleged mismanagement of Aromate. She said that he had caused Aromate to make payments in unusual transactions and to write off debts without apparent commercial justification. Such transactions were the subject matter of the suit which Aromate had brought against the husband and in respect of which the husband had admitted liability on the first day of trial. A large part of the offending transactions involved a company called Nanyang (HK) Ltd ("Nanyang"). What had happened was that Aromate had on-sold goods to Fustar and/or Goodwood Ltd at cost price and upon a credit basis for ultimate sale to Nanyang. Nanyang did not pay Goodwood Ltd which in turn did not pay Fustar and Fustar did not pay Aromate. As Goodwood Ltd had a negative NTA after Mr Foong made full provision for the debts due from Nanyang, he then made provisions for doubtful debts due from Goodwood Ltd to Fustar and from Fustar to Aromate. As a result, all these companies were in a negative NTA position and Mr Foong then caused other companies such as Goodwood Holdings Ltd (Cayman Islands) and Goodwood Holdings Ltd (BVI) and Goodray Ltd (HK) to make provisions for doubtful debts due from these three companies. Such provisions also substantially reduced the values of other companies.

36 It would be seen from the above account that one substantial reason for the financial difficulties of various companies in the NCL group was the failure by Nanyang to pay for goods purchased from companies in the group. The husband, in response to the above argument by the wife, urged the court to remember that Nanyang was never a customer of Aromate. It was a customer of Fustar and/or Goodwood Ltd. Whilst the wife had suggested that the husband had diverted the business away from Aromate, if Aromate had had a direct business relationship with Nanyang, it would have borne the full brunt of Nanyang's default and would have suffered even greater financial loss. The husband was not a director or a shareholder of Nanyang. He did not control it. That company was sued by Fustar and Goodwood Ltd in Hong Kong and judgment was entered against it in July 1999. It was also sued by a bank in Hong Kong with which the husband was not connected. Finally, Nanyang was wound up in June 2000 on a petition presented by China State Bank Ltd, another company with which the husband had no connection. In any case, any business diverted from Aromate was diverted to Fustar and/or Goodwood Ltd which were companies belonging to the husband and hence matrimonial assets available for division on divorce. The value of the alleged diverted business would therefore remain within the pool of matrimonial assets for division.

37 As far as the NCL group is concerned, in my judgment, the wife has not established her proposition that the husband deliberately mismanaged the group or companies within the group (like Aromate) in order to reduce the value of such companies. Her argument was built upon speculation and her reference to the Aromate transactions could not shore up such speculations, as whatever may have been the husband's breach of duty *vis-à-vis* Aromate, the ultimate cause of Aromate's financial problems lay in its inability to recover amounts due from Fustar and/or Goodwood Ltd and those companies could not pay because of the default of Nanyang, a completely distinct entity that had defaulted on its commercial obligations due to its own commercial difficulties rather than due to any manipulation on the part of the husband.

38 There are, however, as Mr Ang pointed out, some specific problems with some of Mr Foong's valuations. In relation to Aromate, Mr Foong could not substantiate his decision to make provision for a debt due from Goodwood Resources Pte Ltd in the sum of $344,367. In relation to Fustar, Mr Foong in his first report assessed its NTA value as a negative HK$9,779,844. Some five months later, however, in his third report, he assessed its NTA as a negative HK$101,867,690. There was no explanation for this huge change in Fustar's position. In relation to Goodwood Ltd, the position was supposed to be that Nanyang owed Goodwood Ltd approximately HK$22m but the accounts of Goodwood Ltd did not clearly disclose this figure. That cast doubt on exactly how much this debt was. Mr Foong admitted in court that he thought that the auditors had made a mistake in the accounts. Mr Foong also made provision in the amount of HK$10.9m for doubtful debts owing to Goodwood Ltd by APHL. Whether he should have done so is questionable as the latter company had a 52% interest in Dickson Hotel which was, as far as the information before the court went, a profitable venture and had a positive NTA. The husband himself had stated that he believed that Dickson Hotel would generate positive returns in the medium and long run. In relation to APHL itself, in his first report, Mr Foong included as an asset inter-company accounts valued at HK$20m. In his third report, Mr Foong removed this asset but did not explain why he did so and how this money had been utilised. Also, another asset was reduced from its value of HK$1.4m in the first report to HK$380,000 in the third report without explanation.

39 Another Hong Kong company, Greatwood Ltd, had a 40% stake in two associated companies and, under cross-examination, Mr Foong conceded that he had made provisions for Greatwood Ltd's investment in these two companies despite there being a lack of information on the same. These provisions totalled approximately HK$3.2m and Greatwood Ltd was said to have a negative asset value of HK$4.9m. The husband is, indirectly, interested in 30% of the shares of Can Pacific Limited but the value of this company was completely written-off on the basis of a provision of over HK$5m for diminution in value of quoted shares. No explanation was given, however, as to what those investments were and why the provision was necessary. Mr Foong admitted that he made the provision despite not knowing the nature of Can Pacific Limited's investments.

40 There was a dispute between the two experts in relation to the NTA value of Trump Pacific Resources Inc. As at 31 December 1999, according to the balance sheet of that company, this appeared to be C$3,379,102, but in his second report, Mr Foong adjusted it to a negative C$1,355,084. The adjustment was mainly due to provisions made for diminution in value of investments in Allied Pacific Investments Inc and Chateau Ottawa Hotels Inc. Both these companies had positive NTA positions at that time and appeared to be profitable. Chateau Ottawa Hotels Inc is the owner and operator of the Sheraton Hotel, Ottawa. Mr Chan took the view that it was wrong to make provisions for Trump Pacific Resources Inc's investments in the two companies without taking into account their substantial property holdings and future earnings potential and that there was no basis for such provisions to have been made. There seems to me to be merit in his criticism.

41 One of the wife's main submissions was that the husband had purportedly taken "loans" to increase his liabilities. Her submission was that the huge loans he had taken from related parties were not represented by assets he had acquired from the proceeds of the loans because in fact these were false loans which the husband had used to increase his liabilities in order to give the court the impression that he was heavily in debt.

42 Mr Foong's fifth report showed that the husband had taken the following loans from relatives, friends and related companies:

Related Party	Amount borrowed by the husband
Aromate Pte Ltd	S$1,214,292
Bundall Trading Pte Ltd	S$495,000
Goodwood Limited	HK$7,759,388
Goodray Limited	HK$21,329,213
Fostar Limited	HK$24,086
Can Pacific Limited	HK$2,075,810
Dickson Hotel, Tianjin	RMB1,014,499
Mr Daniel Thie (the husband's cousin)	S$76,169
Mdm Ng Chai Loan (the husband's sister)	S$99,488
Mr Ng Bok Beng (the husband's father) in 18 April 2000	US$3,635,168
Golders Green Holdings Pte Ltd (controlled by the husband's friend) on 18 April 2000	S$952,500

The list of proofs of debt filed in the husband's bankruptcy also showed a claim by his brother Ng Cheong Bian for $275,000, reflecting loans made between 2001 and 2002, and a claim by NBEH for $305,000, being a loan made pursuant to a resolution made on 22 April 2002.

43 No specific submissions were made by the wife in relation to the amounts borrowed by the husband from the first seven creditors named above, *ie*, the companies starting with Aromate and ending with Dickson Hotel, Tianjin. In relation to Aromate, as Ms Loh pointed out, over the years sums were taken out of Aromate to pay for the living expenses of the family and these were all booked

under the husband's current account. The wife admitted in court that many of the family's expenses had been paid by Aromate. Secondly, it was argued that it could not be disputed that the husband's sources of funds were his businesses. He managed to acquire an impressive number of properties over time in Singapore and elsewhere. It was not suggested that Cluny Hill or the three Canadian properties registered in the wife's name were gifts from any third party. The funds for their acquisition came from the husband and therefore from his businesses. Thus, although the husband might not have pointed to specific assets purchased with particular loans from his businesses, it was likely that he had acquired many of the matrimonial assets including the FA assets from moneys taken from his various companies which had subsequently been reflected in their books as loans to him.

44 The wife concentrated on the loans made to the husband by his family members and the last creditor, Golders Green Holdings Pte Ltd ("GGPL"). She justified her assertion that loans from these persons had been taken to increase the husband's apparent indebtedness by referring to various circumstances existing at that time. First, she had filed the petition in these proceedings in October 1999 and had obtained, on 10 March 2000, a Mareva injunction against the husband. After she had obtained the latter order, and during the short period of five months between then and July 2000, the husband claimed to have taken substantial personal loans from his relatives. This conduct was consistent with the husband's statements in the telephone conversations which he had had with one Tan Kok Kiong in September and October 1999 that he would take substantial loans in order to increase his liabilities and reduce his net worth. The husband also told Mr Tan that he had previously borrowed money from his friend Jackie and had not repaid it so that he would be in debt. The Jackie referred to controlled GGPL which had filed a proof of debt for $952,500 against the husband.

45 The husband's father, Ng Bok Beng ("NBB"), had filed a proof of debt for loans totalling US$3,635,168 given in April 2000. The wife said that this loan in particular had been taken as part of the husband's overall scheme to reduce his net worth. She reminded me that in Suit 310, the husband had asserted that he had had to sell the Mountbatten property and the NBEH shares in order to pay off debts owing by Aromate and Fustar in 1998, but that I had found that his predominant purpose in transferring the two properties was to reduce the wife's share in the matrimonial assets.

46 The husband's position was that the loans he took in 2000 had been used to pay the further indebtedness of these two companies: US$2,005,168 went to Fustar's debts and US$1,630,000 went to Aromate's. During the trial, the husband produced a bundle of documents obtained from Standard Chartered Bank and United Overseas Bank ("UOB") in Hong Kong relating to the use of the sum of US$3,635,168 by Fustar and Aromate in 2000. At the same time, he produced another bundle of documents relating to the use of the moneys obtained from the sale of the Mountbatten property and the NBEH shares in 1998. The wife submitted that even if the documents produced did support the husband's account of how the funds were used (and the documents were not wholly consistent with his story), his dominant purpose in borrowing the money was not to satisfy Fustar's and/or Aromate's debts.

47 Under cross-examination in the present proceedings, the husband testified that for transactions in which Nanyang was the end buyer, he had used Aromate's credit facilities with Standard Chartered Bank and Fustar's facilities from UOB in Hong Kong. He agreed that he had also caused Aromate to act as a commission agent for Fustar in the transactions with a company called Zhu Hai and to extend its credit facilities for these Zhu Hai transactions. Both Nanyang and Zhu Hai had defaulted. As a result, Aromate owed Standard Chartered Bank US$1.5m and Fustar owed UOB US$2m. UOB had sued the husband and Fustar in Hong Kong for the US$2m and he had then borrowed US$3.6m from NBB to pay off this debt and the Standard Chartered Bank debt. The wife pointed out that Aromate's and Fustar's liabilities to the two banks were a consequence of the same transactions for which the husband was held liable in Suit No 1396 of 2001. She then submitted that even if the

husband had used the loan moneys to repay such liabilities, his dominant intention was not to assist Aromate or Fustar but instead to further reduce his net worth. I do not accept this submission in relation to the moneys borrowed in 2000. Here, there was no sale at an undervalue but a borrowing to settle liabilities owed to banks arising from failed business transactions in which the end-customers, Nanyang and Zhu Hai, were strangers dealing at arm's length. The husband made some bad business decisions and he acted in breach of his fiduciary duties to Aromate in procuring its involvement in the transactions in the manner he had. Having done this, however, he had to settle Aromate's and Fustar's liabilities or see the companies liquidated and his own position threatened by the UOB suit in Hong Kong. Since the amount borrowed was approximately the amount owed, in this case there does not appear, on the balance of probabilities, to be any ulterior motive relating to the divorce behind the loan.

48 The wife questioned the authenticity of the loan of $275,000 made by the husband's brother on the basis that this indebtedness had not been mentioned by the husband in the affidavits of means that he had filed in December 2000 and February 2001. According to the proof of debt filed with the Official Assignee's office, however, these debts were only incurred during the period between 2001 and 2002. The same criticism was made by the wife in respect of the debt of $305,000 owed to NBEH but here again such a disclosure in the earlier affidavits would have been an impossibility since the loan was only made in April 2002. As regards the amounts owing to the husband's sister, the wife pointed out that in December 2000 the husband had claimed that he owed his sister a sum of $99,480, but that the sister had now put in a claim for $176,693. According to the proof filed, the total amount claimed represented loans made in March 2000, April 2000, June 2000, August 2001 and April 2002. Similarly, the amount claimed by the husband's cousin, Daniel Thie, was declared in the proof of debt to be $101,169.01 whereas the husband had stated in December 2000 that he had borrowed only $76,169.01 from his cousin. The wife submitted that there were questionable circumstances surrounding the loans advanced by the husband's relatives and that these so-called loans were part of an elaborate attempt by the husband to depict himself, falsely, as being poor and laden with debts.

49 The wife's allegations would appear to be somewhat thin, based as they are on the difference between the husband's declarations made at an earlier date and the amounts claimed by the creditors concerned at a later date, since one big change in the husband's circumstances between the two dates was that his assets in Singapore had been frozen by reason of the issue of the Mareva order. That meant that the husband's access to his assets was impeded and he may have had to borrow to meet his needs. The wife, however, was also relying on the other circumstances mentioned in [44] above, and in particular, on the recordings of telephone conversations between the husband and various parties in which the husband discussed his plans to dissipate his assets in order to reduce the amount available to the wife in the event of a divorce. The wife referred to my finding in Suit 310 that these telephone conversations provided independent evidence of the husband's intentions to put the Mountbatten property and the NBEH shares beyond the reach of the wife. The Court of Appeal had also held that these transcripts confirmed that the husband had planned to make himself look poor so that the wife would not be able to get at the two assets.

50 The husband, on the other hand, submitted that his marital problems had started by the mid-1990s at the latest and, between then and the time the Aromate action was taken against him, seven years had gone by. During this period, the husband had had a long and hard struggle while he tried to save his marriage, family and businesses, but to no avail. This, he said, was not the case of an angry husband who at the first hint of a marriage breakdown cleaned out the matrimonial coffers to deny his wife her share of matrimonial assets on divorce. This was the case of a man who wanted to save his marriage and in trying to do so, over the years, he went down the proverbial slippery slope and lost his marriage and his businesses. Ms Loh argued that it was surprising that the husband

had managed to stave off financial ruin for as long as he did. As early as March 2000 Standard Chartered Bank had taken out a bankruptcy action against him and the wife had also taken such action the same month and then again in January 2002 and finally, successfully, in October 2002. The husband also referred to various tape recordings that had been produced by the wife for the first time during the hearing of these proceedings. Some of the conversations recorded on those tapes showed that between the end of 1999 and early 2000, the husband had had difficulties with some of his businesses and was especially concerned with payment of the debts owing to UOB and Standard Chartered Bank.

51 It is clear from the above account of the evidence and the arguments, that it is not possible at this stage to come to a definite conclusion about the value of the husband's assets and the quantum of his liabilities. The husband is a bankrupt and, on paper at least, his debts are monumental. Some of his companies have failed, others are still in operation and, as far as the information before the court is concerned, appear to be profitable. There are some that are completely mysterious because no information on them has been provided. In the circumstances, I do, however, think there is enough evidence to justify my drawing an adverse inference against the husband in the matter of full disclosure. This inference would mean that I have to treat the husband as being worth more than he says he is although it is extremely difficult to put a figure to that value. I also think that the valuations of the companies done by Mr Foong do not and cannot be regarded as full and complete in view of the difficulties that I have mentioned in the earlier paragraphs of this judgment.

52 It is possible that the husband has sufficient assets, even without including the FA assets, to meet all his debts and not just those mentioned by Mr Foong. Whilst no evidence on the value of either the Mountbatten property or the NBEH shares was given in these proceedings and the return of these assets to the husband's estate means that his indebtedness would increase by the US$3m he was paid for them, the evidence in Suit 310 indicated that in June 1998, the Mountbatten property had a value of $8.2m if it was considered as a redevelopment site for residential use whilst the value of the NBEH shares was between $1.1m and $3.5m in September 1998. If the gross value of these assets is taken as being $10m (which seems reasonable in the circumstances), then the husband's estate in bankruptcy will be increased by this amount.

The value of the wife's matrimonial assets

53 The wife set out an up-to-date list of her assets and liabilities in her affidavit filed on 7 May 2004. She disclosed the following:

(a) various bank accounts holding amounts totalling approximately $97,385;

(b) various bank accounts holding amounts totalling approximately US$533,435.71 ($896,172);

(c) two bank accounts holding a total of £1,034.51;

(d) shares in Singapore listed companies which, as at 31 December 2003, had a market value of $783,402.50;

(e) shares in Malaysian public listed companies for which no value was provided;

(f) Cluny Hill which the wife believed to have an open market value of $7.8m based on a valuation done in February 2001 and on which the outstanding mortgage loans stood at $3.678m as at February 2004;

(g) Chancellor Boulevard (which had been valued at C$1.075m in February 2000) and Beach Avenue (which had been valued at C$2.345m in February 2000), both of which secured an outstanding amount of C$1m;

(h) Canadian treasury bills amounting to C$1.009m ($1,412,600) purchased with the proceeds of sale of Drummond Drive; and

(i) one Audi A4 purchased in November 2002 for $191,658.

In June 2004, the wife sold Beach Avenue for C$1.626m. The bulk of the proceeds was converted into twin currencies for foreign currency investment and the rest was used to pay for the various expenses of the wife and the children.

54 Looking at the above list of assets, the wife's assets, after deducting her liabilities and excluding the Malaysian shares and the car, according to her own valuations, are worth $5.02m, US$533,435.71 and C$3.710m. If the US dollar assets are converted to Singapore dollars using the current rate of US$1 = S$1.68 and the Canadian dollar assets are converted to Singapore dollars using the rate of C$1 = S$1.4 then these assets are worth S$896,172 and S$5.194m respectively. This would bring the total value of the wife's assets to at least $11.11m of which the cash component is $2,406,157.

55 The husband submitted that the wife had not been truthful about the amount of assets she declared. The assets which she had received over the years meant that she should have more than $6m in cash alone. The items making up this amount comprised:

(a) US$320,000 and S$500,000 paid to the wife under the Financial Agreement;

(b) proceeds from the sale of the Lei Garden shares amounting to $2.646m under the Financial Agreement;

(c) $60,000 for the legal fees under the Financial Agreement;

(d) $289,000 being the sum that the wife took from an OCBC overdraft facility on 9 June 1994 allegedly for her sister Regina Wong and other withdrawals on various other dates prior to that;

(e) $300,000 paid to the wife by herself from the OCBC overdraft facility;

(f) $560,000 paid to the wife by way of various cheques from Aromate;

(g) $260,000 received as directors' fees from Aromate;

(h) the proceeds of sale of the Porsche car that she had purchased for approximately $480,000 in 1999 and sold the same year; and

(i) the rental proceeds from the three Canadian properties in Vancouver which amounted to approximately $941,664.

On the husband's calculation, the total cash assets of the wife amounted to $6,476,664, much more than the amount that she had disclosed. He also asserted that she had failed to disclose many of her personal valuables such as expensive jewellery, watches and other expensive items, although in 2001,

she had provided his solicitors with an inventory on jewellery valued at $73,960. The wife had also chosen to hide the sale of Fustar's shares in Fortune Holdings for about $1,115,000 which had taken place even before she filed her affidavit on 7 April 2004.

56 In response, the wife explained that she had not tried to hide the sale of the shares in Fortune Holdings in 2001. The wife said that she had disclosed her shareholding in Fustar in her previous affidavit filed on 19 November 2001 and her shareholdings in Fustar had not changed thereafter. Further, the wife submitted that the husband was well aware of the sale and of the fact that the sale had taken place as a result of legal proceedings commenced by Fortune Travel Pte Ltd, the wholly-owned subsidiary of Fortune Holdings, for the travel expenses of the wife and the children which the husband had been obliged to pay for. The wife had been sued for more than $90,000. Notwithstanding the wife's explanation, when she filed her updated affidavit of means she should have included the value of her shareholding in Fustar. Bearing in mind the price at which the shares had been sold, that shareholding would have to be valued at $1,115,000 and that amount would have added to the value of the wife's assets.

57 As regards the other claims relating to cash assets, the wife gave reasons why either she had not received some of these amounts or they could not be considered as cash assets in her hand. First, as regards item (c), the sum of $60,000, being legal fees paid by the husband under the Financial Agreement, could not be considered a cash asset. The entire sum was paid to the wife's then lawyers for the legal costs incurred in the preparation of the Financial Agreement. I accept this argument. Second, as regards item (d), being the sum of $289,000 taken from the OCBC overdraft facility "allegedly for her sister Regina", it was the husband himself who had stated in his affidavit filed on 2 February 2001 that he had checked the statements of account and had identified that a total sum of $647,000 from the OCBC overdraft account was given by the wife to her sister and, of that, the sum of $289,000 had yet to be accounted for. In that same affidavit the husband had exhibited the OCBC cheques which were clearly made out to Regina Wong. The wife found it extremely puzzling that the husband was now claiming that she had taken this money. I accept this argument as well since the cheques show the money was intended for Regina Wong and the husband obviously had knowledge of this.

58 As regards item (f), the moneys from Aromate, the wife pointed out that whilst the husband had claimed that she had received $560,000 from Aromate, of the five cheques that he had exhibited to substantiate this assertion, only three (totalling $260,000) were from Aromate. The other two cheques were from Goodwood Resources Pte Ltd ($100,000) and the parties' joint account ($200,000). The wife explained in cross-examination that the parties had sold a property in Nassim Hill in 1997 and that they had agreed to share the profits from the sale equally. Her share of these profits had been between $400,000 and $500,000 and the husband had paid her by way of a few cheques for varying amounts. The husband's position was that he had given her one cheque for $460,000 in January 1997 and another for $43,000 in April 1997. As evidence of the payment of $460,000, the husband had produced a cheque stub but no copy of the cheque itself nor any bank statement to substantiate the alleged withdrawal. The wife maintained that she had received several smaller payments and had never received one cheque for $460,000. She agreed that the total sum received from the sale of Nassim Hill was not part of the Financial Agreement. Weighing up the evidence, it is clear that the wife received at least $500,000 in 1997 from that transaction and this sum could have, if not spent, formed part of her cash assets upon the divorce.

59 Dealing with item (e), the amount of $300,000 taken from the overdraft facility in June 1994, the wife's position was that that amount was meant for her sister. However, the wife had admitted in cross-examination that she had drawn the cheque in her own favour and signed it and banked it in. The notes of evidence that I took do not show the wife's assertion that the money was meant for her

sister but even if she said this and I failed to make a note of it at the time, there was no evidence to back up her assertion that the money had been given to her sister. The cheque was not made out to her sister and she proffered no explanation as to why she had paid this money to her sister. If she had done this, it could very well have been a private loan between the two of them. I think this sum has to be considered as having been taken by the wife. Of course, it also could have been spent long before the divorce took place.

60 As for item (h), the wife stated that the Porsche had been bought for $480,000 in October 1998 and had been sold for $420,000 in December 1999. She did not explain what had happened to the proceeds of sale. As for item (i), the rental proceeds from the three Canadian properties had been used, as the wife had explained in her affidavits in February 2001 and May 2004, to service the monthly mortgage payments to Royal Trust Bank, Canada, which mortgage the husband had, under the Financial Agreement, agreed to discharge.

61 The wife submitted that she had at no point in time held more than $6.4m in cash. She considered the husband's approach to the calculation of her cash to be deliberately simplistic because he ignored the fact that she had had expenses to meet which had to be satisfied out of her cash in hand. The husband had not made any payment under the consent maintenance order from November 2000 onwards and had not paid any of the mortgage payments in respect of Cluny Hill from March 2000 onwards. The wife had to pay the children's and her own expenses and the mortgage payments out of her own cash resources. She also had to pay legal and other professional fees in relation to the protracted legal proceedings between the husband and herself.

62 To summarise the above discussion, on the basis of the evidence, it would appear that the wife received in cash the moneys described in items (a), (b), (e), at least $500,000 of the amount described in items (f) and (g). As for the proceeds of sale of the Porsche car, I do not think that that can represent a separate cash amount since the wife would have bought the car with cash already in her possession and it would be double-counting to add the sale proceeds to the cash in hand. As for the rental proceeds, I accept the wife had to pay the mortgage loans using these moneys and probably had to meet other expenses relating to these properties from the same. To the items mentioned has to be added the sum of $1.115m derived from the sale of shares by Fustar. I therefore conclude that the sums received by the wife in cash over the years would have amounted to US$320,000 (S$537,600) and $5,416,000 or almost $6m. Even if one discounts the $300,000 received in 1994 and the $260,000 received in directors' fees on the basis that these two sums were received long before the divorce proceedings started and may now be represented by other assets like the wife's share portfolio (which the wife herself claimed to have purchased from her own savings), the adjusted total of $5.39m is considerably more cash than the wife disclosed in her latest affidavit and in her evidence in court as can be seen from [53] above. There are two possible reasons as to why the wife's affidavits did not show this amount, the first being that the wife has been extremely free-spending over the years and does not have that money any more and the second being that she has not disclosed all her cash assets. Having heard the wife's evidence and seen the documentation relating to her expenses and those of the children, I incline towards the first reason. The wife does not seem to have seen any need to stint herself or the children since the divorce proceedings began in October 1999. Both she and they, especially the eldest son, Ezine, seem to have enjoyed a very lavish lifestyle of which the wife's purchase of a Porsche and Ezine's many purchases of expensive vehicles are merely some examples. Additionally, the wife's disclosure has been fairly detailed although some of it was made at a rather late stage and, as the husband pointed out, she has not given full disclosure of the value of her jewellery and other personal belongings, though in cross-examination she said she said she had sold some jewellery in 2002 and 2003.

63 I should note that the valuation of the wife's assets at about $11.11m included a gross

valuation of Cluny Hill at $7.8m based on what the wife called "an indicative open market valuation" obtained from a company named OrangeTee.com Pte Ltd in February 2001. The husband, however, relying on a valuation done by Robert Khan & Co in November 2000 put the value of Cluny Hill as being at least $10m. The valuation obtained by the wife is a very brief affair and refers simply to the type of property valued, its address, the tenure on which the land is held and the land area. On the other hand, the valuation report produced by Robert Khan & Co was much more detailed and the valuer had obviously visited the premises and inspected the nature and general condition of the structure and fixtures and fittings. It would seem to be a more reliable guide to the value of Cluny Hill than what was clearly a desktop valuation given by OrangeTee.com Pte Ltd. If the value of Cluny Hill is based on this report then the wife's assets would be worth $2.2m more, *ie*, $13.31m in total.

Division of the assets

64 The factors that the court will take into account in ordering a division of matrimonial assets are set out in s 112(2) of the Act and are well known. I will not repeat them here. In this case, it is the wife's submission that there are two main factors that I should give weight to in carrying out the division. These are:

(a) the Financial Agreement as affirmed by the Deed; and

(b) the wife's years of contribution to the marriage and to bringing up the children.

65 The husband's position was that if the court considered the Financial Agreement and the Deed to be agreements in contemplation of divorce, then these agreements constituted but one of several factors which the court must have regard to in dividing the assets. Ms Loh submitted that the court would also have to take into account the following:

(a) the extent of the contribution made by the husband in money and effort towards acquiring the matrimonial assets;

(b) the debts owing or obligations incurred or undertaken by the husband (especially in the current accounts of various companies like Aromate and Fustar) for the benefit of the family, for example, the amount of $1.26m that the husband said he had overdrawn from Aromate over the years in order to pay the amounts due under the consent maintenance order;

(c) the extent of contributions made by the husband to the welfare of the family;

(d) the fact that the FA assets in the wife's hands were acquired by the husband;

(e) the period of rent-free occupation of the matrimonial home enjoyed by the wife to the exclusion of the husband since the end of 2000;

(f) the reduced income, earning capacity, property and financial resources which the husband had and was likely to have in the foreseeable future;

(g) the husband's age; and

(h) the material adverse change in circumstances which had taken place since the Financial Agreement and the Deed were entered into between the parties.

The husband submitted that a fair and equitable distribution of the matrimonial assets would be a division of 30% to the wife and 70% to him of all assets now in the hands of the Official Receiver and

in the hands of the wife including the FA assets.

66 The first sub-issue here is whether the Financial Agreement and the Deed constituted agreements between the parties with respect to the ownership and division of the matrimonial assets which had been made in contemplation of divorce within the meaning of s 112(2)(*e*) of the Act. Submitting that this question should be answered in the affirmative, the wife argued that the Financial Agreement has to be the starting point when the division is considered because it expresses the parties' intentions as to what she is to be entitled to out of the matrimonial assets for her financial security, in the event of her abandonment by or divorce from the husband. Mr Ang reminded me that the Financial Agreement was proposed by the husband to the wife in an attempt to get her to withdraw the divorce petition she had filed in 1996. At that time, the wife had informed the husband of her fear that he may subsequently abandon the family and move overseas with another woman. The husband had admitted both in his affidavit of 20 March 2000 filed in Originating Summons No 30 of 2000 and in open court too that he had proposed the Financial Agreement in order to ease the wife's concern that she and the children would be left financially vulnerable.

67 In the wife's view, the Deed reinforced the intention behind the Financial Agreement. Mr Ang explained that the Deed was concluded in July 1999 because at that time, the wife was not mentally and emotionally prepared for an immediate divorce but contended that nevertheless it was entered into in contemplation of divorce. In this connection, Mr Ang relied on the husband's statements in court. In the DC suit, the husband had admitted that when he entered into the Deed and reaffirmed the Financial Agreement, he knew that a divorce was possible. He also admitted that it was his understanding that if the parties were to subsequently divorce, the wife would be entitled to retain the properties transferred to her under the Financial Agreement. Under questioning in these proceedings, the husband agreed that there was a possibility that there would be a divorce three years after the Deed was signed but he maintained that at the time of signing he was confident that he and the wife would be able to patch things up during the three years. He believed that if he was rich, she would not divorce him. In the DC suit, the district judge made a finding that the husband had, at the time he entered into the Deed, clearly contemplated that there could eventually be a divorce.

68 The husband's position was that the FA assets that he had transferred to the wife were substantial and ought not to be excluded from the pool of matrimonial assets to be divided on divorce. He did not agree that the Financial Agreement and the Deed were agreements "in contemplation of divorce". Ms Loh submitted that in the Financial Agreement, the husband had promised to carry out his responsibilities and obligations, both morally and financially, as a husband and a father. The Financial Agreement confirmed the parties' desire to keep the marriage and family intact. By the Deed, the wife had agreed to withdraw the pending divorce proceedings in Divorce Petition No 3359 of 1996. There was no agreement between the parties as to whether and, if so, how their marriage was to be dissolved. The two documents were made with a view to saving the marriage if possible. The parties had agreed to attend counselling and the husband's evidence was that he had signed the documents in order to try and save the marriage rather than to prepare for divorce.

69 Having considered the oral evidence and the documents, it is my view that the Financial Agreement itself was not concluded in contemplation of divorce. It was a document that was entered into on the husband's part to prevent a divorce from taking place at that time and on the wife's part in order to reduce her financial dependence on the husband. By the time of the Deed, the husband had been in breach of the Financial Agreement on several occasions and the parties were on very bad terms. Basically the purpose of the Deed was to maintain the status quo in regard to the marriage (whereby the parties lived separately in the same house and remained married only in legal terms) and to reaffirm the husband's commitment to comply with the provisions of the Deed. The husband

obviously wanted to put off the evil day of divorce as long as possible whilst the wife wanted to strengthen her legal position *vis-à-vis* enforcement of the Financial Agreement. It has not been submitted on behalf of the wife that she intended that the assets transferred to her pursuant to the Financial Agreement would, in the event of a divorce, constitute her share of the matrimonial assets and that by signing it, she was impliedly agreeing not to make any further claim to share in the matrimonial assets. On balance therefore, whilst both parties must have at the time they signed the Deed contemplated that a divorce might one day take place, I do not think that the Deed, in reiterating the husband's obligations under the Financial Agreement and the consent maintenance order, was intended to set out the regime for the division of assets in the event of a divorce. Nevertheless, in considering how the assets should be divided, I can have regard to the fact that both parties considered that the provision for the wife made by the Financial Agreement would give her the financial security she sought and needed.

70 The wife had submitted that in carrying out a division under s 112 of the Act, the court should give primacy to the existence of the Financial Agreement and the Deed and therefore treat the FA assets as being absolutely and irrevocably transferred to her for her security and benefit and that of her children. As for those obligations under the Financial Agreement that the husband had not performed, the wife asked the court to exercise its discretion under s 112 of the Act to order the husband to perform these outstanding obligations. However, as I have noted above, even if the Financial Agreement had been made in contemplation of a divorce, it would be only one of the factors that the court would consider, although such a considered division of their assets by the parties would be entitled to considerable weight.

71 An alternative submission made on behalf of the wife was that the FA assets were gifts to her from the husband and as such should not form part of the pool of matrimonial assets which the court would divide on divorce. The wife relied on *Lee Leh Hua v Yip Kok Leong* [1999] 3 SLR 506 ("*Lee Leh Hua*"). It was held there that in a case where the events before the divorce petition clearly established that one party was entitled to an asset as of right, the court ought not to allow the other party to ask the court to exercise its power under s 112 of the Act and vary the vested interest of the first party. That decision was predicated on the finding of the court that the husband (who had asked the court to allow him to retract a gift he had made to the wife and divide it between them) had intended to make the wife a gift of the sale proceeds of his flat to expiate the suffering caused to the wife when he deserted her. The equities of the situation were against avoiding the gift and bringing the asset back into the pool for division between the parties.

72 Ms Loh, in response to this submission, pointed out that even where one spouse made a gift to the other, the court has the power to divide those gifts upon divorce. in *Yeo Gim Tong Michael v Tianzon* [1996] 2 SLR 1 ("*Yeo Gim Tong Michael*"), the Court of Appeal, dealing with the section on division of property that preceded s 112 of the Act (*ie*, s 106 of the Women's Charter (Cap 353, 1985 Rev Ed)) held that where the subject matter of the gift was property originally acquired during the marriage, it would be taken into account in the division of matrimonial assets notwithstanding that it was a gift from one spouse to the other. This was because the spouse who had made the gift would no doubt have expended moneys in acquiring it, and the fact that the gift had been transferred, either contemporaneously with its acquisition or subsequent thereto, to the other spouse, would not affect the original acquisition of that gift. The important point was that if the asset had been acquired during the marriage, it would fall to be divided under the then s 106.

73 In *Yow Mee Lan v Chen Kai Buan* [2000] 4 SLR 466, I considered both *Lee Leh Hua* and *Yeo Gim Tong Michael*. I observed at [62]:

> On the facts of *Lee Leh Hua*, the court clearly came to the right decision. The husband, having

made the wife a gift as compensation for his causing the breakdown of the marriage, was wrong to ask the court to exercise its discretionary powers and thereby enable him to retract that gift. I do not think, however, that the learned Judge intended to hold, as the wife here submitted, that in all cases where one spouse vests property in the other by way of a gift, the court cannot vary the vested interest of the other spouse by invoking s 112(1) of the Charter. Such a holding would be difficult to support. Whether the court will decide to exercise those powers depends only on the particular circumstances before it and the court is not deprived of its powers under 112(1) by the fact of the asset being a gift between spouses even though this factor would be determinative of any summary application on title brought under s. 59.

74 The wife's submission was that in this case, the gift should be upheld. She argued that the husband had shown an unequivocal intention to transfer the assets set out in the Financial Agreement to her as absolute gifts. The language of cl 3 of the Financial Agreement referred to the husband making gifts "absolutely and irrevocably" to the wife of all interests and rights that he had in the properties that were in the name of the wife. These assets had been transferred and the gifts were complete and vested in the wife. The purpose of the transfer was to induce the wife to withdraw the first divorce petition which she had filed as a result of the husband's adultery. Further, the FA assets were meant to be for the wife's financial security in case he abandoned her and the children and stopped providing for them. In the view of the wife, since the husband had thereafter abandoned all responsibility towards her and the children, it was most unjust for him to attempt by way of the present proceedings to claim a share in the FA assets.

75 It is clear to me that the express intention of the husband was to transfer the assets listed in the Financial Agreement irrevocably to the wife and to give up all his rights in the same. At the time he signed the document he thought he could well afford to adhere to its terms on the basis that he would continue in the future to earn the same level of income that he had earned in the past. His purpose in concluding the document was to delay, if not halt altogether, the divorce proceedings the wife had initiated. He was successful in this aim and he also bought himself time in which he was able to take steps to reduce his assets by fraudulently conveying the Mountbatten property and the NBEH shares. If the wife had gone ahead with the divorce proceedings in 1997, the Mountbatten property would, together with all his other assets at a time when the husband was in a financially strong position and must have been an extremely wealthy man, have been up for division shortly thereafter and the wife might well have been granted an equivalent amount in the division process, if not more, on the basis of the husband's then wealth. It is also significant that throughout the period when the parties negotiated the Financial Agreement and, later, the Deed, the husband was legally represented. He would have been advised as to what the financial consequences of divorce were likely to be.

76 The circumstances of this case are much more akin to those in *Lee Leh Hua* than to those in *Yeo Gim Tong Michael*. In the first case, the gift was made as compensation for the husband's abandonment of the wife whereas in the latter case, the husband had, in the course of the marriage, bought land in the Philippines for the wife and had paid for the construction of a house there. The gift to the wife was not connected with any breakdown of the marriage nor was it given to her for any particular purpose or to compensate her in any way. Here, the gifts made to the wife under the Financial Agreement were made for the specific purpose of inducing the wife to act in a certain way. She did so. I think that it would be inequitable to allow the husband to retract these gifts now even though his financial circumstances may have changed for the worse. In fact, one of the purposes of the gifts must have been to insulate the wife from reverses in the husband's finances since she wanted a certain level of security and he was prepared to give her the same in the circumstances that then existed.

77 I therefore hold that the FA assets transferred to the wife before September 2004 may be retained by her as gifts and should not be brought into the pot for division on divorce. I do not, however, consider that the husband should be obliged to make any further payment to the wife under the Financial Agreement. This includes the sums of $1m due on 30 November 1998 and 30 November 1999 and what has not yet been given to her cannot be considered a gift since the transfer is incomplete. It is therefore not subject to the principles laid down in *Lee Leh Hua*. Secondly, the husband's circumstances have changed though perhaps they are not as bad as he makes out. However, he is not in the same financial position that he was in previously and it would not be equitable to order him to comply further with the Financial Agreement for the purposes of the distribution of assets on divorce. As far as the mortgage instalments on Cluny Hill are concerned, I think the husband's obligation to pay the same under the Financial Agreement must continue up to and including August 2004 as the confirmation of the gifts and the division of the assets would take effect from September 2004 when the hearing of these proceedings commenced.

78 Even if I had held that the FA assets should be divided between the spouses as part of the ancillary matters, I would in the division have ordered that the wife retain all these assets. I have considered the contributions of both parties to the marriage. The wife made very little contribution in financial terms. She did run a boutique for some time but that was a loss-making business though she maintained in court that the income tax returns filed by her did not disclose the true position of the business because the husband had drawn up the accounts so as to show a loss and avoid tax. Whatever may be the truth of that allegation, the wife was a party to the way the accounts were drawn up and I think she must now be bound by what they show. The wife's main contribution was in the care of the household and the children. Although there was some dispute as to how devoted a mother she was in the earlier years of the marriage, there was no doubt that for the past few years, she has been the mainstay and main supporter of the children and that they are all close to her. The husband's contributions were mainly in the area of building up the family's finances (an area in which he was extremely successful until 2000) and providing a luxurious lifestyle for them. He was attached to the children in the earlier years but his relationship with them deteriorated as the marriage itself broke down. The marriage itself lasted some 24 years. In the light of all the circumstances, I think a fair division of the matrimonial assets would be 40% to the wife and 60% to the husband. As I do not have full information about the husband's assets, I would have given effect to this division by ordering that the wife retain all the assets in her possession and that the husband keep all those in his possession (*ie*, strictly speaking, in the possession of the Official Assignee). I note here that the wife did not ask to be given a share in any assets currently owned by the husband.

Future maintenance of the wife

79 The wife asked for the consent maintenance order to be varied and that a lump sum payment be paid to her in respect of all future maintenance from the husband. She pointed out that she was obliged to take care of the youngest child, Ewe; to pay for household expenses; to ensure that Eharn successfully completed her studies; to ensure that Ezine successfully completed his studies and underwent proper treatment for his various problems and to service the existing mortgage repayments to UOB in respect of Cluny Hill.

80 The consent maintenance order was made under Part VIII of the Act which contains the provisions dealing with the maintenance of wives and children during the subsistence of the marriage. Now that the parties are divorced, the appropriate section in relation to maintenance of the wife is s 113 of the Act which gives the court power to order a man to pay maintenance to his former wife when granting or subsequent to the grant of the divorce decree. The factors that the court must take into account when determining the amount of any maintenance to be paid are set out in s 114 of the Act. Among these are the income, earning capacity, property and other financial resources which

the parties have or are likely to have in the foreseeable future and the financial needs, obligations and responsibilities which they have or are likely to have in the foreseeable future. As I see the position, I must now exercise my powers in relation to maintenance under this section and, in doing so, I am not bound by the consent maintenance order. I make this observation because the wife had submitted that under s 117 of the Act, the consent maintenance order would persist until the death of the wife or the husband, whichever is the earlier, or until the remarriage of the wife. In my judgment, that section only applies to maintenance orders made pursuant to s 113 and not to orders, like the consent maintenance order, made pursuant to Part VIII of the Act which have to be reconsidered or affirmed if the parties subsequently divorce.

81 The wife submitted that she should be granted a lump sum as her future maintenance since the husband had been a persistent defaulter in paying maintenance and also had not made full and frank disclosure of his assets. She used the consent maintenance order as the basis of her computation of such lump sum and arrived at a total figure of $2,184,000 as the maintenance that she contended she should be awarded. This amount was derived as follows. The wife took the amount of $15,000 per month awarded under Order 1 of the consent maintenance order as a starting point. She considered that to be reasonable as it had been intended to cover her household expenses, her personal expenses and the children's day-to-day expenses but not her medical and travel expenses and various other expenses which the husband was supposed to pay for separately. Then, as Eharn had turned 21 on 14 September 2000, the sum of $1,500 being Eharn's estimated monthly expenses was deducted by the wife and she therefore asked for maintenance of $13,500 per month from September 2004 until April 2007 (a total of $432,000). The next adjustment was made for the period from May 2007 to June 2019 by which time the wife would have reached 71. Because Ewe would reach the age of 21 in April 2007, for this later period, the wife deducted a further $1,500 a month being his estimated monthly expenses and claimed $12,000 per month as maintenance for that period (a total of $1,752,000).

82 The husband's position was that he has no financial resources to pay monthly maintenance, let alone lump sum maintenance. He stated that he was now working as a consultant with a Hong Kong business known as Teresa Concept and earned about S$1,730 per month out of which he contributed a monthly sum of $500 towards his estate in bankruptcy. His monthly expenses were just about covered by his income. (I note here that the wife doubts this account of his income and expenses but has not really been able to disprove it.) The husband is now 55 years old and says his financial circumstances are dire. All his life he was a businessman and by reason of the bankruptcy order he lost his standing with the banks and his source of income from business. His income had plummeted in 1999. Whereas he used to draw income from various sources, those sources ceased in about 1999 and he had to resort to borrowing to pay for his living expenses and the wife's monthly maintenance. The husband submitted that the court ought not to make any order for maintenance which the husband had no means of fulfilling as, inevitably, he would fall into default of such an order.

83 As the position now stands, the wife is, on paper at least, in a very much stronger financial position than the husband. Whilst the husband has assets, he has also substantial liabilities which he has to settle from those assets and, apart from the Mountbatten property, his assets are shares in private companies and as such are not easily realisable. As a bankrupt, the husband's earning potential is limited. Whilst he might get support from family and friends, he cannot borrow from banks and other financial institutions. His main task now is to try to have his estate adjudicated and his assets realised so that he can be discharged from bankruptcy and go back into active business. The wife, on the other hand, has cash, immovable properties and shares in public companies which are easily realised. The husband has proved himself to be a resourceful man who is good in business and if he does manage to sort out his liabilities, there is a possibility that he will one day be a high-income earner again. I have not forgotten that he is already 55 years old but, with his connections and family

background, his age should not prevent him from making a decent living, at least, once again. In the meantime, however, I do not think that he is in a position to pay substantial monthly maintenance to the wife. Nor do I think that I should make a lump sum order against him as that would simply mean one more proof of debt being filed in his estate and it becoming that much harder for him to work his way out of bankruptcy.

84 In the particular circumstances of this case, it would be wrong to order lump sum maintenance. It would also be wrong to order him to pay substantial monthly maintenance to the wife. She has enough to support herself on for the time being and for a long time to come in a comfortable lifestyle as long as she is not unduly extravagant and unduly indulgent towards her children. She need not travel first or business class. She can spend less money on clothes and she does not need to indulge Ezine's whims like she has been doing, for example, by paying thousands of dollars for him to live in a service apartment while he was on holiday in Singapore because he said the Cluny Hill home brought back bad memories and made him depressed.

85 Of course if the husband's financial position changes for the better or it can be shown subsequently that he has an increased monthly income, the wife can apply for her maintenance to be increased and to be converted into a lump sum at that stage. In the meantime, in order to preserve the wife's rights to maintenance, I order the husband to pay her maintenance of $1,000 per year in advance effective from September 2004 which was when the hearing of the ancillary matters started. The first payment would therefore have fallen due on 1 September 2004 and the second one on 1 September 2005 and thereafter payment should be made on 1 September of each year following, unless and until the order is varied.

Maintenance for Ewe

86 As for the youngest child, Ewe, the wife did not make a separate claim for his maintenance but included it as part of her lump sum maintenance post the divorce. As stated above, she estimated his monthly expenses at $1,500 in her closing submissions. In her affidavit of 13 August 2001, the wife set out a table of what she said were Ewe's expenses at that time and these totalled $3,510 per month. In court, she agreed that his expenses had changed since he was no longer in school. They now totalled $3,100 per month. The items claimed were as follows:

(a)	Allowance	$1,000
(b)	Medical/dental expenses	$300
(c)	Travel expenses by first class/business class	$1,200
(d)	Clothes and shoes	$200
(e)	Hobbies	$100
(f)	Miscellaneous expenses	$300

By the time the action was heard, Ewe was enlisted in National Service. That meant that he would be receiving an allowance from the army.

87 The husband submitted that the obligation to maintain Ewe was not his alone and that the wife was also obliged to maintain him, which she was able to do in view of her means. Further, Ewe's standard of living could not remain at the level enjoyed by him before the husband became a

bankrupt. If the wife wanted to maintain him at that standard, it would be up to her to do so. The husband asked that maintenance payable by him for Ewe be reviewed after he was discharged from bankruptcy or that a nominal order for maintenance be made.

88 In asking for the lump sum maintenance for herself between September 2004 and April 2007 to be calculated at $13,500 per month, the wife specifically allocated only $1,500 per month for Ewe's maintenance although she claimed that his expenses amounted to $3,100 per month. She therefore appeared to recognise her responsibility to contribute to Ewe's maintenance. However, I consider that Ewe's expenses have been estimated at a high level. There is no need for him to be given an allowance of $1,000 a month or for him to incur travel expenses of $1,200 a month. Circumstances have changed and his expenses must be reduced to suit the difficulties in which his parents find themselves. If his mother wishes to indulge him from her own pocket that is her prerogative but the husband should not be made to contribute to an inflated level of expense. If Ewe was given $900 a month for food, $250 a month for travel expenses, $100 for medical expenses and $400 for his clothes, hobbies and miscellaneous expenses, the total amount of $1,650 a month taken together with his National Service allowance should be enough to support him fairly comfortably and better than many people in Singapore. I order the husband to contribute to Ewe's maintenance by paying him $1,000 with effect from September 2004.

Maintenance for Ezine

89 On 12 January 2001, the wife filed a maintenance summons (MSS 22/2001) in the Subordinate Courts on Ezine's behalf for a maintenance order against the husband. The wife stated in her complaint that maintenance was necessary for Ezine because of his mental disabilities and because he was receiving and would be continuing to receive instruction at an educational establishment. She claimed $17,175.66 per month as maintenance for him.

90 Ezine is now 28 years old. He entered Lynn University in Florida, USA in September 2000. He had not graduated by the time he appeared in court in November 2004. He explained then that for the whole of 2004, he had not been attending university because of some dispute with the administration and that he intended to return to the university in January 2005 and would complete his course by May 2005.

91 The wife submitted that Ezine required maintenance for the period of his education at Lynn University and also for his medical and/or therapy expenses. She pointed out that by order (4) of the consent maintenance order, the husband had agreed to pay all medical, educational, travel and overseas living expenses of Ezine. As such she said it would be reasonable for him to continue to be responsible for Ezine's expenses overseas until he completed his education. Ezine had reduced his expenses. In August 2001, Ezine had claimed US$12,129.97 per month but by July 2004, he had reduced the amount he was claiming to US$11,079.97 per month. In court he further voluntarily reduced his claim to US$7,064.31 (S$12,053.83) per month.

92 A breakdown of Ezine's revised monthly expenses was set out in the wife's closing submissions. Ezine asked for a lump sum payment of maintenance in the sum of $662,960.65 which he arrived at on the basis that he was entitled to $12,053.83 per month for the period of 55 months from November 2000 to May 2005.

93 Ezine's maintenance summons was filed under the provisions of s 127(1) of the Act which grants the court power, at any time subsequent to the granting of a decree of divorce, to order a parent to pay maintenance for the benefit of his child. Section 127 falls within Pt X of the Act but sub-s (2) thereof specifically states that the provisions of Pts VIII and IX apply to an application for

maintenance made under sub-s (1). This imports the provisions of s 69 of the Act into an application made under s 127(1). By s 69(5), the court is prohibited from making a maintenance order for the benefit of a child who has attained the age of 21 years unless it is satisfied that the provision of the maintenance is necessary because of a mental or physical disability of the child or that the child is or would be receiving instruction at an educational establishment or serving National Service or that special circumstances exist which justify the making of the order.

94 At the time the maintenance summons was filed, Ezine was aged 23. By May 2005, he would have been almost 28 years old. The submission made for him was that he should be maintained because during the period in question, he was receiving instruction at an educational establishment. Additionally, he had a long history of mental disorders with different diagnoses being given by different doctors. In 1993, Ezine was diagnosed as suffering from psychotic disorder, post-traumatic stress disorder and poly-substance abuse. Between 1994 and 1995, he was diagnosed as suffering from schizophrenia complicated by behavioural problems and, later, drug dependence. Between 1996 and 2000, he was treated for mental and emotional problems arising from an abusive childhood. Since December 2000, he has been regularly receiving psychotherapy treatment in Florida from an American psychologist named Dr Karen E Engebretson-Larash. Ezine was exempted from National Service because of his mental health problems.

95 The husband took issue with Ezine's claim on various grounds. First, the quantum of the claim was exaggerated in view of the evidence that Ezine had given under cross-examination. Set out below is a table of Ezine's expenses showing the amounts that he originally claimed, the revised amounts claimed in the wife's closing submissions and the amounts which the husband said had been claimed by Ezine himself when he was cross-examined.

S/No	Description (Monthly expenses)	Original claim ($)	Revised claim ($)	Amounts claimed in court ($)
1.	Lynn University Tuition Fees $19,500/12 mths = $1,625 for the years 2001 to 2003 $4,000/6 mths = $666.67 for the half year in 2005 Average = ($1,625 + $1,625 + $1,625 + 0 + $666.67)/5 = $1,108.33	1,625	1,108.33	0

2.	Student Activity Fee $500/12 = $41.67 for the years 2001 to 2003 none for the years 2004 and 2005 Average = ($41.67 + $41.67 + $41.67 + 0 + 0)/5 = $25.00	41.67	25	0
3.	Telecommunication/ Technology Fee $100/12 = $8.30 for the years 2001 to 2003 none for the years 2004 and 2005 Average = ($8.30 + $8.30 + $8.30 + 0 + 0)/5 = $4.98	8.30	4.98	0
4.	Rent	1,925	1,650	1,650
5.	Books per semester. 1 semester = 6 months. Hence $600 ÷ 6 = $100 for the years 2001 to 2003 and 2005 Average = ($100 x 4)/5 = $80	100	80	0
6.	Personal Expenditure Allowance (i) Food (Dining out) (ii) Groceries (iii) Utility Bills	 500 500 300 300	 600 0 180 0	 600 0 114 0

	(iv) Clothes	100	0	0
	(v) Shoes	80	40	40
	(vi) Haircut	150	100	100
	(vii) Entertainment *eg* movies, parties, plays	250	100	0
		200	70	70
	(viii) Dental/Medical	100	60	56
	(ix) Handphone Bill	90	80	80
	(x) Homephone Bill	60	0	0
	(xi) Cable TV Bill	1,200	1,200	1,200
	(xii) Laundry (Dry Cleaning)	135	0	0
	(xiii) Therapist	480	480	433
	(xiv) Gym	200	100	0
	(xv) Car Insurance $5,760 ÷ 12 = $480 per month	400	400	100
		250	250	250
	(xvi) House Cleaners	380	0	0
	(xvii) Petrol	100	0	0
	(xviii) Maintenance for Car	1,250	0	0
	(xix) Personal Trainer	50	0	0
	(xx) Personal Insurance			
	(xxi) Additional tuition fees			
	(xxii) Stationery			

7.	Holiday (yearly) $6,000 ÷ 12 = $500 per month	500	500	0
8.	Computer	300	36	36
	TOTAL per month	**US$11,574.97**	**US$7,064.31**	**US$4,729**
	Convert to Singapore dollars at an exchange rate of US$1=S$1.7063		**S$12,053**	**S$8,069.09**

96 The husband argued that maintenance is not a life-long meal ticket which a parent must provide for so long as the child, regardless of age, is receiving education. In any case, at the time Ezine was cross-examined, he was not attending university. Ezine wanted to stay away from Singapore. It was clear from his cross-examination that he was very capable of taking charge of his own affairs: he lived on his own, spent the money he had been given as he saw fit and was able to engage in a dispute with his university as a result of which he had to or decided to stay out of school. There was no evidence that he was incapable of taking care of his own person. He claimed that he required therapy and he went about on his own to procure the same. The husband submitted that Ezine did not truly need the therapy provided by Dr Engebretsen-Larash. In this regard, he relied on the evidence of a psychiatrist, Dr Roger Samuel, who examined Ezine for the purpose of the court proceedings.

97 Dr Samuel's evidence was that Ezine had a history of wanting to have more treatment than he actually required. His opinion was that Ezine did not currently suffer from any psychiatric condition or disorder. He considered Ezine to be capable of taking charge of his own life and his financial matters. As he did not have any specific disorder he did not need any specific future psychiatric treatment. In terms of improving his understanding of himself, it would be good for him to have psychotherapy to work on different issues in his life. This, however, was optional and a choice rather than a necessity.

98 The husband's submission was that since Ezine was not mentally disabled and was capable of running his own life, no maintenance should be granted to him on the ground of mental disability. He further argued that necessity was the test of maintenance and that if it was not necessary it should not be allowed. This was especially so since the husband could not afford to maintain Ezine. In any case, Ezine's claim for maintenance was not reasonable. He had himself admitted that he had overspent. Ezine had chosen to stay in the US and not to return to Singapore. That was his choice that he was entitled to make as a man of 28 years of age but he should not be allowed to claim maintenance from the husband.

99 It is clear from the provisions of s 69(5) of the Act that the court should not grant maintenance to a child over 21 unless either one of the three factors set out therein is established or there are other special circumstances justifying the order. The first factor is if the child is under a mental or physical disability. Although the section does not expressly state so, the mental or physical disability necessitating an order for maintenance must, in my considered view, be of such a nature that it affects the ability of the child to earn a living and maintain himself. In this case, Ezine did have

mental health problems at various stages of his life but there was nothing in the evidence to show that, from November 2000 (the date from which Ezine wanted the maintenance order to start) up to May 2005 (the date on which he agreed that maintenance should end), such problems prevented him from earning a living. His own therapist, Dr Engebretsen-Larash, did not consider that he was suffering from schizophrenia during that period. Her diagnosis was that he had a post-traumatic stress disorder. Dr Samuel did not agree. He thought Ezine had no psychiatric condition at all. Even accepting Dr Engebretsen-Larash's view (though I consider that she did not defend it well under cross-examination and that Dr Samuel was more consistent and coherent in his evidence), I think that Ezine has not established that his mental condition necessitated an order for maintenance being made.

100 The other factor listed in s 69(5) that Ezine relied on was that described in sub-para (*c*), *ie*, that he was receiving instruction at an educational establishment during the period for which maintenance was required. This sub-paragraph indicates that one reason why maintenance may be necessary is that the child is being educated. This does not mean, of course, that the child may prolong his education and take degree after degree and insist on being maintained during all the years he is studying. However, if the child is genuinely pursuing a course of studies in order to prepare himself better for the working world, as long as in all the circumstances it is reasonable for him to pursue that course and the parents can afford it, the court may order the parents to maintain him either fully or partially while he is still studying. In this case, Ezine did obtain admission to a university and whilst he was somewhat lackadaisical in the pursuit of his education, he did manage to complete three years of his course and it did not appear that he was only studying in order to obtain maintenance. It was not put to him during the cross-examination that he was not a serious student and was simply trying to make an unjustified claim so that he could be supported while he loafed around enjoying life.

101 I have concluded therefore that Ezine has satisfied the requirements of s 69(5)(*c*) of the Act and that the provision of maintenance is necessary because he was during the relevant period receiving instruction from an educational establishment. I would not award him maintenance despite that, if I was satisfied that the husband was totally unable to pay such maintenance. As I have found earlier, however, the husband does have assets and I think it is right to make him support Ezine's education to a reasonable extent. Also, since Ezine has been out of the Singapore school system since he was sent to boarding school at the age of ten, I do not think the husband can reasonably cavil at Ezine's choosing to study in the US. On the other hand, I consider that Ezine's claim for maintenance was pitched at an extremely high level. He has lived the life of an extremely wealthy young man and his mother does not seem to have put him on any budget but has simply given him whatever funds he has asked for. As a result, he has been able to indulge in a great many expensive pursuits and it would not be correct to ask the husband to foot the bill for all of these. I would also restrict the period for which maintenance is awarded to a period of 45 months being the period during which he could have obtained his degree from Lynn University had he studied there continuously from the time he first enrolled. This 45-month period is calculated from enrolment in September in the year of entry to graduation in May in the fourth year of studies.

102 Coming to quantum, I think he is entitled to the amounts as claimed in items 1, 2 and 3 of the table. In respect of his rental, I would award him US$500 and in respect of his personal expenditure, I would award him US$2,000 to cover his books, food, clothes, entertainment and transport. I do not make any award for his holiday travel expenses or his therapist as those are luxuries. I accept Dr Samuel's evidence that therapy for Ezine is good but not essential. Further, there is no reason why he could not have worked part-time in order to fund his holidays and any other luxuries he required. His total expenses therefore would be US$3,638.31 per month while he was studying or US$163,723.95 for the total period. This converts to S$278,330.72 (at the rate of US$1 = S$1.7) and I therefore order the husband to pay Ezine that amount as his maintenance during the period that he

was at university. No further maintenance for Ezine has been asked for or will be ordered.

Maintenance for Eharn

103 Eharn's application for maintenance by the husband was filed on 7 December 2000. Her claim was also made pursuant to s 127 of the Act and it was made on the basis that she should be maintained because she was receiving instruction at an educational establishment. Eharn reached 21 years of age on 14 September 2000. She enrolled in the Singapore Management University in September 2001 and was scheduled to graduate in May 2005. Eharn computed her living expenses at $2,784 per month and asked for lump sum maintenance of $153,153 to cover the 55-month period from November 2000 to May 2005.

104 The husband submitted that Eharn's expenses had fallen. In her affidavit filed on 13 August 2001, she had calculated her monthly expenses at $4,362.62 whereas in July 2004, she reduced her claim to $2,923.49. Thereafter she reduced the claim again to $2,784.60 per month taking into account her evidence regarding the cost of her laptop. The husband said that in cross-examination she had again revised her expenses downward. The table of Eharn's expenses showing the original and adjusted claims is set out below:

S/No	Description (monthly Expenses)	Amount claimed in July 2004 ($)	Amount adjusted by the husband's counsel after cross-examination ($)
1.	Tuition fees for Bachelor of Accountancy ($5,650 ÷ 12) add 3% GST on $5,650 for 2001 and 2002, 4% GST on $5,650 for 2003 and 5% GST on $5,650 for 2004	488.49	488.49
2.	Annual Fee in relation to SMU course	10.20	10.20
3.	Books per semester. 1 semester = 6 months. Hence $250 ÷ 6 = $41.67 per month	41.67	20

4.	Personal Expenditure Allowance:		
	(i) Food and drinks = $40 per day x 30 = $1,200	1,200	450
	(ii) Clothes and accessories	100	80
	(iii) Cosmetics/skincare	100	30
	(iv) Haircut	50	30
	(v) Entertainment	80	80
	(vi) Transportation	100	100
	(vii) Dental/Medical	50	30
	(viii) Handphone	80	45
	(ix) Miscellaneous	100	100
5.	Holidays	250	0
6.	Registration/Matriculation fee	3.13	3.13
7.	Laptop	111.11	111
8.	Stationery	20	20
	Total	**2,784.60**	**1,597.82**

Eharn had also admitted in cross-examination that she had earned money from giving tuition classes and from working as a teaching assistant.

105 In my judgment, Eharn was entitled to be maintained by the husband for the period from September 2001 when she started at the Singapore Management University until May 2005 when she graduated. That was a period of 45 months. On quantum, Eharn did not agree to the adjustments that the husband made to her claim. On the whole, I think that her claim is reasonable except that her food and drinks claim should be reduced to $30 a day or $900 a month and the item of $250 a month for holidays should be omitted since she was able to work part-time and should pay for luxuries like that herself. After these deductions are made, her monthly claim would be reduced to $2,234.60 a month or $100,557 for 45 months. I award her that sum as her maintenance during her period of tertiary education.

The application to vary the consent maintenance order

106 On 29 November 2000, the husband made an application under s 72 of the Act for a variation of the consent maintenance order. At that time, he asked for the maintenance to be varied to a sum to be determined by the court on the basis of the following reasons:

(a) that his financial position was such that he could no longer afford to pay the wife the sums she was entitled to receive under the consent maintenance order;

(b) two of the children, namely Ezine and Eharn, who were both included in the consent maintenance order were beyond 21 years of age and ought to be excluded from that order;

(c) the scope of the consent maintenance order was unreasonably wide and the wife had abused its ambit by her unreasonable spending; and

(d) in any case, the wife had failed to show that the amount she claimed for maintenance was to maintain the level of spending she was accustomed to over the years of the marriage.

107 In the husband's closing submissions, he submitted that having regard to all the circumstances of the case, the consent maintenance order should be rescinded. The circumstances under which he had agreed to the making of that order were very different from those that existed when his application for variation was filed and from those that existed at the date of the hearing of these proceedings. There had been material changes in circumstances relating to the parties and their children. After the consent maintenance order was made, the husband had transferred to the wife assets (including cash) having a total value of more than $15m. Also, after that date, the husband had been beset with financial troubles arising from the home and business fronts and these had eventually resulted in his being made a bankrupt. The wife had been instrumental in destroying his income-earning capacity. The situation was made much worse by the wife's indiscriminate spending. The wife had claimed that her living expenses amounted to $30,553 a month. This figure comprised $13,267 for monthly household expenditure, $12,810 for monthly personal expenditure, $4,050 for Ewe's expenditure and $426 for miscellaneous items. The husband asserted that if in fact the wife was spending all these amounts, then she ought to be cutting back drastically on her expenses as she was not spending on necessities but being extravagant.

108 The wife did not agree that the husband had transferred assets valued at more than $15m to her. She considered that his valuation of Cluny Hill and the three Canadian properties was too high. In any case, the fact that he had transferred fairly substantial assets to her under the Financial Agreement did not constitute a good ground for varying the consent maintenance order. After all, the husband himself had affirmed that order in the Financial Agreement and had thereafter confirmed it again in the Deed. She pointed out that in 1999, the husband had made an application ("the 1999 application") to vary the consent maintenance order and that the same was dismissed on 13 April 2000. Just seven months later, the husband had made the application that is currently before me. Thus, the court should consider whether there was a change in circumstances in the period between 13 April 2000 and 20 November 2000. The husband had not furnished any fresh grounds in his application that had not been considered when the 1999 application was dismissed. He had also not furnished any evidence of material change in his financial circumstances between 13 April 2000 and 20 November 2000. The wife pointed out that when the husband was asked whether he agreed that there was nothing in the documents that he had furnished that explained how his financial circumstances had changed materially between April 2000 and November 2000, his reply was:

> Even before the last application, my financial position changed. And to my understanding, the judgment did not refer to this. Plus it continued to deteriorate. So I had to make another application.

In her view, by that answer the husband had, practically, conceded that he had not given such evidence. Further, it appeared that his case was that he had made the second application because the court had not considered the issue of the change in his financial position when the 1999 application was dismissed. The notes of evidence for the hearing of the 1999 application showed, however, that the husband's assertion of a change in financial position had been strenuously challenged by the wife's counsel and the district judge had, before giving her decision, received submissions from the husband's counsel on his financial position. Thus, this matter must have been considered when the district judge dismissed the 1999 application.

109 In my judgment, there is no evidence showing a radical change in the husband's circumstances between April 2000 and the time the present application was made in November 2000. The evidence before me, in the form of Mr Foong's reports, showed that at the end of 1999 the husband's net worth excluding the FA assets was at least $7.6m. The husband did not substantiate a decline in that amount between 1 January 2000 and April 2000, much less between April 2000 and November 2000. On that basis, no variation in the consent maintenance order as of November 2000 would be justified.

110 There is, however, another basis justifying some variation of the consent maintenance order. That order covered the maintenance of Ezine and Eharn and, at about the same time the husband applied to vary it, those two children applied for separate maintenance orders. I have dealt with those applications. Since I have provided for Ezine and Eharn's maintenance between November 2000 and May 2005 to the extent and at the level that I consider appropriate, the consent maintenance order should be varied with effect from November 2000 so that all obligations of the husband thereunder to maintain Ezine and Eharn are discharged. Thus, from November 2000, the husband would no longer be obliged under the consent maintenance order to pay additional amounts to cover the medical, educational, travel and overseas living expenses of Ezine and the medical, educational and travel expenses of Eharn. Also, the sum of $15,000 payable under para (1) of the order should be reduced by $900 a month (representing the cost of food and drink for Eharn each month) from September 2001 which is when the maintenance order for Eharn made under [105] above commences.

111 Whilst there was no sufficient evidence of a material change in the husband's circumstances in November 2000, there is no doubt that these circumstances did change drastically for the worse when he was made a bankrupt in October 2002. This alteration is relevant to the consideration of the husband's application for variation since the same only came up for hearing in September 2004. The change in the husband's personal status meant that he no longer had access to credit facilities from banks and could no longer act as a director of many, if not most, of the companies in which he was interested. His ability to borrow money from these companies would also have been affected by this event. Further, as I have noted earlier, the evidence showed that both the husband and wife had used funds from Aromate to defray their family and household expenses. This company was in financial trouble and could no longer be a source of funds. Whilst some of the husband's problems may have been self-induced, there is no doubt that he also had external indebtedness arising from genuine business transactions that went bad.

112 As from the date when the husband became bankrupt, I think that the wife could not expect to be maintained in the same manner as before. The husband, however, did have assets which will, eventually, be made available towards settling his indebtedness and which can be used to, at least partially, satisfy his maintenance obligations. Accordingly, it would not be correct to vary the maintenance order to zero as from the date of the change in the husband's status. I therefore order that the consent maintenance order be varied so that the amount payable to the wife as the monthly maintenance for herself and Ewe with effect from October 2002 be reduced to $7,500 a month. This order would remain effective up to August 2004 since I have already made provision above for her

maintenance, and, separately, for Ewe's maintenance, from September 2004 onwards.

Conclusion

113 I shall hear the parties on costs. I also give the parties liberty to see me to settle the terms of the orders to be made pursuant to this judgment in the event that any clarification is needed.