IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 34

Civil Appeal No 52 of 2021

Between

VEW

… *Appellant*

And

VEW

… *Respondent*

In the matter of HCF/Registrar's Appeal from the Family Justice Courts No 27 of 2020

Between

VEW

… *Appellant*

And

VEW

… *Respondent*

JUDGMENT

[Conflict of Laws — Restraint of foreign proceedings]
[Family Law — Divorce]

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v
VEV

[2022] SGCA 34

Court of Appeal — Civil Appeal No 52 of 2021
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA and Judith Prakash JCA
18 January 2022

14 April 2022 Judgment reserved.

Andrew Phang Boon Leong JCA (delivering the judgment of the court):

Introduction and overview

1 The present appeal raises – in stark relief – the delicate process of balance that must be undertaken where potentially competing public policies are involved. On the one hand, there is the public policy embodied in (here, foreign) legislation intended to relieve the financial hardship that results despite the fact that a matrimonial order has been handed down in a foreign jurisdiction whilst there is, on the other, the (here, local) public policy in ensuring that finality is maintained in court decisions (in this case, in the context of the division of matrimonial assets). In this last-mentioned regard, there is an especial concern with regard to preventing court decisions being attacked and/or subverted by what is (in substance and effect) re-litigation of issues that have already been determined by the court itself. Indeed, this particular issue is, as

we shall see, at the centre of the present appeal. Given, in particular, the aforementioned tension (and the technical as well as policy complexities as well as detail in analysis that they entail), it might conduce towards clarity if we summarise our reasons and decision right at the outset of the present judgment.

2 In essence, the matrimonial assets in the present case had been divided by the Singapore court between the parties following their divorce. However, one particular asset – real property (the "Property") located in London (and which constituted the most valuable asset) – was held *not* to be a matrimonial asset and was therefore not part of the pool of matrimonial assets that was divided between the parties by the Singapore court.

3 The appellant wife (the "appellant") subsequently brought a claim pursuant to Part III of the Matrimonial and Family Proceedings Act 1984 (c 42) (UK) (the "MFPA") for *financial relief* centring on the Property after an *overseas* (here, Singapore) divorce. The *purpose* of this claim provided for by the MFPA was to furnish financial relief in situations of need *notwithstanding* the fact that financial provision might have been provided pursuant to a *prior overseas* divorce by the relevant court in that particular jurisdiction.

4 At first blush, the subsequent claim for *financial relief* in the *English* court appears *separate and distinct* from the earlier proceedings related to *the division of matrimonial assets* in the *Singapore* court. However, it should be noted that *the Property* was – literally at least – involved in *both* sets of proceedings. The respondent husband (the "respondent") sought an *anti-suit injunction* ("ASI") to prevent the appellant from continuing with the English proceedings, arguing, amongst other things, that there would be a *re-litigation* of matters that had already been decided by the Singapore court. The issue that arises is whether or not *re-litigation* would in fact take place were the

proceedings in the English court permitted to continue, given that both sets of proceedings had (as just mentioned) *different* purposes – the application in the English court being one for financial relief following a divorce in Singapore, and the proceedings in Singapore being for the division of matrimonial assets in the aforementioned divorce.

5 At this juncture, it is of the first importance to note that the answer to the issue just set out must surely be one of *substance and not merely form – literal or descriptive* similarities and/or differences ought not to be *legally or normatively determinative* in and of themselves. Hence, for example, notwithstanding the fact that an application for financial relief in the English court might appear to have a different purpose from the previous matrimonial proceedings in the Singapore court, if the former is, in *substance*, a *re-litigation* of the latter, then that would, in our view, be impermissible as it would undermine or subvert the public policy relating to the finality as well as integrity of the Singapore courts' decisions in relation to matrimonial proceedings. In *that* event, an *ASI might* indeed be granted by the Singapore court in order to restrain proceedings that are initiated in England. What would constitute re-litigation would depend on the precise facts and circumstances of the case. *However*, in the *present case*, we are of the view that there has been ***no*** *re-litigation* inasmuch as the claim initiated by the appellant for financial relief pursuant to Part III did ***not*** engage *the distribution of the Property in relation to matrimonial proceedings simply because the Property was not considered part of the pool of matrimonial assets in the first place.*

6 What, then, of the argument that the Singapore courts, by holding that the Property was not part of the pool of matrimonial assets, had in fact rendered a decision with respect to the matrimonial proceedings and that, therefore, the claim initiated by the plaintiff for financial relief pursuant to Part III *did*

constitute a *re-litigation* of this particular decision? Whilst a not unattractive argument, it is our view that the fact that the Property had not been considered part of the pool of matrimonial assets meant that *not a single iota* of the Property could, *ex hypothesi*, have been *the subject matter of distribution* to one or both of the parties *pursuant to* ***the matrimonial proceedings***. Looked at in that light, the subsequent claim initiated by the appellant for financial relief pursuant to Part III and which centred on the Property could ***not*** be construed as a *re-litigation* of a matter that, *ex hypothesi*, was *never before the Singapore court hearing the matrimonial proceedings in the first place*. It is important to emphasise once again that the inquiry is one of substance and not form. As importantly, it is an inquiry that should not be preoccupied with fine distinctions. As we pointed out to the parties during oral submissions before us, had the appellant accepted – without argument – that the Property did not form part of the pool of matrimonial assets, she would clearly not have been precluded from initiating a claim pursuant to Part III simply because the Property *would clearly not have been the subject of the matrimonial proceedings in the Singapore court*. The fact that she *did* argue – albeit unsuccessfully – that the Property ought to form part of the pool of matrimonial assets should not, in our view, make a difference. Indeed, to insist on drawing such a difference would be to engage in an overly technical inquiry that would produce rather *arbitrary* results. Such flexibility as well as the eschewing of an overly technical approach towards the concept of re-litigation is also needful in light of the fact that by their *very nature*, both Part III and Chapter 4A of the Women's Charter (Cap 353, 2009 Rev Ed) (the "Women's Charter") would – *literally* speaking – often involve a consideration of the same facts that were before the court concerned in respect of the foreign divorce proceedings.

7 More importantly, the court should – as far as it is possible – attempt to give effect to the underlying policy and spirit of these statutory provisions that *do* presuppose that there have been prior foreign matrimonial proceedings and whose purpose is nevertheless to provide financial relief where it is necessary to do so. In the context of the present appeal, the fact that the Property had *not* been the subject of any division by the Singapore courts as it was considered not to be within the pool of matrimonial assets that was to be divided between the parties renders it less likely – if at all – that the public policy of Singapore in relation to the division of matrimonial assets would be contravened, whilst simultaneously rendering it an eminently appropriate resource from which the financial hardship of the appellant could be alleviated *provided that the appellant can make good her claim pursuant to the letter as well as spirit of Part III*, thus giving effect to the policy and spirit underlying Part III.

8 In the circumstances, as there has been no re-litigation of any kind, we think that an ASI should not have been issued in the present case. The appeal is therefore allowed and the ASI is set aside. It is therefore not necessary for us to elaborate on the possible examples of situations where there has, in fact, been a re-litigation that might justify the grant of an ASI. It suffices for the present to note that we prefer the test that focuses on whether or not the party against whom an ASI is granted had acted in a vexatious or oppressive manner (as opposed to having acted in an unconscionable manner), and we do not accept the appellant's counsel's submission that the former test may be subsumed within the latter (see [69] below). We endorse the test laid down in the High Court decision of *AQN v AQO* [2015] 2 SLR 523 ("*AQN v AQO*") (which counsel for the respondent had cited to us). Indeed, in addition to the fact that the concept of unconscionability is a specific legal term of art in the sphere of equity, it also manifests itself in different concepts and may itself be too vague

and general in specific contexts even within that particular sphere (see, in particular, this court's decision in *BOM v BOK and another appeal* [2019] 1 SLR 349 ("*BOM v BOK*")). It bears emphasising that given our finding in the present appeal that there has been no re-litigation of any kind to begin with (the reasons for which we will elaborate upon below), there has, *ex hypothesi*, been no conduct that could be considered vexatious or oppressive.

9 As already mentioned, the above is a summary as well as overview of our reasons and decision. For completeness, we note that following the hearing before us on 18 January 2022, counsel for the appellant sent a letter to the court on 20 January 2022 (the "20 January 2022 Letter") to address us on some of the questions raised during the hearing. In the court's reply to counsel on 21 January 2022, it was noted that counsel had not sought leave to make further submissions to the court, that the 20 January 2022 Letter was a discourtesy to the court, and that the court would not consider the contents of the 20 January 2022 Letter. For the avoidance of doubt, we reiterate here that we did *not* consider the contents of the 20 January 2022 Letter in reaching our decision. We turn now to elaborate on the reasons set out above, commencing with a summary of the events leading up to the present appeal.

Facts

The parties

10 The appellant and respondent met in England in 2008 and moved into the Property, which is solely owned by the respondent, in March 2009. They married in Italy in July 2011 and moved to Singapore in February 2012. The parties are both Singapore permanent residents; the appellant has dual citizenship in the UK and the Republic of Ireland, while the respondent has dual citizenship in the UK and Australia.

11 On 26 June 2018, the appellant filed for divorce in England. On 9 July 2018, the respondent filed for divorce in Singapore. The appellant then applied for a stay of the divorce proceedings in Singapore. Her application was dismissed on 28 January 2019, and she proceeded to file a defence in the Singapore divorce proceedings in February 2019. The divorce was eventually granted in Singapore on an uncontested basis. The Interim Judgment of Divorce was granted on 5 March 2019, and the Certificate of Final Judgment of Divorce was granted on 23 December 2019. In the meantime, the parties' dispute over the ancillary matters had been heard by a District Judge (the "DJ").

Background

12 On 8 October 2019, the DJ gave her orders on the ancillary matters (the "AM orders"). This included an order pertaining to the Property, which stated: "There shall be no division of the [Property] which shall belong to the [respondent] solely". In her Grounds of Decision in *VEV v VEW* [2020] SGFC 6 (at [63]–[64]), the DJ stated that she agreed with the respondent's written submissions and had excluded the Property from the pool of matrimonial assets. The appellant did not file an appeal against the AM orders.

13 On 10 February 2020, the appellant applied to the English courts for leave to apply for financial relief under Part III of the MFPA. Deputy District Judge ("DDJ") Hodson granted the appellant leave on 21 August 2020. The leave order stated, *inter alia*:

> **IT IS ORDERED THAT:**
>
> **Leave to make an application for financial relief – s.15(1)(c)**
>
> 7. The applicant shall have leave to make an application for financial relief limited to orders against the respondent's interest in the [Property], pursuant to s. 15(1)(c) and as restricted by s.20.

Section 15(1)(c) of the MFPA confers jurisdiction on the English courts to entertain an application for an order for financial relief if either or both parties to the marriage had, at the date of the application, a beneficial interest in possession in a dwelling-house situated in England or Wales which was at some time during the marriage a matrimonial home of the parties to the marriage.

14 The appellant filed an application under Part III of the MFPA in the English courts on 3 September 2020. The respondent filed FC/SUM 2619/2020 ("SUM 2619") on 7 September 2020 in Singapore for an ASI against the appellant's Part III application. On 11 September 2020, the English Central Family Court ordered that the appellant's application be stayed generally, with permission to either party to restore on seven days' written notice to the other party (the "Part III Stay Order").

15 SUM 2619 was granted by the DJ on 26 October 2020. The appellant's appeal to the High Court in HCF/RAS 27/2020 ("RAS 27") was dismissed by the High Court judge (the "Judge") on 11 March 2021. The appellant was subsequently granted leave to appeal to the Appellate Division of the High Court (the "Appellate Division") against the Judge's decision in RAS 27. In granting the appellant leave to appeal in AD/OS 14/2021 ("OS 14"), the Appellate Division observed:

> 2 There is a question of general importance to be decided for the first time as the Singapore courts have not dealt with the principles to be applied in an application for an anti-suit injunction in the context of foreign English proceedings brought under Part III of the Matrimonial and Family Proceedings Act 1984 (c 42) (UK) ("MFPA"). This is particularly the case as Singapore has equivalent provisions in Chapter 4A, Part X of the Women's Charter (Cap 353, 2009 Rev Ed) ("Chapter 4A"), which was modelled after the MFPA. Although the Singapore court has an interest in preventing collateral attacks on its judgments, the English statutory provisions expressly recognise that the English court is entitled to make financial

> provisions in relation to a Singapore divorce which is also recognised in the English court, *a fortiori*, where the proceedings involve real property situated in England.

The costs of OS 14 were reserved to the appeal court.

16 On 24 June 2021, the English Central Family Court varied the Part III Stay Order by staying the appellant's Part III application until the Appellate Division had determined her appeal. On 15 July 2021, the appellant filed her Notice of Appeal to the Appellate Division. On 14 September 2021, CA 52 was transferred from the Appellate Division to the Court of Appeal.

17 Subsequently, on 15 October 2021, the appellant filed CA/SUM 80/2021 ("SUM 80"), an application for leave to adduce further evidence in CA 52. The further evidence was the official transcript of the oral judgment (the "Transcript") delivered by DDJ Hodson in the English Central Family Court on 21 August 2020. We allowed SUM 80 on 17 November 2021, with costs reserved to this court in CA 52.

Summary of the decisions below

18 In SUM 2619, the DJ referred to and applied the principles set out in this court's decision in *Lakshmi Anil Salgaocar v Jhaveri Darsan Jitendra* [2019] 2 SLR 372 ("*Lakshmi*") at [50]. The DJ noted, *inter alia*, that Singapore was the natural forum of the parties' dispute, and that the appellant was seeking a "second bite at the cherry" by commencing Part III proceedings in the UK. Having not filed an appeal against the AM orders, bringing duplicative proceedings in the UK was clearly vexatious conduct. Further, the appellant would be raising the same arguments and using the same factual matrix for her claim in respect of the Property in the UK, and she should not be permitted to

do so as this would involve re-litigation of matters already the subject of judgment.

19 In RAS 27, the Judge dismissed the appellant's appeal and upheld the DJ's grant of the ASI:

> Having read the reasons of the DJ, I disagree with the Wife's position that the DJ was in error. The DJ has considered all the relevant principles under Singapore law and applied them correctly in her decision. From the position taken by the Wife in the Singapore proceedings, her application under Part III of the [MFPA] would result in parties having to relitigate the division of the matrimonial assets in London. This is because the [Property] was excluded from the pool when the matrimonial assets were divided here. Once it is considered under Part III of the [MFPA], whether the share of her matrimonial assets decided by the DJ is adequate will necessarily have to be reviewed in its entirety, even though the Wife says that the English Court will accept the findings of the Singapore Court and deal only with her application based on the value of [the] [Property] alone. The relitigating of the entire division of the matrimonial assets can result in the possibility of the English Court coming to a different finding from the DJ, and I do not think that the Wife should be permitted to do so. Even though Part III of the [MFPA] is available for the Wife to seek reliefs in England after her divorce in Singapore, given the positions she has taken in the Singapore proceedings, I do not think that she should be allowed to avail herself to that jurisdiction *in this particular case*.
>
> [emphasis in original]

The parties' cases on appeal

20 We now summarise the key points of the parties' cases in the present appeal (*viz*, CA 52) as follows.

The appellant's case

21 First, the appellant argues that the Judge had erred in upholding the grant of the ASI on the basis that there will be re-litigation of the entire division of matrimonial assets before the English court. Further, instituting the Part III

proceedings is, in itself, not vexatious, oppressive or unconscionable conduct justifying the grant of the ASI – the whole basis of Part III is that it is appropriate for two jurisdictions to be involved.

22 Second, the Part III regime is designed to weed out unmeritorious cases, and due weight should be given to the decision of the English court in granting leave for Part III to proceed. Singapore's own Chapter 4A was modelled after the Part III regime, and the Law Reform Committee of the Singapore Academy of Law had recognised that the requirement to seek leave from the English court – which is reproduced in Chapter 4A – was an effective filtering mechanism in Part III.

23 Finally, the respondent is not entitled to the ASI as he is before this court with "unclean hands", given his delay in applying for an ASI, and the fact he seeks to rely on this application to circumvent the decision of DDJ Hodson.

The respondent's case

24 The respondent's arguments are as follows.

25 First, the Judge did not err in upholding the grant of the ASI on the ground that there would be re-litigation of the entire division of matrimonial assets before the English court. The AM orders expressly include an order that the Property was to belong to the respondent solely and there would be no division thereof. The case the appellant intends to run in England, which includes the Property, will involve re-litigation of substantial matters contested and determined in Singapore. Re-litigation of a concluded matter in Part III proceedings is vexatious conduct justifying the grant of an ASI.

26 Second, it is important for the Singapore court to protect its own jurisdiction, particularly in the context of Part III proceedings. The appellant appears to be advocating an "ill-founded" view that the Singapore courts ought to defer completely and unquestioningly to the foreign court and the filtering system of the foreign court to decide if a Part III proceeding is an attack on Singapore court orders. However, the grant of leave by the foreign court cannot be determinative of the merits of an application for an ASI, nor does it give rise to an issue estoppel in respect of a subsequent ASI application in the competing forum.

27 Finally, the doctrine of unclean hands does not apply in this case. The respondent filed his ASI application on 7 September 2020, shortly after the appellant was granted leave on 21 August 2020 to pursue Part III proceedings in the UK. The respondent only took part in the UK proceedings under protest and subject to his strict reservations as to jurisdiction. Further, the UK proceedings have not progressed to an advanced stage.

28 Before we turn to the specific issues in the present appeal, it would be useful to set out the background to Part III of the MFPA and Chapter 4A of the Women's Charter, as well as the general principles concerning the grant of an ASI.

Part III of the MFPA

29 Part III of the MFPA allows a party to apply for financial relief in England and Wales after an overseas divorce. The UK Supreme Court has explained the background to Part III of the MFPA in *Agbaje v Agbaje* [2010] UKSC 13 ("*Agbaje*") as follows (at [4]–[5]):

> 4. The background to Part III [of the MFPA] was concern at the hardship to wives and children caused by the effect of a combination of the liberality of the rules relating to recognition of foreign divorces and the restrictive approach of some foreign jurisdictions to financial provision. The problem became apparent in a series of cases in the 1970s in which there had been a foreign divorce in proceedings (both judicial and extra-judicial) instituted by the husband in which no financial provision had been made for the wife.
>
> 5. In those cases the divorce was entitled to recognition in England, e.g. because of a "real and substantial connection" with the foreign country … As a result the parties were regarded as no longer married, and the court was not able to make an order in her favour for financial relief … As a result of these cases there were calls for legislation to give the English court jurisdiction to grant ancillary relief after a foreign divorce. …

30 The matter was subsequently referred to the Law Commission for England and Wales and the Scottish Law Commission (the "Law Commissions"). The Law Commission for England and Wales published a report in 1982 recommending that the law be reformed to allow financial provision to be ordered after a foreign divorce, not only in cases where *no* financial provision had been made or could have been made in the country where the divorce was granted, but also where the provision was *inadequate* (see *Family Law: Financial Relief after Foreign Divorce* (Law Com No 117, 1982)). The Law Commission for England and Wales also recommended a "filter mechanism" requiring leave of the court to make an application to the English court. As a result of the work of the Law Commissions, Part III of the MFPA was enacted in 1984 (see *Agbaje* at [7]–[8]).

31 Under s 13 of the MFPA, an applicant must first be granted leave to commence proceedings under Part III of the MFPA (see *Agbaje* at [9]):

> **13 Leave of the court required for applications for financial relief.**
>
> (1) No application for an order for financial relief shall be made under this Part of this Act unless the leave of the court has been

> obtained in accordance with rules of court; and the court shall not grant leave unless it considers that there is substantial ground for the making of an application for such an order.
>
> (2) The court may grant leave under this section notwithstanding that an order has been made by a court in a country outside England and Wales requiring the other party to the marriage to make any payment or transfer any property to the applicant or a child of the family.
>
> (3) Leave under this section may be granted subject to such conditions as the court thinks fit.

32 The principal object of this "filter mechanism" in s 13 is to "prevent wholly unmeritorious claims being pursued to oppress or blackmail a former spouse"; the threshold is "not high, but is higher than 'serious issue to be tried' or 'good arguable case' found in other contexts" (see *Agbaje* at [33]).

33 Section 15(1) of the MFPA sets out the jurisdictional requirements for the English court to entertain the Part III application, as follows:

> **15 Jurisdiction of the court.**
>
> (1) Subject to subsection (1A) below, the court shall have jurisdiction to entertain an application for an order for financial relief if any of the following jurisdictional requirements are satisfied, that is to say—
>
> (a) either of the parties to the marriage was domiciled in England and Wales on the date of the application for leave under section 13 above or was so domiciled on the date on which the divorce, annulment or legal separation obtained in the overseas country took effect in that country; or
>
> (b) either of the parties to the marriage was habitually resident in England and Wales throughout the period of one year ending with the date of the application for leave or was so resident throughout the period of one year ending with the date on which the divorce, annulment or legal separation obtained in the overseas country took effect in that country; or
>
> (c) either or both of the parties to the marriage had at the date of the application for leave a beneficial interest in possession in a dwelling-house situated in England or Wales which was at some time during the marriage a matrimonial home of the parties to the marriage.

34 Second, at the substantive hearing of the Part III application, the court has a duty to consider whether England and Wales is the appropriate venue for the application, having regard in particular to the factors under s 16(2) of the MFPA (see *Agbaje* at [42]):

> **16 Duty of the court to consider whether England and Wales is appropriate venue for application.**
>
> (1) Before making an order for financial relief the court shall consider whether in all the circumstances of the case it would be appropriate for such an order to be made by a court in England and Wales, and if the court is not satisfied that it would be appropriate, the court shall dismiss the application.
>
> (2) The court shall in particular have regard to the following matters—
>
> (a) the connection which the parties to the marriage have with England and Wales;
>
> (b) the connection which those parties have with the country in which the marriage was dissolved or annulled or in which they were legally separated;
>
> (c) the connection which those parties have with any other country outside England and Wales;
>
> (d) any financial benefit which the applicant or a child of the family has received, or is likely to receive, in consequence of the divorce, annulment or legal separation, by virtue of any agreement or the operation of the law of a country outside England and Wales;
>
> (e) in a case where an order has been made by a court in a country outside England and Wales requiring the other party to the marriage to make any payment or transfer any property for the benefit of the applicant or a child of the family, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with;
>
> (f) any right which the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any country outside England and Wales and if the applicant has omitted to exercise that right the reason for that omission;

> (g) the availability in England and Wales of any property in respect of which an order under this Part of this Act in favour of the applicant could be made;
>
> (h) the extent to which any order made under this Part of this Act is likely to be enforceable;
>
> (i) the length of time which has elapsed since the date of the divorce, annulment or legal separation.

The court also has to consider whether an order should be made under s 17 of the MFPA, having regard to the matters in s 18 of the MFPA (see *Agbaje* at [71]).

Chapter 4A of the Women's Charter

35 The *same* issue that led to the enactment of the MFPA was *also recognised* in *Singapore* around the 1990s – *ie*, that if a marriage had been terminated by a foreign decree, then it was not possible for the Singapore court to assume jurisdiction in respect of the marriage, and the Singapore court could no longer exercise its powers to divide matrimonial assets or order maintenance. In 2009, the Law Reform Committee ("LRC") published a proposal to amend the Women's Charter to address this issue (see Law Reform Committee, Singapore Academy of Law, *Report of the Law Reform Committee on Ancillary Orders after Foreign Divorce or Annulment* (July 2009) (the "LRC Report")). The Women's Charter (Amendment) Act 2011 (Act 2 of 2011) plugged this particular lacuna in the law by enacting Chapter 4A of the Women's Charter (see Debbie Ong, *International Issues in Family Law in Singapore* (Academy Publishing, 2015) at para 6.61). We pause here to note that, as of 31 December 2021, the 2020 Revised Edition of the Women's Charter has come into effect, but Chapter 4A of the Women's Charter (2020 Rev Ed) does not materially differ from the older version referred to in this judgment.

36 Chapter 4A of the Women's Charter was modelled after Part III of the MFPA (see the decision of this court in *UFN v UFM and another matter* [2019] 2 SLR 650 ("*UFN v UFM (CA)*") at [23]). Like Part III, Chapter 4A allows the Singapore court to grant financial relief to an applicant where (i) there was no relief available in the foreign court or (ii) the relief granted by the foreign court was inadequate or not a fair one (see the High Court decision of *Harjit Kaur d/o Kulwant Singh v Saroop Singh a/l Amar Singh* [2015] 4 SLR 1216 ("*Harjit Kaur*") at [10]). As with applications under Part III of the MFPA, an application under Chapter 4A comprises two stages – an applicant must first obtain the leave of the court, before making a substantive application for financial relief at the second stage (see *UFN v UFM (CA)* at [17]).

37 At the initial stage of obtaining leave under s 121D of the Women's Charter, the applicant must first show that there is a foreign divorce/annulment/judicial separation that is entitled to be recognised as valid in Singapore, and that the Singapore court has jurisdiction over the matter as required by s 121C (see *UFN v UFM (CA)* at [18], [20]). Next, the applicant must show a "substantial ground" for the making of an application for an order for financial relief. This court has clarified that at this stage the applicant need only show that it is *prima facie* appropriate for a Singapore court to grant relief – the purpose of the leave mechanism is only to sift out plainly unmeritorious cases or those which amount to an abuse of process (see *UFN v UFM (CA)* at [29], citing *Agbaje* at [33]). The factors in s 121F (which are the *same* factors as in s 16(2) of the MFPA) must also be considered by the Singapore court when deciding whether to grant leave under s 121D, though not every factor in s 121F needs to be considered in the way that a court hearing the substantive application might do so (see *UFN v UFM (CA)* at [31]). Section 121D states as follows:

> **Leave of court required for applications for financial relief**
>
> **121D.**—(1) No application for an order for financial relief shall be made unless the leave of the court has been obtained in accordance with the Family Justice Rules made under section 139.
>
> (2) The court shall not grant leave unless it considers that there is substantial ground for the making of an application for such an order.
>
> (3) The court may grant leave under this section notwithstanding that an order has been made by a court of competent jurisdiction in a foreign country requiring the other party to the marriage to make any payment or transfer any matrimonial asset to the applicant or a child of the marriage.
>
> (4) Leave under this section may be granted subject to such conditions as the court thinks fit.

38 Section 121C sets out the jurisdictional requirements for the Singapore court to hear an application for an order for financial relief:

> **Jurisdiction of court**
>
> **121C.** The court shall have jurisdiction to hear an application for an order for financial relief only if —
>
> (*a*) one of the parties to the marriage was domiciled in Singapore on the date of the application for leave under section 121D or was so domiciled on the date on which the divorce, annulment or judicial separation obtained in a foreign country took effect in that country; or
>
> (*b*) one of the parties to the marriage was habitually resident in Singapore for a continuous period of one year immediately preceding the date of the application for leave under section 121D or was so resident for a continuous period of one year immediately preceding the date on which the divorce, annulment or judicial separation obtained in a foreign country took effect in that country.

39 At the second stage, the applicant may proceed to apply for substantive financial relief. Before making an order for financial relief, the Singapore court has a duty to consider, like the English court must, whether it would be appropriate for a Singapore court to grant the relief sought, taking into account

the factors under s 121F. This is different from the determination at the leave stage, where the applicant only needs to show it would be *prima facie* appropriate to do so (see *UFN v UFM (CA)* at [33]). Section 121F states as follows:

> **Duty of court to consider whether Singapore is appropriate forum for application**
>
> **121F.**—(1) Before making an order for financial relief, the court shall consider whether in all the circumstances of the case, it would be appropriate for such an order to be made by a court in Singapore, and if the court is not satisfied that it would be appropriate, the court shall dismiss the application.
>
> (2) The court shall, in particular, have regard to the following matters:
>
> (*a*) the connection which the parties to the marriage have with Singapore;
>
> (*b*) the connection which those parties have with the country in which the marriage was dissolved or annulled or in which judicial separation was obtained;
>
> (*c*) the connection which those parties have with any other foreign country;
>
> (*d*) any financial benefit which the applicant or a child of the marriage has received, or is likely to receive, in consequence of the divorce, annulment or judicial separation, by virtue of any agreement or the operation of the law of a foreign country;
>
> (*e*) in a case where an order has been made by a court of competent jurisdiction in a foreign country requiring the other party to the marriage to make any payment or transfer any property for the benefit of the applicant or a child of the marriage, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with;
>
> (*f*) any right which the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any foreign country, and if the applicant has omitted to exercise that right, the reason for that omission;

> (*g*) the availability in Singapore of any matrimonial asset in respect of which an order made under section 121G in favour of the applicant could be made;
>
> (*h*) the extent to which any order made under section 121G is likely to be enforceable; and
>
> (*i*) the length of time which has elapsed since the date of the divorce, annulment or judicial separation.

40 Sections 121D and 121F of the Women's Charter are *in pari materia* with ss 13 (the leave mechanism) and 16 (the duty to consider whether the court of England and Wales is the appropriate venue for the application) of the MFPA, respectively. However, we note that in respect of the jurisdictional requirements in s 15 of the MFPA and s 121C of the Women's Charter, s 15 of the MFPA has an *additional* ground under s 15(1)(c) that is not present in s 121C of the Women's Charter, this being the ground that "either or both of the parties to the marriage had at the date of the application for leave a beneficial interest in possession in a dwelling-house situated in England or Wales which was at some time during the marriage a matrimonial home of the parties to the marriage". This is the ground on which the appellant was granted leave to commence Part III proceedings in the English court (see [13] above). In the LRC Report, the LRC explained (at [62]) that this was "thought to be too tenuous a connection for the Singapore court to assume jurisdiction where the parties have otherwise no other connection with Singapore, even if the resulting orders are only in relation to that property".

Principles concerning the grant of an ASI

41 Finally, we turn to the principles concerning the grant of an ASI.

42 An ASI is an order of the court compelling the party subject to the order to refrain from instituting or continuing with proceedings abroad (see the High Court decision of *PT Sandipala Arthaputra v STMicroelectronics Asia Pacific*

Pte Ltd and others [2015] 5 SLR 873 ("*PT Sandipala*") at [71]). The general principles governing the issuance of ASIs are well-established in Singapore. First, the jurisdiction is to be exercised when the "ends of justice" require it; second, where the court decides to grant an injunction restraining proceedings in a foreign court, its order is directed not against the foreign court but against the parties so proceeding or threatening to proceed; third, an injunction will only be issued restraining a party who is amenable to the jurisdiction of the court; fourth, since such an order indirectly affects the foreign court, the jurisdiction is one which must be exercised with caution (see the decision of this court in *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] 1 SLR 732 ("*Sun Travels*") at [65]).

43 This court has also identified five factors (as stated in *Lakshmi* at [50]) that have to be considered when deciding whether to grant an ASI (see the decisions of this court in *VKC v VJZ and another* [2021] 2 SLR 753 ("*VKC*") at [16]–[20]) and *Sun Travels* at [66]):

(a) whether the defendant is amenable to the jurisdiction of the Singapore court;

(b) whether Singapore is the natural forum for resolution of the dispute between the parties;

(c) whether the foreign proceedings would be vexatious or oppressive to the plaintiff if allowed to continue;

(d) whether the ASI would cause any injustice to the defendant by depriving the defendant of legitimate juridical advantages sought in the foreign proceedings; and

(e) whether the institution of foreign proceedings was or would be in breach of any agreement between the parties.

Although these factors are to be considered in the round, a breach of an agreement has been regarded as a separate basis on which an ASI may be granted; one that is distinct from vexatious or oppressive conduct (see *Sun Travels* at [67]).

44 Whether there has been vexatious conduct involves an assessment and evaluation of a number of factors. The list of factors is not closed. The inherent weakness of a claim sought to be pursued in the foreign proceedings when taken together with other factors may be a relevant factor in considering whether the foreign proceedings are vexatious (see *VKC* at [19]). Factual findings which have supported findings of vexation or oppression include where the foreign proceedings were instituted in bad faith or for no good reason, are bound to fail, will cause extreme inconvenience (see the decision of this court in *John Reginald Stott Kirkham and others v Trane US Inc and others* [2009] 4 SLR(R) 428 ("*Kirkham*") at [47]), amount to an unlawful attack on the plaintiff's legal rights (see the High Court decision of *Evergreen International SA v Volkswagen Group Singapore Pte Ltd and others* [2004] 2 SLR(R) 457 at [46]–[64]), or are duplicative of Singapore proceedings (see *PT Sandipala* at [112]–[129]). In so far as this last category is concerned, however, there is no presumption that a multiplicity of proceedings is vexatious or oppressive *per se* – something additional is required to make the duplication vexatious. For example, the greater the positive and voluntary involvement of the injunction respondent in the local proceedings, and the longer the local suit has been allowed to proceed before the commencement of the parallel foreign proceedings, the stronger the case for an injunction (see *PT Sandipala* at [137] as well as Thomas

Raphael QC, *The Anti-Suit Injunction* (Oxford University Press, 2nd Ed, 2019) ("*The Anti-Suit Injunction*") at paras 19.43–19.44).

45 Related to the question of whether or not the foreign proceedings are vexatious or oppressive would be the injustice that each party might suffer if the injunction were or were not granted. Consideration of a juridical advantage in the foreign forum would include the kind of remedy and its availability to the party bringing proceedings in the foreign jurisdiction based on the application of foreign law to the substance of the parties' dispute, rather than the law of the competing forum (see *VKC* at [20]).

46 Finally, we note the observation of the High Court in *PT Sandipala* (at [71]) that, while an ASI is directed at the opposing party and not the foreign court, its indirect effect on the foreign court may nevertheless be an affront to comity. Bearing in mind considerations of comity, it is apposite to note that the court's jurisdiction in respect of an ASI should be exercised sparingly and only in exceptional cases.

Issues before this court

47 The following issues arise for the court's determination in the present appeal:

(a) What are the principles applicable to the grant of an ASI against Part III proceedings in the UK?

(b) Should an ASI have been granted in this case?

(c) Has the respondent come before this court with unclean hands?

Issue 1: What are the principles applicable to the grant of an ASI against Part III proceedings?

48 In the present case, as we noted earlier, the DJ applied the factors in *Lakshmi* at [50] (the "*Lakshmi* factors") in ascertaining whether the ASI should be granted (see [43] above). In our view, this approach is, with respect, not appropriate in the context of *this* case.

The "typical" case

49 We begin by considering the context of a "typical" case where an ASI is sought based on allegations of vexatious or oppressive conduct.

50 The respondent referred to the decision of the English Court of Appeal in *Munib Masri v Consolidated Contractors International Company SAL and another* [2008] EWCA Civ 625 ("*Masri*"). Masri had obtained judgment in London against two companies, "CCIC" and "CCOG" (at [2], [4]). CCIC and CCOG subsequently brought an action in Yemen for a declaration that they were not liable to Masri, and Masri successfully obtained an ASI against CCIC and CCOG in England (at [5]), which was upheld on appeal by the English Court of Appeal. The English Court of Appeal observed that the fact that a respondent was seeking to re-litigate in a foreign jurisdiction matters which were already *res judicata* between himself and the applicant by reason of an English judgment could be a sufficient ground for the grant of an ASI (at [82]). CCIC and CCOG were seeking to re-litigate abroad the merits of a case which they had lost in England, and this was a "classic case" of vexation and oppression designed to interfere with the process of the English court in litigation to which they had submitted (at [95]). The ASI was therefore necessary to protect the jurisdiction of the English court, its process and its judgments (at [99]–[100]).

51 *Masri* has been cited with approval in the Singapore courts, for example, by the High Court in *Beckkett Pte Ltd v Deutsche Bank AG and another* [2011] 1 SLR 524 ("*Beckkett*") (at [34], [42]), and by the Singapore International Commercial Court ("SICC") in *Baker, Michael A (executor of the estate of Chantal Burnison, deceased) v BCS Business Consulting Services Pte Ltd and others* [2022] 3 SLR 103 (at [51]–[54]), where the SICC noted that *Masri* was a "paradigm example of a case involving consecutive proceedings".

52 The parties have also referred to the English Court of Appeal decision of *Aliye Ayten Ahmed and another v Mehmet Mustafa* [2014] EWCA Civ 277 ("*Ahmed*"). In this case, following the parties' divorce proceedings, the English court made final orders apportioning ownership of various properties in England and in the Turkish Republic of Northern Cyprus ("TRNC"). The order expressly stated that neither party was entitled to make any further application in relation to their marriage in the jurisdiction of England and Wales or in any other jurisdiction (at [2]). The wife had also previously given the English court an undertaking not to, *inter alia*, take any further steps in earlier proceedings in TRNC or bring further proceedings in North Cyprus in relation to the properties in North Cyprus owned by the parties save with the leave of the English court (at [8]). Following the conclusion of the divorce proceedings in England, the wife issued a petition for divorce and a claim for financial provision in TRNC, where she sought a greater share for herself than was awarded by the English court (at [3]). The husband was granted an ASI to prevent the wife from carrying on or commencing proceedings in any jurisdiction, and the grant of the ASI was upheld by the English Court of Appeal (at [5], [45(a)]). The English Court of Appeal noted that the subject matter of the proceedings did not, in itself, render an attempt at foreign re-litigation "unconscionable", and *Agbaje* established that such a follow-on jurisdiction as represented by Part III of the MFPA was

internationally acceptable. However, that did not rule out the existence of cases where, on the facts of the case concerned, it was indeed unconscionable to contemplate either party seeking to have the very same issues redetermined before a different court (at [21]). When considering whether the wife's actions or proposed actions in the court of TRNC were vexatious and oppressive, the English Court of Appeal stated that the judge was entitled to hold that the wife's actions were *prima facie* of that quality, unless they could be justified – and in the circumstances of the case, no such justification was established (at [22]). The ASI was therefore proportionate and necessary when viewed in the light of the wife's conduct, having given her one hundred per cent commitment to the English process (at [25]).

53 Finally, we note that the *Lakshmi* factors have also been applied in the context of family proceedings. For example, in *AQN v AQO*, the wife commenced divorce proceedings in Singapore in January 2010, and the husband commenced proceedings in New York in May 2010 for an order that the wife be restrained from alleged breaches of the terms of the prenuptial agreement they had made in New York in 1999 (at [3]). In upholding the lower court's grant of an ASI against the New York proceedings (at [32]), the High Court applied the *Lakshmi* factors (at [16]); it held that the foreign proceedings commenced by the husband were vexatious and oppressive (at [27]) and that there was no injustice to the husband inflicted by the grant of the ASI (at [28]–[31]).

The present case

54 However, unlike *Masri*, *Ahmed* and *AQN v AQO*, the present case concerns a situation where (i) the foreign proceedings are initiated under an

English statute, ***and*** (ii) Singapore has enacted its *own* legislation modelled after Part III, in the form of Chapter 4A of the Women's Charter.

55 The implications of these two points distinguish this case from the "typical" case.

Significance of proceedings under Part III of the MFPA

56 First, Part III offers *a statutory right* of relief that is conferred upon a certain class of litigant. A Part III application is contingent upon there being a *foreign decree* of divorce, annulment or legal separation in an overseas country that is entitled to be recognised as valid in England and Wales (see s 12(1) of the MFPA), and an applicant may be granted leave to commence Part III proceedings *notwithstanding* that an order has been made by a court in a country outside England and Wales requiring the other party to the marriage to make any payment or transfer any property to the applicant or a child of the family (see s 13(2) of the MFPA). Part III therefore does not *foreclose* a grant of leave to an applicant *even if* a court outside the UK has already dealt with the financial issues in the divorce; it confers jurisdiction on an English court that is *additional to* the jurisdiction of a foreign court. On the face of it, there is therefore nothing *inherently* vexatious or oppressive in the conduct of a party who seeks financial relief under Part III after having received an order for financial relief from a court overseas. That is the whole point of the legislation.

57 That said, however, not *all* applicants who have obtained a decree of divorce, annulment or legal separation outside the UK are *automatically* eligible for relief under Part III. The UK Supreme Court in *Agbaje* noted that (at [33]):

> 33. In the present context the principal object of the filter mechanism [in section 13 of the MFPA] is *to prevent wholly unmeritorious claims being pursued to oppress or blackmail a*

> *former spouse*. The threshold is not high, but is higher than "serious issue to be tried" or "good arguable case" found in other contexts. It is perhaps best expressed by saying that in this context "substantial" means "solid". …
>
> [emphasis added]

We note that this court has cited this paragraph of *Agbaje* in observing that the purpose of the equivalent leave mechanism under Chapter 4A "is only to sift out plainly unmeritorious cases or those which amount to an abuse of process" (see *UFN v UFM (CA)* at [29], [34]).

58 The Law Commission of England and Wales had proposed this "filter mechanism" in its 1982 Report to protect against unmeritorious applications and to ensure that the English court only intervenes in appropriate cases:

> **(i) The "filter" mechanism**
>
> 2.1 The essence of the scheme put forward in the Working Paper was that the court should have power, in appropriate cases, to make orders for financial relief in favour of a party to a marriage and any children of the family notwithstanding the existence of a prior foreign divorce. The most difficult aspect of the problem is to provide workable rules for ensuring that relief is confined to those cases *in which it is appropriate for the English court to intervene*. …
>
> 2.2 …We have given further consideration to the procedural aspects of the matter in an attempt to ensure, not only that the court's powers are only exercised in appropriate cases, but also that potential respondents are adequately protected. We believe that unless such protection is available, the mere fact of issuing proceedings could confront the respondent with an acute dilemma: he might well be satisfied that he had a strong defence to the application, yet to defend it would necessarily involve him in substantial expense – particularly if (as would often be the case) he was resident abroad. *We believe it to be right to provide some measure of protection against the possibility of applications under the proposed legislation being used to exert improper pressure on respondents to settle in order to avoid the expense of contesting an application.*
>
> 2.3 Effect is given to this proposal … *by providing that no application for an order for financial relief shall be made … unless leave of the High Court has first been obtained*; and that

> the court shall not grant leave to make such an application unless it considers that there is substantial ground for the making of the application for financial relief. …
>
> [emphasis added]

59 In our view, this "filter mechanism" in the MFPA presupposes that the English court will indeed be diligent in sifting out unmeritorious cases, including those cases which are "being used to exert improper pressure on respondents to settle". Indeed, the Singapore High Court has noted, citing the LRC Report, that the leave requirement has proven in practice "to be useful in sieving out unmeritorious applications" in the UK (see *Harjit Kaur* at [13]).

Significance of Singapore enacting Chapter 4A

60 We now turn to the implications of Singapore having enacted legislation modelled after Part III of the MFPA, *ie*, Chapter 4A.

61 First, Chapter 4A is part of Singapore's public policy under the Women's Charter. This is significant because, in deciding whether considerations of comity should inhibit (or even proscribe) the grant of an ASI, the court must weigh those considerations against the public policy of the Singapore legal system (see *Beckkett* at [44]–[46]). In this appeal, therefore, this court must consider whether allowing the Part III proceedings to continue would offend the public policy underpinning Chapter 4A.

62 Second, Singapore's interpretation of Part III (on which Chapter 4A is modelled) may also affect other foreign courts' interpretation of Chapter 4A, and their willingness to grant an ASI (or similar relief) against the commencement of Chapter 4A proceedings in Singapore. The present appeal therefore has potential ramifications for how foreign jurisdictions deal with Chapter 4A.

63 With these differences in mind, we now consider whether it was appropriate to apply the *Lakshmi* factors to this case.

The applicability of the Lakshmi factors

(1) Amenability to the jurisdiction

64 First, we note that the party against whom the ASI is sought must be amenable to the jurisdiction of the Singapore court. In our view, it is uncontroversial that this is a requirement both in the present case and in the "typical" case. Amenability means that the court has *in personam* jurisdiction over the party that the injunction seeks to bind, and the court must have *in personam* jurisdiction over that party since the ASI is addressed to the party who is ordered to exercise self-restraint or suffer the consequences prescribed by law (see *PT Sandipala* at [75]). In the present case, the appellant rightly did not dispute in the proceedings below (or before us) that she is amenable to the jurisdiction of the Singapore court. The appellant voluntarily submitted to the jurisdiction of the Singapore courts by choosing to bring her claims for financial relief in Singapore, after an uncontested divorce in Singapore (see *PT Sandipala* at [79]; see also [11] above).

(2) Natural forum for the resolution of the dispute

65 We now turn to the second *Lakshmi* factor of whether Singapore is the natural forum for the resolution of the dispute between the parties. The DJ said there was no dispute that Singapore "is clearly the more appropriate forum".

66 In our view, however, unlike cases such as *AQN v AQO*, the question of whether Singapore is the "natural forum" is *not* relevant in this particular context. We agree with the appellant that the whole basis of Part III (and

Chapter 4A) is that it may be appropriate for more than one jurisdiction to be involved (see *UFN v UFM (CA)* at [47] and *Agbaje* at [49]). As noted by the UK Supreme Court in *Agbaje* (at [49]–[50]):

> 49. *But the forum non conveniens principles were developed to deal with cases in which it was necessary to decide which of two jurisdictions was the appropriate one in which proceedings were to be brought.* Section 16 [of the MFPA] does not impose a statutory *forum non conveniens* test. It does not require the court to determine the only appropriate forum where the case may be tried more suitably for the interests of the parties and the ends of justice. *No choice between jurisdictions is involved. The whole basis of Part III is that it may be appropriate for two jurisdictions to be involved, one for the divorce and one for ancillary relief.*
>
> 50. *Many of the factors in section 16(2) have much in common with those which would be relevant in a forum non conveniens enquiry, but they are not directed to the question of which of two jurisdictions is appropriate.* They are directed to the question whether it would be appropriate (which is the meaning of the word *conveniens* in *forum conveniens*) for an order to be made by a court in England and Wales when *ex hypothesi* there have already been proceedings in a foreign country (including proceedings in which financial provision has been made). Little assistance can therefore be obtained from the stay cases (and still less from the anti-suit injunction cases) in the Part III exercise. *The task for the judge under Part III is to determine whether it would be appropriate for an order to be made in England, taking account in particular of the factors in section 16(2), notwithstanding that the divorce proceedings were in a foreign country which may well have been the more appropriate forum for the divorce.*
>
> [emphasis added]

67 Similarly, the High Court in *UFM v UFN* [2018] 3 SLR 450 ("*UFM v UFN (HC)*") has observed (at [35]–[36]):

> 35 *It is equally clear, on the other hand, that the LRC did not intend for the doctrine of natural forum to apply as a free-standing principle in the Chapter 4A exercise.* … it is clear from the plain text of s 121F(2) [of the Women's Charter] that the concerns of natural forum are, if anything, held in the balance with policy considerations specific to the context of granting financial relief consequent on a foreign divorce. *Those*

> *considerations include ensuring finality of litigation, preventing any abuse of process, and correcting for unfairness in any ancillary financial provisions obtained in a foreign jurisdiction. …*
>
> 36 It is therefore clear from the text and history of Chapter 4A that its drafters recognised that *injustice may arise should only one forum,* ie*, the forum of divorce, be allowed to address any and all ancillary matters*. Accordingly, in line with Lord Collins's second observation (see [33] above), *Chapter 4A's very premise is that it may be appropriate for more than one forum to be involved.* … the Chapter 4A test for appropriate forum, embodied in s 121F, applies only to the specific ancillary context of financial relief. … these concepts of appropriateness address specific concerns arising in the family context. *They are therefore not co-extensive with the doctrine of natural forum even though they share with it similar policy considerations, including the interest in maintaining the comity of nations and the need to prevent the abuse of process.*
>
> [emphasis added]

68 In our view, therefore, it is not helpful to ask which forum is the more appropriate forum in the present case and to apply the various factors considered in *AQN v AQO* (such as the availability of witnesses and the law governing the dispute (see *AQN v AQO* at [18])). The answer in this case would either be England and Wales, since that is the only place where Part III proceedings can be pursued, or Singapore, since that is where the parties divorced. However, that does not actually address the question of whether an ASI should be granted ***in the unique context of the Part III regime***, which confers a ***statutory*** *right* on a certain class of litigant and which envisions that ancillary relief may be granted by more than one jurisdiction.

(3) Vexatious or oppressive conduct

69 The heart of the analysis ***in the present context***, in our view, really rests on the ***third*** *Lakshmi* factor – *whether the Part III proceedings would be* ***vexatious or oppressive*** ***to the respondent*** *if allowed to continue*. We highlight here that, as stated at [8] above, we do not agree with the appellant's counsel's

submission that the test of "vexatious or oppressive" conduct may be subsumed within the test of "unconscionable" conduct. The High Court in *AQN v AQO* at [25]–[26] has explained that the former term was coined by Lord Goff of Chieveley in the Privy Council decision of *Société Nationale Industrielle Aerospatiale v Lee Kui Jak* [1987] AC 871, while the latter term was coined by Lord Hobhouse of Woodborough in the House of Lords decision of *Turner v Grovit* [2002] 1 WLR 107, and that the two terms are not synonymous. In this regard, Thomas Raphael has suggested that the test of "vexatious or oppressive" conduct is to be preferred (see *The Anti-Suit Injunction* at paras 4.57–4.59):

> 4.57 … The simplest approach would have been to stick with Lord Goff's concepts of 'the ends of justice' and 'vexation or oppression' as formulated in *Aérospatiale*. This has been the approach taken in the subsequent House of Lords, Supreme Court, and Privy Council cases that have considered the test. … It is therefore arguable that Lord Goff's tests should be viewed as established as being the law as a matter of precedent.
>
> 4.58 It is suggested that the language of 'the ends of justice' is also to be preferred as a matter of principle. Using unconscionability as the primary test brings with it the danger of excessive closeness to the historical equitable legacy of the common injunction. It is also arguably a legal fiction. In many cases where anti-suit injunctions are granted, there is no real sense in which the injunction defendant's *conscience* is or should be engaged. 'Unconscionable conduct' fits particularly poorly as a way to describe situations where the injunction is granted to protect the jurisdiction of the English court, or English public policy. Further, the language of 'the ends of justice', or 'vexation and oppression' is a more appropriate way to frame those cases where features of the foreign litigation warrant the imposition of an injunction. The greater suitability of Lord Goff's tests is illustrated by the fact that in a number of cases where the concept of unconscionable conduct has been formally applied, it has merely served as a redundant, higher-level conceptual shell for the application of the underlying test of vexatious or oppressive behaviour.
>
> 4.59 In addition, although Lord Hobhouse articulated the notion of 'unconscionable conduct' to focus attention on the 'wrongful conduct of the individual', it is submitted that this risks oversimplification. Anti-suit injunctions are not merely a matter of private law, but also inescapably involve public

> interests, because of the tensions with comity that they produce. Locating the concept of the 'ends of justice' at the heart of the relevant test compels the court to address not merely the conduct of the injunction defendant, but also the ends of justice as a whole.
>
> [emphasis in original]

We find this analysis persuasive, and we endorse the test of "vexatious and oppressive" conduct as stated in *AQN v AQO*. We also reiterate here our observation (see [8] above) that the concept of unconscionability is a specific legal term of art in the sphere of equity, and may itself be too vague and general in specific contexts even within that particular sphere (see the decision of this court in *BOM v BOK*).

70 We have noted earlier (at [44] above) that facts supporting a finding of vexation or oppression include the following factors: where the foreign proceedings were instituted in bad faith or for no good reason, are bound to fail, will cause extreme inconvenience, amount to an unlawful attack on the respondent's legal rights or are duplicative of Singapore proceedings. In *AQN v AQO*, for example, the High Court found that the New York proceedings were vexatious and oppressive as the wife had not been receiving maintenance from the husband and her financial resources were strained from dealing with numerous applications filed by her husband both locally and in New York, whereas her wealthy husband had the resources to pursue litigation (at [27]). In *Masri*, the English Court of Appeal found that the judgment debtors were seeking to re-litigate abroad the merits of a case which they had lost in England, and that this was a "classic case of vexation and oppression", designed to interfere with the process of the English court in litigation to which they had submitted (at [95]).

71 These same concerns are clearly relevant to Part III proceedings. First, as noted in *Agbaje*, there is a possibility that a party may pursue Part III proceedings to "oppress or blackmail a former spouse" (see [57] above), by embroiling the former spouse in a protracted dispute in England, causing the former spouse to incur further time and expenses in defending the Part III application, and thereby exert pressure on the former spouse to settle in the foreign court (see [58] above) – similar to the behaviour of the husband in *AQN v AQO*. Second, there is a possibility that an applicant will rely on Part III to take advantage of a "more generous approach" in English law that they may not have under foreign law (see *Agbaje* at [72]) and try to "get a second bite of the cherry" (see *UFN v UFM (CA)* at [48]) – similar to the judgment debtors in *Masri* who were trying to obtain a more favourable decision in Yemen than they had in England.

72 That said, however, it ***cannot*** be the case that the commencement of Part III proceedings is ***always*** vexatious and oppressive, justifying the grant of an ASI. First, this position would render Part III ineffectual, as parties who divorce in Singapore would then *never* be able to subsequently pursue Part III proceedings. That, in our view, would be an affront to comity, as the Singapore court would essentially be taking the position that Part III applications after a Singapore divorce are always an abuse of process.

73 Second, this position would sit uncomfortably with the fact that Singapore itself has modelled Chapter 4A after Part III. This would mean that foreign applicants who wish to apply in Singapore under Chapter 4A after a foreign divorce may similarly be prevented by an ASI (or equivalent relief) granted in the foreign country against commencing Chapter 4A proceedings, and hence similarly render Chapter 4A ineffectual. This militates against the whole point of enacting such legislation in the first place (see [36] above) and

would, in our view, be contrary to the public policy behind Chapter 4A – which was to plug a lacuna in the law by allowing a Singapore court to order financial relief for an applicant consequent upon a foreign divorce.

74 Third, this position would also sit uncomfortably with the fact that the leave mechanism in Part III of the MFPA presumes that the UK court will be diligent in sifting out unmeritorious applications. The Singapore courts have acknowledged this function of the leave mechanism and its effectiveness in filtering out unmeritorious cases (see *UFN v UFM (CA)* at [29], [34]; *Harjit Kaur* at [13], [17]) – and the same mechanism has been adopted in Chapter 4A. Further, before making an order for financial relief under Part III, the English court has a duty to consider whether England and Wales is the appropriate venue for the application, having regard in particular to the matters in s 16(2) of the MFPA, which includes the connection the parties to the marriage have with England and Wales, and their connection with any country outside England and Wales (see [34] above). Finally, in deciding whether to make orders for financial provision and property adjustment under s 17, the English court is to have regard to factors in s 18 of the MFPA, including "all the circumstances of the case" and the extent to which any foreign order for the making of payments or the transfer of property by a party to the marriage has been complied with or is likely to be complied with (see ss 18(2), 18(6) of the MFPA; see also *Agbaje* at [44]). As noted by the UK Supreme Court in *Agbaje* (at [52]):

> 52. … There is nothing internationally objectionable in legislation which gives a court power to order financial provision notwithstanding a foreign decree of divorce, whether or not the foreign court has ordered financial provision, provided that the forum has an *appropriate connection* with the parties or their property. *The whole point of the factors in s 16(2) is to enable the court to weigh the connections of England against the connections with the foreign jurisdiction so as to ensure that there is no improper conflict with the foreign jurisdiction.* That is why in *Holmes v Holmes* [1989] Fam 47, at 53, Purchas LJ was

> right to note that *section 16 reflected the principles of comity as between competent courts.*
>
> [emphasis added]

75 In the light of the English court's duty to ensure that there "is no improper conflict with the foreign jurisdiction", we think that the English court's considerations of whether to grant leave and order relief under sections 13 and 16(2) of the MFPA respectively *would inevitably overlap* with the inquiry as to whether an ASI should be granted. For example, under s 16(2)(f) of the MFPA, the English court will consider any right which the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any country outside England and Wales, and if the applicant has omitted to exercise that right, the reason for that omission. This overlaps with the question as to whether the applicant's conduct is vexatious or oppressive, depending on the applicant's reasons for not exercising his or her rights in that foreign country. For example, if the applicant had chosen not to apply for relief in the foreign court in the hope of obtaining a more favourable award in the English court, this could constitute forum shopping (see *Harjit Kaur* at [21]), and could be a factor in favour of granting an ASI.

76 In our view, therefore, these statutory provisions in the MFPA are useful "safety valves" against a foreign applicant taking advantage of the MFPA to undermine the Singapore court's orders. Further, Singapore has itself adopted these same provisions in Chapter 4A. If a Singapore court were, *by default*, to grant an ASI against the commencement of Part III proceedings, this would *preclude* the English court from engaging in its own analysis, under its own law, of whether it is appropriate for England to grant leave or the relief sought. That would be contrary to the principle of comity as the Singapore court would effectively be taking the position that the UK's legislation (and, likewise,

Singapore's Chapter 4A) does not provide sufficient safeguards against abuse of process. In our view, therefore, a Singapore court should ***generally be slow to grant an ASI*** against the commencement of Part III proceedings in the UK.

77 This, however, does not mean that a Singapore court can *never* grant an ASI against Part III proceedings. We think that these "safety valves" in Part III of the MFPA are useful as *supplementary aids*, and weight should certainly be placed on the grant of leave by an English court (again, bearing in mind that Singapore has adopted similar legislation in the form of Chapter 4A). However, this should not be *conclusive* of whether an ASI should be granted against Part III proceedings, as the Singapore court must retain the ability to intervene to safeguard its own public policy, and the integrity of its court proceedings, where necessary. In our view, there would certainly be some cases where the commencement of Part III proceedings would result in unwarranted interference with Singapore's judgments and court process (as noted in *Ahmed* at [21], while a follow-on jurisdiction under Part III of the MFPA is "internationally acceptable", that does not rule out the existence of cases where, "on the facts of the case, it is indeed unconscionable to contemplate either party seeking to have the very same issues re-determined before a different court"). One example might be where the Singapore court has reserved judgment on the ancillary matters, and, while the court is deliberating, one party then applies for leave in England to commence Part III proceedings. This is similar to the conduct of the plaintiff in *Beckkett*, which had commenced an action in Indonesia just after its appeal had been heard by this court but before this court had delivered judgment (at [35], [42], [46]). There is a strong argument, in our view, that such conduct would be sufficient basis for granting an ASI. However, what exactly constitutes an unwarranted interference with Singapore's public policy ought to be dealt with after full consideration of all the facts in each case,

taking into account factors like whether the English court has granted or denied leave, the stage of the divorce proceedings in Singapore, and the nature of the parties' claims in the Part III proceedings.

78 For completeness, we observe that the fourth *Lakshmi* factor – whether the ASI would cause any injustice by depriving the applicant of legitimate juridical advantages sought in the Part III proceedings – overlaps with the third factor. For example, a party who is found to be pursuing Part III proceedings in order to oppress or blackmail a former spouse would plainly not be deprived of any legitimate juridical advantage were an ASI to be granted. We also note that the fifth *Lakshmi* factor (whether the institution of foreign proceedings was or would be in breach of any agreement between the parties) is a *separate* ground from vexatious or oppressive conduct, as the basis for granting an ASI in such a case is *contractual* (see *VKC* at [16]). However, as the parties in this case have not made any such agreement in respect of the Part III proceedings, we say no more on this point. We reiterate that the *present* case really turns on whether the appellant's conduct was ***vexatious or oppressive***.

79 We now turn to the next question – whether an ASI should have been granted in this case.

Issue 2: Should an ASI have been granted in this case?

Whether there will be re-litigation

80 The DJ reasoned that the appellant would be raising the same arguments and using the same factual matrix for her claim to the Property in the UK, and she "should not be permitted to relitigate this issue as the division of [the Property] was fully considered and concluded with orders made pertaining to its status". On appeal, the Judge agreed with the DJ. He reasoned that once the

Property was considered under Part III, the adequacy of the appellant's share of the matrimonial assets, as decided by the DJ, would necessarily have to be reviewed in its entirety. This re-litigation could result in the possibility of the English court coming to a different finding from the DJ.

81 In one sense, the DJ and the Judge were correct that there would be "re-litigation" of the division of the Property in the UK. There would, literally, be another set of proceedings commenced in respect of the Property – such as how another set of proceedings was commenced in TRNC in *Ahmed* and in New York in *AQN v AQO* in respect of the parties' divorce, and another action was commenced in Yemen in *Masri* in respect of the judgment debtors' liability to Masri.

82 However, while there may *literally* be "re-litigation" of the division of the Property, it does not automatically follow that an ASI should issue. As we have said earlier (at [69] above), the heart of the analysis is not whether there is, literally, "re-litigation", but whether the Part III proceedings *amount to vexatious or oppressive conduct* in the circumstances of the case. Even in the "typical" cases, there is no presumption that a multiplicity of proceedings, in and of itself, is vexatious and oppressive (see *PT Sandipala* at [112]). For example, in *Masri*, the attempted re-litigation by the judgment debtors was vexatious and oppressive because the matters in question were already *res judicata* between them and the applicant by reason of an English judgment (at [82]). In *PT Sandipala*, the plaintiff's conduct in commencing an action in Singapore against the defendants and subsequently commencing an action against them in Jakarta after failing to bring forward the trial dates in Singapore (at [29]) was held to be vexatious and oppressive (at [110]), as, *inter alia*, the claim in Jakarta was founded on the same wrongful acts that were the subject of the action in Singapore (at [121]), and there was a lack of a good explanation

for the duplicative proceedings (at [142]) (For completeness, we note here that the High Court's decision in *PT Sandipala* was affirmed by the Court of Appeal in Civil Appeal No 182 of 2015).

83 In our view, however, the present case is different since the Property is the subject of *Part III proceedings*. Unlike the situation in *PT Sandipala* (at [142]), there *is* a "good explanation" for the duplicative proceedings in the present case because there is *an English statute* which gives the appellant a right to commence proceedings in the UK in respect of the Property (see [56] above). In these circumstances, the *mere fact* that the appellant is commencing Part III proceedings in respect of the Property, and her reliance on the same arguments or the same factual matrix present in the Singapore proceedings for her claim in the UK, is ***not*** a sufficient justification for the grant of an ASI.

84 What then of the possibility that the English court may come to *a different decision* from the Singapore court in respect of the division of the Property? The respondent's counsel argues that the appellant's conduct is vexatious and oppressive because the AM orders expressly include an order that the Property was to belong to the respondent solely and that there would be no division thereof – the appellant's application for a share in the Property under Part III "clearly runs a serious risk of conflicting judgments". In this case, the DJ had found that the Property was not a matrimonial asset and excluded it from the pool of matrimonial assets for division (at [12] above).

85 As we stated earlier (at [6]), this is not an unattractive argument. The UK Supreme Court in *Agbaje* (at [54]) said that Part III "allows the [English] court to *supplement* the order of a foreign court" [emphasis added]. However, the line between *supplementing* and *supplanting* an order of a foreign court seems a rather fine one. For example, if a Singapore court had ordered that the wife

should receive 5% of a matrimonial asset ("A") while the husband received 95% of A, and the wife subsequently commenced Part III proceedings in the UK seeking a 15% share of A, it is not clear whether a UK court order granting the wife a 15% share of A would thereby *supplant* the Singapore order of 5% with the UK order of 15%, or *supplement* the Singapore order of 5% with an additional 10%. Much will obviously depend on the precise facts and circumstances concerned. We note here, for completeness, that the possibility of such a scenario arising under Chapter 4A, and the issue of how to balance the competing public policies underpinning Chapter 4A and the interests of finality in the division of matrimonial assets in the foreign jurisdiction, was not canvassed during the relevant Parliamentary debates – the then Minister for Community Development, Youth and Sports, Dr Vivian Balakrishnan, only referred to the scenario where a foreign court "for some reason makes *no* financial provision" [emphasis added], but did not explain whether this meant no financial provision *at all* or no financial provision *in respect of specific assets*, or what was the appropriate procedure in the event that the foreign court had made *some* financial provision (see *Singapore Parliamentary Debates, Official Report* (10 January 2011), vol 87 at cols 2048–2049). This issue may well have to be addressed by Parliament should such cases arise for decision in the future. We pause here to observe that, in our view, it may be possible to lower the incidence of such disputes in future similar cases involving Part III proceedings (or proceedings under similar foreign legislation) through active case management, for example, by inviting parties to confirm from the start of their divorce proceedings in Singapore all possible jurisdictions in which they intend to litigate the ancillary matters pertaining to the divorce, so that the Singapore court (and the parties themselves) can consider whether certain assets should be left to be divided by the courts of that particular jurisdiction after the

parties have been divorced in Singapore (or indeed, whether it would be more prudent to commence divorce proceedings in that foreign jurisdiction instead).

86 We should, at this juncture, also highlight another issue that may arise in the context of Part III proceedings: there could arguably be an impact on Singapore's public policy in ensuring the finality of its judgments, depending on the conditions that are attached to the grant of financial relief under Part III. In *Agbaje*, the wife received a lump sum equal to 65% of the gross sale proceeds of the Lytton Road property in the UK, *upon the condition that she agreed to relinquish her life interest in the Lagos property* (see *Agbaje* at [35]). *Agbaje* was cited in the Singapore case of *UFM v UFN (HC)*, where the parties divorced in Indonesia and the wife was granted sole custody of their children and an order for child maintenance. The wife did not first seek a division of matrimonial property in Indonesia, and instead applied under Chapter 4A seeking a division of a property in Singapore (the "Seaview Property") which the parties jointly owned (see *UFM v UFN (HC)* at [1]). The wife was granted leave by the High Court, and the decision was upheld by this court on appeal in *UFN v UFM (CA)*. Before the High Court, the husband argued that the wife's application for leave should not be granted because, *inter alia*, by asking a Singapore court to deal with the Seaview Property in isolation, the wife was "cherry-picking or forum shopping for the best outcome in Singapore" (see *UFM v UFN (HC)* at [81]). The High Court noted that it had the power to grant financial relief only in respect of the Seaview Property, but expressed some concerns (at [84]–[85]):

> 84 While the court has such power, *there could be reason, nonetheless, to be cautious about dividing matrimonial assets in a piecemeal fashion, as the law pertaining to such division would be different in Singapore and Indonesia.* The district judge was quite rightly concerned that there were other properties in Indonesia. *If the wife obtains a division of the Seaview Property separately from the remaining pool of matrimonial assets, she may in some way prejudice the success of a subsequent*

> *application to the Indonesian courts for relief out of the parties' Indonesian assets.*
>
> 85 In response to this concern, counsel for the wife says that the wife seeks to divide the Seaview Property in resolution of all the parties' claims on their matrimonial assets both here and in Indonesia. Among these assets, the Seaview Property, the wife says, is the most valuable. She refers to *Agbaje* … where the judge ordered the husband in that case to pay his former wife a lump sum equal to 65% of the gross proceeds of the sale of their house in London, which was valued at £425,000, upon the wife's undertaking to relinquish her interest in a house in Nigeria (where she was divorced), which was valued at £86,000. *In the present case, the wife has indicated her willingness to undertake to relinquish her claim to the matrimonial assets in Indonesia. In my view, this is a matter which the court charged with deciding the full merits of the division should consider, in the light of information subsequently adduced as to the entirety of the parties' assets.*
>
> [emphasis added]

87 In *Agbaje*, the wife commenced Part III proceedings *after* ancillary orders had been made in Nigeria in respect of the division of the matrimonial assets. In *UFM v UFN (HC)*, the wife commenced Chapter 4A proceedings without seeking any ancillary orders in Indonesia in respect of the division of the matrimonial assets. In both cases, however, the applicants' willingness to relinquish their rights in respect of matrimonial assets in Nigeria and Indonesia respectively was either a *condition of* or a *relevant factor to* the court granting financial relief under Part III and Chapter 4A. Rather than merely supplementing the orders of a foreign court (see *Agbaje* at [54]), it seems that the English and Singapore courts were, *in substance*, either supplanting the foreign orders (in *Agbaje*) or *foreclosing* the possibility of such foreign orders (in *UFM v UFN (HC)*). In the present case, it could be argued that there would be an impact on Singapore's public policy *if*, as a condition of being granted financial relief under Part III in respect of the Property, the appellant is similarly required by the English court to relinquish her claim to the matrimonial assets

in Singapore (like the wife in *Agbaje*), as this would, *in effect*, amount to setting aside the DJ's AM orders.

88 We have in the foregoing paragraphs (see [84]–[87] above) sketched out some of the possible complexities that can arise in this context. This is compounded in situations where a decision made by the Singapore court to distribute the matrimonial assets in a particular way stands to be fundamentally affected or undermined by an English court making an order for financial relief under Part III (or by another court under legislation similar to Part III). We will have to weigh the considerations in the light of the observations we have set out here and with the benefit of further and fuller arguments in future cases. In our view, however, neither of the concerns we have raised at [84]–[87] above arises in the present case to justify granting an ASI.

89 First, we do not think there will be any supplanting of the Singapore orders or a risk of "conflicting judgments" in the present case. In this case, the DJ found that the Property was *not* part of the pool of matrimonial assets. Thus, the Property could not have been divided between the appellant and respondent pursuant to the divorce proceedings in Singapore – once the DJ found that it was not a matrimonial asset, *the question of division did not even arise.* As DDJ Hodson described it in his reasons for granting leave:

> 28. The consequence is [the Property] is an excluded asset. How, therefore, should the family Court treat it? This has been the heart of it. Mr [A] says, in contrast, on behalf of former wife "The Court has not dealt with it". It was not brought into account in any way; therefore this English family court is free to deal with it. … This is looking at simply saying, did the Singapore court include this asset within its balance sheet?
>
> 29. If I deal with that as a simple question, the answer is no, it did not. Mr [B] is absolutely right; it did decide to say, "Will we bring it into account or not?" However, then it decided it would not, under the local law, and therefore it was completely

> kept out. It appeared nowhere on the balance sheet and it is an excluded asset.

90 We therefore think that the Part III proceedings initiated by the appellant ***cannot*** constitute a "re-litigation" of the division of the Property, since the question of division was never before the Singapore court. That makes it less likely that there will be any conflict with Singapore's public policy in relation to the division of matrimonial assets.

91 We add that we view this case as being similar to other cases concerning Part III where certain assets were simply *not* divided between the parties in other jurisdictions. For example, in *Agbaje* itself, the UK Supreme Court restored the order of the English High Court granting financial relief to a wife who had applied under Part III following a divorce in Nigeria. The parties' assets comprised two houses in London in the husband's sole name (which were the bulk of the assets), one being the "Lytton Road property", and other properties in Nigeria (at [2], [15], [35]). The Nigerian court awarded the wife a life interest in a property in Lagos with a capital value of about £86,000 (the "Lagos property") and a lump sum of about £21,000 for maintenance, but it dismissed the wife's claims in respect of the properties in London (at [2], [20], [22]). The wife was subsequently granted leave to apply under Part III of the MFPA (at [24]), and the English High Court ordered that the wife should receive a lump sum equal to 65% of the gross sale proceeds of the Lytton Road property, on the condition that the wife agreed to relinquish her life interest in the Lagos property (at [35]). In our view, the appellant in the present case is in a similar position to the wife in *Agbaje* – the latter's claim in respect of the Lytton Road property, which was in the husband's sole name, was unsuccessful in Nigeria but allowed in the UK. Likewise, in the present case, the appellant's claim in respect of the Property, which is in the respondent's sole name, has been

unsuccessful in Singapore – however, she should not be barred from pursuing financial relief in the UK in respect of the Property under Part III because of that.

92 Further, as we have stated earlier (at [6]), had the appellant *accepted* before the Singapore court that the Property did not form part of the pool of matrimonial assets, she would not have been precluded from initiating a claim pursuant to Part III in respect of the Property as the Property would not have been the subject of the matrimonial proceedings in the Singapore court. We do not see why the outcome should be different just because the appellant was *unsuccessful* in her claim in respect of the Property before the Singapore courts.

93 Second, with respect to the possibility of the English court imposing certain conditions on the grant of financial relief, we do not think that this is a sufficient basis to justify the grant of an ASI in this case. In our view, it would be mere speculation to assume that the appellant would be required to relinquish her rights over the matrimonial assets in Singapore as a condition of being granted financial relief under Part III. There was no indication of such a condition being imposed when the appellant was granted leave to commence Part III proceedings, nor was there any intimation of this in DDJ Hodson's judgment. Nonetheless, while the issue does not arise in the present appeal, we observe that such a question could *possibly* arise for determination in future cases, depending on the facts and circumstances of those cases.

94 The above analysis, in our view, suffices to dispose of the appeal before us. We set aside the ASI on the basis that there has been no re-litigation of any kind, nor has there been any vexatious or oppressive conduct on the appellant's part.

95 For completeness, however, we will briefly address the other points raised by the DJ and by the respondent.

Not filing an appeal in the Singapore court

96 The DJ reasoned that not filing an appeal against the AM orders and bringing duplicative proceedings in the UK was clearly vexatious conduct on the appellant's part. According to the DJ, the "correct thing" for the appellant was to appeal against the AM orders, "not re-litigate the issue in a different forum".

97 In our view, however, commencing Part III proceedings without first appealing against the AM orders does not *automatically* lead to the conclusion that the appellant's conduct is vexatious and oppressive. There is no requirement for a foreign applicant to exhaust remedies in the foreign court before applying under Chapter 4A – rather, in deciding whether it is the appropriate venue to grant the relief sought, the Singapore court will, under s 121F(2)(*f*) of the Women's Charter, have regard to any right which the applicant has or has had to apply for financial relief in the foreign country, and if the applicant has omitted to exercise that right, the reason for that omission (see *UFN v UFM (CA)* at [49]). For example, if the applicant has chosen not to apply for relief in the foreign court in the hope of obtaining a more favourable award in the Singapore court, this could constitute forum shopping (see *Harjit Kaur* at [21]), and weigh against the Singapore court making an order under Chapter 4A.

98 Section 121F(2)(*f*) of the Women's Charter is *in pari materia* with s 16(2)(f) of the MFPA. The English court, in deciding whether it is the appropriate venue to grant relief, would thus similarly consider the applicant's

reasons for not pursuing an appeal against the AM orders and whether this is any indication of "forum shopping" or an attempt to "obtain some further advantage" by applying under Part III (see *Harjit Kaur* at [21]). In fact, in this case, we note that the respondent had made the argument that the appellant had failed to appeal against the AM orders in Singapore in his skeleton argument opposing the grant of leave under Part III. In any event, if the Singapore court's position is that there is no requirement for a foreign party to exhaust foreign remedies before applying in Singapore under Chapter 4A, the Singapore court should similarly not require a party to exhaust remedies in Singapore before applying in the UK under Part III of the MFPA and *preclude* the applicant from seeking such relief by granting an ASI.

99 This should not be taken to mean that pursuing Part III proceedings instead of filing an appeal in Singapore can *never* amount to vexatious or oppressive conduct justifying the grant of an ASI. In this case, however, given that the appellant was in fact granted leave under Part III, and given that her Part III application in the UK was confined to an asset which was *not subject to any division* before the Singapore court, we do not think it was vexatious or oppressive for the appellant to have commenced Part III proceedings rather than filing an appeal against this part of the DJ's decision.

Other examples of the appellant's alleged vexatious or oppressive conduct

100 Finally, we address the respondent's other arguments concerning the appellant's alleged vexatious and oppressive conduct.

101 First, the respondent's counsel submits that there would be "time, effort and expense" incurred in the English proceedings. While that is true, this does not *in itself* show that the appellant's conduct is vexatious or oppressive, or that

the appellant is using the Part III proceedings to exert improper pressure on the respondent (see [58] above).

102 Second, the respondent's counsel submits that the appellant had made misleading statements in her Witness Statement in Support of her Application for Leave to Apply for Financial Relief dated 10 February 2020 ("Witness Statement") and in her submissions for the hearing for the grant of leave under Part III – the appellant had said that because the Property was not classified as a matrimonial asset, it was "left out of all account under Singapore law" and "excluded from any consideration". The appellant had also allegedly misrepresented the AM orders by saying that the DJ ordered there was to be no division of the "matrimonial home", when the Singapore court had not even characterised the Property as a matrimonial asset. Finally, the respondent's counsel argues that the appellant's description of the AM orders in her Witness Statement as leaving her with "an award of S$120,000 … as full and final settlement of [her] share of the matrimonial assets which amounts to 8.7% of the total assets available for division" is a "grave misrepresentation" of the DJ's AM orders. The lump sum payment of $120,000 was only one part of the package of orders made, which included spousal and child maintenance and a housing allowance of $535,800; further, the appellant was in fact awarded 25% of the pool of matrimonial assets.

103 In our view, if it is found that an applicant under Part III of the MFPA has made misrepresentations in the Part III proceedings, this could be a factor weighing in favour of granting an ASI, to the extent that these misrepresentations indicate that the Part III application was made in bad faith and/or suggest that the true purpose of the Part III proceedings was to harass the other party (see *PT Sandipala* at [130]). However, we do not think the

appellant's statements in the Part III proceedings in respect of the Property are indicative of any bad faith on the appellant's part.

104 First, we do not think the appellant had misrepresented the AM orders by saying there was to be no division of the "matrimonial home". In her Witness Statement, the appellant explained that the Property was where she and the husband began pre-marriage co-habitation in March 2009, and she defined the Property as "the matrimonial home". It was in this context that the appellant later referred to the DJ's order that the "matrimonial home", *ie*, the Property, would not be subject to division and would belong to the respondent solely. Second, the appellant also explained that the 6.5 months she had lived in the Property after the parties' marriage appeared to have been too short to persuade the Singapore court to classify it as a matrimonial asset, and that "the property was categorized as non-matrimonial and therefore excluded from the capital division". We do not see anything misleading about this – the DJ had indeed excluded the Property from the pool of matrimonial assets and held that it was not amenable for division. Our view also applies to the appellant's submissions for the hearing for the grant of leave under Part III, where the appellant explained that "no part of [the Property's] value falls into the category of 'matrimonial asset' for the purpose of Singapore law".

105 As for the appellant's comment in her Witness Statement about being awarded a $120,000 lump sum, which amounted to "8.7% of the total assets available for division", we note that the DJ had awarded the appellant *25% of the joint net assets* of $462,010.02, although the appellant was correct that she was awarded a $120,000 lump sum by the DJ. According to the respondent, the percentage of 8.7% "erroneously takes into account in its denominator numerous assets already classified as non-matrimonial and therefore not available for division, including [the Property]", resulting in the "wildly

exaggerated figure of 8.7% being presented to the English court". However, we do not think that this is indicative of *bad faith* on the appellant's part justifying the grant of an ASI. First, the appellant's counsel in the UK explained in her skeleton argument for the hearing before DDJ Hodson concerning the grant of leave that the parties *disagreed* as to whether they should assess the outcome provided by the Singapore court "in terms of the asset base overall (both matrimonial and non-matrimonial) or simply by reference to those assets which the Singapore court considered matrimonial and therefore amenable to orders". The proper interpretation of the AM orders was therefore a point in dispute between the parties. Second, the appellant did not actually say that she had gotten an 8.7% share of the *pool of matrimonial assets as determined by the DJ* – rather, she said that her award of $120,000 amounted to 8.7% *of the total assets available for division*, which, in context, reads as a reference to *all* of the parties' assets placed before the Singapore court for consideration. We further note, in any event, that this reference to the 8.7% figure did not appear to have an impact on the grant of leave – DDJ Hodson had referred *directly* to the DJ's decision and specifically observed that the DJ had awarded the appellant a 25% share of the matrimonial assets. Finally, we also note that the appellant had in fact included the DJ's orders as to spousal maintenance, child maintenance and the rental payments of $4,500 per month by the respondent till 7 March 2022 in her Witness Statement.

106 To sum up, we do not think the respondent's other allegations concerning the appellant's vexatious and oppressive conduct are made out.

Issue 3: Has the respondent come before this court with unclean hands?

107 Finally, for completeness, we note the appellant's argument that the doctrine of unclean hands applies in the present case, such that the respondent

should not be entitled to the ASI. However, since we are setting aside the ASI in any event, we do not think it is necessary to address this argument.

Conclusion

108 In conclusion, we allow the appeal in CA 52 and set aside the ASI.

109 We award the costs of CA 52 and OS 14 to the appellant. As we have found the Transcript to be helpful in our consideration of CA 52, we also award the costs of SUM 80 to the appellant. The appellant submits that she is entitled to costs of $46,924.60, inclusive of GST and disbursements, consisting of $10,000 for costs and $1,403.60 for disbursements for SUM 80, and $32,000 for costs and $3,521.07 for disbursements for CA 52. The respondent submits that he is entitled to costs of $3,000 plus disbursements of $300.40 for SUM 80, and costs of $36,000 plus disbursements of $1,637.40 for CA 52. In our view, costs of $10,000 for SUM 80, with disbursements of $1,403.60, is a reasonable figure. As for CA 52, while it did involve a novel point of law, it was on a narrow issue, and we think $30,000 (all-in) will suffice. Finally, in respect of OS 14, we fix costs at $8,000 (all-in). The usual consequential orders will apply.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Judith Prakash
Justice of the Court of Appeal

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