

ACW v ACX
[2014] SGHC 53

Case Number : Divorce Suit No 4187 of 2011 (RAS 123 of 2013 and RAS 128 of 2013)
Decision Date : 09 April 2014
Tribunal/Court : High Court
Coram : Edmund Leow JC
Counsel Name(s) : Mr Ivan Cheong and Ms Cheong Yen Lin Adriene (Harry Elias Partnership) for the plaintiff; Ms Bernice Loo and Mr Darren Chan (Allen & Gledhill LLP) for the defendant.
Parties : ACW — ACX

Family Law – Matrimonial Proceedings – Procedure – Discovery

Civil Procedure – Discovery of documents

Civil Procedure – Interrogatories

9 April 2014

Edmund Leow JC:

Introduction

1 This case concerns cross appeals by the plaintiff (“Husband”) and the defendant (“Wife”) regarding orders for discovery and interrogatories made against the Husband relating to company documents in the context of ancillary matters following the interim judgment for divorce. This raises the issue of the extent of the Husband’s obligations regarding discovery and interrogatories that relate to companies over which he has significant control and interest. At one end of the spectrum, where a husband is merely a minority shareholder of a company with no management powers, the husband’s discovery obligations in relation to the company generally only extends to that of financial statements that he would receive as a shareholder from the company. At the other end of the spectrum, where a husband effectively owns the entire company such that he has total control of the company, his discovery obligation would generally extend to documents belonging to the company, in addition to the financial statements he would receive as a shareholder. The present case lies in neither extreme. The Husband is not a majority shareholder and does not have total control of the companies, but he has significant control. In such a situation, the court has to engage in a balancing exercise with the facts and legal principles in mind.

2 In RAS 123 of 2013, the Husband is appealing against the dismissal of his appeal in RA 72 of 2013, which was the Husband’s appeal against some of the orders made by the Deputy Registrar. Specifically, the Husband is arguing that the Deputy Registrar and District Judge erred in ordering the Husband to provide documents and to answer interrogatories pertaining to the [X] group of companies which he has an interest in.

3 In RAS 128 of 2013, the Wife is appealing against the dismissal of her appeal under RA 87 of 2013, which was her appeal against some of the orders made by the Deputy Registrar.

The background

4 Interim judgment for divorce was granted on 30 January 2012. Apart from the affidavit of assets and means which were exchanged, no further ancillary affidavits have been filed or exchanged. The parties have agreed to hold off the filing of all discovery affidavits pending the outcome of the ongoing appeals.

5 For the purposes of these proceedings, the [X] group of companies which the Husband has an interest in consists of:

- (a) [X] Group;
- (b) [X] (Asia Pacific) Limited;
- (c) [X] Group Pte Ltd;
- (d) [X] Group Singapore Pte Ltd;
- (e) [K] (Australia) Pty Limited;
- (f) [X] Asia Pacific (Thailand) Co Ltd;
- (g) [X] Consultant Pvt Ltd;
- (h) [X] KK;
- (i) [X] (Asia Pacific) Ltd, Guangzhou Branch;
- (j) [X] (Asia Pacific) Ltd, Shanghai Branch;
- (k) [X] (Asia Pacific) Ltd, Hong Kong Branch; and
- (l) [X] (Asia Pacific) Taiwan Corp.

6 [X] (Asia Pacific) Limited is a company incorporated in Hong Kong. The Husband is a co-chairman and co-owner of [X] (Asia Pacific) Limited with [Y]. Their shareholdings are equal, and all decisions have to be made jointly, by consensus. [X] (Asia Pacific) Limited in turn owns other companies under the [X] umbrella group of companies, except for [X] Group Singapore Pte Ltd, which is owned by the Husband and [Y] directly and also in equal shares. From a commercial point of view, all the companies operate as one entity.

Decision below

7 With respect to the Husband's discovery obligations, the Husband was ordered by the Deputy Registrar to :

- (a) state on affidavit whether the requested documents relating to the [X] group of companies was in his possession, custody or power, and if not, when he parted with it and what has become of it;
- (b) exhibit in the affidavit a copy of each of the requested documents stated to be in his

possession, custody or power; and

(c) state the reasons why the requested documents were not in his possession, custody or power, if any of the requested documents are not exhibited.

8 The Deputy Registrar found that the requested documents were in the Husband's possession, custody or power.

9 With respect to the Wife's interrogatories, the Husband was ordered by the Deputy Registrar to state:

(a) a complete list of all the Husband's business interests;

(b) the profit-share arrangement that the Husband had with [Y] in respect of the [X] group of companies;

(c) how much in total the Husband drew from the [X] group of companies since the Husband joined in or around 2000;

(d) all the immovable properties owned by the [X] group of companies; and

(e) all the bank accounts held by the [X] group of companies which the Husband had access to.

10 No order was made for a professional valuer to be appointed by the court to value the companies the Husband has an interest in.

11 No order was made to grant the Wife discovery of documents relating to the alleged Vietnamese joint venture.

12 On appeal, these orders were affirmed by the District Judge.

The Husband's case

13 The Husband is appealing against the court's order for discovery and interrogatories of the following documents and information pertaining to the [X] group of companies:

(a) all financial statements, including but not limited to, audited or unaudited accounts, profit and loss statements, income statements, balance sheet, cash flow statement, consolidated accounts, and management accounts;

(b) all income tax documents;

(c) quarterly bank account statements for HSBC Business Integrated AUD savings account [account number xxx] ("the HSBC savings account");

(d) instructions given by [X] (Asia Pacific) Limited to RHL Appraisals Ltd to prepare the valuation report; and

(e) information pertaining to all immovable properties and bank accounts held by [X] group of companies.

The Wife's case

14 The Wife is appealing against the court's refusal to make any orders on her requests for discovery of documents and information pertaining to a Vietnamese joint venture that the Husband entered into.

Issues

15 The issues to be decided are:

(a) Whether the Deputy Registrar erred in ordering the Husband to disclose and produce documents and answer interrogatories pertaining to the [X] group of companies ("issue 1").

(b) Whether the Deputy Registrar erred in not ordering the Husband to disclose and produce documents, and answer interrogatories pertaining to the Husband's Vietnamese joint venture ("issue 2").

Issue 1: Whether the Deputy Registrar erred in ordering the Husband to disclose and produce documents and answer interrogatories pertaining to the [X] group of companies

The law applicable to discovery in ancillary matters

16 The applicable law governing discovery, inspection of documents and interrogatories in ancillary matters are found in rr 24 to 39 of the Women's Charter (Matrimonial Proceedings) Rules (Cap 353, R 4, 2006 Rev Ed) ("the MPR"). Rule 24 provides that O 24, 26 and 26A of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) do not apply to any claim for ancillary relief. It appears that the discovery regime provided by the MPR and that in civil proceedings under the Rules of Court are largely similar. One notable difference is that the court may order a party to exhibit a copy of the documents admitted to be in that party's possession, custody or power (see r 25(2) of the MPR). This is in contradistinction to the discovery regime in civil proceedings where the starting point is that a party merely has to allow inspection of the documents admitted to be in that party's possession, custody or power (see O 24 r 9 of the Rules of Court). Nevertheless, an order for production may be sought in certain situations (see O 24 r 11 of the Rules of Court). Hence, the MPR allows the court to facilitate the early production of documents relevant to the ancillary matters, such as bank account statements of the parties. Since there are similarities between the discovery regimes of the MPR and the Rules of Court, the principles applicable to the discovery regime under the Rules of Court should generally apply to that under that MPR to the extent that they are consistent with the MPR.

17 For easy reference, extracts from r 25 of the MPR are produced here:

Discovery in respect of ancillary relief

25. —(1) Subject to paragraphs (7A) and (9) and rule 35, the court may, at any time, on the application of any party to an action or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application, or any class of documents so specified or described, is or has at any time been in his possession, custody or power, and if not then in his possession, custody or power, when he parted with it and what has become of it.

(2) Upon the making of an order under paragraph (1), if a document or class of documents is stated by the party in his affidavit to be in his possession, custody or power, the court may order

the party to exhibit a copy or copies of the document or class of documents in the affidavit.

(3) An application for an order under this rule must be in such form as the Registrar may direct, and be supported by an affidavit stating the belief of the deponent —

(a) that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power, the document or class of documents specified or described in the application; and

(b) that the document falls within one of the following descriptions:

(i) a document on which the party relies or will rely;

(ii) a document which could —

(A) adversely affect his own case;

(B) adversely affect another party's case; or

(C) support another party's case; and

(iii) a document which may lead the party seeking discovery of it to a train of inquiry resulting in his obtaining information which may —

(A) adversely affect his own case;

(B) adversely affect another party's case; or

(C) support another party's case.

...

(8) In deciding whether to grant an order under paragraph (1), the court shall take into account the extent of discovery which the party from whom discovery is sought has stated that he is willing to provide under paragraph (6)(a), as well as any offer made by the party to give particulars or make admissions relating to any matter in question.

(9) An order under paragraph (1) shall not be made in respect of any party before the granting of the interim judgment, or before the Affidavit of Assets and Means has been filed by the plaintiff and the defendant, unless, in the opinion of the court —

(a) the order is necessary to prevent the disposal of a party's assets;

(b) the order is made in conjunction with an order preventing the disposal of a party's assets; or

(c) there is any other exceptional circumstance necessitating the making of the order.

18 The case of *B v B (Matrimonial Proceedings: Discovery)* [1978] Fam 181 ("*B v B*") provides useful guidance for discovery of documents belonging to a company, of which the husband was a director and shareholder, in the context of proceedings for ancillary relief. Even though the case was decided under the general civil procedure rules applicable in England at that time, the principles are

applicable insofar as they are not inconsistent with the MPR.

19 The following general guidance on discovery can be distilled from *B v B*:

(a) There are three requirements to be satisfied for an order for discovery to be given. First, the person against whom discovery is sought is a party to the suit. Second, the documents are in his possession, custody or power. Third, the documents relate to matters in question in the proceedings.

(b) A person has the obligation to disclose all relevant documents which are or have been in his custody or power, even if he is not the owner or sole owner of them, and *prima facie* he is obliged to produce all such documents for inspection of the other party. Where the person under a discovery obligation objects to the production, the court will exercise its discretion in deciding whether to order production.

(c) If the three requirements are not satisfied, there is no discretion to order production of the documents.

20 More directly, a helpful summary of the relevant principles relating to discovery of documents belonging to a company of which the husband was a director and shareholder can be found in *B v B* at 193–194:

(a) The documents of a company are in the legal possession of the company. If they are or have been in the actual physical possession of a director who is a party to litigation they must be disclosed by that director, if relevant to the litigation, even though he holds them as servant or agent of the company in his capacity as an officer of the company.

(b) If the director who is a party to the litigation does not have physical possession of the documents, the question of fact of whether the documents are within the power of the director arises. "Power" in this context means "the enforceable right to inspect or obtain possession or control of the document" in the personal capacity of the director. This is in contradistinction to the right to inspect vested in a director in his capacity as a director. Without the consent of the company, the director has no right to inspect the documents. Much will depend on the share structure of the company.

(c) If the company is the alter ego of such a director so that he has unfettered control of the company's affairs, he must disclose and produce all relevant documents in the possession of the company. Where the company is not the alter ego of a director, the factors to be considered are:

(i) the extent of the shareholding of the husband;

(ii) whether it amounts to control of the company;

(iii) whether the minority shareholders are adverse to him;

(iv) how the board of directors is constituted; and

(v) whether there is any objection by the board to disclosure of any of the documents sought.

(d) A very wide range of issues are relevant in proceedings relating to ancillary matters. The

court has to assess what the husband is shown to have, but also what could reasonably be made available to him. In many cases, audited accounts of companies of which the husband is a shareholder will be sufficient, together with full disclosure of all the husband's personal financial records. But there are cases when the court will go behind company accounts and order discovery of company books and documents. It is not usual, however, for the court to take this course unless there is evidence before it from accountants or other experts that the published accounts of the company cannot be relied upon.

(e) Where relevant documents in the possession of a company are disclosed by a director as being in his custody or power, the court has a discretion whether or not to order production of them. In exercising the discretion, the court will have regard to all the circumstances and balance the relevance and importance of the documents and the hardship likely to be caused to the wife by non-production against any prejudice to the husband and third parties likely to be caused by production.

(f) It has not hitherto been the practice of the court to order production of company documents to which the board of directors objects on affidavit, provided that the court is satisfied that the objection is not contrived for the purpose of frustrating the powers of the court. The court will not in the exercise of its discretion order parties to do that which they have no power to do. The court will not order production unless it is satisfied that production is necessary either for disposing fairly of the issues between the parties or for saving costs.

(g) Where the wife cannot obtain documents on discovery, she may be able to apply for leave to issue a subpoena against the secretary or other officers of the company to produce relevant documents.

My decision on the Husband's appeal on discovery

HSBC savings account

21 The Husband stated that the HSBC savings account is a corporate bank account and not his personal bank account. Hence, the bank statements of that account are not "accessible" to him. [\[note: 1\]](#) The Husband also stated that although there were occasions when the Husband requested for the company to transfer Australian dollars to his daughter in Australia, that was purely out of convenience. The amounts transferred were deducted from his directors' fees and he did not receive additional income. [\[note: 2\]](#)

22 However, there is no evidence to show that the HSBC savings account belongs to the [X] group of companies. On the contrary, the fact that the Husband seems to have operated the account in sending payments for the maintenance of his two daughters from the first marriage suggests that the account belongs to the Husband. [\[note: 3\]](#) Moreover, the Husband initially stated in his notice in response to request for discovery dated 6 June 2012 that he would provide the statements to the HSBC savings account in an affidavit.

23 In the circumstances, I find that the Deputy Registrar did not err in ordering the Husband to disclose and produce the statements.

Financial statements and income tax documents

24 In the hearing before me, the Husband conceded that the audited accounts of [X] (Asia

Pacific) Limited have to be disclosed because the Husband would receive it as a direct shareholder. Hence, what is in issue is whether the other documents listed in [13] above, including the financial statements of the companies other than [X] (Asia Pacific) Limited, should be disclosed and produced.

25 It is clear that the Husband has an obligation to disclose all relevant documents which are or have been in his custody or power, even if he is not the owner or sole owner of them (see above at [19(b)]). The Husband argued in his written submissions that the documents are not within his "power, custody or possession" to disclose because he merely "may have access" to these documents in his capacity as a director. However, he did not in fact state unequivocally in his affidavit that the documents are not within his "power, custody or possession" to disclose. Instead, the Husband's position on affidavit seems to be that the valuation report he provided is sufficient and that he did not need to disclose the financial statements. [\[note: 4\]](#) In a later affidavit, the Husband referred to his notice in response to request for discovery exhibited in his earlier affidavit, which stated that he does not have "possession, access or control" of the [X] group of companies' financial statements and income tax documents. [\[note: 5\]](#) I note that the exact words of the order of court and r 25 MPR, *ie*, "possession, custody or power", were consistently avoided in the Husband's affidavit. Since the Husband is legally represented, I find the deliberate choice of using "access" instead of "custody" suspicious. Moreover, I find the Husband's argument that he does not have the financial statements of [X] group of companies, despite the Husband being a co-owner and co-chairman of [X] (Asia Pacific) Limited, incredible. As stated earlier, the Husband conceded that he receives the financial statements for [X] (Asia Pacific) Limited as a direct shareholder. The same concession must apply to [X] Group Singapore Pte Ltd, as the Husband is also a direct shareholder. As for the other companies in the [X] group of companies, even though the Husband is not a direct shareholder, he is a 50% owner of the parent company, [X] (Asia Pacific) Limited. In substance, the Husband is a shareholder of the other companies. Without more than an equivocal denial by the Husband, I am not satisfied that he does not have custody of the financial statements of the other companies. Since the Husband and [Y] are the only two directors and equal shareholders, and all decisions in the companies have to be made jointly by consensus, the board of directors of [X] (Asia Pacific) Limited cannot and has not prevented the Husband from obtaining the requested documents at least for the purposes of making those decisions. A logical inference from the facts is that the Husband does have access to the requested documents.

26 Further, I note that the focus of the Husband's arguments in the hearing before me and in the written submissions was on whether the Husband had the authority to disclose the financial statements and whether the Husband would breach his fiduciary duties to the companies as a director if he disclosed the financial statements, rather than whether those documents were in his custody. That misses the point. The starting inquiry should be whether the financial statements are or have been in his custody. It is only when it has been established that he does not have custody of the financial statements, that the issues of whether the financial statements are in his power or possession arise. The focus on that argument suggests that the Husband has custody of the financial statements.

27 Another reason why the Husband's position is doubtful is his concession that the Husband would receive the audited accounts of [X] (Asia Pacific) Limited as a direct shareholder. He stated in his notice in response to request for discovery that he does not have "possession, access or control" of the [X] group of companies' financial statements and income tax documents. However, he conceded in the hearing before me that the audited accounts of the [X] (Asia Pacific) Limited have to be disclosed because the Husband would receive it as a direct shareholder. The Husband's concession is effectively an admission that his initial blanket denial of having custody of the requested documents is not entirely accurate.

28 Accordingly, I find that the Husband has custody of the documents sought by the Wife.

29 Should the unaudited financial statements and income tax documents not be in the custody of the Husband, the question of whether the documents are within the power of the Husband also arises, *ie*, whether the Husband has an enforceable right to inspect or obtain possession or control of the documents in his personal capacity. In the present case, since the Husband only owns 50% of the shares in the companies and all decisions in the companies have to be made jointly by consensus, he does not have unfettered control over the companies, and he is hence not the alter ego of the companies. That is not the end of the inquiry though. In deciding whether the documents are within the power of the Husband, the factors to be considered are (as enumerated in [20(c)] above): (a) the extent of the shareholding of the Husband; (b) whether it amounts to control of the company; (c) whether the minority shareholders are adverse to him; (d) how the board of directors is constituted; (e) and whether there is any objection by the board to disclosure of any of the documents sought.

30 As stated earlier, the Husband is a co-chairman and co-owner of [X] (Asia Pacific) Limited with [Y]. The Husband and [Y] are the only two shareholders, and their shareholdings are equal. Hence, I note that the Husband is clearly not a minority shareholder. [X] (Asia Pacific) Limited in turn owns other companies under the [X] umbrella group of companies, except for [X] Group Singapore Pte Ltd, which is owned by the Husband and [Y] directly. I note that all management decisions have to be made jointly by consensus. However, the Husband has not shown any evidence as to whether he has an enforceable right to inspect or obtain possession or control of the documents belonging to the [X] group of companies in his personal capacity as a 50% shareholder of [X] (Asia Pacific) Limited and a 50% shareholder of [X] Group Singapore Pte Ltd. No memorandum or articles of association of the [X] group of companies has been brought to my attention. I also note that the board of directors of [X] (Asia Pacific) Limited cannot and has not prevented the Husband from disclosing the requested documents because [Y] is only one of the two directors with the Husband being the other director. Moreover, if the Husband is correct that the HSBC savings account belongs to the [X] group of companies, and not to the Husband personally, then the fact that the Husband managed to get the company to transfer money to his daughter in Australia suggests that the Husband has substantial control of the companies. In the circumstances, I am not persuaded that the documents are not within the power of the Husband. In any case, I have found earlier at [28] that the Husband has custody of the documents sought by the Wife.

31 Having dealt with the issue of whether the financial statements are within the Husband's custody or power, I move on to the issue of whether the documents asked for are relevant. As stated above at [20(d)], a very wide range of issues are relevant in proceedings relating to ancillary matters. In the present case, we are concerned with valuing the companies the Husband has an interest in, and the availability of funds from these companies. Although the Husband conceded that the audited accounts of [X] (Asia Pacific) Limited, which is the parent company of the subsidiaries, have to be disclosed, those accounts would not give a complete picture of the financial situation of the subsidiaries. For example, a parent company's audited accounts may not show whether its subsidiaries have declared dividends which have yet to be paid to the parent company, or have earned profits but have chosen not to declare dividends at all. Broadly speaking, audited accounts of companies of which the husband is a shareholder will generally be sufficient, and it is not usual for the court to go behind company accounts and order discovery of company books and documents unless there is evidence before it from accountants or other experts that the published accounts of the company cannot be relied upon. However, one must also be alive to the commercial realities of a two-man privately-held company which the Husband is co-chairman and co-owner in equal shares. This is in contradistinction to a public company with numerous shareholders, or even a private company with many shareholders, to keep a check on the management of the company. Although it would be

difficult to find that the present structure would clearly make the Husband the alter ego of the companies, the control he must have over the companies must be quite significant. Therefore, I find that the Husband is closer to a director or shareholder who is the alter ego of the company, than a mere shareholder. Given the circumstances, I find that the order for discovery is necessary for disposing fairly of the cause or matter and for saving costs.

32 Lastly, after it has been established that the financial statements are within the Husband's custody, and that the statements are relevant, the issue of whether the court should exercise its discretion to order production of the documents arises. In exercising the discretion, the court will have regard to all the circumstances in balancing the relevance and importance of the documents and the hardship likely to be caused to the Wife by non-production, against any prejudice to the Husband and third parties likely to be caused by production.

33 In the present case, [Y] has objected to the disclosure and access of the companies' documents on the basis that the scope of company documents the Husband had been ordered to provide is excessive and oppressive, and that the company would need to incur significant costs in complying with the order. [\[note: 61\]](#) However, he did not explain how the companies would be prejudiced. I therefore directed that the Husband procure an affidavit from [X] group of companies explaining any prejudice the companies might suffer if disclosure and production of the documents were ordered. The Husband then filed an affidavit of [X] (Asia Pacific) Limited's Group Finance Director ("[Z]"), [\[note: 71\]](#) which provided two instances of alleged prejudice. First, [Z] stated that time and costs would be wasted in retrieving the documents asked for as the documents were returned to their original locations for filing after the valuation. I do not find this to be a significant prejudice on the companies. Since [Z] stated that [X] (Asia Pacific) Limited had previously provided the documents to its valuer, it is more likely that [X] (Asia Pacific) Limited has kept records of where the documents can be obtained, or it could get copies of the documents from its valuer at no significant cost. In any case, any expense incurred by the companies in procuring the documents should properly be borne by the Husband.

34 Second, [Z] stated that the documents contain confidential information, the disclosure of which would do serious damage to the companies and even expose the companies to litigation for breaching its confidentiality agreement with the companies' clients. [Z] stated that such confidential information include the private particulars of its clients, the exclusive market trades of the companies, sensitive records of other staff, and business terms. I do not find this point to be of much substance. I do not expect the documents to reveal any such confidential information that was alleged to have, and [Z] has not explained how such confidential information would be revealed. What has been ordered for disclosure and production are financial statements, management accounts, and income tax documents. The Husband has not been ordered to produce business agreements of the [X] group of companies with its clients, nor private dossiers of clients. The object of the production of the documents so ordered is to allow the Wife to value the Husband's companies, and to assess the Husband's sources of funds from the companies. To the extent that any of the alleged confidential information which does not go towards the stated object might be revealed in the documents, I shall allow the Husband to redact them. Specifically, I shall allow the Husband to redact the following information from the documents, with liberty for the Husband to apply to me to redact additional information with an affidavit explaining the prejudice the companies would suffer if the information is not redacted:

- (a) client's particulars;
- (b) contract terms with clients;

- (c) client's financial value;
- (d) the companies' exclusive market trades; and
- (e) the companies' human resource records of its staff, save for records of the Husband.

35 The Wife stated in her affidavit that she is willing to give an undertaking that she will only use the information and the documents for the purpose of these ancillary matter proceedings, and will not disseminate or use in any way the information and documents outside of these ancillary matters proceedings. [\[note: 8\]](#) Accordingly, I direct that the Wife provide such an undertaking as a precondition to the production of the documents by the Husband. The permission to redact confidential information and the Wife's undertaking should prevent the companies from suffering any prejudice regarding the production of confidential information.

36 The Husband also argued that if he were to disclose and produce the requested documents, that would amount to a breach of his fiduciary duties as a director to the companies under Hong Kong law, Hong Kong being the place of incorporation of [X] (Asia Pacific) Limited. However, the Wife's expert witness, a solicitor from Hong Kong, stated in her opinion that it is unlikely that the Husband would be in breach of his fiduciary duties if he were to disclose documents on discovery in civil proceedings because all the documents disclosed would remain confidential between the parties and the court. [\[note: 9\]](#) The Wife's expert also stated that it is typical for the Hong Kong court to order such requested documents to be disclosed as part of the financial discovery process for divorce proceedings. [Z] stated that [X] (Asia Pacific) Limited was informed by its auditor that the Husband would be in breach of his fiduciary duties as a director if he were compelled to disclose and produce company documents without the management's approval because that would be prejudicial to the company. [\[note: 10\]](#) In view of [33]–[35] above, I do not find that there is any prejudice that will be caused to the companies by the discovery order. I find the opinion of the Wife's expert, that it is unlikely that the Husband would be in breach of his fiduciary duties, persuasive because it would be rather strange if the disclosure of company documents by a husband as part of the court's discovery order would amount to a breach of his fiduciary duties as a director of the company. In such a case, the husband would be in contempt of court for not complying with the discovery order.

37 Even though the Husband does not have unfettered control of the [X] group of companies, I am alive to the fact that he has significant control as he is the co-owner and co-chairman of the [X] (Asia Pacific) Limited and the co-owner of [X] Group Singapore Pte Ltd. We are not only concerned with valuing the companies, but also with the Husband's access to funds from the companies. If the Husband indeed has access to funds from the companies, the Wife would not be able to detect that without the management accounts, and would hence be prejudiced. This is not a case where there are several shareholders and independent directors who would ensure proper accounting. The possibility of the Husband having access to funds from the companies cannot be said to be fanciful. Having regard to all the circumstances and balancing the relevance and importance of the documents and the hardship likely to be caused to the Wife by non-production, against any prejudice to the Husband and third parties likely to be caused by production, I am of the view that the Deputy Registrar did not err in ordering the audited financial statements and management accounts for each of the companies to be disclosed and produced by the Husband.

Valuation Report

38 I note that there is a valuation report prepared by a valuation company on the value of the [X] group of companies. However, this valuation report must have been based on the information given by

the management of the companies. Without knowing the instructions and information given to the valuation company, it is understandably difficult to accept the valuation report as providing an accurate valuation of the companies.

39 In response to the Wife's request for discovery for the instructions and information given to the valuation company, the Husband stated in his affidavit that the instructions are not relevant, that the communication between the company and the valuation company belongs to the company, and that the instructions are not necessary for the ancillary proceedings. [\[note: 11\]](#) The Husband did not say that the instructions are not within his possession, custody or power.

40 Even though the Husband was not bound to provide a valuation report on the companies, he has done so. Now that the valuation report has been put forth by the Husband as evidence, I find it relevant and necessary for the instructions given by the companies to the valuer to be disclosed so as to provide the court with a proper understanding of the valuation report. I note that the valuation report itself stated that it is based on information provided by the management and the financial projections for the next five fiscal years, in addition to the management accounts. The valuer is likely to maintain a file containing all such relevant documents from the companies, hence any expense in disclosing and producing the information should not be too onerous.

41 Therefore, I dismiss the Husband's appeal on the discovery orders made.

My decision on the Husband's appeal on interrogatories

Information pertaining to all immovable properties and bank accounts held by the [X] group of companies

42 The Husband stated that the interrogatory should be directed against the company as it is a separate legal entity, and that the information has been included in the valuation report. [\[note: 12\]](#) However, the Husband did not deny that he has the information. I find that it is necessary for the Husband to answer the interrogatories regarding the immovable properties despite the fact that the financial statements of the companies have been ordered to be disclosed and produced because the financial statements would typically merely reflect the historical cost of acquiring the immovable properties and may not reflect any changes in the market value of the properties from the time of acquisition till now. The answers to the questions regarding the cash balance in the bank accounts held by the companies are necessary to allow the Wife to value the companies and assess the Husband's access to funds.

43 Therefore, I dismiss the Husband's appeal on interrogatories orders made.

Issue 2: Whether the Deputy Registrar erred in not ordering the Husband to disclose and produce documents, and answer interrogatories pertaining to the Husband's Vietnamese joint venture

44 The Wife is appealing against the court's refusal to make any orders on her requests for discovery of documents and information pertaining to a Vietnamese joint venture that the Husband entered into.

45 I am satisfied that the Husband has provided all the available documents that are within his power, custody and possession. The Wife argued that the Husband would have received documents explaining the concept of his investment in Vietnam. However, the Husband has stated unequivocally in his affidavit that he does not have any further documents to disclose because there was a lack of

paperwork for his investment in Vietnam. [\[note: 13\]](#) The Wife argued that the letter from another investor supporting the Husband's version was not sworn in affidavit. However, I am not prepared to totally disregard it because it is exhibited in the Husband's affidavit where the Husband had sworn that the letter was from Mr Ta Tu Tai, who was another investor in the group. I also note that the Wife has not produced any evidence to substantiate her belief that the Husband is in possession of other documents.

46 The Wife also argued in her written submissions that the Husband can disclose transfer instructions in addition to the statements showing that the transfer of money was made for the investment. The specific request for transfer instructions does not appear to have been made in the Wife's request for discovery. Should the Wife be minded to, she can make a request for such documents.

47 On the issue of interrogatories, the Wife is asking the Husband for the name of the joint venture company in Vietnam allegedly involved in introducing the Husband to the contact for the investment, and whether the joint venture company is related to the [X] group of companies.

48 I find that the Husband has answered the interrogatories sufficiently, save for this particular question. Therefore, I directed that the Husband answer this interrogatory, and the Husband has complied with my direction.

Conclusion

49 For the reasons set out earlier, I dismiss the Husband's appeal and allow the Wife's appeal in part with no order as to costs.

[\[note: 1\]](#) Husband's Affidavit dated 10 July 2012 at p 7.

[\[note: 2\]](#) Husband's Affidavit dated 24 September 2012.

[\[note: 3\]](#) Defendant's Bundle of Documents, tab 2.

[\[note: 4\]](#) Husband's affidavit dated 10 July 2012 at p 3.

[\[note: 5\]](#) Husband's affidavit dated 8 November 2012 at p 4, referring to Husband's Affidavit dated 10 July 2012 at pp 38-39.

[\[note: 6\]](#) [Y]'s affidavit dated 12 September 2013 at para 8.

[\[note: 7\]](#) [Z]'s affidavit dated 1 January 2014 at p 2.

[\[note: 8\]](#) Wife's affidavit dated 5 February 2014.

[\[note: 9\]](#) Ku Ming Wai's affidavit dated 6 November 2013 at p 9.

[\[note: 10\]](#) [Z]'s affidavit dated 1 January 2014 at p 6.

[\[note: 11\]](#) Husband's affidavit dated 8 November 2012 at p 6.

[\[note: 12\]](#) Husband's affidavit dated 10 July 2012 at p 58.

[\[note: 13\]](#) Husband's affidavits dated 17 April 2013 at p 6 and dated 10 June 2013 at p 4.

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