UFM
v
UFN

[2017] SGHCF 22

High Court Family — Originating Summons (Family) No 101 of 2016
(Registrar's Appeal No 10 of 2017)
Valerie Thean JC
6 July 2017

Family law — Ancillary powers of court — Financial relief after foreign divorce

Statutory interpretation — Construction of statute — Purposive approach

Conflict of laws — Natural forum

22 September 2017 Judgment reserved.

Valerie Thean JC:

1 In November 2011, Parliament grafted onto Part X of the Women's Charter (Cap 353, 2009 Rev Ed) a set of provisions titled Chapter 4A, which gives the courts a new power to grant financial relief to a person who has obtained a divorce in a foreign jurisdiction. This appeal raises a question of principle as to the role, if any, of the doctrine of natural forum and the concept of exhausting foreign remedies in the interpretation and application of Chapter 4A. The appeal arises from a divorce between the parties in Indonesia, where the wife was granted sole custody of their three children and also an order for child maintenance. Without first seeking a division of their matrimonial

property in that jurisdiction from her former husband, she applied under Chapter 4A seeking a division of a property situated in Singapore which the parties jointly own. A Family Court did not grant her leave to pursue her application, and she now appeals against that decision.

2 Having considered the parties' submissions and the deponents' evidence, I find that the wife has demonstrated substantial ground under s 121D of the Charter for her application for financial relief. I therefore allow her appeal and grant her leave to proceed with her application.

Background

3 The husband and the wife are Indonesian citizens and Singapore Permanent Residents. They met in 1993 and married in 1995. They have two daughters and a son who are aged 20, 16 and eight respectively.

4 In October 2012, the wife filed criminal charges against the husband alleging that he had subjected her and their children to physical and sexual abuse. In July 2013, the West Jakarta District Court convicted him on indictments for physical violence in the household against the wife and for procuring a child to an obscene act. He was sentenced to three years and six months' imprisonment and fined IDR100m (approximately $10,000).[1] The Jakarta High Court in January 2014 dismissed his appeal against his conviction and enhanced his sentence to four years and six months' imprisonment.[2] Instead of serving his sentence, the husband has remained in Singapore since 2013, residing in a condominium apartment referred to in these proceedings as the

1 Record of Appeal Vol III Part A at pp 170 to 171.

2 Record of Appeal Vol III Part A at pp 213 to 214.

Seaview Property. The husband contends that he was convicted on hoax charges.

5 In parallel with these criminal proceedings, the wife obtained a divorce in June 2013 from the West Jakarta District Court, which granted her sole custody of their three children and ordered the husband to pay her maintenance for their children in the sum of IDR50m (approximately $5,000) every month.[3] The husband appealed that decision to the Jakarta High Court, which in April 2014 upheld the grant of divorce but revised the amount of maintenance payable by the husband from IDR50m to IDR22.5m (approximately $2,300) every month.[4] The latter figure comprised IDR7.5m for each of the three children. The Supreme Court of Indonesia in August 2015 dismissed entirely the husband's appeal against the High Court's decision.[5] The Indonesian courts have not made, and neither has the wife applied for, any ancillary orders following the divorce.

6 In October 2016, the wife sought leave in Singapore to apply for an order for financial relief under Chapter 4A. She sought financial relief in form of an order for the sale of the Seaview Property and for the division of the sale proceeds. Her application was heard and dismissed by a District Judge. The District Judge was not satisfied that the Indonesian courts would not deal with the Seaview Property or make any order which would not be enforceable in Singapore.[6] She considered that any application by the wife for relief would be more appropriately dealt with in Indonesia first, given that the wife had not filed any ancillary application in that jurisdiction, and given that the Seaview

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3 Record of Appeal Vol III Part A at pp 263 to 264.

4 Record of Appeal Vol III Part A at pp 288 to 289.

5 Record of Appeal Vol III Part B at pp 49 to 50.

6 Record of Appeal Vol I at p 11D-E.

Property was but one of a number of matrimonial assets. Dissatisfied, the wife appealed.

7 The wife's position on appeal is that she has demonstrated substantial ground for her application for leave under s 121D(2) of the Charter. She argues, by reference to the list of factors in s 121F(2), that it is appropriate for a Singapore court to make the order she seeks. First, the parties' marriage enjoy a substantial connection to Singapore. Second, there is no rule that she must exhaust her remedies in Indonesia before making a Chapter 4A application. Third, the husband by his fugitive status and failure to comply with previous maintenance orders, has demonstrated, in her words, "blatant disregard"[7] for the Indonesian courts. He is therefore likely to disobey any Indonesian financial order, and this amounts to a good reason for seeking financial relief in Singapore.

8 The husband's response is that the wife is engaging in forum shopping. He says that she has applied here to circumvent an Indonesian pre-nuptial agreement affecting the Seaview Property. He suggests that my analysis should be guided by various substantive principles in the general law. Thus, he contends that there exists a rule that a Singapore court must reject a Chapter 4A application if the applicant has not exhausted her remedies in the foreign jurisdiction which granted the divorce. The wife, having made no attempt to apply for relief in Indonesia, therefore cannot be allowed to seek relief here. He also argues that, applying the doctrine of natural forum in conjunction with the factors in s 121F(2), Singapore is not the appropriate forum to entertain the wife's application for financial relief. He also denies being in breach of his maintenance obligations. Finally, he argues that a Singapore court is precluded

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[7] Wife's Written Submissions dated 25 May 2017 at para 18.

from dealing with the Seaview Property in isolation from the other matrimonial assets.

Issues

9 The facts of this case and the differences in the parties' submissions raise two main issues of principle. The first is whether the doctrine of natural forum has any role to play in the interpretation and application of Chapter 4A, especially s 121F. The second is whether it is a pre-requisite for an applicant seeking leave or relief under Chapter 4A to exhaust his remedies in the foreign jurisdiction which granted his divorce, having regard in particular to s 121F(2)(*h*). Although Chapter 4A is a statutory regime, these two issues have not been framed or argued as typical questions of statutory interpretation. By this I mean that the issues do not invite the court to render an interpretation of a particular statutory provision or a part of a provision. Instead, they invite consideration of whether certain sets of principles, such as the doctrine of natural forum and the requirement to exhaust foreign remedies, ought to apply alongside the text of Chapter 4A, and if so, how. After considering these issues, I must assess whether the wife has demonstrated substantial ground for her application.

10 In brief, my view is that the Chapter 4A analysis does not attract the application of any free-standing common law concepts or principles. This conclusion follows from the simple fact that Chapter 4A is a statutory regime. The proper approach is to apply Chapter 4A with careful attention to its text, in the light of its statutory purpose and the purpose of its component provisions. Taking this approach, I find that the wife has demonstrated substantial ground for her application under s 121D(2), which justifies my granting her leave for her application to proceed.

11 My view is informed by a recognition that natural forum and exhausting foreign remedies are in fact central to the design of Chapter 4A. That design informs the purpose of Chapter 4A and its provisions, which in turn affects their application. It is therefore necessary first to examine the purpose and design of Chapter 4A through close attention to its text and structure. Under this analysis, the purpose of s 121F and its catalogue of factors will come to light, and so will their relationship with the doctrine of natural forum. This in turn will shape my examination of the merits of the wife's application for leave, which will involve an assessment of whether she has demonstrated substantial ground for her application. I will deal in that context with the husband's specific contentions on forum shopping and the need to exhaust foreign remedies.

Purpose and design of Chapter 4A

12 The starting point for determining the legislative purpose of a provision or set of provisions is its text interpreted in its textual context. If a provision is well-drafted, its purpose will emanate from the words in which it is formed: *Attorney-General v Ting Choon Meng and another appeal* [2017] 1 SLR 373 ("*Ting Choon Meng*") at [57]. The text of a provision is an essential guide to the proper formulation of its legislative purpose, which can be framed at different levels of generality. Having analysed the text, the court may then refer to extraneous materials, if they assist the court to ascertain the meaning of the provision: see s 9A(2) of the Interpretation Act (Cap 1, 2002 Rev Ed) ("IA") and *Tan Cheng Bock v Attorney-General* [2017] SGCA 50 ("*Tan Cheng Bock (CA)*") at [42] to [54].

13 Also important is the distinction between the specific purpose underlying a particular provision and the general purpose or purposes underlying the statute as a whole or the relevant part of the statute: *Tan Cheng*

Bock (CA) at [40]. This distinction is applicable here as between the Charter and Chapter 4A, and as between Chapter 4A and its constituent provisions, including s 121F, whose specific purpose is of particular significance in this case. This is especially because Chapter 4A is a subsequent addition to the Charter and was intended to create a new type of proceeding. Bearing in mind these principles, I turn to consider the purpose and design of Chapter 4A, with a focus on its text and structure.

Text of the provisions

14 Chapter 4A creates a new type of proceeding which, if successfully brought by an applicant who has been divorced overseas, will result in his obtaining an order for financial relief. Concerning the form of such relief, s 121G(1) permits a division of matrimonial assets under s 112, an order for spousal maintenance under s 113 or an order for the maintenance of children under s 127(1), "in the like manner as if" a divorce, nullity or judicial separation in respect of the marriage had been granted in Singapore. Sections 121G(1) and 121G(2) import into the Chapter 4A regime such concepts as the "just and equitable" division of assets in s 112(1) and the list of factors in s 114(1) for determining the amount of maintenance to be paid, making clear that Singapore law governs the reliefs to be granted.

15 It follows, then, that persons who are entitled to such relief must be persons to whom the Singapore courts have an interest in extending its remedies. The scope of that interest is delineated in a number of ways. The first is a jurisdictional requirement, under s 121C, based on domicile or habitual residence for a minimum period on the part of one of the parties to the marriage. The second is a leave requirement, under s 121D, which requires an applicant who has met any of the jurisdictional criteria in s 121C to obtain leave before

his application can be heard. Leave may only be granted if the court considers that there is "substantial ground for the making of an application" for financial relief: s 121D(2). It is plain from these words that the establishment of "substantial ground" is directed to the entirety of the application. So the court must, applying that preliminary standard of scrutiny, assess the merits of the application before it grants leave.

16 How are those merits to be assessed, according to the Charter? The answer may be found in the criteria which Chapter 4A requires the court to apply – apart from those relating to jurisdiction in s 121C, since jurisdiction is by this stage established – before granting an order for financial relief. One set of criteria, which I have mentioned, is to be found in the provisions in the Charter expressly incorporated into Chapter 4A by s 121G, *ie*, ss 112, 113 and 127(1). These provisions concern the circumstances in which ancillary relief should be granted, and they will be relevant to evaluating the availability and propriety of the type of relief which the applicant seeks. The second set of criteria is to be found in s 121F, which imposes a duty on the court to consider whether in all the circumstances of the case it would be appropriate for an order for financial relief to be made by a court in Singapore.

17 The analysis under this second set of criteria is to be guided by the concept of what is "appropriate" for the purposes of s 121F(1). The meaning of that word is clearly not to be determined by any extra-statutory principle such as the doctrine of natural forum, but by the text of s 121F itself. In this regard, s 121F(2) catalogues nine matters or factors to which the court must have "particular" regard in exercising its duty under s 121F(1). Those nine factors are therefore the principal guide to what is meant by the appropriateness of an order being made by a Singapore court for the purposes of s 121F(1). They are as follows:

> (*a*) the connection which the parties to the marriage have with Singapore;
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> (*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;
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> (*c*) the connection which those parties have with any other foreign country;
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> (*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;
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> (*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 by the order and the extent to which the order has been complied with or is likely to be complied with;
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> (*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;
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> (*g*) the availability in Singapore of any matrimonial asset in respect of which an order made under section 121G in favour of an applicant could be made;
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> (*h*) the extent to which any order made under section 121G is likely to be enforceable; and
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> (*i*) the length of time which has elapsed since the date of the divorce, annulment or judicial separation.

18 Factors (a) to (c) help the court assess the degree of connection which the parties to the marriage have to Singapore – whose courts are being asked to grant relief – relative to their connections with the jurisdiction which granted their divorce and to any other jurisdiction. The analysis is necessarily comparative in nature. And it allows the court to go beyond the jurisdictional requirements in s 121C to ascertain, apart from and in addition to domicile and habitual residence, how closely the parties are connected to Singapore. Taken

together, s 121C and factors (a) to (c) help the court ensure that it is extending a remedy to an applicant to whom Singapore has an interest in extending its remedies. The corollary goal of these provisions, highlighted especially by the comparative analysis necessitated by consideration of factors (b) and (c), is to preserve a measure of respect for the comity of nations in the Chapter 4A exercise. The practical effect is that the stronger the parties' connection to Singapore, the more ready the courts will be to grant relief.

19 Factors (d) to (f) embody at least three connected concerns: the fairness of any foreign relief which the applicant has obtained or is likely to obtain, the practical effectiveness of that relief, and the reason the applicant has made an application in Singapore. On the first concern, factors (d) to (f) direct the court's attention to relief which is received "in consequence of the divorce" (factor (d)), which is "given by the order" made by the foreign court in relation to the other party to the marriage (factor (e)), and which the applicant may seek from that party elsewhere (factor (f)). The focus in these factors is on identifying the nature and extent of any foreign relief obtained by or available to the applicant consequent on his foreign divorce. This suggests that the court should be concerned about the fairness of that relief.

20 Even if the foreign relief is fair, however, it may not be practically effective. That is why factor (e) invites the question whether any order for financial relief made by a foreign court consequent on the divorce "has been complied with or is likely to be complied with". Clearly, if the party against whom the foreign order has been made refuses to comply, then the other party would effectively have no relief even if fair relief has been granted by the foreign court.

21 Factor (f) invites the court to consider the reason for the applicant's decision not to apply for financial relief in any foreign jurisdiction in the event that he has a right to do so. One such reason, suggested by the text of factor (f) itself in the words "has had", is that he has lost that right, in which case the court should inquire into the reason for that loss. The corollary purpose of the inquiry under factor (f) is to assess the true purpose of the applicant's choice of Singapore as the forum in which he has sought financial relief. I elaborate on how the court should make that assessment at [61] to [73] below, as it is a central aspect of this case.

22 Next, factors (g) and (h) share the common and practical concern of whether an order for financial relief would be enforceable. Factor (g) makes relevant the existence in Singapore of any matrimonial asset, on which a Singapore court order would be readily enforceable. Notably, factor (h) does not restrict the concern to whether the order would be enforceable in Singapore, implying that the court should consider instead whether a Singapore order would be enforceable, wherever it would need to be enforced.

23 Lastly, factor (i) refers to the lapse of time since the foreign divorce. The reason for delay will of course be relevant. While there is no limitation period on the right to bring an application for financial relief, the parties' expectations of finality in their proceedings for divorce deserve reasonable protection, and factor (i) calls attention to this concern.

24 Having regard to the catalogue of factors under s 121F(2), I consider that the concept of appropriateness under s 121F(1) cannot be reduced to any single concern. It is a multi-faceted concept which requires the court to pay close attention to the facts and consider whether it would be appropriate for a court in Singapore to grant the relief sought by the applicant, having weighed a

number of incommensurable concerns. These include the connection of the parties to Singapore; the comity of nations; the fairness, efficacy and availability of any foreign relief to the applicant in consequence of the divorce; the reason for the applicant's choice of Singapore as a forum for relief; the enforceability of any order for financial relief a Singapore court may make; and the need to ensure a degree of finality in litigation.

25 Therefore, as far as I can discern from the text of Chapter 4A, its statutory purpose is to provide financial relief consequent on foreign matrimonial proceedings for a party to those proceedings who has a genuine connection to Singapore and for whom seeking such relief from the other party in any foreign jurisdiction would be unfair or impractical, or has led to an unfair or impractical remedy. In this context, the specific purpose of s 121F is to ensure that the court grants relief only if it would be appropriate for a Singapore court to do so. I hasten to emphasise that these purposes are not to be used as legal tests for determining whether leave or relief should be granted. Instead, the court should assess the application by carefully applying the text of the provisions in the light of their legislative purpose.

Extraneous materials

26 My view on the purpose and design of Chapter 4A is reinforced by the relevant extraneous material. In this case, the record of Parliamentary debates on the Bill containing the Chapter 4A is instructive: see ss 9A(3)(*c*) and 9A(3)(*d*) of the IA. In referring to it, I bear in mind the principle that only statements in the debate which are clear and unequivocal are of real use, especially those which disclose the mischief targeted by the legislation: *Tan Cheng Bock (CA)* ([13] *supra*) at [52]. Beside the debates, I refer also to the history of Chapter 4A, considering that the history of a statutory provision

generally illuminates its context, which in turn assists in fixing the meaning of its text and in illustrating its purpose: *Commissioner of Taxation v Consolidated Media Holdings Ltd* [2012] HCA 55 at [39]; see also *PP v Lee Sze Yong* [2017] 3 SLR 533 at [59] to [64]. Extraneous material on that history, including foreign legislation and law reform reports, fall within the ambit of s 9A(2) of the IA and may also be consulted by the court to the degree that they shed light on the purpose of the statute or provision in question: see *Ting Choon Meng* ([12] *supra*) at [63] and *Tan Cheng Bock v Attorney-General* [2017] SGHC 160 at [69] to [71].

Minister's speech

27 The Minister's speech in Parliament on the second reading of the Bill containing Chapter 4A contains unequivocal statements which illuminate Chapter 4A's purpose and the mischief it was intended to address. The Minister explained that Chapter 4A was intended to "plug an existing gap": *Singapore Parliamentary Debates, Official Report* (10 January 2011) vol 87 ("Chapter 4A Debate") at cols 2048 to 2049 (Vivian Balakrishnan, Minister for Community Development, Youth and Sports). The gap is that before Chapter 4A entered into force, a person who was divorced in a foreign jurisdiction could not obtain ancillary relief in Singapore because upon recognition of his foreign divorce, a Singapore court would no longer have matrimonial jurisdiction to make ancillary orders. The court therefore had no power to alleviate any injustice arising from any unfairness in the foreign relief (or absence of such relief) granted in the foreign jurisdiction in which the parties were divorced.

28 The Minister said that the new Chapter 4A "will help those who are made vulnerable by foreign divorces and who have a relevant connection to Singapore to seek relief": Chapter 4A Debate at col 2049. The Minister's

mention of vulnerability suggests that the court will give weight to the personal needs of the applicant, as I have suggested at [19] above. Separately, the Minister's speaking of "a relevant connection" to Singapore underlines the importance of establishing a genuine connection to this country. It is important to note that nothing in the text of Chapter 4A and in the Minister's speech says that Singapore must be the jurisdiction to which the applicant has "the most" relevant connection. This is sensible because the provision of relief consequent on a foreign divorce is premised on the idea that in a globalised world, an applicant may have connections with various jurisdictions, any of which may be better placed to make ancillary orders compared to the jurisdiction which granted her divorce. I elaborate on this further at [36] below.

History of Part III and Chapter 4A

29 My view on the purpose and design of Chapter 4A is further reinforced by its history. In the 1970s, a lacuna in English law similar to the "gap" I have referred to above at [27] was revealed by a series of cases in which a wife who was divorced overseas and was given no financial provision there had no remedy in England: *Turczak v Turczak* [1970] P 198; *Torok v Torok* [1973] 1 WLR 1066. So in 1980, the Law Commission in a Working Paper proposed to create a new power for the courts to make a financial order following a foreign divorce: United Kingdom, The Law Commission, *Family Law: Financial Relief after Foreign Divorce* (Working Paper No 77, 1980) (Chairman: The Honourable Mr Justice Kerr) ("1980 Working Paper"). The Commission knew that this new remedy had to be "carefully balanced" against the risks of "forum-shopping", which it understood to be "the risk that litigants with little or no real connection with this country would start proceedings here solely because they would be likely to find it financially advantageous to do so": 1980 Working Paper at para 22.

30 The Commission therefore proposed two cumulative levels of restrictions on the court's power to make a financial order. The first consisted in the rules of jurisdiction, which were intended to be analogous to the jurisdictional rules in divorce proceedings. As a result, a test of domicile or habitual residency (of a minimal period) was proposed. The second was a requirement to obtain leave, which the court would have a "flexible discretion" to grant after taking into account a non-exhaustive set of factors. The discretion was intended as an "additional filter" to keep out unmeritorious applicants, who satisfied the jurisdictional criteria, in a way that "avoid[ed] imposing on the courts insoluble problems of policy": 1980 Working Paper at para 47. The idea appears to be that the set of factors would capture the applicable policy considerations underpinning the need for this filter, and the courts had simply to take those factors into account in exercising the discretion. In addition, the Commission wanted the statute to state expressly that the object of the discretion was to provide for the "occasional hard case", and that relief would be granted only in cases where "serious injustice might arise": 1980 Working Paper at para 51.

31 The Commission in 1982 then published its final recommendations in a later report: United Kingdom, The Law Commission, *Family Law: Financial Relief After Foreign Divorce* (Law Com No 117, 1982) (Chairman: The Honourable Mr Justice Ralph Gibson) ("1982 Report"). This report included a draft Bill which put into statutory form those recommendations. The proposed scheme in the draft Bill was largely similar to the original proposal in the 1980 Working Paper, differing only in two respects. First, the test for leave was now whether "substantial ground" had been made out. Second, the 1982 Report did not follow through on the idea of providing expressly that the object of the discretion was to provide only for the "occasional hard case". What was

expressly provided instead was a longer list of non-exhaustive factors to be considered under the discretion, which was to be exercised for the purpose of determining whether it was appropriate for a financial order to be made by a court in England and Wales: 1982 Report at pp 28 and 30. This proposal appeared as cl 5 of the draft Bill, which became s 16 under Part III of the Matrimonial and Family Proceedings Act 1984 (c 42) (UK) ("the 1984 Act"). This section is identical in wording to s 121F of the Charter.

32 It was not until 2010 that the Part III provisions were considered by the UK's highest court in *Agbaje v Agbaje* [2010] 1 AC 628 ("*Agbaje*"). One of the issues was the role of the doctrine of natural forum in the Part III analysis. Lord Collins of Mapesbury, writing for the UK Supreme Court, held that the issue whether it is appropriate for an order to be made by an English court is not the same issue as whether England is an appropriate venue for the purposes of the doctrine of natural forum. His Lordship gave two reasons for this. First, the doctrine of natural forum was only in its infancy in the early 1980s at the time Part III was being proposed: *Agbaje* at [46]. The leading case on the doctrine was decided only in 1987 in *Spiliada Maritime Corpn v Cansulex Ltd* [1987] AC 460 ("*Spiliada*") and applied to stays of English matrimonial proceedings only in 1988 in *de Dampierre v de Dampierre* [1988] AC 92. So the doctrine could not have had a role in the design of Part III. No mention of it is to be found in the 1980 Working Paper and the 1982 Report. It will, however, be seen that this aspect of Lord Collins's reasoning does not apply to the Chapter 4A regime.

33 Second and more importantly, the doctrine of natural forum was 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, whereas the whole basis of Part III was that it may be appropriate for two jurisdictions to be involved, one for the divorce and one for ancillary relief:

Agbaje at [49]; see [28] above. In other words, cl 5 of the draft Bill and s 16 of the 1984 Act did not purport to impose a statutory *forum non conveniens* test. It is therefore unsurprising that, in the present case, the wife places great reliance on this aspect of Lord Collins's reasoning in *Agbaje* in urging me to find that the doctrine of natural forum has no application in the Chapter 4A analysis.

34 In 2009, the Law Reform Committee ("LRC") of the Singapore Academy of Law proposed amending the Charter to create a new remedy closely modelled after Part III of the 1984 Act. That year, it published its proposal in a report: Law Reform Committee, Singapore Academy of Law, *Report of the Law Reform Committee on Ancillary Orders after Foreign Divorce or Annulment* (July 2009) ("LRC Report"). What is significant, for present purposes, is that unlike the Commission, the LRC in its report expressly took the view that considerations underlying the doctrine of natural forum were important and did not need to be sacrificed by the creation of the new remedy: LRC Report at para 38. The LRC said that proposed catalogue of factors under s 121F(2) were "consistent with the doctrine of natural forum": LRC Report at para 64. Therefore, Lord Collins's first observation in *Agbaje* that the doctrine of natural forum did not feature in the design of Part III cannot apply to Chapter 4A. The doctrine of natural forum was no longer in its infancy in 2009, and the LRC took it into account.

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. First, the LRC did not see the need to modify the substance of the factors in s 16(2) of the 1984 Act. Thus, the factors in s 121F(2) are identical to those in s 16(2) and also to those in cl 5 of the draft Bill in the 1982 Report. Second, no other part of Chapter 4A mentions the concept of natural forum. Third, it is clear from the plain text of s 121F(2) 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. By retaining the substance of cl 5 of the draft Bill and s 16(2) of the 1984 Act, the LRC must have considered that a faithful application of the factors in s 121F(2) was sufficient to achieve an outcome which was just in the light of these varied considerations among which there is no statutory hierarchy.

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. In this regard, Chapter 4A may be regarded as representing a broader philosophy of diversifying the concept of appropriate forum in order to respond to the needs of justice presented by the varied consequences of familial breakdown in a globalised world. Thus, the Chapter 4A test for appropriate forum, embodied in s 121F, applies only to the specific ancillary context of financial relief. Issues of custody, on the other hand, are thought to demand their own set of considerations for the purpose of deciding questions of appropriate forum, considerations such as those defined by a child's habitual residence, subject to defined exceptions: see *eg*, the Convention on the Civil Aspects of International Child Abduction (25 October 1980), (entered into force 1 December 1983), which Singapore acceded to on 28 December 2010. The point is that 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.

37 The upshot of this analysis is that the court, in the Chapter 4A exercise, should apply faithfully the provisions of the statute without regard to free-standing principles, lest the court overestimates concerns which are marginal to the purpose of Chapter 4A or underestimates concerns which are cardinal to it. The proper approach to Chapter 4A is to undertake in each case a "careful application" of the provisions of the statute in the light of its statutory purpose: see *Agbaje* at [71]. And that purpose is to provide financial relief consequent on foreign matrimonial proceedings for a party to those proceedings who has a genuine connection to Singapore and for whom seeking such relief from the other party in any foreign jurisdiction would be unfair or impractical, or has led to an unfair or impractical remedy: see [25] above. This approach is consistent with the approach taken by the High Court in *Harjit Kaur d/o Kulwant Singh v Saroop Singh a/l Amar Singh* [2015] 4 SLR 1216 ("*Harjit Kaur*"). Although that case alludes to such concepts as comity and natural forum (at [18] to [20]), it does not, as the husband's submissions suggest, ascribe these concepts an importance above what the Chapter 4A provisions already require the court to consider. For the reasons above, it is inappropriate for me to "evaluate the s 121F(2) factors against the backdrop of the *forum non conveniens* principles",[8] as the husband urges me to do. I therefore reject the husband's submission that the test in *Spiliada* is applicable in the s 121F analysis.

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8 Husband's Written Submissions dated 1 June 2017 at paras 34 to 37.

Proof of substantial ground

38 Substantial ground for the purposes of s 121D(2) means a "solid" case, "solid" being an expression for a standard higher than a "serious issue to be tried" or a "good arguable case": *Harjit Kaur* at [19], citing with approval *Agbaje* at [33]. As I have mentioned at [16] above, the merits of the wife's application should be assessed according to the two sets of substantive criteria in the Chapter 4A provisions. The first, contained in s 121F, addresses whether it is appropriate for a Singapore court to grant the relief the applicant seeks; and the second, contained in s 121G, concerns the availability of the type of relief sought and the propriety of granting it. I begin with s 121F.

Appropriateness of Singapore court: s 121F

Parties' connections: ss 121F(2)(a) *– 121F(2)*(c)

39 Sections 121F(2)(*a*) to 121F(2)(*c*) require me to examine the parties' connection with Singapore, with Indonesia, and with any other foreign country.

40 In this regard, the wife accepts that the "centre of gravity" of the parties' marriage is Indonesia.[9] But she submits that the parties nevertheless have a substantial connection to Singapore. Her evidence is that she, her husband and their children stayed at the Seaview Property from 2009 to October 2012.[10] The husband currently lives in that property and intends to stay in Singapore for the foreseeable future. The parties' three children are Permanent Residents of Singapore, and the husband intends for them to be educated in Singapore and to live here. The wife refers me to a letter dated 18 February 2012, written by a

9 Wife's Written Submissions dated 25 May 2017 at para 44.

10 Record of Appeal Vol III Part F p 107 at para 11.

Father Damian De Wind from a local Catholic church recommending the parties' eldest daughter to be enrolled into a secondary school in Singapore.[11] Father Damian also wrote that the parties' family had been parishioners of the church since 1991. He related how the family had recently returned from Jakarta and noted that the husband and his eldest daughter were preparing to be involved in various church ministries.

41 The husband, on the other hand, contends that the parties have more connecting factors with Indonesia. He adopts in his submissions a comparative analysis of the parties' connections to Indonesia and Singapore. Citing *Spiliada* ([32] *supra*), *BDA v BDB* [2013] 1 SLR 607 and *JIO Minerals FZC and others v Mineral Enterprises Ltd* [2011] 1 SLR 391, he relies on the doctrine of natural forum to argue that the parties' stronger connection with Indonesia makes Indonesia the appropriate forum and therefore ought to weigh significantly against granting the wife leave or relief here.[12] He highlights that their marriage was registered and solemnised in Indonesia in 1995. Their pre-nuptial agreement was also signed in Indonesia that year. The parties are both Indonesian nationals. He also disputes the wife's claim that they lived in Singapore from 2009 to 2012, averring instead that they resided in Jakarta at all times before the wife initiated divorce proceedings in that jurisdiction in 2012. And the wife and their children still reside in Indonesia to this date. All their assets, save for the Seaview Property, are located in Indonesia. When ancillary matters are dealt with, Indonesian witnesses will need to be summoned to give evidence.

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11 Record of Appeal Vol III Part D at p 221.

12 Husband's Written Submissions dated 1 June 2017 at paras 33 to 38.

42 For reasons I have given, I reject the husband's application of the *Spiliada* principles. But I accept that the cradle of the marriage was Indonesia. The parties' connection with that jurisdiction is the strongest. Nevertheless, in the light of my analysis that Singapore need only be an appropriate jurisdiction and not the most appropriate jurisdiction, I need only ascertain whether their connection to Singapore is sufficiently significant in the context of s 121F(2)(*a*). It is clear that the parties did not have a transient connection with Singapore. While there is a dispute over whether the family occupied the Seaview Property for a significant duration, there is objective evidence in the form of their children's Permanent Resident status and Father Damian's letter that the family has a significant connection to Singapore. The husband, on his own admission, has lived in Singapore since 2013.

43 In the circumstances, I find that the parties have a significant connection to Singapore for the purpose of s 121F(2)(*a*) but a particularly strong connection to Indonesia for the purpose of s 121F(2)(*b*). This means that while there may be sufficient connection for the Singapore court to exercise jurisdiction, the appropriateness of exercising such jurisdiction would in this case depend more heavily on the other factors under s 121F(2).

*Financial benefit under agreement: s 121F(2)(*d*)*

44 Section 121F(2)(*d*) requires me to consider any financial benefit which the applicant is likely to receive by virtue of any agreement. This brings into issue a pre-nuptial agreement which the parties signed in Indonesia on 6 June 1995. Their dispute over it begins at the most fundamental level: its validity and effect. The wife's evidence is that the agreement was prepared without legal advice, and that even if it were valid, it does not affect the Seaview Property. The husband takes the opposite position on both points.

45 Accordingly, the husband's first principal submission on the pre-nuptial agreement is that Singapore is not the appropriate forum to rule on its validity and effect, which the Singapore court would have to do if the wife's application is allowed to proceed for a hearing on the merits.[13] The husband emphasises that the agreement was prepared by Indonesian solicitors and executed by the parties in Jakarta. So the appropriate method of recourse for the wife is to apply to set aside the pre-nuptial agreement in Indonesia. For these points the husband relies on *AZS and another v AZR* [2013] 3 SLR 700 ("*AZS*"). The wife's response to this is that the validity and effect of the pre-nuptial agreement is simply a matter of proof of foreign law, which can be easily dealt with by the Singapore courts.[14]

46 In *AZS*, the husband applied to stay, on the ground of *forum non conveniens*, divorce proceedings commenced by the wife in Singapore. The parties were French nationals resident in Singapore who had signed a pre-nuptial agreement providing that each spouse was entitled to keep the property that he or she subsequently acquired. An important reason why the High Court granted the stay was that the proceedings "really revolved around the pre-nuptial agreement" (at [17]). Although the pre-nuptial agreement was not expressly governed by French law, it made numerous references to the French Civil Code, and the wife was contesting its voluntariness and validity. That fact, together with the existence of concurrent proceedings in France, made France the more appropriate forum.

47 I agree with the husband that *AZS* suggests that the jurisdiction in which a pre-nuptial agreement is concluded is best-suited to determine its validity and effect. This is because the witnesses who would be called to establish or

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13 Husband's Written Submissions dated 1 June 2017 at para 42.

14 Wife's Written Submissions dated 25 May 2017 at para 45.

challenge the voluntariness of the agreement, for example, are likely to come from that jurisdiction. While this is something that I may take into account under the s 121F analysis, on the facts of the present case, I am nevertheless persuaded by the wife's point that it would not be difficult for the validity and effect of the pre-nuptial agreement to be adjudicated in Singapore. I note from an English translation of the agreement that unlike the agreement in *AZS*, it does not make numerous references to foreign law.[15] As long as the parties are afforded the opportunity to provide the Singapore court with sufficient evidence – both of foreign law and of any relevant conduct relating to the signing of the agreement – the Singapore court would be more than competent to assess and decide the validity of the pre-nuptial agreement. Indeed, the Court of Appeal in *TQ v TR and another appeal* [2009] 2 SLR(R) 961 undertook such an assessment and held that the agreement in question was valid under Dutch law after considering the evidence and surrounding circumstances.

48 Accordingly, the dispute over the effect and validity of the pre-nuptial agreement does not, in my judgment, make it significantly less appropriate for the order sought by the wife to be granted by a court in Singapore.

49 The husband's second principal submission on the pre-nuptial agreement is that the wife is attempting to circumvent the pre-nuptial agreement through her Chapter 4A application in Singapore. I will consider this submission below where I examine the concern of forum shopping in the context of s 121F(2)(*f*) , which is the concern raised by this submission.

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15 Record of Appeal Vol III Part E at pp 56 to 61.

Foreign relief: ss 121F(2)(e) *and 121F(2)*(f)

50 Sections 121F(2)(*e*) and 121F(2)(*f*) require me to consider the extent to which a financial order made by a foreign court is likely to be complied with and the exercise or non-exercise by the applicant of any right to obtain such an order.

51 The wife's central submission, on these factors, is that the husband's contumelious disrespect for the Indonesian courts is a good reason for her decision not to exercise her right to apply in Indonesia for financial relief and to apply instead in Singapore for such relief. The husband, on the other hand, says that he has evinced no such disrespect, and in any event, the wife is obliged to seek relief in Indonesia first before doing so in Singapore. Accordingly, it is sensible to deal first with the evidence on the husband's alleged disrespect towards the Indonesian courts, and then address the issue of principle as to whether the wife needs to exhaust her remedies in Indonesia.

(1) Husband's disrespect towards Indonesian courts

52 First, the wife says that her husband has refused to serve a sentence of imprisonment which was imposed on him by the Indonesian courts for offences relating to his physically abusive behaviour towards the wife and their children. His conviction and sentence have been affirmed by the Jakarta High Court.[16] Having travelled to Singapore to evade his sentence in Indonesia, he is now essentially a fugitive of Indonesia. He has since 2013 refused to step foot in Indonesia for this reason. He claims that the criminal charges on which he was convicted and sentenced were "hoax charges" which were "fabricated [by the

[16] Record of Appeal Vol III Part A at p 213.

wife] to set [him] up and to label [him] as an abusive father who supposedly ill-treats his own children" in order to support her divorce suit against him.[17] The wife says that the husband's view of his criminal convictions demonstrates his continuing and blatant disrespect towards and contempt for the Indonesian courts and for any order they would make which is adverse to him.

53 Second, the wife contends that the husband has refused to comply with the maintenance order made by the Indonesian courts. The husband was first ordered, in June 2013 by the West Jakarta District Court, to pay his wife IDR50m (approximately $5,000) on a monthly basis for child support.[18] This amount was in April 2014 revised to IDR22.5m (approximately $2,300) by the Jakarta High Court.[19] The Indonesian Supreme Court upheld the order and the revised figure in August 2015.[20] The wife says that the husband did not pay her any monies from October 2012 to April 2015, and he therefore failed to comply with the West Jakarta District Court's maintenance order, which was upheld by two appellate courts. The wife also avers that from April 2015 to the present day, the husband has only paid her IDR300m (approximately $31,000), and on an intermittent basis.[21]

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17 Record of Appeal Vol III Part F p 193 at para 28.

18 Record of Appeal Vol III Part A at p 266.

19 Record of Appeal Vol III Part A at p 289.

20 Record of Appeal Vol III Part B at p 49.

21 Record of Appeal Vol III Part A at p 15.

54 The wife also points out that the husband has adduced thin and inconsistent evidence on his compliance with his child support obligations:[22]

(a) In the husband's first affidavit dated 2 February 2017 in these proceedings, he asserted that he had paid the wife a total sum of $154,036 towards child support.[23] The wife argues that the husband's evidence of his payments amounting to that total sum is of poor quality. The evidence exist in the form of photographs of stacks of cash[24] as well as six remittance receipts,[25] only two of which clearly state the wife as the recipient.[26]

(b) In the husband's second affidavit dated 6 April 2017, he changed his position by asserting that he had in fact complied with the maintenance order by paying the wife IDR300m (approximately $31,000). He suggests that the order took effect only upon its being upheld by the Indonesian Supreme Court in August 2015.[27] By then, his eldest daughter had turned 18 (which she did in 2014), and therefore the wife was not entitled to child support in relation to her.[28] The wife highlights that these views were not expressed in his first affidavit and are not reconcilable with his earlier assertion that he had paid $154,036.

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22 Wife's Written Submissions dated 25 May 2017 at paras 12 to 14.

23 Record of Appeal Vol III Part D at p 201.

24 Record of Appeal Vol III Part D at pp 233 to 234.

25 Record of Appeal Vol III Part D at pp 235 to 240.

26 Record of Appeal Vol III Part D at pp 236 and 238.

27 Record of Appeal Vol III Part F p 194 at para 35.

28 Record of Appeal Vol III Part F p 194 at para 34.

55 The husband has two principal submissions in response. First, the husband submits that the wife has not shown that that the husband will not comply with orders made in Indonesia. The husband says that his decision to evade his criminal sentence is no basis for the inference that he would not comply with Indonesian orders for financial relief, because those would have been made on a "civil basis".[29] The husband also argues that he has not defaulted on his maintenance obligations. His explanation for the alleged inconsistency in his evidence is that the sum of $154,036, which he mentioned in his affidavit dated 2 February 2017, included (a) the sum of approximately $31,000 which he gave the wife after the Indonesian Supreme Court's decision in August 2015 and which the wife does not dispute;[30] and (b) a lump sum of approximately $104,000, which the wife's family had extracted from him as a condition for "pull[ing] the criminal case" and allowing him to see his children.[31]

56 In my judgment, it is reasonable for the wife to take the view that the husband is unlikely to comply with any order made by the Indonesian courts. The husband's fugitive status alone is sufficient proof of his complete disregard for the rule of law. The husband's attempt to distinguish between criminal and civil orders is not only arbitrary – since both emanate from court proceedings – but in fact supports the wife's case on his contumelious attitude because it suggests that complying with court orders is for him ultimately a matter of choice. Also, since his attendance in court in Indonesia cannot be secured, his wife will face practical difficulties should any application in Indonesia have to proceed to trial. Any attempt on her part to seek relief from him in Indonesia is

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29 Husband's Written Submissions dated 1 June 2017 at para 22.

30 Husband's Written Submissions dated 1 June 2017 at para 21(b).

31 Husband's Written Submissions dated 1 June 2017 at para 21(a); Record of Appeal Vol III Part D p 230 at para 1.

likely to be thwarted by his blatant disrespect towards the courts in that jurisdiction. I also accept that the evidence that the husband has hitherto produced on his compliance with his maintenance obligations seems scanty and inconsistent, and this supports the wife's assertions that he has not paid.

(2) Exhausting foreign remedies

57 Next, considering the husband's attitude towards the Indonesian courts, the wife argues that it is reasonable for her to commence Chapter 4A proceedings here without having applied for relief against the husband in Indonesia, which she accepts she is entitled to do. The husband, in her view, has proved that he would be unwilling to comply with any court order made in Indonesia, whether of a criminal or matrimonial nature. So any application, even if successful, would be futile and practically unenforceable. He may even allege lack of due process as a reason not to comply with any Indonesia order obtained in his absence. In these circumstances, the wife says that she surely cannot be required first to seek relief against the husband in Indonesia before doing so in Singapore.

58 The husband contends that it is a rule of law that the wife must first exhaust all available remedies in Indonesia before coming to Singapore to file Chapter 4A proceedings. He stresses in this regard that the wife had and continues to have a real opportunity to seek relief in Indonesia. She acknowledges that the Indonesian courts have yet to decide on the division of their matrimonial assets consequent upon their divorce. Having failed to make a single application for ancillary relief in Indonesia, the wife, says the husband, cannot be allowed to file Chapter 4A proceedings here. For the rule on exhaustion of local remedies, the husband relies on *Cai Xiao Mei v Zhang*

ShaoJi [2014] SGDC 132 ("*Cai Xiao Mei*"). In all of this, the husband's point is that the wife is a forum shopper whose application should be dismissed.[32]

59 In my view, it is clear that the text of Chapter 4A does not set out any rule that one must first exhaust all available remedies in the jurisdiction where the foreign divorce was obtained before making a Chapter 4A application here. First, there is nothing in Chapter 4A which supports the existence of a free-standing rule to that effect. Second, s 121F(2)(*f*), which is the closest provision to a statutory basis for such a rule, is but one of a number of factors which the court must consider under s 121F(1), and therefore it lays down no absolute or presumptive rule. Third, not only does s 121F(2)(*f*) not lay down such a rule, it also casts the net of inquiry wider than the jurisdiction which granted the foreign divorce. The provision refers to the right an applicant has under the law of "any foreign country" and not just the country in which the foreign divorce was obtained.

60 On a plain reading, s 121F(2)(*f*) simply invites the court to assess whether the applicant has a good reason for choosing Singapore over any other jurisdiction in which he may have a right to obtain financial relief from the other party. But how is the court to assess whether the applicant has a good reason? That question may be answered, in my view, with reference to the statutory purpose of Chapter 4A and the authorities cited by the parties. I therefore turn to review these, before bringing their import under a general framework for inquiry and applying that framework to the facts of this case.

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[32] Husband's Submissions dated 1 June 2017 at para 8.

(A) AUTHORITIES

61 Fundamentally, the court's assessment must be guided by the purpose of Chapter 4A. In this regard, it will be recalled that the jurisdictional and discretionary criteria of Chapter 4A are intended to keep out persons insufficiently connected to Singapore from starting proceedings here purely in the hope of obtaining a financial or juridical advantage: see [29] above. Such persons are commonly referred to as forum shoppers. Part III, and by extension Chapter 4A, was not designed to lend them aid: see [29] above. Instead, Chapter 4A's purpose is to provide financial relief to an application who has a genuine connection to Singapore and for whom seeking relief from the other party in any foreign jurisdiction would be unfair or impractical, or has led to an unfair or impractical remedy.

62 It follows that if the applicant's reason for forgoing foreign remedies is purely to obtain an actual or perceived juridical advantage under Singapore law or procedure, the Singapore court is likely to consider his application an abuse of process because he is not the kind of applicant that Chapter 4A is intended to benefit. Thus it was said in *Harjit Kaur* ([37] *supra*) at [21] that the court will generally not grant leave to an applicant who chooses not to apply for relief in a foreign court in the hope of obtaining a more favourable award elsewhere.

63 The facts of *Cai Xiao Mei* illustrate this point. The wife in that case was contesting ancillary matters in China, but had deliberately refrained in that jurisdiction from applying for financial relief out of the parties' matrimonial assets located in Singapore. This was simply because she felt that Singapore was the more appropriate forum to hear that particular claim. There was no evidence that it was impractical for her to contest that claim in China or that the Chinese courts would deal with it unfairly. The District Judge considered that

she had not demonstrated substantial ground as she was simply cherry-picking particular claims for a Singapore court to adjudicate (at [33]).

64 Yet at the same time, a forum that an applicant has good reason to choose may well afford him some kind of juridical advantage, and that alone ought not to disentitle him to relief under Chapter 4A. This point is well illustrated by a pair of Part III cases which arise in the familiar context of pre-nuptial agreements: *N v N (Foreign divorce: financial relief)* [1997] 1 FLR 900 ("*N v N*") and *Traversa v Freddi* [2011] 2 FLR 272 ("*Traversa*"). The husband in the present case relies on *N v N* to argue that leave should not be granted to the wife because the Singapore court may grant her more than her entitlement under the pre-nuptial agreement. The wife on the other hand relies on *Traversa* to argue that the existence of a pre-nuptial agreement does not by itself preclude her from applying for relief in Singapore, especially if she knows that making an application in Indonesia would be futile.

65 By way of preliminary observation, I note that *N v N* was decided on the basis that it was essential to demonstrate that the applicant was suffering hardship or injustice before the court could find that there was substantial ground for granting leave to commence Part III proceedings. This proposition was overruled by the UK Supreme Court in *Agbaje* at [61] on the basis that nothing in Part III or the 1982 Report made hardship or injustice a necessary precondition for leave to be granted: see also [31] above. I also find no warrant for it in Chapter 4A. Needless to say, hardship and injustice remain relevant factors, just not pre-conditions to a successful application.

66 Apart from this overruled point, the court's reasoning in *N v N* on the issue of forum shopping is instructive. In that case, a Swedish couple had a pre-nuptial agreement which provided that all property acquired by each of them for

or during their marriage should be the individual property of the party by whom it was acquired with the other having no right to such property. Before the parties divorced in Sweden, the wife received a large inheritance. The wife later moved to England, and the husband applied under Part III to divide the sale proceeds of their Swedish flat.

67 The court refused the husband leave, finding that no substantial ground had been made out because the husband had failed to prove injustice (at 913): as mentioned, this aspect of the decision is wrong and may be ignored. But the court also gave weight to the fact that the husband had without reason omitted to apply for relief in Sweden before coming to England. By coming to England, the husband might obtain an advantage since the English court may grant the husband more than his entitlement under Swedish law by taking into consideration the wife's inheritance, which was expressly excluded from the husband's reach by the pre-nuptial agreement: *N v N* at 912 to 913.

68 *N v N* may be juxtaposed with *Traversa*. In *Traversa*, the wife and husband were married in Italy under a "separate property regime". Expert opinion was produced to show that under this regime, each party would retain his or her property acquired before and during the marriage. The wife, who was the wealthier party, divorced the husband in Italy. The husband did not take part in the Italian proceedings. Shortly after the divorce, the wife evicted the husband from his home in England, which was in her sole name. But because of the separate property regime, he still had a cottage in Italy which the wife had transferred into his sole name during their marriage. In the event, the husband applied for financial relief under Part III, seeking specifically an order for the transfer of the English property into his name.

69 One of the wife's submissions was that the husband's claim would certainly fail because the court was bound by precedent (*ie*, *Granatino v Radmacher (formerly Granatino)* [2011] 1 AC 534) to give significant weight to the separate property regime in Italy. Therefore, she said, no substantial ground had been made out. Thorpe LJ saw the force of this argument, noting that the regime was "a positive, mutually agreed election and there [was] no suggestion of unfairness at the date of marriage" (at [33]). But his Lordship thought that "whether or not it is fair in the present circumstances to apply it with all its rigour is a consideration to be weighed, not on the application for leave, but at the resulting trial" (at [33]). Ultimately, Thorpe LJ did not see the separate property regime as an obstacle to the husband's establishment of substantial ground. This the husband did successfully, in Thorpe LJ's view, by showing (among other things) that (a) he had been served with eviction proceedings and (b) he was willing to transfer the Italian cottage back to the wife in return for the English home.

70 It is illustrative to contrast *N v N* and *Traversa*. *N v N* shows that the court should not assist an applicant who seeks mainly to obtain a financial or juridical advantage by avoiding the effects of a pre-nuptial agreement through a Chapter 4A application. *Traversa* simply shows that this is not an uncompromising rule. This is because the husband in *Traversa* was seeking not only to obtain title to the English property. He was also willing for that purpose to give up the Italian cottage, to which he was otherwise fully entitled under the separate property regime. It was not disputed that there was no chance of obtaining such an order in Italy, and that perhaps explains why he did not apply for relief there. So allowing him to use English proceedings may well have given him a juridical advantage. But Thorpe LJ must have considered it to be justifiable to do so on the facts. I note also that during the marriage, the husband

spent many years living and working in England, and was now being evicted from his home in that country. I agree with the *Traversa* court that on those facts, the husband had at least shown substantial ground.

71 The next point arising from the authorities is that the availability and practical effectiveness of a foreign remedy which the applicant has yet to seek is a relevant factor. This point flows from the purpose of Chapter 4A and is found in the Court of Appeal's reasoning in *TMO v TMP* [2017] 1 SLR 585 ("*TMO*"). In that case, the District Judge thought that the applicant ought not to be granted relief under Chapter 4A because she could still pursue remedies in Johor where she had obtained the divorce. The Court of Appeal had difficulties with this view because those remedies, on the facts, were no longer open to her. One of those difficulties is that she was seeking to divide a HDB flat, but a Johor court order which purports to divide it may well not be enforceable in Singapore because of the *lex situs* rule: *TMO* at [59]. While this point dovetails with the inquiry under s 121F(2)(*g*) as to whether the relief sought relates to local assets, the emphasis of the court's reasoning was on the unenforceability of a foreign order, not on the enforceability of a Singapore order, relevant as the latter may be. That emphasis illustrates the broader point that the court must consider whether it would be practical to insist on the applicant seeking a foreign remedy which may ultimately not be efficacious.

72 Finally, the text of s 121F(2)(*f*) indicates that the court should also consider whether the applicant has lost his right to apply for relief in a foreign jurisdiction: the provision invites the court to examine any right to financial relief which the applicant has or "has had". Naturally, the court should consider why the applicant has lost that right. One possible reason is delay, as suggested in the 1982 Report's commentary on cl 5: 1982 Report ([31] *supra*) at p 31. Another reason might be that the applicant has waived that right or is estopped

from exercising it. This was the other difficulty the Court of Appeal had in *TMO*. While the District Judge had suggested that the applicant could apply to set aside the divorce she had obtained in Johor, the Court of Appeal observed that she had either waived her right to make that application or was estopped from doing so because she had obtained custody under the Johor divorce and had even obtained relief from the Syariah Court in Singapore on the basis of the Johor divorce: *TMO* at [58]. While the right to challenge a divorce may not technically be a "right … to apply for financial relief" under s 121F(2)(*f*), the point is that an applicant may have lost such a right for good or bad reasons, and it is for the court to assess those reasons when assessing the applicant's choice to seek financial relief in Singapore.

(B) FRAMEWORK AND ANALYSIS

73 I now gather the threads of the foregoing analysis. Having regard to the statutory purpose of Chapter 4A and the relevant authorities, I am of the view that the court ought to consider the following non-exhaustive set of factors when assessing under s 121F(2)(*f*) the applicant's reason for not exercising his right to relief, if he has such a right, under the law of any foreign country:

(a) any desire in the applicant to obtain an actual or perceived juridical advantage by commencing proceedings in Singapore;

(b) the kind of financial relief which the applicant has a right to seek from the other party in any foreign jurisdiction;

(c) the fairness and practicality of requiring the applicant to exercise such a right; and

(d) where the applicant has lost such a right, the reason for that loss.

74 In the present case, the third factor is the controlling factor. I have found that the wife has taken a reasonable view that the husband has proved his unwillingness to comply with any order which the Indonesian courts might make. That being the case, it would be both unfair and impractical to require her to exercise her right to seek financial relief from him in Indonesia, regardless of the scope of that relief. In my judgment, this consideration outweighs the fact that she may obtain a juridical advantage by having a Singapore court decide the validity and effect of the pre-nuptial agreement. In any event, the husband has produced no evidence that she desires such an advantage. If she can be said to be seeking any advantage at all, it would be the certainty that a Singapore financial order would be enforceable on the Seaview Property, given that the property is located in Singapore. But that is simply a function of the *lex situs* rule and is in any event an advantage contemplated by the Charter, as I explain shortly below. I therefore find that the wife has a good reason for omitting to exercise her right to apply for financial relief from the husband in Indonesia.

Local assets and enforceability: ss 121F(2)(g)*) and 121F(2)(*h*)*

75 Sections 121F(2)(*g*) and 121F(2)(*h*) require me to consider whether any matrimonial asset which is sought to be divided is available in Singapore and whether, in general, the financial order sought would be enforceable. Here, the Seaview Property is in fact available in Singapore, and any order made in Singapore on the property would be readily enforceable.

76 The enforceability of a Singapore order on a property located in Singapore is a juridical advantage for a Chapter 4A applicant which Parliament

envisaged. This is clear from the scenario described by the Minister in the Chapter 4A Debate ([27] *supra*) at col 2049:

> Let me give Members an example: A Singaporean woman who marries a foreigner and then lives in a matrimonial home in Singapore. Suppose the foreign spouse then obtains a divorce from a foreign court which is recognised in Singapore but for some reason makes no financial provisions. Currently, the Singaporean spouse will have no financial remedy in Singapore because the Singapore courts do not have the power to make such ancillary orders. With this new Chapter, the courts here will be able to make orders on matrimonial assets in Singapore and the maintenance for divorces that were obtained in foreign courts. This will plug an existing gap. The related amendments will also be made to the Central Provident Fund to effect this, as CPF monies may constitute part of the matrimonial assets to be divided between parties.

77 Citing this passage, the Court of Appeal in *TMO* at [59] to [60] observed that the difficulty of enforcing a foreign order for the division of assets located in Singapore, such as HDB flats and CPF monies, was precisely the type of difficulty Chapter 4A was intended to resolve. Of course, the mere fact that the parties' matrimonial assets are in Singapore will not be decisive, as *Cai Xiao Mei* ([58] *supra*) illustrates: see [63] above. But it is certainly a factor that weighs in the wife's favour in the present case.

*Delay: s 121F(2)(*i*)*

78 Section 121F(2)(*i*) is not in issue. The parties' divorce was finalised in August 2015, and there is no allegation that the wife has delayed in making her application for relief under Chapter 4A.

Conclusion on s 121F

79 I now conclude my analysis under s 121F. I find that the parties have a strong connection with Singapore. The wife has a good reason for choosing not to exhaust her remedies in Indonesia before seeking financial relief under

Chapter 4A in Singapore. That reason is that the husband's disrespect towards the Indonesian courts, and his intention not to return to Indonesia, constitute a material impediment to the wife's exercise of her right to relief in Indonesia and enforcement of any relief she might obtain. It would therefore be unfair and impractical to expect the wife first to seek remedies there before applying for financial relief in Singapore. This consideration is weightier than the fact that she might obtain some kind of juridical advantage in having the validity and effect of the pre-nuptial agreement decided under Singapore law. Also, the location of the Seaview Property in Singapore contributes to the appropriateness of Singapore as a forum for relief.

Appropriateness of relief: s 121G read with s 112

80 I turn now to assess "substantial ground" in terms of the availability and propriety of the type of relief which the wife seeks: see [16] above. Here, the wife wants the Seaview Property to be divided. Under s 121G, the court's power to order a division of matrimonial property in Chapter 4A proceedings is co-extensive with the power conferred by s 112 in ancillary proceedings. That provision is therefore an important yardstick for analysis.

Power to divide "any matrimonial asset"

81 The husband says that the wife is asking the Singapore courts to divide the Seaview Property in isolation from the whole pool of matrimonial assets. In this regard, he submits, first, that a Singapore court is restricted from dealing with the Seaview Property in that manner because the wife is entitled to seek financial relief against the husband through ancillary proceedings in Indonesia. Second, the husband argues that by asking a Singapore court to deal with the

Seaview Property in isolation, the wife is "clearly cherry-picking or forum shopping for the best outcome in Singapore".[33]

82 The wife, on the other hand, argues that a Singapore court is entitled to deal with just the Seaview Property. She qualifies that she will be asking, at the hearing on the merits, for the division of that property to be performed in the light of all the parties' assets. But she confirms that she has restricted her claim only to that property. She argues that the court's remedial discretion under s 121G(1) in flexible enough to permit such a remedy.

83 In my view, a court is empowered under s 121G(1) read with s 112 to divide only part of the applicant's pool of matrimonial assets. Section 112(1) says that the court may order the division or sale between the parties of "any matrimonial asset". Hence, it is clear that the power is not exercisable only if the court intends to divide or sell "all" matrimonial assets. It may do so for "any" such asset. It follows that the court has the power to grant financial relief relating to only part of the parties' matrimonial assets under s 121G(1) of the Charter.

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.

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[33] Husband's Written Submissions dated 1 June 2017 at para 31.

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* ([32] *supra*), 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.

Dividing assets "between the parties"

86 Finally, the husband contends that the purchase price of the Seaview Property was paid fully by his mother.[34] This contention was mentioned only in passing at the hearing and the wife did not respond to it substantively. But she may for now be presumed to take the opposite view since she is proceeding on the basis that the Seaview Property is in fact a matrimonial asset and is liable to division. This raises the issue of whether a court in Chapter 4A proceedings has the power to determine the interests of a third party in a property and make orders against the third party consequent upon that determination. After the hearing of the appeal, it came to my attention that there are conflicting High Court authorities on whether such a determination would properly be "between the parties" within the meaning of s 112 of the Charter: see *ABX v ABY and*

[34] Record of Appeal Vol III Part F at p 204.

others [2014] 2 SLR 969 at [68] and *UDA v UDB and another* [2017] SGHCF 16 at [24]. The proper view on s 121G and s 112, in the light of these cases, has not been argued before me. The husband's mother's claimed interest in the property in any event does not undermine the wife's application for leave at this stage. It suffices for me to highlight to the parties that they may make the appropriate arguments at the hearing on the merits or file an appropriate application.

Conclusion

87 In the present case, the wife has chosen to pursue in Singapore the division of a matrimonial asset located here. The parties' connection to this country is strong and the husband has taken up residence here to evade the penal consequences of his criminal conviction in Indonesia. In these circumstances, the wife, in my judgment, has demonstrated substantial ground for my granting her leave to proceed with her application under Chapter 4A.

88 I therefore allow the appeal and set aside the orders made below. Unless counsel wish to be heard on costs (in which event they should write in within seven days from today), costs both here and below are to be in the cause of the application.

Valerie Thean
Judicial Commissioner

Suang Wijaya and Nakoorsha bin Abdul Kadir (Eugene Thuraisingam LLP) for the plaintiff;
Mimi Oh, Geena Liaw Jin Yi and Chloe Chong (Ethos Law Corporation) for the defendant.