AFS *v* AFU
[2011] SGHC 52

Case Number : Divorce Transfer No DT 626 of 2006 and Summons No 5789 of 2010

Decision Date : 07 March 2011

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Foo Siew Fong (Harry Elias Partnership) for the petitioner; Suchitra Ragupathy (Rodyk & Davidson LLP) for the respondent.

Parties : AFS — AFU

Family Law

7 March 2011

Andrew Ang J:

Introduction

1 The parties, whom I shall refer to as husband and wife, were married on 15 January 1993 in Budapest, Hungary. The wife is Hungarian and the husband is Canadian. Both are Singapore permanent residents. There are two children of the marriage, both sons, born in 1995 and 2000. In or about 2001 to 2002, the husband left the family to live with another woman, [D]. The parties entered into a Deed of Separation ("the Deed") on 19 February 2003. The husband filed the divorce petition on 16 February 2006, and the decree *nisi* dissolving the marriage was obtained on 28 April 2006 and the ancillaries were dealt with separately.

2 The ancillary hearings have been long and tumultuous, involving numerous summonses taken out by both parties, and spanning more than four years. The ancillary orders made by me on 25 November 2010 were as follows:

(a) The husband and wife shall have joint custody of the children, namely, [E] and [F], with the husband having care and control of [E] and the wife having care and control of [F].

(b) The husband shall have access to [F] as follows:

(i) Tuesday and Thursday after school to 9.00pm. The husband is to pick up [F] from school and return him to [Property 1].

(ii) Alternate weekends from Friday after school till Sunday 8.00pm.

(iii) Half of school holidays.

(iv) Alternate public holidays from 10.00am to 8.00pm.

(v) [F]'s birthday on alternate years.

(vi) On [E]'s birthday, access to [F] from after school to 9.00pm.

(The wife did not apply for access to [E] as she preferred that [E] see her voluntarily.)

(c) The husband shall pay $3,500 per month for the maintenance of [F] with effect from February 2010.

(d) The husband shall pay the children's school fees, tuition fees and the transport expenses.

(e) The husband shall pay the sum of $3,600 per month for the rent of the residential premises of the wife and [F] with effect from March 2010.

(f) The husband shall provide [F] a return air ticket to Hungary, once annually.

(g) Other household expenses (including supplemental rental and employment of maid) shall be borne by the wife.

(h) The husband shall pay $1 per month, nominal maintenance for the wife until further order.

(i) The wife to get 25% of the matrimonial assets which is the S$985,000 and the 11.5 million [G] Commodities shares.

(j) Account not to be taken of any other assets of either party.

(k) The husband to take all steps necessary to cause or transfer 25% of the said shares to the wife's CDP Securities Account No [xxx].

(l) The wife to remove the Caveat No [xxx] against [Property 2], after payment and receipt of her share in the 25% of the matrimonial assets.

(m) There will be no order as to costs.

(n) DCA Nos [xxx], [xxx], and [xxx] of 2010 to be withdrawn by consent, with no order as to costs.

(o) Liberty to apply.

3 The husband has appealed against (i) and (k) of my order above. I now give my reasons for my order that the wife is to receive 25% of the matrimonial assets, consisting of S$985,000 and 11.5 million [G] Commodities shares.

Background

4 The husband is presently the managing director of [G] Commodities Pte Ltd ("[G] Commodities"). [G] Commodities is a company listed on the Singapore Stock Exchange. The wife is an associate medical director with [H] Development Pte Ltd. As mentioned earlier, the husband had left the family around 2001 to 2002 for [D] and parties subsequently decided to enter into the Deed. The Deed was comprehensive and included all ancillary matters such as custody, care and control of the children, maintenance for the children and the wife, as well as division of matrimonial assets. More crucially, cl 11 of the Deed read:

11 Assets excluded from division

Both parties agree that asset(s) acquired by either party from the date of this Deed will remain

as asset(s) of the acquiring party.

5 At the time of execution of the Deed, the husband was the managing director of [J] Asia Pte Ltd ("[J] Asia"). However, subsequent to the execution of the Deed there was a buy-out of [J] Asia by [K] Holdings Pte Ltd ("[K] Holdings") which was completed on 12 February 2004. The husband remained as the managing director of [J] Asia. As a result of the buy-out, the husband received a stock option dated 28 June 2004, which provided that the husband could acquire 25% of the current issued and paid up share capital of [J] Asia for S$1 within the next three years from the date of the option, provided that if after the exercise of the option, [J] Asia's annual audited consolidated profit and loss accounts reflected a loss for three consecutive financial years, the husband would have to pay $500,000 for his 25% stake. The husband exercised the option on the very same day. [J] Asia was later renamed [K] Asia Pte Ltd ("[K] Asia").

6 [K] Holdings was a major shareholder of [G] Commodities. Subsequently, on 10 July 2006, both [K] Holdings and the husband sold their shares in [K] Asia to [G] Commodities. The husband received 11.5 million [G] Commodities shares, estimated to be worth around S$12m, and S$985,000 in consideration for his 25% stake in [K] Asia.

7 As the buy-out of [J] Asia and the transfer of the shares to the husband occurred after the execution of the Deed, the husband's assets consisting of 11.5 million [G] Commodities shares and S$985,000 ("the husband's assets") would therefore *prima facie* fall under the exclusion cl 11 of the Deed. However, the wife's position was that the option was given for his efforts in brokering the sale of [J] Asia to [K] Holdings prior to the execution of the Deed.

8 The question of when the issue of a buy-out of [J] Asia arose became pertinent in order to ascertain when the husband's assets were acquired, and whether they were acquired by the husband's efforts expended during the marriage or after separation. The Family Court gave orders on 4February 2010 for the husband to answer interrogatories posed to him by the wife's counsel, as well as to disclose documents relating to the sale and purchase of [J] Asia, with a view to determining if the shares were part of the matrimonial assets.

Division of matrimonial assets

9 The governing provision with regard to the division of matrimonial assets is s 112 of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Act"):

> 112.—(1) The court shall have power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset ***in such proportions as the court thinks just and equitable*** .
>
> (2) It shall be the duty of the court in deciding whether to exercise its powers under subsection (1) and, if so, in what manner, to have regard to all the circumstances of the case, including the following matters:
>
> (*a*) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the matrimonial assets;
>
> ...

(*c*) the needs of the children (if any) of the marriage;

(*d*) ***the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family*** or any aged or infirm relative or dependant of either party;

(*e*) ***any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce*** ;

...

(*g*) ***the giving of assistance or support by one party to the other party*** (whether or not of a material kind), ***including the giving of assistance or support which aids the other party in the carrying on of his or her occupation*** or business; and

...

(3) The court may make all such other orders and give such directions as may be necessary or expedient to give effect to any order made under this section.

(4) The court may, at any time it thinks fit, extend, vary, revoke or discharge any order made under this section, and may vary any term or condition upon or subject to which any such order has been made.

...

(8) Any order under this section may be made upon such terms and subject to such conditions (if any) as the court thinks fit.

...

[emphasis added in bold italics]

10 For a start, it should be noted that s 112(10)*(b)* of the Act defines "matrimonial asset" as including:

(10) In this section, 'matrimonial asset' means —

(a) ...

(b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,

but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

It is clear that the [G] Commodities shares and $985,000 fell within s 112(10)*(b)* of the Act as assets that were acquired *during* the marriage by the husband. The question is whether cl 11 of the Deed should prevail nevertheless.

11 It is evident from s 112 of the Act that in deciding on the division of matrimonial assets the

court must take into account all relevant matters but has the discretion in weighing the relevant factors to come to a just and equitable division for both parties. Ultimately, the court has the power and the discretion to decide what is just and equitable and arrive at a fair conclusion for both parties.

Was the Deed binding?

12 Before me, the husband submitted that the Deed was prepared and drafted by the wife's solicitors, M/s Rodyk & Davidson, based on the wife's instructions. Further, both parties had the benefit of competent and independent legal advice as to the terms and effects of the Deed as affirmed in Recital 1.3 of the Deed. As such, the husband submitted that as the wife was the one who had requested for the Deed to be entered into, it was unfair for her to argue to set aside the Deed. In addition, the husband also submitted that the wife had received the full benefit of the clauses in the Deed until December 2009.

13 However, the wife's version of events was that she had entered into the Deed primarily to secure the interests of the children and the Deed was drawn up based on the husband's disclosure of his income, benefits and assets. Subsequently, the husband had breached various clauses in the Deed and there was also non-disclosure of material facts and assets by the husband. The wife therefore argued that the Deed should be set aside.

14 The wife submitted that the husband had made numerous breaches of the Deed by insisting that the children and the wife move out of their family home, an apartment at [Property 3], into cheaper accommodation; reducing the children's and the wife's maintenance unilaterally; and replacing the children's nanny without the wife's prior consent in contravention of clauses in the Deed providing for the same.

15 More importantly, the husband appeared to have failed to disclose an increase of 10% in his local and off-shore income, a British Club membership, as well as profit shares of US$60,000 paid to the husband from [J] Asia and the 25% stock option he was to receive from [J] Asia. As such, the wife submitted that the Deed ought to be set aside.

16 With regard to the issue of the wife's maintenance, it was stated in cl 7.2.1 that the wife's maintenance would be "subject to review" in the event that there is a "material change in the Husband's financial circumstances". However, the Deed contemplated a change with respect to the maintenance of the wife only, and not the children. As such, a unilateral reduction of the children's maintenance would be a breach of the Deed.

17 It can be said that the mere fact that the parties had executed a Deed did not mean it was the be-all and end-all. In *TQ v TR and another appeal* [2009] 2 SLR(R) 961 ("*TQ v TR*"), it was held:

> 73 It is clear, in our view, that as the ultimate power resides in the court to order the division of matrimonial assets 'in such proportions as the court thinks *just and equitable*' ... a prenuptial agreement *cannot* be construed in such a manner as to *detract from* this ultimate power. However, this does not mean that such a prenuptial agreement cannot (where *relevant*) be utilised to *aid* the court in exercising its power pursuant to s 112 of the Act.
>
> ...
>
> 75 ... how much weight is to be allocated to a prenuptial or postnuptial agreement in each case must ultimately depend on the precise circumstances of the case ...

...

80 ... The ultimate aim of the court is (in accordance with s 112(1) of the Act, ... to arrive at a division of matrimonial assets that is both *just and equitable* as between the parties. We pause to observe that this approach (mandated by s 112 of the Act) is, in fact, flexible and permits the court to consider other developments and changes that have taken place since the marriage (many of which are encompassed within the factors mentioned in s 112(2) itself).

[emphasis in original]

18 While the court is to have regard to the executed Deed (amongst all other circumstances) under s 112(2)*(e)* of the Act in deciding whether to exercise its powers under s 112(1) and if so how; it should be noted that the courts "[would] be especially vigilant and [would] be slow to enforce agreements that [were] apparently not in the best interests of the child or the children concerned" (see *TQ v TR*). Additionally, the decision in *TQ v TR* held that an agreement between parties "*cannot* be enforced *in and of itself*" [emphasis in original]. The terms of an agreement would only constitute one of the factors that the court should take into account in arriving at its decision as to the proportions in which the matrimonial assets concerned are to be distributed. Even if *prima facie* the court would not lightly set aside an agreement between parties, the court has liberty to decide that an agreement ought not to apply if the court does not consider it just and equitable.

19 Turning now to the present circumstances, Recitals 1.5 and 1.6 of the Deed provide that:

1.5 Each party has ***disclosed to the other full details*** of the income, earning capacity, property and other financial resources and the financial needs obligations and responsibilities ***which each has now and is likely to have in the foreseeable future*** in accordance with the Schedule of Monthly Allocations annexed herein.

1.6 Both parties ***acknowledge that they have been given the opportunity to inspect*** the financial documents and records of the other and that ***disclosure to each party by each party has been full and relevant*** .

[emphasis added in bold italics]

This would, in essence, mean that both the husband and the wife had agreed to disclose full details of their income, earning capacity, property and other financial resources as well as their financial needs, obligations and responsibilities prior to entering into the Deed. Further, Recital 1.5 provides for full disclosure of income, earning capacity, property and other financial resources which each party has "now" and is "likely to have in the foreseeable future". The husband therefore had an obligation to disclose the stock option or any other benefit if he had knowledge at the time parties entered into the Deed – that there was a likelihood he would be receiving it in the foreseeable future.

20 In addition, Recital 1.6 provides that both parties acknowledge that the disclosure by each party has been full and relevant at the time of execution of the Deed. However, where either party had not in fact given full and relevant disclosure to the other prior to the latter signing the Deed, the aggrieved party should not be held to Recital 1.6. Further, as has been observed earlier, the division of matrimonial assets is not purely a matter of contract despite the existence of the Deed. In dividing matrimonial assets, the court has the ultimate power to decide what is just and equitable for the parties, and this principle is of paramount importance.

21 This brings us to the issue of whether the husband had fulfilled Recitals 1.5 and 1.6 by giving

full and relevant disclosure, and consequently if parties ought to be held to cl 11 of the Deed. Clause 11, and by extension the entire Deed, should not be binding on the wife if:

(a) the husband failed to disclose the stock option; and

(b) the wife satisfies the court that he knew or ought to have known that he would be receiving the stock option at the time they entered into the Deed.

The husband's evidence

22 In order to determine if the husband knew or ought to have known that he would be receiving the stock option, the starting point is to examine when the question of the buy-out of [J] Asia arose.

23 The husband averred in an affidavit dated 28 October 2008 that [J] Asia was going through financial difficulties and that the stock option was extended to him by [K] Holdings "due to the uncertainty of the business prospects" of [J] Asia. He further mentioned that [K] Holdings had granted him the option as it had "wanted to ensure that [he] was committed to the company and that [he] would work hard to secure their investment in [J] Asia". Additionally, the husband attributed his 11.5 million [G] Commodities shares and S$985,000 to mere good fortune. According to him, he was "simply very fortunate in [his] decision to become a shareholder of [[J] Asia] at a time when the shares were not only worthless but even a liability. At the time all [he] was trying to do was save [his] job and secure [[K] Holdings'] support. [He] could have never imagined such an outcome".

24 However, the husband's own evidence in a previous maintenance summons taken out by the wife when the husband had unilaterally reduced the children's and her maintenance on 4 October 2004 revealed the husband did not become owner of the shares serendipitously:

> 39 In late 2003, due to my parent company in Holland experiencing financial difficulties, the Singapore company which I work for also nearly went under. ***Fortunately, I found a buyer and brokered the take-over by a Singapore incorporated company ('[K]')*** . [K]'s directors decided to retain my services. [emphasis added in bold italics]

25 This suggested that the husband was in fact instrumental in the buy-out by [K] Holdings and was not a mere bystander. At the time of the hearing of the maintenance summons, as the division of matrimonial assets had not become contentious, the husband had perhaps let his guard down and was frank in his evidence then. It could not be that he was mistaken as to his role since his evidence in the maintenance summons was given only eight months after completion of the buy-out. To my mind, the husband would have had a greater incentive to downplay his involvement in the buy-out transaction in his later affidavits. I was therefore more inclined to accept the husband's earlier evidence that he had "brokered" the buy-out by [K] Holdings.

26 In addition, in the documents produced by the husband on 2 and 9 July 2010, it was apparent that the husband had been instrumental in the buy-out deal by [K] Holdings of [J] Asia. The husband was described as indispensable, an "angle of the triangle" in the buy-out deal, in an e-mail dated 23 February 2004 from one [L] of [M] Corporate Finance BV (a mergers and acquisitions consultancy firm which facilitated the takeover of [J] Asia) addressed to the directors of [K] Holdings and the husband.

27 On top of that, an e-mail dated 19 March 2004 sent by [N], the main director of [K] Holdings to the chief executive officer of [J] Holding BV ("[J] Holding"), [O], read:

> [K] has a corporate policy to reward CEOs with stock options and as ... mentioned ... [[K]'s]

> taking over is conditional on [the husband] staying. [[K] has] decided to give [the husband] an attractive 25% shares in the company. ...

This clearly showed that a condition of [K] Holdings' agreement to buy-out [J] Asia was that the husband would remain as the managing director of [J] Asia. As it was a corporate policy, it was likely to have surfaced early in the negotiations, incentivising a more pro-active role by the husband in the buy-out.

28 It was likely that a deal of some sort had previously been struck between [K] Holdings and the husband before the buy-out. This can be gleaned from an e-mail dated 6 November 2003 from [L] to [N] prior to the transaction, assuring [N] that he would:

> ... take only a minimal risk since [the husband] who [had] the expertise and who [was] fully aware of all aspects, processes and details of the company and its subsidiaries [would] remain in office and [would] as such form an instrumental part of the organization.

29 Furthermore, in an unrelated hearing in [case name redacted], the husband had, under cross-examination, given evidence that he had substantial control and authority in [J] Asia, at pp 1305–1313 of the notes of evidence:

> And as someone who was working in the field, it is rather frustrating to be determined, or to have your trading fate determined by somebody who is sitting very far away and has very little knowledge of what is going on on the ground, whereas in [J], the idea of structuring my own warehousing arrangements, the book was mine, to put together as I pleased.
>
> ...
>
> I was not exactly sure why we had two holding companies, and since I have come down I restructured that, I got rid of [J] Singapore altogether, and I believe I changed the name of [J] Holding Asia to [J] Asia.
>
> ...
>
> As of the year 2000, I became a director of all the [J] companies and I am the managing director and the CEO of [J] Asia.

30 It was therefore unlikely that the husband had no inkling of the buy-out that was to occur shortly after the execution of the Deed.

[O]'s evidence

31 [O]'s affidavit also served to substantiate the wife's claim that the 25% stake in [J] Asia was in fact a reward for the husband's involvement in brokering the buy-out by [K] Holdings, which was under way before the execution of the Deed.

32 An e-mail from the husband to [O] on 26 November 2003, read:

> As you know [the CEO of [J] Shanghai] has advised us as early as last year [*ie* 2002] that he intended to stay only until the end of this year. It is my understanding, from him that he was waiting to see how things with the sale of [J] Asia would un-fold before making his move.

It was apparent that discussions about the sale of [J] Asia had already been under way from as early

as 2002, and the husband would have had knowledge of an imminent buy-out at the time of execution of the Deed.

33 [O], in his affidavit, said that the husband had furnished a report dated 2 September 2002 that recommended that "the most efficient way to achieve [growth for [J] Asia was] is to have [[J] Holding] inject capital into [[J] Asia]" but as this was not possible "an outside investor" would have to be found.

34 [O] added that the husband's prognosis for the future of [J] Asia was bleak, and in his reports to [J] Holding, he had forecasted that [J] Asia would be wound up if the shareholders in [J] Holding did not inject more capital or sell [J] Asia off. It was on the basis of the husband's dismal forecast of the company that the decision was taken by [J] Holding to sell off [J] Asia.

35 This led to [O]'s conclusion (at [31] of his affidavit dated 27 August 2010):

> [This] shows that from as early as 2002, he was already aware of the fact that selling [J] Asia was most likely the only way out. We therefore may infer that [the husband] had set his own course and made his choice by signing a non-competition agreement with [K] Holdings on 21st April 2003, which paved the way for the eventual sale of [J] Asia to [K] Holdings.

36 In addition, the husband had on 22 November 2002, sent an e-mail to [O] asking whether further consideration had been given to the possibility of [J] Asia's management taking equity in the company, which would include the husband himself. On 24 January 2003, the husband once again e-mailed the shareholders of [J] Asia raising questions about the proposed increase of his profit share.

37 This evidence by [O] supports the wife's claim that the husband had always been frustrated by the fact that he could not claim a stake in [J] Asia, as it was a family-owned company, and that the husband had actually engineered the buy-out by [K] Holdings in order to edge out the [O] family and to acquire substantial equity for himself.

38 Furthermore, the husband had exercised the stock option on the very same day it was given to him, on 28 June 2004. This showed that the husband was confident of the success of [J] Asia after the buy-out, despite the bleak outlook for the company which he had painted to [J] Holding prior to the sale; it also suggested that the real reason for the husband's insistence on the buy-out of [J] Asia was to remove the [O] family from the company. It also served to emphasise the husband's eagerness to receive equity in the company, supporting the wife's position that the husband had engineered the buy-out transaction for the purpose of acquiring equity in [J] Asia.

39 In the light of this, it was for the husband to produce evidence to prove that the buy-out was conceived after the execution of the Deed and that the stock option was a real windfall. However, as can be seen from the succeeding paragraphs, he failed to provide any such evidence.

Husband's lack of full and frank disclosure

40 The determination of whether the husband's stock option ought properly to be regarded as part of the matrimonial assets to be divided between the parties was highly dependent on the husband's full and frank disclosure of the relevant papers in his possession, in particular those documenting the discussions and negotiations with respect to and the rationale for the grant of the stock option. However, the husband failed time and again to comply with his duty of full and frank disclosure to the court, as seen in the instances listed below:

(a) He failed to disclose in his first Affidavit of Assets and Means ("AAM"), filed on 2 October 2006, the cash consideration of S$985,000 and the 11.5 million [G] Commodities shares. The husband only disclosed an approximate amount of S$36,000 in his bank accounts and his CPF moneys.

(b) In the husband's affidavit filed on 4 January 2007 in support of his application in Summons No [xxx] of 2007 ("SUM [xxx]") to uphold cll 10 and 11 of the Deed, he once again failed to disclose the same assets, *ie*, the sum of S$985,000 and 11.5 million [G] Commodities shares. Neither did he disclose a [Property 2] which he had bought subsequently using the S$985,000 as part payment.

(c) At the hearing of SUM [xxx], the district judge presiding at the hearing specifically questioned if all assets had been disclosed in the husband's AAM. Despite that, the district judge was not informed of the existence of the [G] Commodities shares and the S$985,000.

(d) The wife, on multiple occasions, sent requests to the husband for information in respect of any shares he may have possessed in [J] Asia, but his response was that all his shares and benefits had already been disclosed in his IR8A form, when in truth they had not.

(e) The wife later discovered his assets in [J] Asia by chance and obtained an order of court on 22 May 2008 to set aside the earlier order dated 11 May 2007 which the husband had obtained in SUM [xxx], on the grounds that it was obtained by misrepresentations. This was affirmed on appeal by Justice Woo Bih Li in the High Court.

(f) On 4 February 2010, District Judge Masayu Norashikin ordered the husband to disclose all documents, correspondence or memorandums relating to the sale of [J] Asia and in respect of the stock option granted to the husband, as well as to answer interrogatories by the wife's counsel. The husband was contumacious with respect to discovery and evasive in answering the interrogatories. His response to the discovery order made against him was inconsistent, oscillating between the two positions that he either did not possess the requisite documents or that they did not exist. On 1 April 2009, the husband stated that the request was oppressive and that he did not have the documents requested. On 8 December 2009, the husband stated that the documents requested "simply" did not exist. However, on 22 February 2010, the husband reverted to his earlier position that he did not possess the documents and that all relevant documents had earlier been produced.

(g) Notwithstanding the husband's insistence that he did not possess the documents and/or, alternatively, that they did not exist, he managed to produce a voluminous bundle consisting of 288 pages of documents on 2July 2010, after this court had, on 1 July 2010, warned that an adverse inference might be drawn against him if he failed to comply without just excuse. However, as this court observed, the set of documents tendered on 2 July 2010 remained incomplete.

(h) On 9 July 2010, the husband produced a further set of documents spanning 553 pages in respect of the 4 February 2010 discovery order made against him. However, despite the voluminous documents produced, only two brief e-mails pertained to the reasons as to why the husband was granted the option to purchase 25% of [J] Asia's shares for S$1. The e-mails were dated 19 March 2004 and 1 April 2004 respectively, and were written by [N] of [K] Holdings to [O], the CEO of [J] Holding and the director of [J] Asia until 6 March 2006 as well as the sole shareholder of [J] Asia until 12 February 2004. The first e-mail mentioned that [K] Holdings' takeover of [J] Asia was conditional on the husband remaining in the company and that he was to

receive "25% shares in the company". The second e-mail clarified that "the shares for [the husband were] not share transfers but stock options". Other than those two brief e-mails, there was no discovery of any e-mail, memorandum, letter or minute evidencing discussions or negotiations between the husband and [K] Asia or [K] Holdings or the latter's board decision to give the husband the stock option.

41 The Court of Appeal in *Wee Ah Lian v Teo Siak Weng* [1992] 1 SLR(R) 347 held that full and frank disclosure was paramount and that, in its absence, the court was entitled to draw inferences adverse to the party who failed to comply. There have been many instances where the court had chosen to disbelieve a party owing to a lack of full and frank disclosure by that party, and demonstrated its readiness to make adverse inferences against the errant party, such as in *Koo Shirley v Mok Kong Chua Kenneth* [1989] 1 SLR(R) 244, as well as *Tan Siew Eng (alias Tan Siew Eng Irene) v Ng Meng Hin* [2003] 3 SLR(R) 474, *inter alia*.

42 The husband had ignored his duty of full and frank disclosure time and again in the proceedings. I did not accept his argument that his failure to disclose his assets, when he filed his AAMs and when asked by the district judge below, was due to his belief that the assets were irrelevant, the stock option having been granted after the execution of the Deed. Clearly, the assets fell within s 112(10) (*b*) of the Act and he ought to have disclosed the existence of the assets while maintaining that they ought to be excluded as matrimonial assets under cl 11 of the Deed.

43 The husband's initial insistence that he did not possess any of the documents requested for in the 4 February 2010 discovery order, and subsequently, after my warning of an adverse inference being drawn against him on 1 July 2010, his incremental disclosure of the documents in his possession on 2 July and 9 July 2010, showed that the husband was intentionally flouting his duty of full and frank disclosure to the court. In the event, only two of the documents produced by the husband related to the issuance of the stock option by [J] Asia to him, as mentioned in [40(h)] above. It was difficult to believe that there was no record of negotiations or discussions as to the level of incentive or reward. It was even more unbelievable that an important corporate decision such as the award of a 25% stake in [J] Asia to the chief executive officer would not have been the subject of any resolution, written memorandum, e-mail or letter documenting the issuance of the stock option in the company.

44 I therefore drew an adverse inference that the husband's reluctance to disclose those assets, as well as his failure to disclose the relevant documents, more likely than not meant that if revealed the documents would have shown that at the time of execution of the Deed he knew or ought to have known that he would receive some form of benefit from the buy-out. Taking into account all the circumstances, it would appear more likely than not that the husband had known of the likelihood of receiving the stock option or at least some form of benefit when he executed the Deed on 19 February 2003. The wife had signed the same believing the husband's false representation that he was not likely to have any other property in the near future.

45 The husband had thus contravened Recital 1.5 of the Deed by not fully disclosing the assets and benefits he was likely to receive in the foreseeable future, despite the knowledge that he would or was likely to receive the same at that time. It would therefore be unjust and inequitable to hold the wife to Recital 1.6 as there had been no full and relevant disclosure, and equally unfair to hold her to cl 11 of the Deed, when she had been unaware of the stock option or other benefit that the husband knew he would or was likely to receive.

Division of the [G] Commodities shares and S$985,000

46 Given that the [G] Commodities shares and the S$985,000 are matrimonial assets and that cl 11 of the Deed ought not to prevail, we next have to decide on her fair share of the assets. In deciding what is just and equitable for division between parties, it is relevant to consider factors such as:

(a) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family (see s 112(2)*(d)* of the Act); and

(b) the giving of assistance or support by one party to the other party, including the giving of assistance or support which aids the other party in the carrying on of his or her occupation (see s 112(2)*(g)* of the Act).

47 The husband maintained that he was granted the stock option due to the "uncertainty of the business prospects" of [J] Asia, when it was bought over by [K] Holdings. He submitted that the stock option made him personally liable to [K] Holdings for the entire purchase cost of the company from [J] Holding, suggesting that the stock option was in fact a liability rather than an asset for him. The husband also argued that [K] Holdings granted him the Option Agreement to take a 25% stake in the company to ensure that he was committed to the company and that he would work hard to secure their investment in [J] Asia, suggesting that the stock option was for future services.

48 On the other hand, the wife submitted that the primary purpose of the stock option was to provide compensation or reward for the husband's past services in [J] Asia, as well as to give recognition to his expertise in warehousing management and the running of [J] Asia's business in the Asia Pacific region. The wife submitted that the stock option was also granted for the husband's role in brokering the sale of [J] Asia to [K] Holdings. Finally, the wife's position was that the stock option was also granted for the husband's expertise and knowledge, which was acquired during the marriage with her support.

49 I find it difficult to accept that the stock option was to reward the husband for his past services in [J] Asia. For reasons earlier stated, it is more likely that it was partly to reward him for his role in facilitating and brokering the buy-out of [J] Asia. Further, in the e-mail dated 6 November 2003 from [L] to [N] referred to in [28] above, [N] was assured that in the buy-out he was taking only a minimal risk as the husband, who had the expertise and was fully aware of all aspects, processes and details of the company and its subsidiaries, would remain in office as an instrumental part of the organisation after the buy-out. This lent support to the wife's position that the stock option was also granted to retain the husband for his experience and knowledge.

5 0 *Grich v Grich*, 1996 Conn Super LEXIS 3451 ("*Grich*"), is of assistance, where it was held in that case that the object of the stock option plan was stated to be to provide key employees of the company additional incentives to continue and increase their efforts on the company's behalf and to remain in the employ of the company. The Superior Court of Connecticut found that the husband:

> ... could not have arrived at his advantageous position at [the company] as a 'key employee' without the prior concentration of his time, energies, and labor [*sic*] in the computer industry. From the evidence presented it is clear that his concerted effort was aided significantly by the [wife] who helped to further his career ...

It was even held that the unvested stock options were part of the marital estate and were subject to equitable distribution between the spouses. This reasoning was adopted by our Court of Appeal in *Chan Teck Hock David v Leong Mei Chuan* [2002] 1 SLR(R) 76.

51 The reasoning in *Grich* is apropos in the present case. The wife was supportive of her husband's

career when they were based in China. She single-handedly shouldered the burden of looking after the young family in a foreign country, enabling the husband to focus his energies in his work and render himself indispensable to the company. Prior to their relocation to Singapore, the wife had just begun working as a resident surgeon in an American clinic in China. However, for the benefit of her husband's career, she relocated to Singapore. While in Singapore, she was unable to practice as her degree was not recognised here. Her husband left the family soon after the family's relocation to Singapore and their younger son's birth in 2001. The wife thus brought the younger son up as a single mother.

52 The wife's indirect contributions to the family and her support and assistance to the husband undoubtedly led to the husband being valued as an asset to the company and put him in a position to negotiate for a 25% stake in [J] Asia, which eventually converted into 11.5 million [G] Commodities shares and S$985,000. It was only just and equitable that the wife be given a share of those assets.

53 Under the Deed, the husband agreed to the wife having a 50% share of the matrimonial assets. I could have taken that division as being what both parties considered just and equitable, applied that same percentage in dividing the 11.5 million [G] Commodities shares and the $985,000. However, I had regard to the fact that the marriage had lasted only ten years up to the time of the execution of the Deed (13 years as at date of decree *nisi*). Moreover, I doubted that the husband would have been ready to share equally if he had fully disclosed what he would or was likely to obtain in the near future.

Conclusion

54 I therefore awarded the wife a 25% share of the 11.5 million [G] Commodities shares and the $985,000, leaving undisturbed the earlier agreed division of the other matrimonial assets. With respect to the [G] Commodities shares the husband was to take all steps necessary to transfer 25% of the same to the wife's CDP account, particulars of which were to be notified by the wife's solicitor to the husband's.