BF v BG
[2006] SGHC 197

Case Number : D 604668/2002

Decision Date : 07 November 2006

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Petitioner in person; Indranee Rajah SC and Daryl Mok (Drew & Napier LLC) for the respondent

Parties : BF — BG

Family Law – Divorce – Ancillary matters – Appeal against District Court's orders on access, maintenance and division of matrimonial assets

7 November 2006 *Judgment reserved.*

Woo Bih Li J:

1 The parties, BF and BG ("the Wife" and "the Husband" respectively), were married at the City Hall Marriage Registry, Hong Kong, on 17 March 1995. They have two sons. The Wife and the Husband were born in 1955 and 1956 respectively. The couple had stayed together in Hong Kong before and after their marriage. Thereafter, they moved to and stayed in an apartment in Singapore. Both are Australian citizens domiciled in Singapore. The Husband is also a Singapore permanent resident. After the first child was born, the Wife became a homemaker. The Husband is an international management consultant. He claims that he is at present engaged primarily by CMA Co. (The names of the parties and the corporate entities in which the Husband are involved have been changed in this judgment to protect the identities of the children.) I will say more about their income-earning capacities later. On 17 December 2002, the Wife left the matrimonial home with the children and filed a divorce petition the same day on the ground of the Husband's unreasonable behaviour. The Husband was away then on a business trip. When he returned home on 19 December 2002, he found that his family had left with clothing, household appliances and some furniture. He was served that same day with the divorce petition and an application for interim care and control. From 20 January 2003, the parties attended court mediation and then private mediation. On 6 February 2003, the Husband filed a cross-petition based on three years' separation. On 11 February 2003, the Wife was allowed to withdraw her divorce petition. On 11 March 2003, a decree *nisi* was made on the Husband's cross-petition. The ancillaries were adjourned to be heard in chambers. The parties eventually signed an agreement dated 15 March 2003 ("the Agreement") which provided for custody, school and public holiday access, an arrangement for a holiday and maintenance. The Agreement was incorporated into a consent order on 20 April 2003 ("the Consent Order"). The date of 20 January 2003 thereon is a typographical error. Final orders on ancillaries were made by District Judge Khoo Oon Soo ("District Judge Khoo") in August and September 2005 as elaborated below.

2 The Husband and Wife, each being dissatisfied with certain parts of District Judge Khoo's order, have appealed against parts of his orders. The appeals are:

(a) the Husband's appeal in Registrar's Appeal from the Subordinate Courts ("RAS") No 720075 of 2005 ("RAS 720075/2005") on access;

(b) the Husband's appeal in RAS No 720081 of 2005 ("RAS 720081/2005") (as amended) on division of matrimonial assets and maintenance;

(c) the Wife's appeal in RAS No 720082 of 2005 ("RAS 720082/2005") on access, division of matrimonial assets and maintenance.

3 There is also another appeal by the Husband in RAS No 720019 of 2006 ("RAS 720019/2006") against orders made by District Judge Teoh Ai Lin ("District Judge Teoh") which I shall elaborate on later. All the appeals were heard by me. Ms Indranee Rajah SC was the lead counsel who appeared before me for the Husband. The Wife appeared in person. The Husband filed the two notices of appeal referred to in [2(a)] and [2(b)] above because after District Judge Khoo made his final order on 17 August 2005, he heard further arguments on the division of matrimonial assets and maintenance. District Judge Khoo's decision, after further arguments, was given on 28 September 2005. The Husband's notice of appeal in RAS 720075/2005 was filed first on 31 August 2005 to preserve the appeal timeline. The second notice of appeal in RAS 720081/2005 was filed on 4 October 2005 and amended on 11 October 2005. The Wife's notice of appeal in RAS 720082/2005 was filed on 5 October 2005. The back page thereof indicates a filing date of 5 September 2005 which should probably read as 5 October 2005. I should add that Ms Rajah did not assert that the Wife's notice of appeal, or any part thereof, was time-barred. Numerous affidavits and exhibits were filed. They occupied 15 bundles and over 6,000 pages in vol III of the joint record of appeal. Several issues relating to access, maintenance and division of matrimonial assets were canvassed in the various appeals.

Access

4 I will first deal with the access issues. There was a prior application under Summons in Chambers No 651539 of 2004 which was an application by the Husband for interim access during term time. District Judge Khoo had made certain orders thereon. The Husband then appealed to the High Court. His appeal was heard by Andrew Phang Boon Leong JC, as he then was. Phang JC affirmed District Judge Khoo's orders but added two other orders:

(a) that the Husband would have an additional hour of access to each child; and

(b) that the Husband was to have video access, when he telephoned the children, if possible.

5 In the final hearing on ancillaries, District Judge Khoo appeared to consider that he was bound by the decision of Phang JC even though that decision was in respect of interim access pending the final hearing on the ancillaries. In that final hearing, District Judge Khoo maintained the access orders he had made and the two additional orders of Phang JC with a qualification that any make-up access be done during the additional hour of access (see (b) below). The orders on access, as they stand before my decision, are as follows:

<u>School time access</u>

(a) The Husband shall have mid-week access every Wednesday from 5.30pm to 7.30pm.

(b) The Husband shall have make-up access to the children on Tuesdays from 5.30pm to 7.30pm, upon giving the Wife 24 hours' notice, should the Husband be unable to have access on Wednesdays due to work commitments.

(c) The Husband shall have weekend access to the children each month as follows:

Week 1 and 3: Saturday 10.00am to Sunday 10.00am

Week 2 and 4: Friday 7.00pm to Saturday 7.00pm

(d) The Husband shall have an additional hour of access with each son on Tuesdays (according to Ms Rajah's submission, this is homework/make-up access. I shall come back to this order later).

(e) The Husband shall have unrestricted and reasonable telephone access.

(f) The Husband is to have video access, if possible.

(g) The Husband may visit the children in school subject to the following conditions:

(i) the Husband's visits to the school shall be no more than once a week;

(ii) the Husband shall inform the Wife as well as the relevant school teacher in writing at least one day before his visit, that he is intending to visit the boys (*ie*, if he intends to visit on Wednesday, for example, he should inform the Wife and the school by Tuesday); and

(iii) the Husband's visits shall only take place during the boys' respective lunch hours, and he shall not bring the boys out of the school premises during his visit.

(h) The Husband may attend any public event in the school to which all parents are invited, and any parent-teacher meetings or parent-child school activities to which he, as the father, is specifically invited, or to which both parents are invited.

(i) Both the Wife and Husband shall be allowed to do volunteer work with the school provided that it is by the invitation and agreement of the school.

School holiday access

(j) The Wife and the Husband shall have access as provided under the Consent Order, save that the Husband shall have unrestricted and reasonable telephone access when the children are with the Wife.

Under the Consent Order, the access for the summer school holidays was as follows:

Week 1 and 2	-	Husband
Week 3	-	Wife
Week 4 and 5	-	Husband
Week 6, 7 and 8	-	Wife

6 According to Ms Rajah, the access on summer holidays was subsequently varied by an order of District Judge Teoh on 15 March 2006 as follows:

Week 1 and 2	-	Husband
Week 3 and 4	-	Wife
Week 5 and 6	-	Husband
Week 7 and 8	-	Wife

That variation is not in issue before me. However, there are other orders of District Judge Teoh which are the subject of yet another appeal by the Husband, *ie*, RAS 720019/2006 mentioned in [3] above. I will come to those other orders later.

7 Before I deal with specific issues of dispute regarding access, I make the following general observations. From the Husband's affidavits, I gather that his approach was that each parent should have equal time with the children during children's available free time. He then sought to calculate those hours and to use his calculation to justify what he considered was reasonable access for him. In my view, this is not an issue where such an approach is appropriate and the court should take into account other factors such as who the primary caregiver is and what other arrangements he or she considers appropriate, the children's needs not only in spending time with each parent but also to prepare for bed or other activities, and travelling time, as well as their overall schedule. These have to be considered in the round and not based on some mathematical formula.

8 Although Ms Rajah was not using the Husband's calculation as such to support his appeals on various issues of access, it seems to me that the Husband was still trying to get as much time as possible with the children because, basically, he was still of the view that each parent should have equal time with the children from their free time. It also seems to me that the Husband, for all his success in his career, on which I shall say more later, is insecure about his children's love for him and his influence over them. He may think that the Wife is poisoning their minds about him but, as far as I can tell, that suspicion is not well-founded. The Husband also sought to justify his applications and appeals on access by saying that the children wished to spend more time with him. I do not expect young children who love their father to say otherwise. However, issues of access should be considered in the round as I have said and not simply on what young children say they want. There is also no suggestion that the children wanted to spend less time with their mother. The Husband detailed his involvement in the activities and lives of the children but there is no doubt that the Wife is clearly the primary caregiver. In a note written by the Husband to the Wife on 3 July 2002 he said, *inter alia*:

> I believe you have spent the last five years at home spending time raising children and managing the household. Nobody would ever question that our kids have impeccable manners and routines, thanks almost a 100% to you.

9 I will deal first with the Wife's appeal on access since she is appealing only with regards to one aspect.

Wife's appeal on Husband's homework access on Tuesdays

10 The Wife's appeal is that the homework access given to the Husband during school term for each son of an additional hour on Tuesdays be set aside. This access was initially denied by District Judge Khoo but allowed by Phang JC as one of the two additional orders made by Phang JC, which I have mentioned.

11 Ms Rajah did not suggest that the Wife should have appealed against Phang JC's order on the Tuesday access. She accepted that that order was in respect of interim access only. It may well be that the reason why Ms Rajah did not suggest that the Wife should have appealed against Phang JC 's order is that the Husband himself had not appealed against Phang JC's orders. Be that as it may, I agree that the orders of Phang JC were interim orders and could be varied even by District Judge Khoo when he made his final orders in respect of ancillaries on 17 August 2005.

12 The reason why the Husband had sought further weekday access, over and above the Wednesday access, was so that he could help the children with their homework. He had asked for such access to be on Thursdays but Phang JC had decided to give him access on Tuesdays instead.

13 The Wife submitted that there was no necessity for the Husband to be involved with the children's homework. Despite the Husband's very limited involvement previously, the children were already doing well. On the other hand, Ms Rajah submitted that the Husband has a science background while the Wife has a humanities background. The Husband's involvement with the children's homework was therefore in the interest of the children.

14 I see no reason why the Husband should not be involved with the children's homework and, I believe, neither did the Wife actually. Her real disagreement was whether the Husband should be allowed additional access time for this reason. It seems to me that that is the crux of this issue.

15 The Husband already has access for two hours every Wednesday in addition to weekend access. In my view, he can use the Wednesday or weekend access for homework if he wishes but he does not want homework to eat into either of those times. It seems to me that the Husband has used homework as an excuse to gain additional access.

16 The situation on such access, as it stands before my decision, has been described by the Wife as disruptive. Paragraphs 10 to 12 of her (appellant's) submissions stated:

> 10. The Tuesday access effectively takes two hours out of the children's busy week. Parties are no longer living in the same condominium: it takes almost a full additional hour out of each child's week, ie, in addition to the hour's access, to ferry him to and from the Husband's home (including driving time each way, time to collate appropriate isolated-task homework to take, time from carpark to home at each end, etc, and the Husband is invariably 10 minutes late releasing the children from access). This extra hour out places extra strain particularly on the [elder child]: he, as all his peers, already had a very busy week. Both children are only likely to get busier as they get older and have more homework.
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> 11. Under the current arrangements, the Wife returns with [the younger child] to her home by about 7pm on Tuesday evenings after access with the Husband, only to leave him 15 minutes later to go and collect [the elder child] from the Husband's home, returning with [him] 45 minutes later. (As the Order presently provides that the Husband is to have access of one hour each separately with each child (excluding travelling time).
>
> 12. The children's mealtimes are also disrupted. It is no longer possible for the children to eat their evening meal together on Tuesdays. The younger [child] leaves the Wife's home at

5.15 pm and does not return until almost 7pm. He therefore has no opportunity to have his evening meal until after 7pm when [the elder child] is with the Husband. [The elder child] leaves the Wife's home at 6.15pm and does not return until almost 8pm, so he must have his evening shower and meal before he goes for access, while [the younger child] is at the Husband's home. As [the elder child] is used to having his evening meal later on other days (necessitated by scheduled activities, eg, soccer and tennis), the Tuesday access is disruptive to the normal routine that he is familiar with.

17 Ms Rajah submitted that one simple way to address these points was for the Wife to send both the children to the Husband. The Husband could work with one child while the other was having his dinner. However, this was not what the court had allowed.

18 Ms Rajah also submitted that the current logistical arrangement was suggested by the Wife which the Husband agreed to. However, it must be borne in mind that the Wife had to abide by the order pending the outcome of her appeal.

19 In any event, the Husband himself found Tuesdays not suitable for him. In his appeal from District Judge Teoh's order, he was asking that Tuesdays be substituted by Thursdays or Fridays because of his work commitments which require him to spend at least two and a half days per week in Indonesia.

20 The Tuesday homework access should therefore no longer be in issue as such but the Husband wants Thursday or Friday access in replacement. Presumably, he still wants to hang onto Tuesdays, if no replacement is given and even though Tuesdays are not convenient for him.

21 I am of the view that the children's interest do not require the Husband to have the so-called homework access, which is disruptive. If the Husband wants to help them with their homework, he has enough time to do so. Furthermore, I will grant him some additional time for weekend access, although on an alternate basis, as I shall elaborate below.

22 Accordingly, I allow the Wife's appeal on the Husband's Tuesday homework access of one hour for each child. The Husband still has the make-up access which is also currently on Tuesdays but the difference is that under the make-up access, the Husband has two hours from 5.30pm to 7.30pm with both children whereas under the homework access, he has one hour with each child. The make-up access is also available to the Husband only if he cannot avail himself of the Wednesday access. While the Wife has appealed against the Tuesday homework access, she has apparently not appealed against the Tuesday make-up access as she made no submission thereon. My decision on Tuesday homework access is with effect immediately after the 2006 school Christmas holidays so as to tie in with the effective date of other orders I am making in respect of access. This will give parties time to make their arrangements. The question then is whether I should allow the Husband make-up access on some weekday other than Tuesdays. I will deal with this later when I come to the Husband's appeals on access.

Husband's appeal for make-up access on some other weekday

23 The first issue under the Husband's appeals on access is the question of make-up access. As I have mentioned, the make-up access under District Judge Khoo's order was on Tuesdays from 5.30pm to 7.30pm which overlapped with the homework access on Tuesdays of one hour for each child.

24 The relevant notice of appeal states that District Judge Khoo refused to allow the Husband

make-up for access times forgone due to work exigencies. This was not accurate. He had allowed make-up access but the make-up access overlaps with the homework access as I have said.

25 The list of issues which Ms Rajah helpfully provided for the court states that this issue is whether the Husband should be granted make-up access for any access period foregone due to work exigencies rather than just overseas work assignments. The decision of District Judge Khoo on make-up access does not stipulate that such make-up access is allowed only if the Husband was unavailable due to overseas work assignments. It covers the Husband's unavailability "due to work commitments" generally.

26 Indeed, in the Husband's (appellant's) case, the complaint was that the Husband did not want the make-up access to overlap with the homework access.

27 Under my decision, there will not be any more overlap since I have taken away the Tuesday homework access for the Husband. However, I gather that the Husband still prefers to have his make-up access on, say, Thursdays or Fridays instead of Tuesdays. Ms Rajah submitted that a make-up, as sought by the Husband, would not allow him more than what he had been granted and the Husband was prepared to give at least one week's advance notice of the intended make-up. It seems to me that while this may seem reasonable in theory, the reality is that the Wife, as the primary caregiver, must be allowed to plan the schedule of the children. This includes whatever extra-curricular activity which she may consider appropriate. Such activities are usually planned to proceed on a regular basis week after week. One cannot change such activities so simply just because a week's notice is given. It seems to me that the Husband is more concerned about his not losing his access than the disruption his make-up access entails to both the Wife and the children. If he is unable to make the Wednesday access he still has the weekend access. He has also been given telephone access which he can use any day of the week, with video if possible. Furthermore, I will be giving him extended weekend access and, in his affidavit of access filed on 16 May 2003, he himself indicated that he considered weekend access to be more meaningful. At that time, he was seeking a longer period of weekend access. In para 20 of that affidavit he said that as regards the then mid-week access from 5.30pm to 7.30pm, "This slot of access takes place at a time when I am in the middle and in the thick of meeting clientele, doing presentations, studying data of existing and potential clientele and generally racking my mind with general commercial survival issues given the current global economic gloom." He goes on to say, "The quality and impact of an early evening midweek access for a few hours, pales greatly in comparison with overnight access …". Yet he has been seeking weekday access from some time on Wednesdays, to additional time for homework on another weekday, to make-up access on yet another weekday. While it was suggested that this illustrates his love for the children, I am of the view that it demonstrates how he has allowed his desire to get more time with them to override the disruptions to the children and the Wife.

28 Ms Rajah also submitted that it will be rare for the Husband to seek make-up access but, if it is truly rare, there is no need to make such an issue of it. I would not have granted the Husband make-up access even on Tuesdays because of the disruption it would have caused. It seems to me that make-up access was allowed on Tuesdays because the Husband already had homework access on Tuesdays. Without such homework access it is doubtful if the Husband would have been given make-up access by District Judge Khoo. In any event, as the Wife has apparently not appealed against the Tuesday make-up access, that order remains.

29 In the circumstance, I dismiss the Husband's appeal for make-up access on other weekdays. The Wednesday access remains.

Husband's appeal to send the children to school

30 The Husband is appealing to be allowed to send the children to school twice a week with prior notice to the Wife. Ms Rajah has clarified that this can be fixed in advance like every Thursday and Friday. The reason given by the Husband is that this allows him extra bonding time and the children would know that he is making a special effort to be with them.

31 It seems to me that the latter reason is again more an excuse than a reason. There is no suggestion that the children doubt or question the Husband's love for them. The detailed orders made on his access already allow him, in addition to weekend access, one weekday access, telephone calls daily and this together with a video facility, if possible, and visits to the school, of no more than once a week. He has made more than a special effort to be in contact with them.

32 As for spending more time to bond with them, this appears not to be a bad idea as it does not eat into the Wife's time with the children when he sends them to school. However, that is only one factor.

33 District Judge Khoo did not allow the Husband to send the children to school in the interim access application. This decision was upheld by Phang JC on appeal. District Judge Khoo thought that he was bound by Phang JC's decision even when District Judge Khoo was making final orders on ancillaries. As I have said, I agree with Ms Rajah that District Judge Khoo was not bound. In any event, District Judge Khoo went on to say that he considered such an arrangement to be potentially disruptive and unpredictable, even for twice a week. He also considered the fact that last-minute inability by the Husband to send the children would leave them without the school bus transport which was their current means of transport and that it would be desirable for the children to mix with others on the way to school.

34 Ms Rajah submitted that District Judge Khoo had misapprehended the facts as the Husband was familiar with the bus routine. It would arrive at the condominium where the Wife and children are staying around 7.25am to 7.30am and wait for ten to 15 minutes for the children to board. The Husband intended to notify the Wife a day in advance and if "by any freak chance" he was nevertheless unable to have his car parked alongside the school bus when the boys came down, the boys would naturally board the bus and proceed. The boys would therefore not miss the school bus as such.

35 The Wife submitted that it was best for the children, who were not used to seeing the father at the bus-stop, to be able to get on the bus to school without being reminded of the tension between the parents. She further submitted that contrary to what the Husband had thought, the school bus does not wait for about ten to 15 minutes as its schedule would not permit this. Also, the bus-stop area was very congested at the time with a number of school buses pulling in around the same time and residents trying to exit the condominium by the same route. Accordingly, the Husband cannot have his car parked alongside the school bus. Furthermore, the Husband's busy schedule and his own request for make-up access suggested that it was likely that he would from time to time be unable to send the children, which would give rise to uncertainty and stress for the Wife and the children. The Wife added that the school itself encouraged children to use the school bus to avoid congestion although the Husband asserted that nevertheless many children were still brought to school in cars.

36 I am persuaded that the situation is not as simple as the Husband thinks it is. With his busy schedule, there will be disruptions to his plan of sending the children with consequential disruption to the children's routine. I also do not think it is in the children's interest to be waiting at the bus-stop with the niggling thought that if he does not show up in time, they will then have to rush back to get onto the bus. In this respect, I accept the Wife's assertion that the bus's schedule will not allow it to

wait ten to 15 minutes. In the circumstances, I dismiss the Husband's appeal on this issue.

Husband's appeal for extended weekend access every alternate weekend from Friday 7.00pm to Sunday 10.00am

37 I was informed that notwithstanding District Judge Khoo's order, the current mutual arrangement for weekend access is that the Husband has weekend access from Saturday morning 10.00am to Sunday morning 10.00am. The Husband is appealing for additional access on Friday night on alternate weekends, so that he may have more time with the children.

38 The Wife stressed that the Husband had not been successful on this issue in his application for interim access, the appeal therefrom and in the final hearing on ancillaries.

39 The Wife objected to this appeal for various reasons:

(a) A timetable which alternates was difficult and stressful for the children.

(b) With an alternating timetable, it would be difficult for the children to make arrangements with friends for sleepovers and playdates.

(c) The children have a swimming lesson and a piano lesson on Saturday mornings.

(d) She will have less free time with the children.

(e) Any increase in the Husband's access time will make it difficult to monitor the health of the younger child who has allergies.

40 Ms Rajah submitted that the Wife had packed the children's schedule so that she would have a reason to deny the Husband additional access. In my view that may not necessarily be true as parents tend, whether rightly or wrongly, to provide extra-curricular activities of all kinds for their children. In any event, my considerations are as follows:

(a) While it is preferable not to have an alternating timetable, such a timetable will not be as difficult or stressful as the Wife was making it out to be. So long as it is adhered to, that can be part of the routine.

(b) I do not see why an alternating timetable would make it difficult for the children to make arrangements with friends. What they need to know is that they have to check with their mother before making such arrangements. I would not be surprised if that is what they are already required to do.

(c) If necessary, the swimming and piano lessons can be rearranged to some extent given enough time to do so and with different coaches or teachers. Bearing in mind that the Husband no longer has the Tuesday homework access under my order, I think that giving him extended weekend access on an alternate basis is fair and also good for the children.

(d) The Wife will have less time with the children on weekends but this will be on an alternate basis. She also has more time with them on weekdays, although I understand that weekdays are not the same as weekends. However, I am of the view that with the Tuesday homework access taken out, there is less disruption for the children and for her.

(e) As for monitoring the younger child's health, I note that during school holidays, the

Husband has more than just one night's access. I do not think the extra night on alternate weekends will be as damaging as she suggests.

41 Accordingly, I allow the Husband's appeal on this issue. Immediately after the end of the 2006 school Christmas holidays, he is to have the following access on weekends:

Weekend 1 and 3 :	Friday 8.00pm to Sunday 10.00am
Weekend 2, 4 and 5 (if any) :	Saturday 10.00am to Sunday 10.00am

Husband's appeal for access on 1 January of each year

42 The Husband was seeking access to see the children for two hours on 1 January every year should the children and Husband be in the same city. Ms Rajah submitted that New Year's Day was special and that the Wife has Christmas with the children. However, as the Wife pointed out, the Husband has the Deepavali holidays with the children. Besides, the parties had under the Agreement already reached agreement on access during public holidays and I see no valid reason why that should change. Furthermore, as I will be varying District Judge Khoo's order on access during the school Christmas holidays, this appeal is academic. The Husband's appeal on this issue is dismissed.

Husband's appeal for Tuesday access to be changed to Thursday or Friday

43 The Husband's appeal against District Judge Teoh's order was in respect of three areas. The first was that both his homework and make-up access on Tuesdays be changed to Thursdays or Fridays even if both such accesses were still to overlap. As I have allowed the Wife's appeal and taken away the Tuesday homework access, there is no longer any question of switching such access to Thursdays or Fridays. I have also not allowed any switching of the Tuesday make-up access and I need not repeat what I have said thereon.

Husband's appeal to switch his access during school Christmas holidays

44 Under the Agreement, the Husband and Wife had agreed to access arrangements for, *inter alia*, the school's summer holidays and the school's Christmas holidays. However, the Husband subsequently applied to District Judge Teoh to vary such access, amongst other applications. District Judge Teoh varied the access for the school summer holidays, as I have elaborated in [6] above, but not the school Christmas holidays. The Wife has not appealed against the variation of the school summer holidays. The second part of the Husband's appeal against District Judge Teoh's orders was in respect of her decision not to vary the access during the school Christmas holidays.

45 At present, the school Christmas holidays stretch over three weeks from some time in December of each year to January of the next year. Under the Consent Order which District Judge Khoo endorsed, the Wife has the children for Christmas from 10.00am of 24 December till 2.30pm of 26 December of each calendar year. Subject to that, the Husband has the children for the first half of the school Christmas holidays and the Wife has the children for the second half.

46 The Husband wants to switch this so that he has the children over the second half instead, while keeping 10.00am of 24 December to 2.30pm of 26 December intact for the Wife. The Husband's reason is that the last two weeks of December is when his clients usually take their festive break. He exhibited a letter dated 25 July 2005 from CMA Co. The relevant part stated:

> Your taking your December holidays prior to Christmas when all of us are working and neither Singaporenor Jakarta is "de facto shut" just does not work. The company would like you to take your holidays after Christmas and until the first week of January and that is the time when most of our executives and clients are on holiday.

47 The Wife suggested that the letter was a self-serving document but I do not see why the Husband would obtain a less than *bona fide* letter just to switch his access over the school Christmas holidays.

48 The Wife also submitted that because the start of the school Christmas holidays varies from year to year, the Husband might not achieve his purpose even if he achieved the switch he was seeking. As an illustration, the Wife submitted that for the 2005 school Christmas holidays, a switch would have resulted in the children being with her for the week between Christmas and New Year instead of what CMA Co wanted. In my view, this submission was not entirely correct. Even for 2005 when the holidays started later, *ie*, on 17 December 2005, the first half ended in the morning of 29 December (according to one of the Husband's affidavits). This was a Thursday and he would have had the children with him from Thursday afternoon that week. Also, the reason why he would have had the children from 29 December 2005 and not earlier would be because she would still be entitled to the two and a half days spread from 10.00am of 24 December till 2.30pm of 26 December. Furthermore, in the previous years, the school Christmas holidays started on 13 December (for 2003) and on 11 December (for 2004). For each of those years, it would have made sense for the Husband to have had the children with him in the second half.

49 I understand that the school Christmas holidays always start, from the parties' point of view, on a Saturday. Furthermore, it appears from the years 2003 to 2005 that such holidays will start at least one week before Christmas Eve. If that is correct, the school Christmas holidays for this year will start on 17 December, and not 24 December 2006. It would then have made sense for the Husband to have the second half. For 2007, the school Christmas holidays, using the same approach, is more likely to be on 15 rather than 22 December 2007, in which case it would again make sense for the Husband to have the second half. However, should the school start the Christmas holidays closer to 24 December, then the Wife is right in that the Husband should have the first half.

50 I cannot predict how the school will decide on such holidays in the future. Based on the current practice, it does make sense, at least to me, that the Husband should have the second half. It would be ideal if the Wife could demonstrate some flexibility for such holidays to accommodate the Husband. If the Wife is willing to do so, the parties can agree that the Husband will have either the second half or the first half depending on when such holidays start. In the absence of such an agreement, I will have to base my decision on the current practice subject to a qualification which I now come to.

51 One of the Wife's reasons for not agreeing to let the Husband have the second half was that she wanted to have enough time with the children to get them ready before the school term starts. She was especially concerned about the allergies of the younger child and she went so far as to assert that if the Husband were given the second half, it would be "virtually impossible" for her to ensure the younger child's good health by the beginning of the term. Yet, as the Husband pointed out, the Wife had agreed to allow the Husband to have the children for the two weeks of the October break (which is not to be confused with the summer school holidays) without requiring the children back much earlier. Based on that agreement, she has the children back at 10.00am of the last Saturday of the October holidays. The Wife explained that she agreed to this as a compromise for the Husband agreeing to something else but she was not prepared to compromise again. I am of the view that the point is not so much one of forcing the Wife to compromise but that her agreement regarding

the October break does suggest that the situation regarding the younger child's health is not as bad as she has made it out to be. I say this without intending to belittle her concerns over his health. In the circumstances, I am of the view that her concerns are adequately addressed if the Husband has the second half of the school Christmas holidays subject to the qualification that the Husband's access ends at 10.00am on the last Saturday of the second half. The Wife has apparently considered this permutation as well because in her submission she said that this would make the access timetable even more fragmented. I think this is only marginally so. The real fragmentation is because she has the children between 24 to 26 December of each year and yet both parties have agreed to that. Furthermore, the qualification I am imposing means that the children are returned to the Wife earlier than would be the case without the qualification. Indeed, it is the Husband's overall access time over the school Christmas holidays that will be reduced. I hope that he, in turn, will not baulk at this qualification. First, I am seeking to accommodate CMA Co's request and his own. Secondly, he himself has recognised that the Wife should have some time to prepare the children for school. This can be seen in the October access where he has agreed that his access ends at 10.00am on the last Saturday of such holidays. Also, in para 43 of his 25th affidavit filed on 13 December 2005 to support his application for a variation of various access times, he had proposed that the Wife have the last week of the school summer holidays "so she can prepare them for school". I accept that this did not necessarily mean that she would require the entire week to prepare them and was made in the context of how the eight-week school summer holidays was to be split. However, in my view, it does nevertheless demonstrate his acknowledgement that some time is needed for her to prepare them for school.

52 In the circumstances, I allow the Husband's appeal for access during the second half of the school Christmas holidays with the qualification I have mentioned. As the Wife may have already made plans for the 2006 school Christmas holidays, this order will also take effect thereafter, *ie*, from the 2007 school Christmas holidays. For the avoidance of doubt, the two and a half days for the Wife from 24 to 26 December, as elaborated above, remains.

Husband's appeal for an order to restrain the Wife from preventing the children from wearing their Sacred Thread or conducting their Hindu prayers or from otherwise practising or being exposed to Hinduism

53 The Husband had also sought an order from District Judge Teoh to restrain the Wife from preventing the children from wearing their Sacred Thread or conducting their Hindu prayers or from otherwise practising or being exposed to Hinduism. District Judge Teoh dismissed this application and the Husband has appealed against the dismissal. This is the third part of his appeal against District Judge Teoh's orders.

54 The Wife is a Christian and the Husband is a Hindu. I should clarify at the outset that the Wife has no objection to the children, when they are with their father, practising the Hindu religion. What the Husband is complaining about primarily is that the Wife is telling the children not to wear their Sacred Thread when they are with her. He says this is an important part of Hinduism. Although the relief the Husband seeks extends also to the children conducting their Hindu prayers or being exposed to Hinduism, the crux of his application and consequent appeal centres on the children wearing their Sacred Thread while in the Wife's care (and this includes the time while they are at school) as I shall elaborate.

55 The Husband explained the importance of the Sacred Thread in paras 13, 20 and 21 of his 25th affidavit filed on 13 December 2005 in the following terms:

> 13. The Sacred Thread is invested on a Hindu boy during the Upanayanam (or the Thread

Ceremony) which marks the beginning of his religious study and understanding, and formalises his eligibility to read and study the sacred books Varna. This initiation ceremony is considered by Hindus to be holy and sacred and it is only after this ceremony that a Hindu boy is eligible to perform the Gayatri Mantra, a daily prayer for knowledge and wisdom. The Sacred Thread identifies a Hindu and once invested, it is not to be removed.

…

20. I cannot understand why the Petitioner makes up these excuses to prevent the children from wearing their Sacred Thread. By telling the children to remove their Sacred Thread, the Petitioner is not only making the children remove a symbol which is important to Hindus, she is also preventing the children from performing the Gayatri Mantra. The Gayatri Mantra is a prayer for wisdom and intellectual guidance and inspiration and is part of the practice and discipline that a Hindu boy has to go through. It cannot be performed without the Sacred Thread.

21. Effectively therefore, the Petitioner is blocking the children from being exposed to, and from practising, my religion, without any cogent reason whatsoever.

56 The Wife countered this by exhibiting extracts from various websites. One was from the Sri Siva Vishnu Temple,<http://www.ssvt.org/Education/Hinduism%20FQA.asp>, which stated as one of the core beliefs or principles of Hinduism:

i i Freedom of Practice – One can be a Hindu by being a good person and following any type of worship practice that one finds appealing.

57 An article entitled "Indian Culture – The Sacred Thread" by Vikas Kamat (also obtained from the internet, <http:www.kamat.com/indica/culture/sub-cultures/sacred-thread.htm>) stated:

What is a Sacred Thread?

Known as Yajnopavita, the sacred thread is a hand-spun cotton thread worn across the chest and resting on one's left shoulder (the *stavya* position of the thread) most commonly by the priestly Hindus.

The sacred thread finds its origins in the Vedic rites, as a garment worn during the rituals. This is perhaps the reason why the first time it is worn (during a Upanayana ceremony), it is attached to a piece of skin (known as *krishajina*). In today's Hindu society, the sacred thread symbolizes the ancient history of the custom as well as the caste of the person wearing it.

….

As noted earlier, the sacred thread today symbolizes the caste system and it is used in jokes, propaganda as well as elevated to a status of mythical powers. A brahmin *vatu* is taught that the sacred thread and the Gayatri mantram are the strongest weapons in his repertoire, to fight fear and seek enlightment.

…

[emphasis in original]

58 Another website, <http://www.chennaionline.com/music/devotional/04mantras.asp>, stated:

According to ancient Hindu tradition, the investiture of the sacred thread empowered a person to chant the Gayatri mantra. Brahmin boys were invested with the sacred thread at the age of eight, Kshatriya boys at 11 years and Vaishya boys at 12 years.

The enlightened view is that any person, whatever his caste, creed or colour can chant the Gayatri mantra, provided he does it in the right spirit and understands its significance.

59 The Wife said in paras 11 to 12 of her affidavit filed on 9 January 2006:

11. For example, it is widely understood that Hinduism is comprehensive and flexible. Even according to the oldest Hindu writings, it was acknowledged that one can be a good Hindu by being a good person and following any type of worship practice that one finds appealing.

12. It is not generally believed necessary to wear the sacred thread in order to be a good Hindu, or even to perform the gayatri mantra ….

Wearing threads at school, current practices

13 Even where this practice is still followed, it is invariably only by boys, and then only those of the Brahmin caste. My understanding is that it is becoming increasingly the exception rather than the rule among well-educated Indian families living outside India, even amongst Brahmin.

60 In his 26th affidavit filed on 2 February 2006, the Husband replied saying that one of the websites the Wife was relying on was to advertise and promote the sale of a Gayatri mantra digital video disc (DVD). This was the one I referred to in [58] above. Yet, the Husband himself then went on to refer to the same website to assert that it detailed the ancient Hindu tradition and belief that the investiture of the Sacred Thread empowers a person to chant the Gayatri mantra. This was the first of the two paragraphs I cited in [58] above. It seems to me that the Husband had glossed over the second paragraph which stated that the enlightened view is that any person can chant the Gayatri mantra, provided he does it in the right spirit and understands its significance.

61 The Husband then went on to say in paras 10 and 29 of his reply affidavit:

10. Wearing the Sacred Thread is an important practice amongst Hindus. The fact that it is not mandatory is besides the point. The Petitioner's other allegation that the practice of wearing the Sacred Thread has declined is also totally irrelevant. It is akin to saying that because some Muslims do not pray five times a day, it means the proper practice of Islam does not require it.

…

29. The point of the Sacred Thread is that it serves as a constant reminder of and symbolises a man's daily commitment to avoiding ills in speech, thought and action. Further, the Gayatri Mantra can only be performed when one is wearing the thread. The Sacred Thread therefore must be worn daily. It is not something that one can put on one day and take off the next.

62 I find some contradiction between these two paragraphs. On the one hand, the Husband appeared to accept that it was not mandatory, although important, to wear the Sacred Thread. On the other hand, he was suggesting that it was mandatory to do so every day. Also, his point that one must wear the Sacred Thread before saying the Gayatri mantra appeared to be contradicted by the

evidence the Wife had obtained.

63 In any event, I accept that the Husband considers the wearing of the Sacred Thread to be important. On the other hand, the Wife is a Christian.

64 The Wife said she did not want the children to wear a symbol which distinguished them from other children at school based on religion. The Husband saw nothing wrong with that. The parties also disagreed on the visibility of the Sacred Thread. However, it seems to me that the crux of this issue was that the Wife did not want the children to wear their Sacred Thread while in her care. She took the position that it was not for the Husband to dictate what the children did or wore while in her care (see para 19 of her affidavit filed on 9 January 2006).

65 I consider it important to bear in mind how this issue came about. The Husband said he "became aware" of the Wife telling the children to remove their Sacred Threads. He said the children told him about this, but how did the children come to tell him about it? It seems to be that in all probability he was checking on them. He was checking whether they were wearing their Sacred Threads and they told him that their mother did not want them to wear it. It is ironic to me that he was seeking to restrain the Wife from telling the children not to wear their Sacred Threads. One could argue that perhaps he should be restrained from insisting that they wear it bearing in mind that it is in the children's interest to avoid such a conflict and not to put them on the spot. I do not fault the Husband for teaching the children about the Sacred Thread or even encouraging them to do so. However, when his encouragement turns into insistence, as I find to be the case, he has created an issue of conflict and an atmosphere of hostility and tension which could and should have been avoided in the first place.

66 It is unlikely that either of the children would have volunteered information about what their mother had told them, knowing that it would make their father angry and create difficulties for their mother. Even if one of them did do so, the Husband could and should have assured them that what was truly in their hearts and minds was more important and that when they are old enough, they will be able to choose for themselves.

67 I would add that, to support his initial application before District Judge Teoh, the Husband had exhibited a number of letters written by the children asking the court and the police to help as their mother was stopping them from wearing their Sacred Threads. The Wife submitted that the Husband had procured such letters, a practice which she deplored. In view of her reluctance to involve the children, she admitted that she had in turn obtained just one letter from them to demonstrate her point. That letter stated:

> Dad gets us to write lots of letters to him and to the court.
>
> I hate writing them. I always have to do what dad says. …
>
> I feel yucky when I have to write bad things about you. …

68 The Husband denied he had solicited the letters. I am of the view that he did do so. I do not see the children as wanting, of their own accord, the court and the police to take action against their mother on this issue. Unfortunately, this was not the first time that the Husband had drawn the children into the fray. There was previously a minor application filed by the Wife regarding the Husband's visit to the children while in school. To contest the application the Husband caused the children to be assessed by a psychiatrist to obtain a psychiatrist's report. The application was heard by District Judge Lim Hui Min ("District Judge Lim") who expressed her concern that the Husband had

seen it fit to obtain a psychiatrist's report over a relatively trivial issue.

69 I would add that the Wife had stressed that the Husband had subjected the children to no fewer than 23 separate interviews with psychiatrists and a psychologist. On this point, Ms Rajah submitted that the reason for the interviews was because the Husband was concerned about the impact that the divorce proceedings might have on the children. I do not accept this submission. In my view, the interviews would drive home the fact and the pain of the divorce proceedings.

70 District Judge Lim said in her judgment (*BF v BG* [2004] SGDC 115):

> 60 The [psychiatrist's] report has revealed that the father has shown the younger boy correspondence relating to the access issues. The psychiatrist himself has expressed reservations about the father's course of conduct in so doing (see page 6 of the psychiatrist's 1st affidavit). ….
>
> *Contents of the report*
>
> 61 I note from the report that the psychiatrist has said that the elder boy remarked that the mother may be "evil" for trying to stop the father from seeing him at lunchtime. "Evil" is a word that, if it is used at all, should be reserved for persons such as the dictators of empires committing genocide, and others who have committed heinous crimes such as serial killing, kidnapping and rape. … My concern is where this child got this perspective from. And, in this regard, it seems unlikely that the mother would be the one to tell him that she is evil. One is led to infer that it was the father who provided the boy with this perspective. I make no finding on this issue, as it is not necessary for the purposes of this SIC, but it is certainly a matter of concern.
>
> 62 In this regard, I would urge both parties, and in particular, the father, to practice the policy of not sharing their feelings with the boys on the unsatisfactory nature of the access arrangements, or on the character and personality of the other party. …

71 I reiterate what District Judge Lim said in para 66 of her grounds of decision:

> The ancillary matters are, unfortunately, at least some months away from being concluded. I can only express the hope that the parties will be able to conduct themselves in a manner which will minimise the intensity of their litigation … The children of divorce can thrive under many circumstances … All these children have the potential to be happy, confident individuals who love both their parents and enjoy their company—*so long as they do not see or surmise their parents to be in conflict.* It takes two people to make a fight. If one person walks away, the conflict is likely to end. [emphasis in original]

72 Unfortunately, notwithstanding District Judge Lim's concerns and her guidance, the Husband has seen it fit once again to involve the children by soliciting letters from them. It seems to me that notwithstanding that the Husband professes to act only in the interest of the children, he has not done so. For all his success in his career, on which I shall say more later, the Husband does not appear to realise the harm he is causing to the children.

73 Ms Rajah also relied on the case of *Re S (Minors) (Access: Religious Upbringing)* [1992] 2 FLR 313. The facts in that case were that a father who was a fervent Roman Catholic and who had been imprisoned was insisting that the children should receive a strict religious upbringing and be returned to private Catholic education. The Court of Appeal decided that the Official Solicitor

should act as guardian *ad litem*. However, at 320 and 321, Butler-Sloss LJ said:

> The father, as a fervent practising Christian, is naturally very upset about the present position. If steps could be taken to deal with the religious question – by which I mean not to come to a conclusion but to look at it – and those steps are taken by someone other than the father, some of the problem might disappear. It would require a very considerable degree of self-control and self-denial by the father. But it would, in my judgment, be an absolute requirement that he did not make his religion the basis of his renewed access to the children, whenever or if ever it occurs in the future. If he could see the children without taking them to church, on a pilgrimage, without giving them religious objects or religious instruction, without cross-examining them as to their faith but, on the contrary, taking them to some secular, unpressured event where they could enjoy themselves with him and learn to be at ease with him again and to enjoy his company again, there would be some chance of them having a renewed relationship with him. It is the children we are thinking about and their right to have part of their father. If, however, he were to exert pressure on them and overpower them again with the strength of his religious fervour he is in the gravest danger of losing them for ever, if he has not already done so, and also – he might care to reflect equally seriously – push them finally away from the church.
>
> How best to deal with this very delicate situation of these two children, not yet quite mature enough to make their own decisions, but of an age to have a sensible and responsible approach to life? How best to make them think again on two terribly important matters that will affect the rest of their lives? First, do they wish to continue and ought they to continue in the observances of their church? Secondly, and equally important, can they be invited to realise the good they have and could have with their father and not just to see the bad: to see that for them they would gain a great deal by renewed contact with their father and with the father being able to make some promises to them to make it easy for them to go back to see him? If they do not see him in the future, they will lose a great deal. It may be the difficulties are too great, but it is worth a try and it needs everybody to have goodwill and self-control. Nobody should dictate to children of this age, because one is dealing with their emotions, their lives and they are not packages to be moved around. They are people entitled to be treated with respect.

74 As I have said, it seems to me that it is the Husband who is dictating to the children what they should be doing. In my view, that case is of no assistance to and is against the Husband's position.

75 The Husband has emphasised his right to teach the children about Hinduism and how the parties had agreed to have mutual respect for each other's religion. Unfortunately, the way he has gone about it has resulted in his treading on the Wife's right to teach the children about Christianity. I am of the view that it is fair and right and in the interest of the children that neither parent insist on the children practising his or her religion while they are with the other parent. In the circumstances, I dismiss the Husband's appeal on this issue.

76 I would add that had the Husband succeeded in all his appeals on access, leaving aside the issue of the wearing of the Sacred Thread and school holidays, his access during term time would have been as follows:

(a) mid-week access every Wednesday from 5.30pm to 7.30pm;

(b) make-up access on any other weekday like Thursdays or Fridays;

(c) homework access on Thursdays or Fridays;

(d) access in the mornings of Thursdays and Fridays to send the children to school;

(e) extended weekend access on alternate weekends;

(f) unrestricted and reasonable telephone access with video if possible; and

(g) visits to the school of once a week and attendance at public events organised by the school.

77 In my view, such access would have been excessive.

Maintenance

78 As mentioned above, the parties had signed the Agreement which was incorporated into the Consent Order. Under the Agreement, the Husband agreed to pay:

(a) maintenance at S$5,000 per month;

(b) rent;

(c) in advance of, or to promptly reimburse upon production of the relevant receipt, the following expenses from time to time:

(i) school fees and school bus fees;

(ii) medical and dental expenses;

(iii) car maintenance, insurance and licence for the vehicle purchased by the Husband in the Wife's name;

(iv) PUB bills; and

(v) air-conditioning maintenance.

79 Ms Rajah submitted that although the Agreement was signed in March 2003, the Husband had in fact agreed to pay maintenance in December 2002. At that time, the Husband's remuneration package, which was on an expatriate basis, was as follows:

(a) monthly salary of S$17,132 before tax;

(b) expatriate benefits, comprising:

(i) payment of rental for the residence at S$12,000 per month;

(ii) payment of utilities and air-conditioning maintenance;

(iii) use of company car (leased at S$3,000 per month) with parking at the office building;

(iv) payment of school fees and school bus fees for the two children;

(v) contribution of 75% of the premiums for an Aetna US medical / dental insurance

plan for the entire family;

(vi) company group insurance plan for the Husband, covering life, disability, hospitalisation, personal accident and travel accident insurance;

(vii) various club memberships (although expenses incurred in the clubs must be borne by the Husband personally if not incurred in respect of business entertainment); and

(viii) reimbursement of home leave expenses of up to S$25,000 per annum for the entire family for home leave passage.

80 As Ms Rajah's written submission for the Husband, as appellant, helpfully set out the various applications on maintenance leading to District Judge Khoo's orders, the issues arising from the Husband's and the Wife's appeals on maintenance and the Husband's arguments, I will cite quite extensively from it. It stated:

177. At the time he agreed to the interim arrangements therefore, he could still afford to pay maintenance of S$5,000.00 and cover the rent and the disbursements outlined in [the Agreement], as the bulk of these payments were borne by [John Doe].

178. However, there were changes brewing at his workplace. [John Doe] had filed for Chapter 11 bankruptcy in the US in February 2002 and had been taken over by new owners (a French company known as [AT Co]) in or about August 2002. The initial turmoil in February 2002 when the bankruptcy was announced settled down after the new owners came in.

179. We are instructed that in or about March 2003, the new owners communicated to the Husband that they had decided to restructure the business, and that they no longer needed a regional head for Asia. [John Doe] therefore would not want to continue employing the Husband.

180. In around March 2003, the Husband negotiated a settlement with [John Doe] in which his severance terms were agreed with them. He incurred legal fees in negotiating the settlement ….

181. Under his settlement with [John Doe], it was agreed that:

(i) his employment with [John Doe] would cease with effect on 21 March 2003;

(ii) however, he would continue to receive his monthly salary of S$17,132.00 up till 7 June 2003;

(iii) he would also continue to receive his benefits under his expatriate package, i.e. housing, school fees and medical benefits, etc, until 7 September 2003.

….

184. As the Husband was still able to make those payments as at 15 March 2003, the Husband agreed to include maintenance provisions in [the Agreement]. It will be remembered that under the severance terms negotiated with [John Doe], although his employment would end on 21 March 2003, he would continue to receive his salary up to 7 June 2003, and the housing, school fees and medical benefits up to 7 September 2003.

185. There was therefore no mediation as such on the interim maintenance arrangements that

were included in [the Agreement]. The [Agreement] merely recorded what the parties had agreed in December 2002.

….

187. The Husband met the maintenance obligations under [the Agreement] throughout April, May and June 2003.

188. On 7 June 2003, under the terms of the [John Doe] settlement, he stopped receiving his monthly salary.

189. As at 7 July 2003, he had not yet managed to get a new job. ….

190. In view of his changed circumstances, and the fact that his financial situation would weaken further on 7 September 2003 when the benefits ceased, coupled with the fact that the Husband had not yet been able to get new employment, it became obvious that the Husband would not be able to continue to meet the maintenance payments under [the Agreement].

(c) SIC No. 651207 of 2003 (The Husband's Downward Variation Application)

191. Accordingly, on 11 July 2003, which was a full month after his [John Doe] salary was stopped on 6 June 2003, the Husband applied for his maintenance obligations to be varied as follows:

(a) the Husband to pay maintenance to the Wife in the sum of S$1,000.00 from the date of the application for 3 months and that his obligation in this regard be stayed thereafter;

(b) the Husband to pay or reimburse, where relevant, the Wife (upon production of the relevant receipts) all reasonable expenses of the children of the marriage as follows:

(i) school fees (to be paid directly to the school);

(ii) medical expenses;

(iii) clothing expenses;

(iv) food expenses;

(v) fees incurred in employing a domestic maid for the children;

(c) that the Wife and the children of the marriage relocate to an apartment / premise where the rental, which the Husband will bear, should not exceed S$2,000.00 per month. In the alternative, the Husband to be liable only to the extent of S$2,000.00 per month for rental and all additional rental costs to be borne by the Wife.

192. Up to the month of July 2003, he could still meet the rental, school fees and medical payments as these were still covered under the [John Doe] package. However, he could not meet the full maintenance.

193. At the same time in June 2003, the Wife, impervious to his changed financial circumstances, informed the Husband of her intention to go for a holiday to Australia with the

boys in August 2003, and asked the Husband to pay for the same. ….

194. The Husband declined to make payment of such holiday expenses because:

(a) there was no provision for such payments in the [Agreement]; and

(b) under his changed financial circumstances, he could not afford it.

(d) SIC No. 651210 of 2003 (The Wife's Holiday Expenses Application)

195. Unhappy that the Husband would not agree to bear the holiday expenses, on 14 July 2003 the Wife took out an application under SIC No. 651210 of 2003 applying for an order that the Husband pay for:

(i) return air-fare (including taxes) for the Wife and the boys; and

(ii) S$2,500.00 allowance for the trip.

(e) MSS No. 5222 of 2003

196. As indicated above, due to his [John Doe] salary ceasing on 6 June 2003, the Husband was unable to meet the full maintenance payments after July 2003.

197. Undeterred and uncaring of his changed financial circumstances, the Wife then took out a Maintenance Summons in MSS No. 5222 of 2003 on 28 August 2003 to enforce the [Agreement] which had been embodied in the [Consent Order].

198. As the 3 applications involved intertwined facts and issues, it was directed and ordered that all of them, i.e.:

(i) SIC No. 651207 of 2003 (the Husband's Downward Variation Application);

(ii) SIC No. 651210 of 2003 (the Wife's Holiday Expenses Application); and

(iii) MSS No. 5222 of 2003,

be adjourned to be heard at the same time and together with the hearing of the final ancillaries.

199. On 7 September 2003, the [John Doe] benefits stopped. The Husband no longer received housing, school fees and medical benefits on expatriate terms (or indeed at all).

200. In the interim period between August 2003 and November 2003, while he was jobless the Husband paid the Wife maintenance totalling S$4,712.00 per month, which comprised of the following:

(i) S$1,000.00 for the Wife's maintenance;

(ii) S$2,000.00 towards rental (as the rental was S$4,200.00 during this period, this comprised almost 50% of the Wife's rental payments); and

(iii) S$1,712.00 for clothing & food for the boys, and the maid's expenses.

The Husband also continued to make payment in respect of the boys' school fees (which amounted to about S$3,281.00 every month) and school bus fees.

201. The Husband was unable to get a new job until February 2004.

202. On 15 February 2004, he entered into an agreement with [CMA Co]. Under the agreement, he would provide consultancy services to [CMA Co]. He was required to work for 3 days a week for which he would get approximately S$12,000.00 a month (plus annual bonus).

….

204. In order to support himself as well as to provide for the Wife and the 2 boys, the Husband continued to look for other additional employment.

205. In 2005, he obtained another consultancy job as an Advisor to [M Associates] under which he was required to work 1 day a week at a fee of S$2,000.00 a month.

206. In April 2004, he was also appointed as a Board Member at SPRING (an MTI statutory board), for which he was given an annual allowance of S$3,750.00.

….

212. Between December 2003 and August 2005 (when the final order on ancillaries was made), the Husband paid the Wife maintenance of S$3,712.00 per month. He also continued to make payment in respect of the boy's school fees (S$3,281.00 every month) and school bus fees.

(f) Final Order by DJ Khoo on maintenance

213. The Downward Variation Application, the Holiday Expenses Application and MSS No. 5222 of 2003 were heard together with the final ancillaries sought in the Husband's Cross-Petition. …. The final order on the ancillaries made by the learned District Judge, Mr Khoo Oon Soo in respect of maintenance was as follows (Note: the italicised notes and headings ours):

> (1) the maintenance for the Wife and the two children of the marriage is backdated to 7 September 2003 as follows:-
>
> *(For the months before the [John Doe] benefits ceased)*
>
> (2) from 7 August 2003 to 6 September 2003, the Husband shall pay the full maintenance, rental and disbursements claimed by the Wife;
>
> (Note: The full monthly maintenance in the [Agreement] is S$5,000.00 and the full rental was S$4,200.00 up to December 2003, when the Wife's rental decreased to S$4,000.00 per month)
>
> *(For the months between the date the [John Doe] benefits ceased and the date of the final orders)*
>
> (3) from 7 September 2003 to 6 August 2005, the Husband shall pay only 60% of the monthly maintenance of S$5,000.00 and the rental of S$4,000.00. The disbursements claimed by the Wife shall be paid in full;

(From date of Final Orders onwards)

(4) from 7 September 2005, the Husband shall provide the following maintenance to the Wife and the two children of the marriage:-

(iv) the Husband shall pay S$3,000.00 per month for the three of them;

(v) the Husband shall pay S$2,400.00 per month for rental;

(Note: These amounts work out to 60% of the full maintenance of S$5,000.00 and rental of S$4,000.00 provided for in the [Agreement].)

(vi) the Husband shall, on production of receipts, reimburse the Wife on the following items:-

(aa) medical and dental expenses (excluding treatment of a cosmetic nature);

(bb) licence and insurance of family car;

(cc) PUB bills;

(dd) air-conditioning expenses;

(ee) maid salary and levy;

(vii) the Husband shall continue to pay the children's school fees and school bus fees directly;

(viii) the Husband shall pay S$800.00 per month towards yearly holidays;

(Re: the Husband's Downward Variation Application)

(5) Summons in Chambers entered no. 651207 of 2003 is dismissed with costs reserved;

(Re: the Wife's Holiday Expenses Application)

(6) in respect of Summons in Chambers entered no. 651210 of 2003:-

(a) the Husband shall pay, within 3 months from the date of the order, the cost of the return air fares, including taxes, of the Wife and the 2 children for their trip to Australia in July/August 2003;

(b) the Husband shall pay, within 3 months from the date of the order, the Wife the sum of S$2,500.00 being allowance for the expenses of the Wife and the 2 children while on their said trip to Australia in August 2003;

(c) costs are reserved;

(Re: the Wife's Maintenance Enforcement Application)

(7) in respect of MSS 5222 of 2003:-

(a) the Husband shall pay the Wife total arrears as in paragraphs 1(a) and (b) above within 3 months from the date of the order;

(b) costs are reserved.

II. ISSUES ARISING IN THE MAINTENANCE APPEAL

214. The issue in respect of the Husband's appeal on the final order on maintenance is whether the order sought by the Husband should be granted, or whether the Wife should be granted 100% of the amounts set out in the maintenance agreement for the period August 2003 to date.

(a) Husband's Appeal against the Final Order

215. The Husband has appealed in part against the order of the learned DJ, and seeks the following variations to the maintenance orders made by the DJ:

(a) that there be no arrears in maintenance payable by the Husband to the Wife and the sons save for genuine medical and dental expenses of the sons in relation to approved medical practitioners, on the submission of actual receipts;

(Re: the Downward Variation Application)

(b) that Summons-in-Chambers No 651207 of 2003 be allowed to the extent provided in paragraph (a), with costs;

(Re: the Holiday Expenses Application)

(c) that Summons-in-Chambers No 651210 of 2003 be dismissed with costs; and

(Re: the Maintenance Summons)

(d) that MSS No 5222 of 2003 be dismissed with costs.

(From date of final orders onwards)

(e) that maintenance for the Wife and the two sons be fixed in the sum of S$9,000.00 consisting of:-

(i) maintenance for the Wife fixed at $1,200.00;

(ii) maintenance for the two sons fixed at $2,519.00;

(iii) rental subsidy for the Wife and the two sons fixed at $2,000;

(iv) school fees for the two sons fixed at $3,281, to be paid directly to the school;

(f) that as the Husband would like to pay for the sons' medical and dental expenses, the Husband shall take out comprehensive medical insurance for the two sons, on which both the Husband and the Wife can make direct claims;

(g) that the Husband shall pay for all expenses incurred in connection with school extra-curricular activities which both he and the Wife agree to;

(h) that the Husband shall pay for one economy plane ticket for each of the two sons each year, to visit Australia with the Wife;

(b) Wife's Appeal against the Final Orders

216. The Wife has cross-appealed in respect of the final orders on maintenance for the following:

(i) that the maintenance orders dated 20 April 2003 [*ie*, under the Consent Order] to continue until 31 August 2005;

(ii) that the Husband to pay monthly maintenance of S$11,000.00 to the Wife and the 2 children of the marriage with effect from 1 September 2005;

(iii) that in addition, the Husband to pay the school fees of the children directly.

217. In short the Wife is asking that the provisions of the [Agreement] be enforced throughout.

81 I will also set out District Judge Khoo's reasons for his orders on maintenance in his grounds of decision ([2006] SGDC 22) dated 17 February 2006, which were as follows:

Decision on maintenance

50. The law relating [*sic*] assessment of maintenance is stipulated in S. 112 of the Women's Charter which provides certain factors for the court to consider in assessing the quantum. After careful consideration of the evidence, the respective submissions and the authorities cited I gave the orders stated in paragraphs 2 above.

51. These are the reasons for so ordering. Firstly, I agree that notwithstanding his cessation of [John Doe International Inc] employment with effect from 7 September 2003, the [Husband] himself was confident he was able to pay what was agreed in the court judgement. At the time when he entered this consent order he knew his [John Doe International Inc] employment would end in June 2003 and that all fringe benefits would cease by 7 September 2003. There was no provision for review or reduction of this maintenance amount. The relevant provisions (clause 13) stated the "remaining issues" be resolved by mediation failing which by the court. I was satisfied the issue of maintenance had been settled as agreed. The link, as claimed by the [Husband], to further negotiation was an afterthought.

52. Secondly, the evidence shows the Husband to be a very clever and capable man. At the time when he left [John Doe International Inc] he was a member of a number of companies, a member of various advisory boards to the governments of Australia, UK and India and also a member of the prestigious Young Presidents' Organisation.

53. His leaving of [John Doe International Inc] attracted prominent reporting in the Business Times dated [xxx]. Amongst other aims, the [Husband] was reported to have said he was helping Singapore firms to enter the Singapore-India business corridor.

54. Thirdly, he had received lucrative offers from other companies when he was in the employ of [John Doe International Inc]. For example, Bain & Co offered him a package of US$1 million to join. Another example was when he was appointed special advisor to Indonesia for relief works after the 26 December 2004 tsunami disaster hit Indonesia.

55. The sum total of the above was that it was out of character for [the Husband] to leave [John Doe International Inc] without preparing for an alternate career of equal if not better pay packages.

56. Fourthly, the evidence shows he had available funds to bring their two sons for at least six occasions and to places such as Penang, India, New Zealand and Bali between October 2003 to December 2004.

57. Fifthly, [the Husband] claimed he wanted to lead a less stressful life and estimated his income to be about $180,000 per annum. The [Husband] did not disclose much about his employment attempts until he set up his one man consulting firm … job with [CMA Co] on 15 February 2004 with a pay of $12,000 per month. However, this was only for three days a week because of access times with his children. Incredible though it maybe, the [Husband] has refused full-time employment and cited access times as an excuse.

58. I agree with [the Wife's] Counsel that there was really no need to shoot himself in the foot by mentioning his marital woes to potential employers.

59. In my view, the [Husband] was deliberately limiting his earnings or earning capacity for the purpose of present proceedings.

60. Arising from the above findings I also made orders on the various proceedings.

61. In MSS 5222/2003 the [Wife] sought to enforce the arrears from 1st August 2003. The evidence did not show any good reason or cause for not complying with the consent order of 20 April 2003 relating to maintenance. As such I gave the order stated in my paragraph 3 (a) and (b) of my order dated 17 August 2005. That means the total arrears for 7 August 2003 to 6 September 2003 had to be paid in full. However, in view of the total cessation of his [John Doe International Inc] salary and benefits from 7 September 2003, I was of the view the maintenance payable should reflect the reduction. Hence, my order of 60% of the said monthly amount payable relating to maintenance ($5,000) and rental ($4,000) from 7 September 2003 to 6 August 2005. However, the disbursements for expenses already paid had to be reimbursed in full as evidenced by [the Wife's] records.

62. In SIC 651207/2003, the [Husband] sought to vary downwards the said maintenance amount to the [Wife] inter alia from $5,000 to $1,000. He also offered to reimburse reasonable expenses on production of receipts. To succeed in this application, the [Husband] had to show there was a material change in the circumstances. See s.118 of the Women's Charter. In my view there was none. His earning potential was huge. He knew he was losing [John Doe International Inc] benefits from September 2003. Notwithstanding that he consented to the maintenance portion.

63. Further, the SIC was taken out on 11 July 2003. The SIC was premature as his [John Doe International Inc] benefits ceased only on 7 September 2003. It is noteworthy that in his present appeal, the [Husband] is offering total maintenance of $9,000 per month.

64. As there was no good reason for variation, I dismissed [the Husband's] application.

65. In SIC 651210/2003, the [Wife] claimed for reimbursements of the trip she and the boys took to go to Australia. This item was not in [the Consent Order]. Notwithstanding this, the evidence showed [the Wife] and their sons did go back to Australia twice a year to visit her parents. This was a reasonable expense and should be reimbursed even though there was no specific provision. I agree with [the Wife] that Clause 12 [of the Agreement] is a cap on quantum and not the number of trips to Australia. The [Wife's] SIC was, therefore, granted.

66. I should add, at this stage, I accepted [the Wife's] claim for two trips to Australia and a couple of holiday trips to nearby destinations. A monthly sum of $800 would be adequate for this purpose.

67. As stated above, with effect from 7 September 2003, there was a substantial change in [the Husband's] income. He had really lost his [John Doe International Inc] packages. As such, his income was reduced by that much. MSS 5222/2003 deals with the maintenance position from August 2003 to 6 August 2005. An order was required from 7 September 2005 onwards. Taking off from paragraphs 3(a) and (b) of my 17 August 2005 order, I made the order in paragraph 3(c). The maintenance of $3,000 is 60% of $5,000. While the $2,400 for rental is 60% of $4,000 disbursements would have to be on production of receipts.

82 I would add that paras 3(a) to 3(c) of District Judge Khoo's grounds state:

3. The maintenance for the Petitioner and their sons will be backdated to 7/9/2003 as follows:-

(a) From 7/9/2003 to 6/8/2005, [the Husband] will pay only 60% of the monthly maintenance of $5,000 and the rental $4,000. The disbursements claimed by [the Wife] to be paid in full.

(b) From 7/8/2003 to 6/9/2003, [the Husband] will pay the full maintenance, rental and disbursements claimed by [the Wife].

(c) From 7/9/2005, [the Husband] to provide the following maintenance to [the Wife] and their sons:-

(i) [the Husband] to pay ($3,000) per month for the three of them;

(ii) [the Husband] to pay ($2,400) per month for rental;

(iii) [the Husband] to reimburse [the Wife] on these items:-

- Medical and dental expenses;
- Licence and insurance of family car;
- PUB Bills:
- Maid salary and levy

on production of receipts.

(d) [The Husband] to continue paying school fees and school bus fees directly.

83 Although the heading under the Agreement for the subject of maintenance was "Interim Maintenance Matters", it was not the Husband's position that he had agreed to pay the maintenance as set out thereunder only because it was on an interim basis and that he had intended on the final hearing on ancillaries to argue for a lower sum of maintenance. His position was that when he agreed to the maintenance in late December 2002, he was not aware that he would be terminated. It was in or about March 2003 that the new owners of his employer had informed him that he was no longer needed (see again para 179 of Ms Rajah's written submission). Although he was aware in March 2003, when he signed the Agreement on maintenance and other issues, that he would be leaving his employer, he nevertheless signed the Agreement because under the severance terms he was negotiating he would still receive his salary up to 7 June 2003 and other benefits up to 7 September 2003 (see again para 184 of Ms Rajah's written submission). The Husband's position was that the cessation of his employment was a material change in circumstances which justified a reduction of the maintenance he had agreed to pay.

84 Ms Rajah relied on *Tan Sue-Ann Melissa v Lim Siang Bok Dennis* [2004] 3 SLR 376 ("*Tan Sue-Ann*") for the proposition that a party was not bound by his agreement on maintenance. Indeed s 119 of the Women's Charter (Cap 353, 1997 Rev Ed) states:

> Subject to section 116, the court may at any time and from time to time vary the terms of any agreements as to maintenance made between Husband and Wife, whether made before or after 1st June 1981, where it is satisfied that there has been any material change in the circumstances and notwithstanding any provision to the contrary in any such agreement.

85 In *Tan Sue-Ann*, the Court of Appeal found as a fact that the husband there had agreed to pay two-thirds of his monthly income as maintenance on the assumption that his income would increase significantly on his return to legal practice. This assumption was made known to the wife there. Unfortunately, the husband's optimistic assumption proved to be unachievable despite reasonable efforts on his part. The Court of Appeal found that there was a material change in circumstances.

86 In the present case, the Wife did not accept that there was already an agreement on the maintenance in late December 2002. She said agreement was reached around February 2003 just before the Agreement was executed. After considering some correspondence which Ms Rajah had relied on, I am of the view that the parties had reached an agreement on or about 27 December 2002 on the maintenance issue. Perhaps agreement on other issues like access were reached later just before the Agreement was signed, but that is another matter.

87 Nevertheless, even though the agreement on maintenance was reached in late December 2002, I do not accept Ms Rajah's submission about a material change in circumstances. Before I set out my reasons, it is necessary for me to elaborate on the background leading to the Husband's employment up to the time when the Agreement was signed and the various legal entities involved. The latter is important because it seems to me that insufficient attention was paid to the identity of the Husband's employer at different times. On this point I would state that the name "John Doe" and the acronym "JD" were bandied about to the extent that it caused confusion. For example, para 100 of Ms Rajah's submission for the Husband (as appellant) had defined John Doe as "JD" and then used "JD" subsequently, for example, from para 177 onwards when the correct corporate entity should be JD Asia as I shall elaborate later. Likewise, para 9 of District Judge Khoo's grounds of decision used "JD" to refer to John Doe International Inc but when he used "JD" subsequently, for example, from para 50 onwards, "JD" was actually meant to refer to JD Asia as I shall also elaborate later. Also,

although the Husband's affidavits did name a few different legal entities of the John Doe group, his affidavits did not give a clear picture because, at times, his affidavits also used the name "John Doe" loosely, as I shall elaborate below. Where I have cited passages from Ms Rajah's written submission or District Judge Khoo's grounds of decision or the Husband's affidavits, I have left the errors as they are, so that, hopefully, further comments thereon can be understood in context.

88 The facts which I set out below are pieced together from the Husband's affidavits as well as from a *The Business Times* article which was part of the evidence. District Judge Khoo had referred to the article and so did Ms Rajah and the Wife. Significantly, Ms Rajah did not suggest that any part of the article was inaccurate in a material way. I will also be referring to various documents in the joint record of appeal which I shall refer to as "JRA" followed by the page number and paragraph number, where applicable.

89 I set out below the material parts of the article:

> [BG], who led the management buyout of the Asian arm of global consulting firm, [John Doe ("JD")], had left the firm to focus on other ventures.
>
> …
>
> [BG] hit the news last year when he successfully headed the US$56 million management buy-out of [JD]'s Asian business. The MBO – backed by Paris-listed French technology consulting giant, [AT Co] – resulted in [BG] and his associates controlling a majority stake of [JD]'s operations in Singapore, Malaysia, Hong Kong, Korea and Japan.
>
> [JD], the world's oldest management consultancy firm, was put under Chapter 11 bankruptcy protection early last year after it foundered [*sic*] with a debt of about US$68 million. [C C Management], [JD]'s chief creditor, took over the firm in a US$71 million deal in January 2002.

90 According to para 9 of the Husband's fourth affidavit (means and assets) filed on 16 May 2003 ("fourth affidavit"), it was John Doe International Inc, *ie*, a corporation and not a firm, which filed for Chapter 11 protection and this was on 6 February 2002. Assuming that it was John Doe International Inc that was in Chapter 11 protection, the *The Business Times* article would mean that in January 2002 John Doe International Inc's chief creditor, C C Management, took over John Doe International Inc in a US$71m deal. However, the Asian arm of John Doe International Inc was bought over, also in 2002, in a management buyout headed by the Husband and backed by AT Co. As a result, the Husband and his associates controlled a majority stake of John Doe International Inc's operations in Singapore, Malaysia, Hong Kong, Korea and Japan.

91 The Husband asserted in para 4 of his fourth affidavit that his assets in stock of "John Doe", meaning John Doe International Inc, were fully nullified because of the US bankruptcy proceedings in early 2002 and that his biggest nest egg was wiped out. Yet, the situation was not as grim as he had portrayed. According to the *The Business Times* article, he, together with his associates, had bought the Asian arm of John Doe International Inc after the commencement of the US bankruptcy proceedings.

92 I will now set out certain paragraphs of the Husband's fourth affidavit:

> 3. I have been Chairman Asia of the world's oldest management consulting firm, [John Doe]. I stepped down recently from my role after long discussions with the shareholders over the last eight months which [BF] has been fully aware of.

….

9. I have been employed until March 21st, 2003 in Singapore with [John Doe] Asia Pte Ltd, (… and hereinafter referred to as "the Company"), as the Company's Executive Chairman. Prior to this, and during my length of stay in Singapore … I have been employed by [John Doe] Southeast Asia Inc, a company that was a Singapore branch, fully owned by ***[John Doe]International Inc.*** based in Boston, Massachusetts. [John Doe] International Inc. filed for Chapter 11 on 6th February 2002. Subsequent to the bankruptcy proceeding, [John Doe] Southeast Asia Inc has been deregistered …

…

12. As a result of the cessation of my employment with [John Doe] Asia Pte Ltd with effect from 21st March 2003, I am entitled to be paid my salary and pension until June 7th, 2003 only. Also, as of September 7th, 2003, my housing, car and medical benefits will cease to be covered. The agreement between [John Doe] Asia, its shareholders … and myself pertaining to the separation terms are a strictly confidential agreement between the three parties. ….

….

30. While in Singapore, the family could afford and therefore enjoyed much larger premises. Thanks to a generous expatriate package from [John Doe], the family lived in a circa 4000 sq. ft. apartment … with the employer paying rent of S$12,000.00 per month for a Category A, Tier One property.

….

33. Notwithstanding the superior quality of living and lack of financial discipline, I would like the Court to be cognizant of the following realities:

(a) ….

(b) My potential resignation and restructuring from [John Doe] has been known to [BF] since May 2002. The precision and subversive timing of her act apart, the fact remains that now as a Permanent Resident of Singapore and in the current economic environment there is almost no way I can replicate the over generous expatriate package benefits that I was used to at [John Doe.]

[emphasis in original]

93 As can be seen, although the Husband drew a distinction between John Doe International Inc and John Doe Southeast Asia Inc ("John Doe SEA Inc") and John Doe Asia Pte Ltd ("John Doe Asia") in para 9 of his fourth affidavit, paras 3, 30 and 33(b) thereof use the name "John Doe" without differentiation.

94 As regards para 3 of his fourth affidavit, I deduce that the reference to long discussions with shareholders of John Doe over the last eight months must mean the shareholders of John Doe Asia and not John Doe SEA Inc or John Doe International Inc because the fourth affidavit was filed on 16 May 2003 and the last eight months would cover, roughly, July 2002 to May 2003, whereas the management buyout was completed in 2002 and John Doe SEA Inc was deregistered on 5 April 2002.

This conclusion would tie in with his own suggestion that he commenced employment with John Doe Asia after John Doe SEA Inc was deregistered on 5 April 2002 and that he left John Doe Asia on 21 March 2003.

95 I also understand that his reference to the generous expatriate benefits he was earning from "John Doe" was also a reference to John Doe Asia because the Husband has not given details of such benefits from John Doe SEA Inc.

96 To avoid confusion, I will also attempt to clarify some of the formal facts in the midst of various minor discrepancies before I come to the more important discrepancies.

97 The Husband said that his salary from John Doe SEA Inc was paid by John Doe International Inc (see JRA 1689 at para 9 and JRA 4817 at para 55). Thereafter, John Doe SEA Inc was deregistered and he was employed by John Doe Asia. The employment contract between John Doe Asia and the Husband was exhibited by the Husband in one of his affidavits. It was a cover letter on the letterhead of LA Co dated 7 January 2003 with terms and conditions of employment attached thereto. The cover letter stipulated that the employment was to commence retrospectively on 1 June 2002 and was secondable to John Doe Asia. The Husband explained that the cover letter was on LA Co's letterhead because John Doe Asia was 100% used by LA Co (see JRA 5921 at para 63). I would add that the Husband signed to accept the offer of employment on 27 January 2003. I will refer to this contract as "the Employment Contract".

98 The Employment Contract stated that the Husband's employment started on 1 June 2002. This was different from the starting date of "6 April 2003" as stated in his Form IR8A for Year of Assessment 2003 which was exhibited at JRA 1727. Assuming that the year "2003" in the Form IR8A should read as "2002" there was still a discrepancy of a few months which, for present purposes, was fortunately immaterial.

99 A second discrepancy was that that IR8A form referred to a starting date of 6 April 2003 for his employment with John Doe Asia. Even if "2003" should read as "2002", para 9 of his fourth affidavit stated that John Doe Asia was incorporated on 16 April 2002. If this latter date is correct, he could not have started his employment ten days earlier.

100 A third discrepancy was that although that Form IR8A was for the Year of Assessment 2003 and should therefore be for calendar year 2002, the words printed thereon refer to the return of employee's remuneration "for the year ended 2001", see (JRA 1727) again. Presumably, that was a typographical error.

101 A fourth discrepancy was that his designation in that Form IR8A was described as managing director of John Doe Asia, whereas he had referred to himself as John Doe's executive chairman in Asia in para 9 of his fourth affidavit. The Employment Contract also refers to his role as Executive Chairman, Asia. I believe he was appointed as executive chairman, and not managing director, of John Doe Asia. The error in that Form IR8A may have been due to the fact that he was previously holding the position of president and managing director of John Doe SEA Inc.

102 A likely discrepancy is also found between paras 3 and 33(b) of his fourth affidavit, which paragraphs I set out in [92] above. As I mentioned in [94] above, he had stated that he had been having discussions with shareholders over the last eight months. As calculated from the date of his fourth affidavit, this would be from July 2002. However, para 9 of his fourth affidavit stated that the Wife knew about his potential resignation and restructuring of John Doe Asia since May 2002. It could be that he was asserting that she knew since May 2002 although negotiations with shareholders

started only from July 2002, although I doubt that he intended to draw that distinction. Since the distinction is immaterial for the present purposes, I will assume that he was having negotiations about his departure from John Doe Asia since July 2002, if not earlier.

103 I come now to the more significant discrepancies.

104 Although the Form IR8A I have referred to above was intended to cover the Husband's employment with John Doe Asia for calendar year 2002, the calculation exhibited in the next few pages was in respect of his income from John Doe SEA Inc instead. Consequently, the figures in the calculation in JRA 1729 and 1730 do not match the figures in that Form IR8A at JRA 1727. There should have been two forms of IR8A for calendar year 2002 because the Husband had ceased employment with John Doe SEA Inc in early March 2002 and commenced employment with John Doe Asia thereafter.

105 When the Husband referred, in para 3 of his fourth affidavit, to discussions with shareholders regarding his departure from John Doe Asia, it must be remembered that he was not just an employee but also a shareholder of John Doe Asia after the management buyout. Furthermore, his allegation in the same para 3 that he had been having long discussions over eight months about his departure contradicted Ms Rajah's written submission, at para 179, that it was only in or about March 2003 that the new owners communicated to the Husband that they no longer wanted him. The Husband's departure from John Doe Asia was not as sudden as Ms Rajah was suggesting.

106 Indeed, since the Husband had been having shareholder discussions about his departure over the last eight months before his fourth affidavit was filed on 16 May 2003, this would mean that the discussions commenced around July 2002, as I have said. This would be some five months before he signed the Employment Contract on 27 January 2003. Therefore, when he signed the Employment Contract, he was already having discussions about his departure from John Doe Asia.

107 Thirdly, the remuneration package which Ms Rajah had referred to with the salary of S$17,132, before tax, and expatriate benefits was the package under the Employment Contract. The salary of S$17,132 per month, before tax, was apparently derived from an annual salary of US$115,500 (as stated in the Employment Contract) and an exchange rate of about S$1.78 to US$1. However, Ms Rajah had overlooked an important fact. In the context of the issue about division of matrimonial assets, the Husband had, subsequent to his fourth affidavit, asserted that his salary from John Doe Asia had been credited into his DBS Account No 001-100926-8 from August 2002. Yet, there were other amounts, which were for larger sums, paid into his account with Citibank in Hong Kong between August 2002 to December 2002, and also in January 2003 (see JRA 4668). The Husband had attributed such payments into his Citibank Hong Kong account as being for regional management work for yet another entity, *ie*, John Doe Asia Pacific Ltd. ("John Doe Asia Pacific"). However, he had not mentioned John Doe Asia Pacific in his fourth affidavit.

108 In other words, the Employment Contract which Ms Rajah, and the Husband, had been referring to with the expatriate benefits was not the sole source of his income in as late as August to December 2002. He had income from another entity, *ie*, John Doe Asia Pacific at the material time. Indeed, para 63 of the Wife's affidavit filed on 15 September 2004 specifically asked for a copy of his employment contract with John Doe Asia Pacific as she had noted that it was a different entity from John Doe Asia. However, the Husband's reply affidavit filed on 4 February 2005 did not respond to this specific query. Instead, para 63 thereof elaborated only on why the Employment Contract was on the letterhead of LA Co which was a different point. The Husband did exhibit a letter from John Doe Asia Pacific at JRA 5956 to confirm that certain credit entries in his Citibank account in Hong Kong came from John Doe Asia Pacific but this still did not address the question as to why he was being paid for

regional management work at that time by John Doe Asia Pacific. Did the Husband have a separate contract with John Doe Asia Pacific or were the payments made by John Doe Asia Pacific in fact made on behalf of John Doe Asia? The Husband did not elaborate. As I mentioned, he only exhibited a letter from John Doe Asia Pacific which did not shed any light on this question. He did not exhibit any contract with John Doe Asia Pacific or clarify the matter although the Wife had asked for a copy of his employment contract with John Doe Asia Pacific. If the payments by John Doe Asia Pacific were made on behalf of John Doe Asia, there was no indication in the Employment Contract that he would be paid additional sums for regional work. In other words, he had another source of income which was not disclosed in the Employment Contract.

109 Ms Rajah had stressed that the Husband had lost his salary from John Doe Asia from 8 June 2003 and his expatriate benefits from 8 September 2003 but what about his other source of income? The Husband was silent on this. Even if he had lost the other source of income at about the same time as he lost his salary and expatriate benefits from John Doe Asia, the point is that the Employment Contract did not disclose everything as I have said. Accordingly, the Employment Contract did not reveal his true earning capacity.

110 As regards Ms Rajah's submission that the Husband had disclosed payments from both John Doe Asia and John Doe Asia Pacific, this was because he had been required to disclose certain bank statements and then had to explain the credit entries therein. While he had disclosed some of such payments he had not disclosed the basis of the payments from John Doe Asia Pacific.

111 I come now to some more discrepancies. The Husband had said in para 10 of his affidavit filed on 16 May 2003 that his employment income for 2001 was S$245,377. In the calculation for his form IR8A for calendar year 2001, at JRA 1718, that sum is shown to be made up as follows:

(a) S$245,137 from employment, and

(b) S$240 from interest.

112 The figure of S$245,377 was reiterated in para 20 of the Husband's affidavit filed on 2 June 2003. On the other hand, the Wife had uncovered a document, at JRA 2164, which showed that the Husband's regular income for 2001 was "$409,999.93" without mentioning the currency it was denominated in. I will refer to this document as "the Husband's 2001 income statement". She produced this document in her affidavit filed on 3 June 2003 to support her allegation in para 103 thereof that the Husband had told her some years ago that half of his income was paid offshore. Subsequently, her solicitors wrote to the Husband's solicitors to point out that the total sums deposited into the Husband's Citibank account in 2001, *ie*, US$328,982.53 was less than the US$409,999.93 disclosed in the Husband's 2001 income statement and asked how the balance was applied. I should add that her then solicitors had assumed that the figures in that document was in US currency. It was in response to this letter that the Husband gave an explanation in para 64 of his affidavit filed on 13 July 2004. That paragraph stated:

> The amount of US$409.999.93 is the total income that I should have received for the Year 2001. For the whole year, an actual amount of US$340,142.63 was paid by [John Doe] Inc into my Citibank Hong Kong account and not US$328,982.53 as mentioned in the Petitioner's Solicitors' 2 July 2004 letter. The details of this "difference" are already known to the Petitioner from the document shown by the Petitioner herself in her 3 June 2004 Affidavit. The difference emanates from the deductions of US$2025.66 paid to Aetna for the family health premium and deduction of US$67,811.64 that was deducted by [JD] to settle my stock purchases.

The Husband had confirmed that the "$409,999.93" was in US currency.

113 I should point out that while the Husband's explanation sought to address the Wife's solicitors' question, a more significant issue had arisen. The Husband's 2001 income statement contains more figures. For completeness, I set it out in its entirety:

[The Husband] (Employee No XXXX) Total Earnings 2001 (paid by Inc)		
Regular	$	409,999.93
Pretax Medical		
Pretax Dental		
DCN		146,125.03
IP Pretax		
Excess Deff Comp		
Total Earnings		556,124.96
FICA		
Federal		
Medical		2,025.66
Life Ins		
Long Term Disab		
SIP Loan		67,811.64
Misc Deduction		
Excess Deff Comp		
Total Deductions		69,837.30

Nett Pay	$	486,287.66

114 As can be seen, the Husband's total income, before deductions, was US$556,124.96 of which part was ascribed to "Regular" and the other part to "DCN". The Husband explained in para 62(d) of his affidavit filed on 4 February 2005 that "DCN" is a Deferred Computation Note that indicates the discount at which an employee has purchased shares from the company (meaning presumably John Doe International Inc) versus the market or base value. The differential had been treated as income for US tax purposes.

115 The US$556,124.96 was much higher than the S$245,377 he had been referring to in two of his earlier affidavits as I have elaborated in [111] and [112] above. Even if I were to ignore the amount attributed to "DCN", the US$409,999.93 was still much higher than the S$245,377. Although the Husband had disclosed his Singapore tax returns as required by the Wife, he failed to disclose at the material time that those tax returns would not present the complete picture about his income.

116 Furthermore, while paras 14 and 33(d) of the Husband's fourth affidavit suggested that he had lost all pension benefits under his employment with John Doe International Inc or John Doe SEA Inc, I note that the calculation for his tax return for calendar year 2002 shows that he received a pension of S$77,707.85 from John Doe SEA Inc (see JRA 1730).

117 On another point, Ms Rajah submitted that the Husband had filed his application to vary the maintenance downwards because of the Husband's changed circumstances as he was departing from John Doe Asia. However, based on what the Husband had asserted, he was aware since July 2002, that he was likely to leave John Doe Asia. Even though he had agreed to certain maintenance payments in late December 2002, he was by then already aware that he was likely to leave. By March 2003, when he signed the Agreement, he could not have been in doubt about his departure. Yet he signed the Agreement. The Husband is an international management consultant with an impressive *curriculum vitae* which I shall elaborate on later. I have no doubt that he is and was more than capable in arranging his own financial affairs. Accordingly, I also do not accept Ms Rajah's submission that when the Husband signed the Agreement, he did so because he was still getting his salary up to 7 June 2003 and other benefits up to 7 September 2003. If the Husband knew he would not be able to meet his obligations just a few months after he signed the Agreement, he would not have signed it. I agree with District Judge Khoo that it was out of character for the Husband to have left John Doe Asia without preparing for an alternate career with equal if not a better package. However, I also agree with Ms Rajah that it was inconsistent for District Judge Khoo to then vary the maintenance downwards from 7 September 2003. Indeed, that is the subject of the Wife's appeal.

118 Accordingly, in my view, when the Husband filed his application in July 2003 to vary the maintenance downwards, it was not because his future financial remuneration would be less than what he had thought but because he was having second thoughts on what he had agreed to. At that time, it was too soon for him to say that he had been overconfident about his future prospects. Indeed, Ms Rajah did not present his case on the basis that he was aware in late December 2002 of his departure from John Doe Asia but had been overconfident in his assessment of the future. Even if she had made that argument, I would not have accepted it.

119 I come now to another set of arguments from Ms Rajah. She submitted that when the Husband committed himself to certain maintenance payments in late December 2002, the Husband had sustained two major upheavals in his life. The first was that he and John Doe International Inc, the company in which he had spent much time and even engineered a management buyout, would have to part ways. The second was the filing of the divorce petition by the Wife and having the Wife

walk out on him with the children. These arguments are found in pp 118 and 119 of her written submission for the Husband as appellant.

120 In my view, the first of this set of arguments is inconsistent with the earlier argument that the Husband only knew in March 2003 that John Doe Asia no longer needed him. Secondly, according to the Husband's fourth affidavit, his departure from John Doe Asia was not sudden but was negotiated over eight months. It was not a sudden upheaval which could have affected his frame of mind.

121 Thirdly, in March 2003, the Husband was departing from John Doe Asia, not John Doe International Inc. The Husband did not spend much time with John Doe Asia. That was the new entity after the management buyout. If he had any emotional upheaval, it would have been when John Doe International Inc had folded up in early 2002. The Husband was with John Doe Asia for less than a year if I use his starting date of 1 June 2002 as stated in the Employment Contract.

122 Fourthly, the Husband was represented by other solicitors when he agreed to certain maintenance payments in late December 2002. I also believe he was capable enough to have asked for more time if he was not in the right frame of mind to make a decision.

123 Fifthly, the maintenance payments which the Husband agreed to were not new. The Wife had said, without contradiction, that even in the past the Husband had been giving her S$5,000 plus paying for various expenses.

124 As for the divorce, it should be borne in mind that the marriage was already in trouble before the divorce petition was filed. The Husband himself said that the marriage was under strain for about four years. The parties had been sleeping in separate bedrooms since October 1999, almost three years before the Wife left on 17 December 2002 (see para 61(c) of his affidavit filed on 2 June 2003). The filing of the divorce petition could not come as such a shock as was being portrayed. He may have been surprised when he came back to find that his Wife had left with their children but, as I have said, I do not believe that the Husband would have committed himself in late December 2002 to the maintenance payments if he had not collected his thoughts by then. He would have asked for time to think. Furthermore, even if he had committed himself in a moment of emotional turmoil, he had had more than enough time to reconsider before he signed the Agreement in March 2003. It was suggested that he was at that point of time not represented by solicitors and the Wife had prepared the Agreement. Even so, I am of the view that the Husband would not have signed the Agreement if he did not want to.

125 I now come to the efforts of the Husband in seeking alternative employment or engagement. Paragraph 250 of Ms Rajah's written submission for the Husband, as appellant, stated that the Husband was without a job from 7 September 2003 to 15 February 2004 when he was engaged by CMA Co. Ms Rajah also submitted that the Husband was handicapped because (a) he wanted to maintain his access to the children and (b) he had had a heart attack in June 2001.

126 I point out that the Husband had ceased employment with John Doe Asia on 21 March 2003 and not on 7 September 2003. The latter date is the date when both his salary and benefits ceased. I find it difficult to accept that a person of the Husband's calibre was unable to find employment or any engagement for 11 months until 15 February 2004. This is all the more so when he knew at least eight months before March 2003 about his potential departure from John Doe Asia. If he did not obtain any employment or engagement between 21 March 2003 and 15 February 2004, it would be because he had allowed this situation to arise for the purpose of the matrimonial proceedings.

127 It is appropriate at this juncture to set out part of the Husband's *curriculum vitae* ("CV"). His CV was referred to in para 68 of his first affidavit filed on 23 December 2002 which stated:

> The Petitioner has stated that I am a businessman, which I am not. Annexed hereto and marked "RKM-4" is a copy of my detailed CV. I am an international management consultant working with various multinationals. I am a member of the Manpower 21 Committee for the Government of Singapore and on an Advisory Group for Temasek Capital. I am well known to many prominent members of the Singapore government. There is therefore no truth in any allegation of my so-called propensity to leave the jurisdiction with the boys.

128 The CV stated, *inter alia*:

> His clients include some of the world's best consumer goods and customer-intensive companies, technology-intensive corporations and regional governments. His clients include multinationals like PepsiCo, Gillette, Kelloggs, Nestle, Unilever, Nortel, Hughes, British Airways and many others as also the Governments of Singapore (including MAS, EDB and JTC), Malaysia, Indonesia, Philippines, Australia and India. He has also worked with regional conglomerates like Hutchisons (HK), Jardines (HK), Salim Group (Indonesia) and Reliance (India) just to mention a few. Some of his customer intensive clients include Amex, Citicorp and British Airways in addition to telecom operators like Optus, Orange, Singapore Telecom and Deutsche Telekom amongst many others.
>
> ….
>
> [BG] is a seasoned negotiator and deal maker with well developed cross cultural sensitivity developed through living and working across 6 countries and consulting with clients in 21 countries. A creator of strong teams, he has shown a penchant for driving lasting change in organisations and revels in developing high growth businesses with quality governance and sustainability.
>
> ….
>
> [BG] hold a Bachelors degree in Chemical Engineering and a Masters in Business. He has been a Bank of America Scholar, a Sir Ratan Tata Scholar, a National Science Talent Scholar (India) and a Gold medallist and State First during his academic career. In addition to English, he is conversant in Bahasa, Arabic, Hindi and Tamil.
>
> [BG] has both lived and worked in North America, Europe, the Middle East, Australia and Asia. He is married to [BF]… They have two sons …
>
> **Selected Engagements with Branded Customer Intensive Firms**
>
> • Helped a major global airline in restructuring its market and customer focus. The work resulted in repositioning the airline and the achievement of significantly enhanced profitability. The engagement created a benchmark in the airline industry and a case building competitive advantage through new brand and marketing approaches.
>
> • Helped the world's largest detergent and personal care corporation in developing a new portfolio strategy for 3 principal Asian markets to combat share erosion from low priced cottage sector brands. The revised portfolio strategy resulted in a value share increase of nearly 10 points in two markets within a year.

- Developed for the European Board of a major US candy and petfood manufacturer, a harmonised European brand portfolio. This resulted in significant media savings (lowered expenditure by 30% per annum), enhanced brand recognition scores and improved manufacturing economies (savings in excess of £20m per annum).

- Worked with the largest Australian financial and banking institution to develop the firm's retail strategy to maximise profitability. The engagement enabled the bank to reorient its retail operations towards selected segments resulting in a contribution growth by the retail group of over 60% in two years.

Selected Engagements in Technology and Customer Intensive Firms

- Worked with the executive management teams of two leading global telecommunication companies and one of Philippine's largest family conglomerates in structuring a three-way alliance. The alliance, which created one of the country's largest integrated telecommunications entity, with market leading positions in mobile telephony and Internet access, also involved the integration of two companies with overlapping business interests.

- Created the business plan and lobbying strategy for two successful cellular phone tenders in Hong Kong and Taiwan for a consortium of Chinese and European companies. Key value add included insights to the client on establishing pricing, distribution and customer service strategies and advising on the future organisation structure.

- Developed the sales and marketing strategy for an Indian cellular company to achieve rapid turnaround in customer profitability. He directed the establishment of a clear vision and objectives for the company, outlined strategies to secure attractive market segments, expand the distribution network, build an advertising and promotion strategy and create a robust pricing approach.

- Instrumental in developing an integrated marketing strategy for an Australian telecommunications company that identified opportunities to optimise cross-divisional business and marketing strategies for fixed and cellular services. He was instrumental in the creation of frameworks to analyse and implement a targeted marketing approach in the company.

129 In addition, the Husband had received an offer in 2001 from Bain & Company Inc ("Bain") which the Wife placed much reliance on to demonstrate the Husband's huge earning capacity. The letter dated 30 May 2001from Bain offered the Husband an annualised base salary of US$250,000 and bonus. The offer included a sign-on bonus of US$50,000. Paragraph 4 of that letter further stated:

> 2001-2001 Cash Income Floor
>
> While total compensation is normally determined based on performance, there will be an absolute cash compensation floor (base salary and bonus) from your start date until December 31, 2001 at an annualized rate of US$1,000,000. Your total cash compensation (base salary and bonus) for the twelve months ending December 31, 2002 will be guaranteed at 80% of the average firm-wide Officer Compensation for that year. Any compensation paid out in the form of equity and housing allowance will be in addition to the above guaranteed floor amount.

The offer was stated to be open for acceptance on or before 15 June 2001 although, for some reason which is not clear to me, the Wife asserted that it was open for acceptance up to January 2002.

130 Ms Rajah submitted that this offer was not available to the Husband when he left John Doe Asia in 2003 and that the Husband had not accepted this offer because he was working with "John Doe". Presumably she meant John Doe SEA Inc. Ms Rajah also submitted that the US$1m referred to in para 4 of the Bain offer was good for one year only. Even then, I note that the Husband did not really elaborate as to why he had allowed the offer to lapse. All he said in para 31 of his affidavit filed on 25 August 2003 was that he had decided against some offers for a host of reasons primary of which was his desire "as a leader of [John Doe]'s consulting practice in Asia to do right by our staff and not bail out on the first offer". While that may be a commendable sentiment, the Husband did not elaborate as to what he was getting in John Doe SEA Inc before his employment by John Doe Asia. Was his overall package in John Doe SEA Inc more than what Bain had offered and was that the real reason why he declined Bain's offer? Even if the overall package from John Doe SEA Inc was in fact much less than the Bain offer and the Husband had genuinely decided against the offer for the reason he gave, the fact of the Bain offer illustrated his earning capacity.

131 The Bain offer, the impressive CV and the *The Business Times* article together pointed to a person who was very successful in his career.

132 In my view, the Husband was not the sort of person who would let a heart attack slow him down. There was nothing in the *The Business Times* article suggesting he would slow down because of the heart attack in June 2001. Furthermore, in para 21 of his first affidavit filed on 23 December 2002, the Husband referred to the last five years and his having spent up to 15 plus hours a day at work and, on an average, two to three days a week travelling across Asia. At the time of that affidavit, the Husband had not even hinted that he had slowed down because of the heart attack.

133 I am therefore of the view that the heart attack is an excuse to explain why the Husband does not earn much more. On this point, Ms Rajah submitted that the Husband had disclosed that he received a raise from CMA Co and was receiving S$13,500 a month at the time of the hearing of the appeals. He had also disclosed that he had secured what he referred to as the M Associates consultancy at S$2,000 a month. He was also receiving a nominal S$3,750 a year for his work at SPRING. In my view, these are selective disclosures.

134 As for the Husband's access to the children hampering his job prospects, Ms Rajah relied on a letter from Russell Reynolds Associates dated 13 November 2003 to the Husband. It stated *inter alia*:

> You have heard directly, and through us, from our clients about their keen interest in the value-adds and potential contributions you can bring to their ongoing endeavours and potential growth areas in the region. More than one of them are truly interested in advancing discussions with you.
>
> However, the message is becoming clearer that such interest can only be further developed if, and only if, you somehow devote your full attention and time in your engagement with them. Your current legal entanglements, which you frankly and openly disclosed, are, we are afraid, putting such arrangements and positions out of your reach.
>
> It is, simply put, virtually impossible for any of them to engage you meaningfully, for both them and you, in your current situation.
>
> The other related issue has to do with your overall remuneration. As a Permanent Resident of S'pore, it would be highly unusual for employers to be able to offer you terms similar to your previous expatriate status. That would of course not be the case should you agree to relocate abroad. However, you are also well aware that with the clients in question, the senior impactive positions they have in mind for you are all regional in scope, but necessitate a base within Asia

Pac HQ's in S'pore.

[BG], apologies for not being able to be more positive in terms of the opportunities for now. We are sure things will be very different once your present situation changes. Look forward to better scenarios ahead.

135 I agree with the Wife that this letter was probably procured to serve the Husband's interest in the current matrimonial proceedings. The name of the signatory was not stated in the letter. More importantly, I am of the view that the Husband will not let the question of access get in the way of his career. It is not a question of the Husband being penalised, as Ms Rajah put it, for his candour about his marital problems with his potential clients. I do not believe he would volunteer information about such problems. I am not suggesting that the Husband should suppress material information, as Ms Rajah also put it. The point is that I am not persuaded that he volunteered information about his marital problems to prospective employers or clients. That is not the way he would have sold his services. In any event, should his marital problems have had to be disclosed because of his constraints in working overseas, I am of the view that he was the sort of person who would have assured his prospective employer or clients that he would put in 110% effort and that their projects with him would not suffer, notwithstanding such problems. I would add that in the *The Business Times* article, there was no hint that the Husband would slow down because he wanted to spend more time with his family. He could have said this to the press without disclosing his marital problems. Instead, that article portrayed the picture of a man who was very much on the go and on top of things. It seems to me that the Husband was portraying whatever he wanted so long as it suited his purpose at the appropriate time.

136 Ms Rajah also submitted that he had managed to bring his income to what it was before he left John Doe Asia, but excluding all the allowances since he would not be able to get expatriate terms so long as he worked from Singapore. As I have mentioned, Ms Rajah had overlooked the fact that the Husband's income, when he was with John Doe Asia, was actually much more than the S$17,132 per month and allowances. In late 2002, he was also receiving monthly regional responsibility allowances paid by John Doe Asia Pacific which were higher than his monthly salary from John Doe Asia. As I have also elaborated in [111] to [115] above, even his income for 2001, when he was with John Doe SEA Inc, was higher than what he had at first led the court to believe.

137 As for the absence of expatriate benefits for a Singapore position, the Wife pointed out that the Bain offer had included such benefits like housing although it was for a position in Singapore. In any event, I am of the view that the Husband can structure his financial package in any number of ways. He can ask for benefits to be included as part of his salary or for his remuneration to be split among various components or various entities. Put in other way, if the Husband can earn S$1m to S$2m a year, it really does not matter, for present purposes, whether that is all attributed to (a) salary or (b) salary and bonuses or (c) salary, bonuses and allowances *etc*. The question is whether, notwithstanding his marital problems, he is able to earn what he had been earning in the past. In my view, the answer is in the positive.

138 I would add that other parts of the *The Business Times* article stated:

He said he was reviewing various options including accepting invitations to join the boards of some local firms and helping Singapore-based companies build up their competitive capabilities.

…

Born in India and educated at its top schools and colleges, [BG] knows what he is talking about.

Despite having lived half his life in the US, Europe and Asia, this Singapore permanent resident has maintained strong contacts with corporate India, where he sits on the boards of several companies.

139 Although the Husband has made some disclosure in para 20 of his affidavit filed on 2 June 2003 about the board positions he holds, the picture he painted in his affidavit was again quite different from that in the article.

140 In my view, the Husband has not disclosed his true earning capacity when he was with John Doe SEA Inc or with John Doe Asia or after he left John Doe Asia. I do not find any material change in circumstances from December 2002, or March 2003 when he signed the Agreement, and the present.

141 I come now to a few other points. The Wife had made specific claims under Summons in Chambers No 651210 of 2003 for (a) the cost of the return air fares, including taxes, of the Wife and two children for their trip to Australia in July/August 2003 and (b) $2,500 being allowance for their expenses for the same trip. District Judge Khoo allowed this claim. Ms Rajah submitted that he was wrong to do so, even though there was evidence that in the past the Wife and children made two trips to Australia, and the subject trip was the second trip. Ms Rajah submitted that, first, the Husband could not afford this since his circumstances had changed. He had stopped receiving his salary from John Doe Asia since 7 June 2003. Secondly, this expense was not provided for in the Agreement. On the latter point, Ms Rajah submitted that if the Husband was to be bound by the Agreement, then so should the Wife.

142 The Wife asserted that the Husband had brought the children on various holidays between October 2003 and December 2004. She submitted that those trips showed that the Husband was not earning what he claimed as he would have been in financial difficulty if he was and still had to pay the maintenance sought. She detailed the trips as follows:

Location	Dates	Accommodation etc
India	13 – 26 Oct 2003	Included staying for several nights in one or more Oberoi hotels
Penang	13 – 18 Dec 2003	Golden Sands Hotel
Bali	20 – 27 Jun 2004	Le Meridien Resort
Jakarta		Marriott hotel in Jakarta
New Zealand	12 – 21 Jul 2004	Heritage hotels, trip included private skiing lessons

India	10 – 21 Oct 2004	Included accommodation at an Oberoi hotel and at The Claridges Corbett Hideaway, included tiger sanctuary.
Bali	12 – 17 Dec 2004	Le Meridien hotel

143 Ms Rajah submitted that many of the plane tickets for the Husband's holidays with the children were redeemed from air miles and he also stayed with friends.

144 It seems to me that even if the Husband had used his air miles for some of the plane tickets, this was neither here nor there because by not using such air miles for the Wife's holiday to Australia with the children, he had those miles still available for his use. As for staying with friends, I prefer the Wife's more specific evidence about the hotel accommodation he used.

145 I am aware that by February 2004, the Husband was earning income from CMA Co. However, the Husband's travels with the children from October 2003 did not suggest a person who was initially anxious about his financial future after he left John Doe Asia.

146 In any event, I have not accepted that there was any material change in circumstances. Accordingly, the argument about a lack of affordability on this issue must fail.

147 As for the argument that the airfare and expenses claimed by the Wife were not covered by the Agreement, I am of the view that the basis of this argument was not accurate. Paragraph 12 of the Agreement states:

> For the two-week school break in April this year, [the Husband] will pay [the Wife] by 21 March an additional amount of S$2,500 to cover out-of-Singapore expenses incurred while on holidays, will pay for flight tickets as [the Wife] has booked and will ensure that [the Wife] receives such tickets no later than 21 March. This figure of S$2,500 is not intended to set a precedent for calculation of financial support for future holidays: [the Wife] has agreed to this figure because she expects accommodation costs for this particular holiday to be minimal.

148 While it is true that there was no specific reference to the trip to Australia in July/August 2003 in the Agreement, there was clearly a reference in para 12 thereof to future holidays. In my view, the parties had anticipated future holidays whether in 2003 or otherwise. Paragraph 12 was meant to cover only the April 2003 holidays for the time being while not excluding other holidays. Therefore, I am of the view that the Wife is not precluded by the Agreement from making her claims. Also, the quantum allowed by District Judge Khoo was not excessive. In the circumstances, I dismiss the Husband's appeal on this issue.

149 Accordingly, I am of the view that the Consent Order should apply until 31 August 2005, which is the month of District Judge Khoo's first final order on ancillaries, subject to the issue about the Wife's earning capacity as I am of the view that the Consent Order did not take into account the Wife's earning capacity. Indeed, the Wife did not suggest that it did.

150 The Wife had a diploma in education from Australia and had been a primary school teacher. She then obtained a Bachelor of Laws from the University of New South Wales, Australia and worked as a lawyer in Freehills, an Australian law firm. When she moved to Hong Kong before the marriage, she was working in Deacons and then in Hong Kong Bank International Trustee Limited which was later known as HSBC International Trustee Limited, as a senior vice president until she stopped work when the first child was born. The Wife said that she was then earning the equivalent of about S$161,000 per annum. In 2004 she earned S$4,476.89 in Singapore as a relief teacher in the children's school. She said she could not practice in Singapore. Ms Rajah emphasised what the Wife used to be earning in Hong Kong and submitted that she should go back to full-time work. I am of the view that it is not in the children's interest for her to go back to work full-time at present. Nevertheless, the Wife can do part-time work which need not be confined to teaching in the children's school. This can include part-time teaching of law in an institution of higher learning or part-time work as a researcher or librarian. Eventually, as the children grow older, she will have to reconsider her job prospects. At present I have to assess her earning capacity in the light of the circumstances. In the absence of further evidence, I am of the view that she should be able to earn S$12,000 a year, which works out to S$1,000 a month, quite easily in view of her qualifications and experience and bearing in mind that I consider her to be an intelligent and resourceful person.

151 After taking into account the Wife's earning capacity and giving the Wife, say, a year from late December 2002 to settle down and to find a job, I am of the view that the Consent Order should continue up to 31 December 2003. Thereafter, it should be varied from 1 January 2004 to 31 August 2005 by reducing the payment of S$5,000 per month to S$4,000 per month. The other payments under the Consent Order are to continue up to 31 August 2005.

152 As for maintenance from 1 September 2005, each party preferred, for her or his own reason, that I make some sort of lump sum maintenance order.

153 The Wife's approach was that she should be paid S$11,000 per month and the Husband is to pay the school fees, which are about S$3,400 a month, directly to the school. The Wife's figure of S$11,000 was derived as follows:

(a)	S$ 5,000.00	per month for all other expenses not specified in the Agreement;
(b)	S$ 4,000.00	per month for rent, instead of S$4,200 per month under the Agreement; and
(c)	S$ 1,451.32	per month for all the other expenses itemised in the Agreement, excluding school fees and school bus fees.
	S$10,451.32	

As she was suggesting S$11,000 per month and payment of school fees directly, this meant that she

will be paying the school bus fees as well as all the holiday expenses from the S$11,000.

154 The Husband suggested S$9,000 per month, inclusive of school fees, plus (a) medical and dental expenses which will be paid from a comprehensive medical insurance, (b) expenses for school extra-curricular activities which he and the Wife agree to and (c) one economy plane ticket for each of the two children to Australia. The Husband's proposal was on the basis that his income-earning capacity has dropped. As I have concluded that his income-earning capacity has not dropped, his suggestion is rejected and I will adopt the Wife's approach, subject to my being satisfied on the reasonableness of various items as I shall elaborate on and to her earning capacity.

155 The S$5,000 per month was provided for in the Agreement for all expenses not specified. It was also the sum, which the Husband used to provide to the Wife, in addition to paying for various expenses, before the divorce petition was filed. In the absence of a material change in circumstances I will allow this sum.

156 The S$4,000 per month for rent was agreed under the Agreement at S$4,200 per month. The Husband's position was that he has to maintain two households and the Wife should move to less expensive premises as he has done, but this argument was on the premise that there is a material change in circumstances. Before the Wife left with the children, the family were living in a four-bedroom unit of between 4,000 to 4,500 sq feet in a prime residential area. The rent then was S$15,000 a month for the first two years and then S$12,000 a month. They have moved to a smaller three-bedroom unit of 2,043 sq ft in the same condominium and the rent was S$4,200 and then S$4,000 per month. She referred to the smaller unit as the smallest in the condominium. After the expiry of the tenancy of the four-bedroom unit in the condominium, the Husband moved to a unit of 2,494 sq ft in another area with a rent of S$2,900 per month. As I have concluded that there is no material change in the Husband's circumstances, I will not reduce the S$4,000 per month for rent. He was fully aware that he had to maintain two households when he agreed to the sum.

157 I come now to the other items specified in the Agreement, excluding school fees and school bus fees. The Wife itemised the quantum per month based on actual expenditure, as follows:

(a)	medical and dental expenses	S$ 657.65
(b)	car maintenance, insurance and licence for family car	S$ 337.00
(c)	PUB bills	S$ 390.84
(d)	air-conditioning maintenance	S$ 65.83
		S$1,451.32

This S$1,451.32 figure is referred to in [153(c)] above.

158 Of these items, the Husband considers the quantum for the medical and dental expenses and for the PUB bills excessive. He does not complain about the quantum for car maintenance, insurance and licence for the family car and for air-conditioning maintenance.

159 The quantum for the medical and dental expenses does appear high. The primary bone of contention was the use of the services of one Dr Sundardas to treat the allergies of the younger child. His charges formed a large portion of the medical bills. The Husband questioned the need for the Wife to consult Dr Sundardas for the younger child's allergies because Dr Sundardas is not a traditionally qualified medical practitioner, *ie*, he does not seem to possess a MBBS degree. Dr Sundardas is an "Alternative Health Practitioner" and practices in homeopathy medicine (see para 17 of the Husband's affidavit filed on 23 March 2004). However, it was not suggested that the Wife was consulting Dr Sundardas just to increase her claim for maintenance. Indeed, she had consulted Dr Sundardas some time before the divorce petition was filed. The Husband knew and accepted this. In paras 32 and 92 of his first affidavit filed on 23 December 2002, he even described a consultation with Dr Sundardas as "highly productive". The Wife is the primary caregiver and the Husband has, as I have mentioned, given her almost 100% credit for raising the children well. I agree with the Wife that she should be the one to decide whether to continue to consult Dr Sundardas. Also, once I fix the lump sum maintenance, any excessive consultation of Dr Sundardas will be borne from that sum.

160 As for the PUB bills, Ms Rajah submitted that they were 116% more than the national average. In my view, that is not the point since it is not suggested that the Husband is an average working male Singaporean. Some households do have rather higher PUB bills than the average and since the Wife's figures are based on actual usage of her household, I see no reason to disturb her quantum thereon. Indeed, the Wife did mention that such a figure was based on lower usage than other months but I need not dwell on this any further.

161 The S$11,000 per month which the Wife is seeking is about S$500 more than the S$10,451.32 referred above. The S$10,451.32 is derived from the components set out in [153] above and I have dealt with the components. The additional S$500 to make up S$11,000 will cover travel and bus fares to school. This is not high considering that District Judge Khoo had allowed S$800 per month for travel alone. There are, of course, still the school fees to be paid for directly by the Husband. I should mention that as I was writing this judgment, Drew & Napier LLC wrote in on 23 October 2006 to say that there was a "relevant material fact" which was that with effect from August 2006, the school fees have been increased from S$3,281 per month to S$3,803 per month. However, the letter did not say specifically the extent to which this fact would affect the issue of maintenance. In any event, as this is a development after the orders made by District Judge Khoo, I will not take it into account for the purpose of the appeals against his orders. It is up to the Husband to file a separate application if he wishes.

162 After taking into account the Wife's earning capacity, I order the Husband to pay her maintenance of S$10,000 (instead of S$11,000) per month and to pay the school fees directly, with effect from 1 September 2005.

163 As for District Judge Khoo's order on the Wife's maintenance summons, Ms Rajah submitted that technically, the maintenance summons is for arrears only as at the date thereof and is not to enforce sums which subsequently become in arrears. I am surprised at this submission because District Judge Khoo's order was in effect to give the Husband an extension of time to pay arrears, including those which had become due after the filing of the maintenance summons. In any event, to avoid any technical argument, I set aside District Judge Khoo's order on the maintenance summons and make no order thereon.

Division of matrimonial assets

164 I come now to the division of matrimonial assets. The Wife wanted a larger share, *ie*, 40%

rather than 25%, of the parties' disclosed assets which she listed out in "PS-5". There were also disputes as to which items constituted matrimonial assets and the date of valuation of some of such assets. I shall deal with the items raised by the Wife's appeal on division of matrimonial assets and then those raised by the Husband's.

Wife's appeal for a share of the sale proceeds of Carlotta property

165 A property in New South Wales, Australia ("the Carlotta property") was in dispute. The Wife said it should be included as part of matrimonial assets while the Husband disagreed. This was the single most valuable asset to be considered.

166 District Judge Khoo seemed to think that this issue had been settled by District Judge Lim earlier (see para 91 of his grounds of decision ([81] *supra*)) in that the Carlotta property was trust property. In any event, he also concluded that it was trust property. I do not think District Judge Lim would have decided whether it was trust property because she was not making a final decision on the ancillaries.

167 There were documents to show that the Carlotta property was acquired either in December 1994 or January 1995 but in any event before the marriage on 17 March 1995. Although the Wife spent some time to try and establish that it was acquired in January 1995, this point, even if she had managed to establish it, was immaterial. There were also documents to show that the Husband was holding the Carlotta property in a Golden Harvest Trust for his parents who were unit holders thereof and the Trust was created also before the marriage. The Carlotta property was bought at a purchase price of A$743,000. It was sold for A$2,225,000 just before June 2003. The net sale proceeds amounted to A$1,865,432.86, comprising A$1,788,642.58 and A$76,790.26 as the balance from a deposit. The Wife was seeking a share of the net sale proceeds. In her oral submission on 20 July 2006, she said that at least half of the net sale proceeds was part of matrimonial assets and she was seeking 40% of the half.

168 The Husband said that the purchase was funded in the following manner:

(a)	a bank loan	A$250,000
(b)	a loan from his father	A$131,035
(c)	cash proceeds from his parents on the allotment of 400,099 units in the trust at A$1 per unit	A$400,099
		A$781,134

There was no documentary evidence to establish that the loan did come from the father or that the cash to pay for the units did come from the parents. This may have been because of the long lapse of time since the Carlotta property was acquired.

169 Ms Rajah relied on a loan document dated 30 November 1988 between the Husband's father and the Husband to demonstrate that the father was a person of some means. I note that it referred to various loans which the father had purportedly lent to the Husband which amounted to 38 rupees and 50,000 lakhs. Ms Rajah submitted that this amounted to about US$276,978 (although she did not specify the exchange rate) and was lent to help the Husband kick-start his international career. I

note that the Husband himself did not assert in his affidavit, when he was exhibiting this document, that it was to jump-start his career. There was no explanation as to why this loan document became necessary and why the father was charging the Husband interest at nine per cent per annum thereunder. It seems to me that this loan document was meant to serve some other purpose.

170 In any event, even if that loan document recorded previous genuine loans, the fact is that in the Husband's fourth affidavit filed on 16 May 2003, some 14 to 15 years after that loan agreement was signed, the Husband had said in para 6 thereof that he was fully committed to taking care of his children and "my dependent parents". His parents' dependency was repeated in para 15 of the same affidavit as follows:

> Respondent's Obligations
>
> 15. It is also stated for the record that I am the only child of my parents. My father … is now 74 years old and my mother … is of age 69. Both my parents are dependent on me and for this reason the Government of Singapore and the Ministry of Manpower have issued them with long-term dependant visas to enable them to visit or stay with me when they so decide to. In the course of the last 11 odd years, I have been providing for and taking care of their living expenses out of love and affection and in keeping with Hindu traditions. In addition, I have taken care of all their ad-hoc expenses relating to the apartment they live in and all their medical expenditures. …

171 The Wife relied on the Husband's statement that his parents were dependent on him to support her argument that the purchase of the Carlotta property was funded by the Husband. On the other hand, Ms Rajah submitted that the Husband had not said that he was maintaining the parents out of necessity but out of love and affection and in keeping with Hindu traditions.

172 I find Ms Rajah's submission to be unpersuasive. It must be borne in mind that the said para 15 was included in the Husband's fourth affidavit to resist the Wife's claim for maintenance. The allegation of the parents or the father making loans to help fund the purchase of the property was made subsequent to the fourth affidavit.

173 If the parents were not truly dependent on the Husband, he should not have used them as a reason to reduce the Wife's maintenance claim. The Husband had used them to show how his own expenses were high and this included amounts he had to spend to maintain his parents including paying for their clothes. Furthermore, the statement that "[b]oth my parents are dependent on me" was quite unequivocal. I am of the view that the reference to his maintaining them out of love and affection *etc* was simply to clarify that he was not being forced to maintain them. It did not qualify the assertion that they were dependent on him. Accordingly, in my view, para 15 of the Husband's fourth affidavit did give and was calculated to give the impression that his parents were not financially independent.

174 I would add another point. The said para 15 had stated that for the last 11 odd years the Husband had been maintaining his parents. As the affidavit was signed on 16 May 2003, that assertion meant that since about 2002, he had been maintaining them. Yet, on the other hand, he asserted that he had borrowed money from his parents to purchase the Carlotta property in December 2004.

175 I do not find the Husband's evidence to be credible and I am of the view that to some extent he had funded the purchase of the Carlotta property. He had again portrayed whatever he wanted so long as it suited his purpose at the appropriate time.

176 Nevertheless, as Ms Rajah stressed, the Carlotta property was acquired and the trust was created before the marriage. So, as it turned out, it should not matter whether the Husband had funded the acquisition or not. However, in my view, the Husband did not want to take a chance of the Carlotta property being treated as part of matrimonial assets and hence his assertion about his father's loan *etc*.

177 Indeed, the Wife was arguing that although a trust had been created, the Carlotta property should not be treated as trust property for the purpose of the matrimonial proceedings. To support her contention, she submitted that subsequent mortgage payments were paid by the Husband and not from the rental proceeds of the Carlotta property, as the Husband had suggested. She further submitted that subsequent renovations to the Carlotta property amounting to S$200,000 and outgoings were paid by the Husband and not from the rental proceeds or the purchase of additional units by the parents as the Husband was suggesting. On the other hand, Ms Rajah submitted that as the accounts of the trust showed that after the Carlotta property was sold, the Husband was owing the trust A$20,376 (see JRA 4595), this supported the argument that there was more rental than outstandings. I am of the view that that loan is neither here nor there as there is insufficient information about it. For example, the loan could have been made to the Husband by the trust after the trust had issued units at A$1 or A$1.50 each.

178 In any event, there is *prima facie* a trust of the Carlotta property. The burden is on the Wife to persuade me that it, or part of it, should be treated as matrimonial assets. There is a dearth of documentary evidence to establish her assertions about the source of payments for the renovations and outgoings. Even if she was able to establish her assertions, it would have been doubtful whether such payments would have converted the Carlotta property into non-trust property.

179 The Wife also asserted that if she was denied a share in the Carlotta property, then any Husband could set up a trust with matrimonial assets so as to put such assets out of the reach of his Wife. She also submitted that this was the Husband's second divorce, the first being in Australia.

180 However, the trust was not created surreptitiously. The Wife admitted that she was aware of the same at or about the time the trust was created. She claimed that this was for tax reasons, without elaboration, and that she had trusted the Husband and did not enquire about details. In my view, the Wife may well have trusted the Husband but that is different from saying that he was deliberately trying to put this asset out of her reach. If he was, he would not have told her about the Carlotta property and the trust.

181 Bearing in mind the Wife's qualification as a solicitor and some working experience, she must be aware of the consequences of a trust. Indeed, she did not suggest otherwise. It does not assist her to say that she helped indirectly by liaising with agents to find tenants or liaising with consultants to improve the property. Furthermore, the relevant Australian authorities have recognised the trust for tax purposes. It may be that the trust was in fact a sham but, for all the Wife's assertions, including an assertion that the Husband's parents would do as he wished, she stopped short of asserting a sham. The Wife also said that the parties had intended to stay in the Carlotta property and there were documents on renovating the property to suggest this intention. However, as events turned out, they did not stay in it. In my view, even if the parties had resided in the Carlotta property, this would not affect its status if it was otherwise trust property. All things considered, I rule that the Carlotta property was not part of matrimonial assets and neither are its sale proceeds. I dismiss the Wife's appeal on this issue.

Wife's appeal seeking 40% of matrimonial assets

182 As I said, the Wife was appealing for 40% of the matrimonial assets disclosed instead of the 25% she was given by District Judge Khoo.

183 The parties were married on 17 March 1995. The Wife filed the divorce petition on 17 December 2002. The marriage therefore lasted six years and nine months. On this point, the marriage lasted less than other cases where the non-working Wife was given around 40% of the matrimonial assets.

184 Nevertheless, the Wife submitted the following to support her appeal for 40% of the matrimonial assets. First, the Wife stressed that she had given up her career as a lawyer with an annual income, then, of S$160,000 when the first child was born. Thereafter, she continued to look after the first child and, later, the second child. The Wife set out a list of the tasks she had undertaken for the children. On the other hand, the Husband sought to show how much time he had spent with the children. It is not necessary for me to set out their detailed allegations given that for all the claims by the Husband, he did not dispute that the Wife was the primary caregiver as I have said.

185 Secondly, the Wife submitted that she had looked after the house.

186 Thirdly, the Wife submitted that she had helped to entertain the Husband's colleagues and business associates at home and outside.

187 Fourthly, the Wife submitted that there was no matrimonial home as the Carlotta property had been sold and with 25% of the matrimonial assets she would not even be able to buy a modest home either in Singapore or in Melbourne, given her limited career options as she is still the primary caregiver of the children.

188 Fifthly, the Wife submitted that the Husband did not disclose all his assets and she was asking for only 40% of whatever was disclosed.

189 The Wife also submitted that she had paid for the rental of the parties' apartment in Hong Kong from the marriage in March 1995 till mid-1995 and she paid for groceries, personal expenses and household expenses from the start of the marriage until the first child was born in August 1995. However, I accept Ms Rajah's submission that there was no evidence to support these allegations and, in any event, her direct contributions constituted only a small percentage of the Husband's and was more than adequately taken into account in the award of 25%. I therefore need not say anything more on her financial contributions.

190 The Husband countered that household work was done by a maid. The Wife did not prepare meals for the family except for one occasion and corporate entertaining at home was planned and executed by him. He said she did not make a concerted effort to acquaint herself with his colleagues. Ms Rajah also stressed the relatively short duration of the marriage.

191 I accept that in addition to being the primary caregiver, the Wife had also taken care of the home where the family were residing in from time to time. She was in charge of the household even though there was a maid. In any event, the first two submissions by the Wife did not reveal anything extraordinary although I hasten to add that I am by no means minimising the invaluable contributions of full-time housewives who spend most of their time to care for the children and the home. As for the Wife's role as corporate Wife, I am of the view, as District Judge Khoo was, that she had discharged her duties as such a Wife.

192 As for the Carlotta property, I have decided it is trust property and not part of matrimonial assets.

193 However, for reasons which I shall elaborate on later when I deal with the identification of matrimonial assets, I agree with the Wife that the Husband has not disclosed all his assets which should form part of matrimonial assets.

194 In the circumstances, I will allow the Wife's appeal for 40%, instead of 25%, of the matrimonial assets, as disclosed. I now deal with the identification and valuation of matrimonial assets.

Wife's appeal that a sum of US$136,354 should be added onto the balance in the Husband's Citibank accounts

195 District Judge Khoo decided that money amounting to US$136,354 as at 16 May 2003 came from the Husband's Citibank account No 89240715 in Hong Kong containing HK$868,383.40 as at 8 March 2003 and from the Husband's Citibank account No 38035138 in Hong Kong containing US$31,947.84 as at 11 March 2003. District Judge Khoo concluded that, there was double counting when all the three sums were listed by the Wife as part of matrimonial assets. The Wife appealed against this finding saying that the US$136,354 was a different sum and did not come from the Husband's two Citibank accounts. I will elaborate.

196 In an exhibit in the Husband's fourth affidavit (see JRA 1740), the Husband had declared that he had, *inter alia*, US$136,354 and this sum was invested with Asia Pacific Investment Holdings ("APIH"). The date of investment was December 2002.

197 Subsequently, the Husband's then solicitors "clarified" by letter dated 6 February 2004, *ie*, about nine months later, that the amount invested with APIH and the date of investment were incorrect. They said the amount should be US$143,301.96 and the date of investment commenced from 27 March 2003. The correction was repeated in his answer filed on 29 April 2004. There were documents to show that:

(a) On 25 March 2003, the Husband had instructed Citibank to transfer his investment sum in account No 89240715 to APIH. This was done on 27 March 2003. The amount transferred was US$111,354.12.

(b) On 25 March 2003, the Husband instructed Citibank to transfer his investment sum in account No 38035138. This instructed was not carried out until the Husband repeated his instruction and on 29 April 2003, Citibank transferred US$31,947.84.

198 The total of these two transfers was US$143,301.96. The Husband also obtained a letter from APIH dated 26 September 2005 to say that the only funds and deposits received by them from the Husband were the two sums transferred on 27 March and 29 April 2003. Ms Rajah submitted that therefore the date and sum mentioned in the exhibit in the Husband's fourth affidavit was an obvious error. However, what was the error? Ms Rajah was submitting that the date and sum mentioned in the fourth affidavit did not exist but, as the Wife queried, how then did the error occur, bearing in mind that the fourth affidavit was filed on 16 May 2003, shortly after the two sums were transferred on 27 March and 29 April 2003? Where did the Husband get the original date of December 2002 and the original figure of US$136,354 from? As the Wife also queried, perhaps the error was only in the name of the fund manager, *ie*, there was a separate sum of US$136,354 invested with a fund manager other than APIH.

199 I am of the view that the documents from the Husband only demonstrate that the amounts totalling US$143,301.96 in the two Citibank accounts were transferred to APIH in March and April 2003. To that extent there should be no double counting. However, the Husband did not explain where he derived the original figure of US$136,354 or the date of December 2002 from or how the error occurred bearing in mind that his fourth affidavit was filed shortly after the transfer of the two sums.

200 In the absence of such an explanation, I infer that he had a separate sum of US$136,354 under management, if not by APIH then by someone else. Accordingly, I allow the Wife's appeal on this issue and the US$136,354 is to be included as part of matrimonial assets as well as the US$143,301.96 transferred to APIH.

Wife's appeal for a share of Bionutrics shares based on investment value

201 The Husband held 125,000 shares in Bionutrics Inc. He exhibited a letter to APIH dated 18 June 2004 to sell the shares and a reply from APIH dated 8 July 2004 stating that it had sold the shares at a price of US$0.25 per share net of commission amounting to US$31,250. The Husband has paid the Wife 25% of this sum.

202 The Wife did not accept the sale price as the correct valuation because the Husband had indicated the sum he paid for the shares to be S$365,780. She wanted a share of the investment value, *ie*, a value based on the price which the Husband had paid for the same. She submitted that a drop of more than S$300,000 deserved closer scrutiny. She noted that the letter from APIH did not state how many shares it was referring to. I note that that letter did state the unit price and the total sum from the sale. From such information, it was evident that all 125,000 shares had been sold.

203 The Wife also questioned why the Husband, an astute businessman, would liquidate the shares at the wrong time, and why he had involved her in the liquidation of other assets but not these shares. In my view, such arguments do not carry much weight in the absence of more specific evidence to show that the sale price was not genuine.

204 I was not informed as to whether one should expect some sort of contract note or sales note generated for the sale of such shares, as one might expect to see for shares sold on the Singapore Exchange through a stock broker. If such a note exists, it is preferable for the same to be exhibited with a letter rather than just a letter alone to avoid any concern about a less than full disclosure. Be that as it may, I am of the view that the documentary evidence from the Husband is adequate in the absence of specific contrary evidence from the Wife. She may not be as familiar as the Husband was with such prices but it was incumbent on her to obtain the prices of the counter in question on the relevant date if she wished to put some teeth into her submission. In the circumstances, I adopt the sale price asserted by the Husband for the division of matrimonial assets. The Wife's appeal in respect of this item is dismissed.

Wife's appeal for a share of Valencia shares based on investment value

205 The Wife had sought a share of Megasoft (Xius) shares held by the Husband based on the investment value. When the Husband sold the same, the sale price was higher than the investment value and he has paid her 25% thereof. She was happy to receive her share based on the sale price instead of investment value but as she was seeking a share of the investment value of other counters, she was prepared to have the Megasoft (Xius) shares treated on the same basis.

206 I do not see any logic for the investment value to be used. A more current price should be

used. It could be the price as at the date of decree *nisi* or as at date of sale. The latter would obviate any unintended loss or windfall to either party. District Judge Khoo's order was for the Wife to have a share based on the sale price and I agree that that is the appropriate order.

207 The same approach is to apply for the Valencia shares. The Husband asserted that the shares were sold for US$4,940 (S$8,007.74) of which 25% was paid to the Wife on 31 March 2006. There was no further evidence from either side. I will adopt this price for the division of matrimonial assets. The Wife's appeal on this item is dismissed.

Husband's appeal that he be allowed to deduct two sums from the balance in his account with DBS Bank

208 The Husband had a bank account with DBS Bank No 001-100926-8 with a balance of S$175,413.71 as at 11 March 2003. The Husband sought to deduct S$59,743.94 being his income tax liability and S$20,000 being legal fees he had paid, leaving a balance of S$95,669.77 (and not S$95,688.71 as suggested by the Husband) to be part of the matrimonial assets.

209 I have set out under the appeals in respect of maintenance, the Husband's employment history and the various legal entities involved.

210 The S$59,743.94 was the sum of the Husband's tax for his income for the calendar year 2002, *ie*, Year of Assessment 2003. According to the Notice of Assessment for that year, his employment income for 2002 was S$390,974 and his interest income was S$553, making a total of S$391,527. Ms Rajah's written submission for the Husband, as appellant, was that the Husband's salary from his employer, John Doe (without identifying which John Doe entity was involved), had been paid into the DBS account. This was based on para 17(i) of the Husband's fourth affidavit where he simply asserted that his monthly salary had gone into this account without identifying the employer. Ms Rajah submitted that it was fair that the tax the Husband had to pay on his income be deducted from the credit balance in the DBS account before division of this asset between the parties.

211 The Wife said that according to the Husband, his salary was previously paid into his consolidated Citibank accounts in Hong Kong, prior to August 2002. If the Husband's salary from August 2002 was paid entirely into the DBS account from August 2002, she would have expected to see a corresponding reduction in the credit entries henceforth regarding the Citibank accounts. Yet payments into his Citibank accounts continued at the same level as previously.

212 The source of the payments into the DBS account and into the Citibank accounts for 2002 came from the Husband himself. As regards his assertion that salary was being credited into the DBS account from August 2002, this salary was from John Doe Asia. The salary credited into his Citibank accounts from January to May 2002 was from a separate legal entity, *ie*, John Doe International Inc making payment on behalf of John Doe SEA Inc, as I have mentioned.

213 Although the tax of S$59,743.94 was supposed to be based on the employment income of S$390,974 from John Doe Asia and interest of S$553 according to the Notice of Assessment (at JRA 3944), the calculation which followed the Form IR8A, which calculation was apparently prepared by Deloitte and Touche, was disclosing income from John Doe SEA Inc and not from John Doe Asia (see JRA 1729 and 1730). I have alluded to this in [104] above. Accordingly, the tax was not based on income from John Doe Asia but from John Doe SEA Inc. Income from John Doe SEA Inc was credited into his Citibank accounts and not into the DBS account. It was only the income from John Doe Asia that was purportedly paid into the DBS account from August 2002. Even then, it is likely that not all of his salary from John Doe Asia was paid into the DBS account, as I shall elaborate.

214 For example, there was a credit of S$33,618.37 into the DBS account on 13 August 2002 which the Husband described as salary from John Doe Asia. However, there was no credit entry in September or October 2002 for salary. On 18 October 2002, there was a credit of S$25,000 which he described as home leave allowance, but not salary. On 18 November 2002, there was a credit of S$15,515.14 which the Husband described as salary from John Doe Asia and on 26 December 2002, a credit of S$15,302.11 which he also described as salary from John Doe Asia. So, even if the credit of S$33,618.37 on 13 August 2002 could be said to be for the two months of August and September 2002, there was still October 2002 unaccounted for. Besides, since his employment with John Doe Asia commenced from 1 June 2002 according to the Employment Contract, where was the salary for June and July 2002 from John Doe Asia credited into? To me, there was clearly some non-disclosure by the Husband.

215 Furthermore, the aggregate of the 2002 entries into the DBS account amounted to a much lower figure than the S$390,974 on which the tax was based. This reinforces my view that the tax was not based on income which was paid into the DBS account. Accordingly, on the issue as to whether the Husband should be allowed to deduct the tax of S$59,743.94 from the DBS account, I am of the view that he should not be allowed to do so.

216 It may be that this tax should then be deducted from the balances in the Husband's Citibank accounts into which his salary from John Doe SEA Inc was paid. As I elaborated in [197] to [198] above, the balances were transferred to APIH. However, in the absence of more information and submission on this point, I am not prepared to allow the tax to be deducted from the balances in the Citibank accounts. I would add that the Husband did not disclose what happened to his shares in John Doe Asia after his departure from John Doe Asia.

217 As for the Husband's legal fees, the Husband said he paid S$20,000 from the DBS account to pay a bill of his solicitors, Stamford Law Corporation, whom he had engaged to negotiate the termination of his employment with John Doe Asia. His employment ended on 21 March 2003. The invoice No 1867 dated 28 March 2003 from Stamford Law Corporation and the solicitors' statement of account dated 31 March 2003 show the invoice to be for a total of S$37,226.17. On the statement of account (JRA 7471) is a handwritten statement suggesting that a payment of S$20,000 was made by DBS cheque No 300187 dated 5 May 2003. Elaboration of the work done was given in a letter dated 18 July 2006 from Stamford Law Corporation. Most of the work done by them was between 6 to 8 March 2003.

218 Even assuming that the S$20,000 was paid to Stamford Law Corporation from the DBS account, as this was not disputed, I do not see why this sum should be deducted from the pool of matrimonial assets. Ms Rajah submitted that the Husband had to negotiate the terms of cessation of employment and in particular the Husband wanted to be released from certain restrictive covenants. In my view, even if this submission was based on true facts, the negotiations were to assist the Husband in obtaining employment or engagement, going forward. The S$20,000 should not be deducted from the pool of matrimonial assets already acquired before such legal services were rendered. I am therefore of the view that the S$20,000 is not to be deducted from the balance in the DBS account as at 11 March 2003.

Husband's appeal to pay a portion of what is in his Central Provident Fund account later

219 The Husband had been ordered to pay the Wife, within six months of District Judge Khoo's order, 25% of S$12,886 standing in his ordinary account with the Central Provident Fund ("CPF") as at 23 April 2003. This works out to slightly over S$3,000. He said that this was unfair to him as he was not entitled to withdraw the money in his ordinary account yet. In order to pay this sum, he

would have to liquidate another asset which would already be subject to the 25% division for the Wife. He was prepared to assign or charge the relevant amount in his CPF account to the Wife or be directed to pay it as and when he becomes entitled to receive it.

220 As I have already elaborated, the Husband's earning capacity is much more than what he would want the court to believe. I have no doubt that he does not need to wait until he is 55 to pay 40% (under my decision) of S$12,886 to the Wife, *ie*, S$5,154 which is a relatively small sum. However, as he insists on his strict legal rights, I will allow him to pay this sum to the Wife, with interest earned thereon, when he reaches 55. In the meantime, S$5,154 of his ordinary account with CPF is to be charged in favour of the Wife.

Shares in John Doe International Inc and shares in In Touch Technologies Holdings Ltd (also known as Upaid)

221 The Husband has in his name shares in John Doe International Inc but he said the shares have no value as that corporation is bankrupt. The Wife accepts this and is not seeking the transfer to her of any of such shares.

222 The Wife has in her name shares in In Touch Technologies Holdings Ltd (also known as Upaid). District Judge Khoo ordered the Husband to pay her 25% of the value of these shares within six months of his order. The Husband's appeal is that District Judge Khoo erred because these shares are not in his name. The Husband sought a transfer of 75% of these shares to him or payment of the current market value. On the other hand, the Wife was also not keen to keep the shares and sought payment to her of her share. Apparently, there is no actual trade in these shares and in an e-mail dated 31 August 2004 from Upaid to the Wife, it was stated that the current theoretical value was approximately US$0.67 per share.

223 In these circumstances, I do not think it is right to compel either side to buy over the other side's portion of the Upaid shares. In the absence of agreement, the Wife is to transfer 60% of the Upaid shares in her name to the Husband with all costs associated with the transfer to be borne by the Husband.

Husband's appeal in respect of a Mazda car

224 The value of a Mazda car registered in the Wife's name, as at 11 December 2004, was S$5,569. The Husband contended that District Judge Khoo had wrongly asked him to pay the Wife 25% of this sum when the car was registered in the Wife's name and she was using the same. The Wife said that District Judge Khoo did not ask the Husband to pay her 25% of this sum. The car was included in the matrimonial pool and the Wife was given 25% of the pool. Thereafter, District Judge Khoo took into account the assets in her name and ordered the Husband to pay the Wife the balance of her 25% share.

225 If what the Wife said is correct, then there is no need for the Husband to appeal on this issue. If what the Husband said is correct, then the Wife should have no reason to disagree if I make an order along the lines which she herself had said District Judge Khoo had done. Accordingly, I order that the pool of matrimonial assets is to be determined first from the assets disclosed. The Wife is entitled to 40% thereof. Thereafter, the value of the assets in her name and which are to be retained by her are to be deducted from her 40% share and the balance of her entitlement is to be paid by the Husband to the Wife within 30 days of the date of my decision. For the avoidance of doubt, the value of the Upaid shares need not be computed as the Wife is to transfer in kind 60% of these shares to the Husband.

Husband's appeal in respect of his memberships in the Hollandse Club and British Club

226 The Husband was ordered to pay the Wife 25% of the estimated value of his memberships in the Hollandse Club (S$8,000) and The British Club (S$8,200). In his appeal he said he would not be keeping the memberships and would be selling them. Accordingly, he wanted the 25% to be net of the transfer fee which he said was S$2,100 and S$3,307.50 respectively and the commission payable upon transfer which he said would be S$300 for each club. This appeal involves rather small sums.

227 The Wife resisted this appeal because she claimed that the Husband failed to obtain the valuation of the memberships and she had to do so. In my view, that is missing the point as he does not question the valuations as such.

228 In any event, the Husband had the option whether to keep these memberships or not. He did not say he would sell them at the time of the hearing before District Judge Khoo. He has had the benefit of ownership of the same. Whether he in fact made use of the facilities of these clubs or not in the period between District Judge Khoo's decision and mine is irrelevant. I think it is too late for him to try and reduce the sum he has to pay the Wife in this manner and I dismiss this appeal of his.

Husband's appeal in respect of China Club membership

229 District Judge Khoo ordered the Husband to pay the Wife 25% of the value of a China Club membership which was held by the Husband. The Husband appealed on this because his position was that he no longer retained that membership. Unfortunately, the explanation and evidence he provided District Judge Khoo were a bit confusing. With additional evidence provided at the appeal, which I allowed, I was satisfied that his membership had ceased. Accordingly, I allow his appeal on this item and he need not pay the Wife anything in respect of this membership.

Husband's appeal in respect of a US$10,000 loan

230 District Judge Khoo ordered the Husband to pay the Wife 25% of a loan of US$10,000 which the Husband had made to a couple as he considered this to be part of the pool of matrimonial assets. The Husband said it was a personal loan to be repaid when the couple were able to do so. He also said that the Wife also knows the couple. The Husband appealed on this item because he was of the view that it was unfair to him to pay the Wife when he has not received the repayment of the loan. He suggested that the appropriate order should be for him to pay the Wife when he received the repayment of the loan. As it was, he was already out-of-pocket for US$10,000. Alternatively, he suggested that he assigns his rights in respect of the debt to the Wife.

231 The Wife did not dispute that she knew the couple but said that they are the Husband's personal friends. The loan was made without her involvement and the couple do not live in Singapore. Neither does she have any contact with them. The Wife felt that it was not right for her to step into the shoes of the Husband via an assignment in such an informal and personal arrangement. Nor should she be expected to chase for her share of the debt.

232 From one point of view, it is really up to the Husband whether he wishes to press the couple for repayment of part of the loan so that he may pay his Wife her share thereof. However, the Husband would presumably find it embarrassing to seek repayment when the understanding was that the couple were to repay when able to do so. An order that the Husband pay the Wife her share before he has received payment seems to penalise the Husband for his kindness to the couple. Indeed, he may never receive any repayment from the couple. Accordingly, I will allow his appeal on this and set aside District Judge Khoo's order thereon. However, the Husband is to pay the Wife her

share within 14 days of receipt of any repayment. In the meantime, he is to notify her by 14 January of each year whether he has received any repayment in the previous year.

Husband's appeal on Wife's bank accounts

233 The Husband said that as at 9 April 2003 the Wife had HK$1,251,935.33 in her Citibank account Nos 89743067 and 14482355 in Hong Kong (which included A$131,248.85 being the net proceeds of sale of her property in Glebbe Street, Australia). She also had A$49,000 in her account No 38878070 with Citibank in Hong Kong. As at 5 March 2003, the Wife also had a very small sum of A$463.18 in her account No 06273428046214 with Commonwealth Bank of Australia. The Husband wanted his share of these assets. District Judge Khoo stated in his grounds of decision ([81] *supra*) at para 69 that the Husband had not claimed that the Wife's balances in these accounts were part of the pool of matrimonial assets but Ms Rajah pointed out that this was probably incorrect because the Husband did claim this in submissions (see JRA 7067 and 7015A).

234 The Wife said that the funds in these accounts were her savings prior to marriage or proceeds of sale of pre-matrimonial assets, such as the sale of her Glebbe Street property, or a small inheritance from her family.

235 The Husband's approach was simply to make a claim for a share of whatever was in the Wife's accounts. Apparently, he did not ask for a breakdown of all the sources of the Wife's funds and for supporting documents. I have no basis to conclude that the funds in the Wife's accounts are matrimonial assets. Accordingly, I dismiss the Husband's appeal on this issue.

Husband's appeal for payment of loans to the Wife – A$14,000 and HK$10,000

236 The Husband made a claim for loans of A$14,000 and HK$10,000 said to have been made to the Wife and sought repayment of the same. He supported his allegation of the loan of A$14,000 with four cheque butts Nos 0900105 to 0900108 as follows:

No	Date	Amount
0900105	1 Jul 1995	$ 5000
0900106	13 Oct 1993	$ 2000
0900107	20 Dec 1993	$ 5000
0900108	20 Dec 1993	$ 2000

The date of the first cheque butt should perhaps be 1 July 1993, instead of 1995, in view of the dates of the other cheque butts. However, only the last three cheque butts had the words "Temporary loan" written thereon. The first had the Wife's name written thereon but no description of the purpose of the cheque. There was no indication on all the four cheque butts of the currency involved.

237 The loan of HK$10,000 was supposed to be supported by a letter dated 28 June 1999 from the Husband to an officer in Citibank Hong Kong to transfer HK$10,000 to an account of the Wife with The Hongkong and Shanghai Banking Corporation Limited.

238 District Judge Khoo did not make an order for repayment of the loans and the Husband's

appeal includes these sums.

239 The Wife pointed out that these loans were raised late in the day on the Husband's 20th affidavit filed on 4 February 2005. This affidavit was in reply to the Wife's affidavits of 15 September 2004 and 29 October 2004. She had no opportunity to respond to his affidavit unless the ancillaries were delayed.

240 The Wife also submitted the following:

(a) The parties were married on 17 March 1995, so 1993 was before the date of the marriage.

(b) There was no indication on one of the cheque butts, *ie*, 0900105 that it was a loan. The sum could have been to reimburse her for expenses she had paid.

(c) There was no indication of the currency involved. She said it was unlikely to be Australian dollars as the parties were living in Hong Kong then.

(d) The letter dated 28 June 1999 regarding the transfer of HK$10,000 from his account to her account did not indicate that the sum was a loan. The sum could have been to reimburse her for expenses she had paid.

241 The Wife also submitted that she did not recall any outstanding loan to be repaid by her to the Husband. She said that any loan could have been repaid or there would have been a mutual understanding that they be netted off against her financial contributions.

242 I am of the view that the Husband has not established that the HK$10,000 was a loan or that the $5,000 under cheque butt 0900105 was also a loan. As regards the three remaining cheque butts with the words "Temporary loan", he has also not established the currency involved. Furthermore, I accept that the sums were either repaid or netted off against the Wife's own financial contributions. In any event, those three sums may even be time barred as the divorce petition was filed on 17 December 2002.

243 I dismiss the Husband's appeal for these sums of money.

Summary of orders made

Husband's RAS 720075/2005

244 I allow part of the Husband's appeal in RAS 720075/2005, in that from 2007, after the 2006 school Christmas holidays, he is to have extended weekend access as I have set out in [41] above. I dismiss the rest of that appeal.

Husband's RAS 720081/2005 (as amended)

245 I dismiss prayers 1 to 7 and 10 of the Husband's appeal in RAS 720081/2005 (as amended). There is no order on Maintenance Summons No 5222 of 2003. As regards prayer 9 of the appeal on the schedule of the matrimonial assets, the Wife is entitled to a share (40%) of the assets as set out in PS-5 and varied by me, that is:

(a) The Husband is not entitled to deduct income tax of S$59,743.94 or legal fees of

S$20,000 from DBS account No 001-100926-8.

(b) The Husband is to pay the Wife her share of S$12,886 and interest thereon when he reaches 55 years of age. In the meantime, his CPF ordinary account is charged accordingly. For the avoidance of doubt, I clarify that he is to pay the money when he reaches 55 years of age whether or not the sum in his ordinary account allows him to make a withdrawal then.

(c) The Wife is to transfer 60% of the shares in Upaid to the Husband with the Husband paying the expenses of the transfer.

(d) The Husband need not make a separate payment of 40% for the car.

(e) There is to be no deduction for transfer fees or commission in respect of the Hollandse Club and The British Club memberships.

(f) The China Club membership is not part of matrimonial assets.

(g) The loan to the couple mentioned in [230] to [232] above are part of matrimonial assets but the Husband is to pay the Wife her share within 14 days of receipt of any repayment. In the meantime, he is to notify the Wife by 14 January of each year whether he has received any repayment in the previous year.

(h) Money in the Wife's accounts with Citibank, Hong Kong and the Commonwealth Bank of Australia are not part of matrimonial assets.

(i) There is no loan due and payable by the Wife to the Husband.

Wife's RAS 720082/2005

246 I allow prayer 1 of the Wife's appeal in RAS 720082/2005 regarding the Husband's Tuesday homework access with effect from 2007 after the 2006 school Christmas holidays.

247 I allow prayer 2 of the Wife's appeal in part. The Husband is to pay maintenance according to the Consent Order up to 31 December 2003. From 1 January 2004 to 31 August 2005, he is to pay the same, less S$1,000 per month. From 1 September 2005, the Husband is to pay the Wife maintenance at S$10,000 a month and to pay the school fees directly to the school. The Wife is to produce medical and dental receipts to the Husband to enable him to make claims thereon as he has an insurance plan for such expenses.

248 I allow prayers 3 and 4 of the Wife's appeal in part. The Wife's share is 40% of the matrimonial assets as set out in PS-5 and varied by me. For the avoidance of doubt and in addition to what I have set out under RAS 720081/2005:

(a) the Carlotta property is not part of matrimonial assets and neither are the sale proceeds thereof;

(b) the sum of US$136,354 initially mentioned by the Husband in his fourth affidavit of 16 May 2003 is in addition to the money in the Husband's Citibank Hong Kong accounts, which money has been transferred to APIH; and

(c) the sale proceeds, and not the investment value, of the Valencia and Bionutrics shares are part of matrimonial assets.

249 The pool of matrimonial assets will be those undisputed assets and the assets as determined by me to be part of matrimonial assets. Leaving aside the Upaid shares, which are to be distributed in kind, the Wife is entitled to 40% of the remaining matrimonial assets. She is entitled to retain those in her name or in her possession and the balance of her entitlement is to be paid by the Husband to her within 30 days of the date of my decision subject to such other deadline as I have given the Husband to pay as regards specific items.

Husband's RAS 720019/2006

250 I allow part of the Husband's appeal in RAS 720019/2006 in that with effect from the 2007 school Christmas holidays, the Wife is to have the children from 10.00am of 24 December to 2.30pm of 26 December and subject thereto the Wife is to have the children for the first half of such holidays and the Husband the second half, provided that the Husband is to return the children to the Wife by 10.00am on the last Saturday of such holidays.

251 The rest of RAS 720019/2006 is dismissed.

Costs

252 On the whole, the Wife may be the more successful party in the appeals. However, she was not represented by counsel before me. The parties are to write in as soon as possible to state whether they require an appointment to present arguments on costs or whether they have reached agreement on the costs issue.

General

253 I would like to commend Ms Rajah for her civility towards the Wife, which the Wife reciprocated, in the course of arguments before me. While such conduct is to be expected of counsel, such an expectation is not often met, especially in acrimonious cases.