Seet Poh *v* Lim Lee Cheng
[2014] SGHC 78

Case Number	: Divorce Petition No. 602563 of 2003 (Registrar's Appeal (State Courts) No. 720005 of 2013)
Decision Date	: 17 April 2014
Tribunal/Court	: High Court
Coram	: Vinodh Coomaraswamy J
Counsel Name(s)	: Ms Foo Soon Yien and Ms Natalie Chang (Bernard & Rada Law Corporation) for the petitioner; Mr Sham Chee Keat (Ramdas & Wong) for the respondent.
Parties	: Seet Poh — Lim Lee Cheng

Family Law – Matrimonial assets – Matrimonial home

17 April 2014

Vinodh Coomaraswamy J:

Introduction

1 The parties are husband and wife. They married in 1978. From 1995, they started living apart, albeit under the same roof. [note: 1] The husband petitioned for divorce in 2003. The decree *nisi* was granted in September 2003 and made absolute in 2005. On 29 September 2004, in between those two dates, the parties entered a consent order for division of their matrimonial assets. After much correspondence between solicitors, sporadic litigation and ten years, the division of matrimonial assets is now nearly complete. The appeal before me concerns the division of the only remaining undivided matrimonial asset: the matrimonial home.

2 The respondent wishes to retain the matrimonial home. The petitioner has no difficulty with that. The dispute is over whether the petitioner agreed in 2010 to sell his half-share of the matrimonial home to the respondent at a price fixed by reference to its value *then*, in 2010; if so, whether he is bound to transfer the matrimonial home to the respondent at that price *now*; if not, how the price which the respondent is to pay to the petitioner for his half-share in the matrimonial home should now be determined.

3 By Summons entered No. 650153 of 2011 [note: 2] filed on 31 August 2011, the petitioner sought, amongst many other things, an order that the respondent buy his half-interest in the matrimonial home at its "current value" within 6 months, failing which it be sold on the open market with the net proceeds to be divided equally between the parties. Almost exactly a year later, on 29 August 2012, the respondent filed Summons entered No. 650106 of 2012 [note: 3] seeking, also amongst many other things, an order permitting the respondent to buy the petitioner's half-interest in the matrimonial home at a price fixed by the parties in 2010 or at its market price in 2009.

4 The District Judge who heard both applications ordered that the respondent be entitled to buy the petitioner's interest in the matrimonial home at a price equal to the average of the latest-available valuation adduced by the petitioner and the previous valuation by which the price had been fixed in 2010.

5 Dissatisfied with this order, both the petitioner and the respondent appealed. The appeal came before me. Having heard the parties' submissions, I agreed with the District Judge and dismissed both parties' appeals. The respondent let matters rest with my decision. The petitioner has appealed against my decision to the Court of Appeal. I therefore now set out the grounds of my decision.

The consent order

6 At the time of the decree absolute, the parties had considerable matrimonial assets to be divided. These assets include bank accounts in Singapore and Malaysia with balances of approximately $2.55m and RM 1.75m; shares in Singapore worth about $225,000; club memberships worth over $200,000; real property in Singapore then worth over $3m; and real property in Malaysia then worth RM 1.75m. [note: 4]

7 With what appear to be the best of intentions, and with each party having the benefit of advice from a very senior and experienced member of the family bar, [note: 5] they agreed to divide their matrimonial assets equally between themselves and, on 29 September 2004, to record that agreement in a consent order. Unfortunately, those good intentions did not follow through into the implementation of the consent order.

8 The consent order provides that all of the parties' matrimonial assets, including the matrimonial home, shall be divided equally between the parties. It includes a general provision that if either spouse wishes to retain a particular matrimonial asset, that spouse should serve notice in writing on the other spouse to that effect. Within fourteen days after that, either spouse may fix the amount that the transferee spouse has to pay the transferring spouse to retain the asset by commissioning a valuation. Somewhat optimistically, but presumably reflecting the spirit of cooperation which prevailed in 2004, the consent order leaves it to the parties to determine the time frame to effect the transfer. Finally, the consent order expressly gives the parties liberty to apply.

9 In its exact terms, the consent order provides as follows: [note: 6]

> **Division of matrimonial assets**
>
> 5.3 That the Petitioner and the Respondent shall be entitled to 50% share each in the matrimonial assets.
>
> 5.4 The Respondent's 50% share in the matrimonial assets shall include her claims to maintenance and all other claims howsoever and wheresoever arising.
>
> **Retention of asset**
>
> 5.5 That in the event that any one party wishes to retain a particular asset, then he or she is to notify the other party in writing of his or her intention to retain the particular asset.
>
> 5.6 Within fourteen (14) days from **the** date of the written notification of such intention to retain a particular asset, either party shall obtain a valuation report to ascertain the value of the particular asset. The costs and expenses of obtaining the valuation report shall be borne equally by the parties.
>
> 5.7 The party retaining the particular asset shall pay to the other party a sum equivalent to 50% of the value of the particular asset as ascertained by the valuation report. Provided always

that the costs and expenses of transfer shall be borne equally by the party retaining the particular asset.

5.8 The parties are to be at liberty to determine the time frame to effect the transfer.

…

Liberty to apply

5.13 That there shall be liberty to apply only insofar with respect to the time frames to transfer or sell a particular matrimonial asset, the workability of this Order and the enforcement of the Orders herein but not with respect to the parties' share entitlement.

10 Following the consent order, the parties set about selling certain assets that neither party wished to retain. This includes a flat in Singapore which they sold for $430,000 in 2008 and a factory which they sold for $2.32m. It appears that these sales and the division of the net proceeds went smoothly.

11 The parties did not, however, take immediate steps to deal with the matrimonial home. The respondent has lived in it with the three children of the family – none of whom are children any longer – from 1986 until the present.

The matrimonial home

12 The matrimonial home is a two-storey semi-detached house at 4 Ellington Square, Singapore 568915. The parties own it as joint tenants. The following table sets out the evidence before me of its value over the years:

No	Date	Value
1	9 September 2004 [note: 7]	$1.3m
2	2 April 2009 [note: 8]	$1.4m
3	September 2009 [note: 9]	$1.4m
4	21 October 2009 [note: 10] (petitioner's assertion)	~$1.75m
5	17 Dec 2009 [note: 11] (petitioner's valuer)	$1.89m
6	22 Dec 2009 [note: 12] (respondent's valuer)	$1.6m
7	15 April 2010 [note: 13] (petitioner's valuer)	$1.89m
8	21 July 2011 [note: 14]	$2.6m
9	16 May 2012 [note: 15]	$2.91m
10	10 Oct 2013 [note: 16]	$4m

Correspondence between the parties in 2009 and 2010

13 It is not disputed that on 16 September 2009, the respondent gave notice to the petitioner of her intention to retain the matrimonial home under the provisions of the consent order. [note: 17] The parties then began a lengthy correspondence over the price at which the respondent should buy the petitioner's half-interest in the matrimonial home. [note: 18] The letter of 16 September 2009 and a few of the other letters in the correspondence which ensued can no longer be located and are not in evidence. Most are, however, still available and it is possible from them to build a picture of the missing letters and of the parties' positions. For convenience in exposition, I will describe this correspondence in the following paragraphs as though it were directly between the parties rather than, as it was, through solicitors.

14 The respondent's position on 16 September 2009 was that the matrimonial home was worth $1.4m based on a valuation which she had obtained in April 2009 and which she had been told by the valuer continued to be accurate in September 2009. [note: 19] The petitioner's position in response on 21 October 2009 was that it was worth approximately $1.75m. [note: 20] The respondent's position in response on 26 November 2009 [note: 21] was that the value of the matrimonial home was $1.4m. The petitioner's position on 30 December 2009 [note: 22] was that its value was $1.89m based on a valuation he obtained in December 2009 (No 4 in the table at [12] above) but that he was prepared to accept a value of $1.75m.

15 The respondent did not accept the petitioner's value of $1.89m or his offer to accept a value of $1.75m. On 10 February 2010, [note: 23] she offered to buy the petitioner's half-interest in the matrimonial home at the average of *her* latest valuation ($1.4m) and *his* latest valuation ($1.89m). That would make the value of the property $1.645m, implicitly valuing the petitioner's half interest at $822,500. It appears that the petitioner made some sort of a counter-offer on 5 March 2010, but that letter is not before me. The respondent failed to respond to that counter-offer by 1 April 2010 [note: 24] and so the petitioner wrote that day to ask for the respondent to respond by 5 April 2010.

16 The respondent did respond on 8 April 2010, but that letter is not before me. The petitioner's response of 19 April 2010 is before me. [note: 25] From this later letter, it appears that the respondent proposed on 8 April 2010 to deal with the matrimonial home as part of a global resolution of all outstanding ancillary issues at that time. The petitioner's response on 19 April 2010 was that he preferred to resolve the outstanding matters individually. He pointed out that by relying on a valuation obtained *before* she issued notice of her intention to retain the matrimonial home on 16 September 2009, the respondent had failed to comply with the requirement of the consent order to produce a valuation within 14 days *after* that notice. He reiterated his position that the value of the matrimonial home was $1.89m and produced an up to date valuation to support it. This was, of course, more than 14 days after 16 September 2009 and was therefore ineffective to comply with the provisions of the consent order. The petitioner concluded by asking the respondent to confirm within seven days that she would buy his half-interest based on his valuation of $1.89m.

17 The respondent replied on 26 April 2010. [note: 26] She took the position that she wished to resolve all outstanding issues on division of matrimonial assets together, leaving aside only their Malaysian assets, because she needed her share of those funds to pay the petitioner for his share of the matrimonial home. She also offered the petitioner a value of $1.75m for the matrimonial home on the basis that that was the value he had offered to accept on 30 December 2009 and also on the basis that that was halfway between her latest valuation ($1.6m) and his latest valuation ($1.89m), rounded off. That fixed the value of his half-share of the matrimonial home at $875,000.

18 On 3 May 2010, [note: 27] as "a gesture of goodwill and purely to avoid any further litigation and the escalation of costs", the petitioner accepted the respondent's proposed value for the matrimonial home. He asked the respondent to arrange for the transfer documents to be prepared and told her that he expected her to take the transfer within 30 days. He agreed, further, that the respondent could pay $675,000 on the date of the transfer with the remaining $200,000 payable within three months of the transfer. Although it was framed as an acceptance, this letter was in truth a counter-offer. The petitioner added a term as to time which was not part of the respondent's offer. Her acceptance was thus qualified.

19 On 27 May 2010, [note: 28] the respondent responded. She said that she accepted the petitioner's offer to sell his half-share in the matrimonial home to her at $875,000 but only as part of a global resolution of all outstanding disputes over division of their matrimonial assets. Again, although phrased as an acceptance, this was in truth another counter-offer. The petitioner wanted to transfer his half-share to the respondent within 30 days and was prepared to receive payment of $875,000 in two tranches. The respondent was not prepared to take a transfer or to pay the petitioner until all the outstanding issues were resolved so that she could set off the money due to her against the transfer consideration due to the petitioner.

20 On 21 June 2010, the petitioner responded. He took objection the respondent's attempt to link the transfer of and payment for his half-share of the matrimonial home to the resolution of the remaining matters. He pointed out that the consent order did not allow the retaining spouse to delay taking a transfer in order to permit a set-off. He demanded a transfer within one month and payment in accordance with his letter of 3 May 2010.

21 The parties then went back and forth reiterating their positions in 9 letters sent between June 2010 and November 2010. Throughout this correspondence, the petitioner's consistent position was that if the respondent did not buy his half-share in the matrimonial home from him, it should be sold on the open market, *ie* at its current value.

22 From November 2010 to August 2011, both parties went quiet. Then, on 31 August 2011, the petitioner filed the application from which this appeal arises. [note: 29] That application included 27 prayers dealing with 21 matrimonial assets. Prayer 2(1)(y) of his application sought the following order: [note: 30]

> **Previously Agreed Matters**
>
> **4 Ellington Square**
>
> (y) Order that the Respondent buys over the Petitioner's share at current valuation or the property be sold in the open market and proceeds divided equally between the parties.

23 On 29 August 2012, the respondent filed a cross-application. [note: 31] That application included 14 prayers dealing with 18 matrimonial assets. Prayer 2(1)(k) of her application sought the following order: [note: 32]

> **4 Ellington Square, Singapore 568915**
>
> (k) Order that the Petitioner shall sell his share, title and interest in the property to the Respondent at the agreed price of $875,000, or alternatively, at a price based on a valuation of the property as at 16 September 2009 or 30 September 2009. Such transfer is to take

place within 30 days of the date of the Order to be made hereon with the Respondent bearing the costs and expenses of the transfer.

The decision of the District Judge

24 The District Judge heard both applications together. Counsel for both parties attended before him 11 times between October 2012 and July 2013 for several hearings of varying length. I will summarise his decision only insofar as it deals with the matrimonial home.

25 The District Judge found that it "was clear from the exchange of correspondence that the parties had agreed on the sale price but were unable to agree on the other terms, most notably when and how the petitioner was to be paid." [note: 33] He therefore found that the petitioner was not bound in any contractual sense to sell his half-share in the matrimonial home to the respondent at $875,000. I agree with this finding. This finding disposes of the respondent's primary argument based on contract as well as an alternative argument that the correspondence gave rise to a valid and binding compromise. [note: 34] A compromise is merely a contract which has as its subject-matter the resolution of a dispute between the contracting parties. If offer and acceptance did not meet for there to be a contract of sale, as I agree was the case, there could not have been a contract of compromise either. The respondent's application to require the petitioner to sell his half-interest to her at $875,000 therefore fails.

26 The District Judge was then faced with two widely different positions on what the price should be. The petitioner wanted the respondent ordered to buy his half-share from him at the current market price, failing which he wanted to sell the property on the open market. The respondent wanted the petitioner to be ordered to sell his half-share to her at its 2009 price, with no alternative for a sale on the open market.

27 The District Judge saw his task as arriving at a just and equitable solution to the situation in which the parties now found themselves [note: 35] even though the task before him was no longer the division of matrimonial assets. He found on the facts that both parties did not want to force the issue by seeking a court order until 2011 [note: 36] and that both were to blame for the situation in which they found themselves. He also found that both petitioner and respondent were intelligent and shrewd. [note: 37] I agree with all of these findings.

28 From these findings, he drew the inference that neither party had forced the issue of the transfer because each party wanted to see which way the property market went over time and then take the position of greatest economic advantage to each. [note: 38]

29 Bearing all the circumstances in mind, the District Judge decided that it was just and equitable, [note: 39] in effect, to split the difference between the parties' positions so that the respondent would get some of the benefit arising from the rise in property prices over time but without the petitioner bearing the entirety of the corresponding burden. [note: 40] He thus ordered that the respondent be entitled within 6 months to buy the petitioner's interest in the matrimonial home at a price equal to the average of the latest valuation in evidence before him as at the date of his order [note: 41] ($2.91m as at 16 May 2012) and the previous valuation agreed by the parties ($1.75m on 3 May 2010), failing which it be sold on the open market with the proceeds to be divided equally between the parties. [note: 42]

Power to vary a consent order

30 Both parties' applications before the District Judge in form prayed for the court to vary the consent order. That type of application raises at the outset particularly difficult issues. A consent order is the result of and the expression of an underlying contract between the parties. Where the subject-matter of the consent order is the division of matrimonial assets upon divorce, further difficult issues are raised about the scope of s 112(4) of the Women's Charter (Cap 353, 2009 Rev Ed) and its effect on the court's general powers to vary a consent order. A court will exercise its power under s 112(4) to vary a consent order dividing matrimonial assets only where the order has not yet been fully effected or implemented and where it was from the outset unworkable or has become unworkable because "circumstances have emerged since the order was made which so *radically change* the situation so that to implement the order as originally made would be to implement something which is radically different from what was originally intended": *AYM v AYL* [2013] 1 SLR 924 at [23] and [25].

31 Both counsel addressed the District Judge only fleetingly – and did not address me at all – on whether both their applications should properly be approached as applications to vary the consent order and therefore governed by s 112(4). [note: 43] This was no doubt because each party, in their respective applications, was relying on the same power vested in the court, although hoping to achieve diametrically opposed results. It was therefore in neither party's interest to deny the court's power to make orders on the other party's application.

32 It appears to me that the parties in this case are entitled to seek these orders not as a variation of the consent order under s112(4) of the Women's Charter but as fresh orders from the Court falling within the scope of the express provision in paragraph 5.13 of the consent order giving effect to the parties' agreement that each should have liberty to apply. Seen that way, the parties' applications sought not so much to vary the consent order as to make new orders binding the parties on how to supplement and implement the consent order with regard to a specific asset. Indeed, this is how the application was put to the District Judge, [note: 44] that is how the District Judge saw the application [note: 45] and that is the form in which he made his orders. [note: 46]

33 *Chia Chew Gek v Tan Boon Hiang and another appeal* [1997] 1 SLR(R) 383 at [18] is authority for the proposition that a provision allowing the parties liberty to apply does not give a court jurisdiction to vary its own order. But that was a case in which an applicant was seeking to revisit the entire basis of the division of matrimonial assets in an earlier consent order rather than to supplement it with a view to implementing it. Further, that was also a case in which the opposing party objected to the application on grounds that there had been a prior consent order. In this case, both parties are agreed that the consent order needs to be supplemented to deal with the circumstances which have arisen before the provision of the consent order dealing with sale of a retained asset can be implemented. The only question the parties raise on the applications is how that should be done.

34 In any event, to the extent that it is necessary, I would also hold that the consent order is unworkable within the meaning of *AYM v AYL*. It contained a gap or lacuna which needed to be plugged in order for it to implemented. It is at least part of the function of s 112(4) to permit such gaps and lacunae to be filled: *AYM v AYL* at [29]. The consent order contains two gaps. First, it did not set out an alternative mechanism for fixing the sale price of a matrimonial asset which one spouse is to retain if neither spouse secures a valuation of that asset within 14 days of that notice. Second, the consent order did not set out an alternative procedure for fixing the time frame in which the transfer of the matrimonial asset to the retaining spouse must be effected if the parties fail to agree on one. The situation which has arisen in this case is the very result of those gaps, although it is true that it took a concerted effort by both parties over several years to make those gaps appear and to squeeze themselves into those gaps.

The just and equitable result

35 The District Judge relied on *NK v NL* [2007] 3 SLR(R) 743 at [20] to support his holding that although he was not dividing matrimonial assets – that having been done by the consent order – the overriding impetus remained to achieve a result which was in all the circumstances just and equitable (see [27] above). I agree with the District Judge. Whether a court is dividing matrimonial assets under s 112(1) of the Women's Charter, supplementing a consent order for division of matrimonial assets so that it can be implemented pursuant to an expressly agreed liberty to apply provision or exercising its powers under s 112(4) of the Women's Charter to fill a gap or lacuna in a consent order, the imperative must remain the same: to achieve a result which is just and equitable in all the circumstances of the case.

The circumstances of this case

36 What then are all the circumstances of this case? The consent order was made in 2004. By 2009, the value of the matrimonial home had appreciated from $1.3m to somewhere between $1.4m and $1.89m. That represents an increase of somewhere between 8% and 45%. The precise increase is not important. What is important is the upward trend and the fact that both parties knew the trend. Despite this, during these 5 years, both parties were content to do nothing about the matrimonial home. Neither of them gave notice under the consent order of an intention to retain it.

37 On 16 September 2009, the respondent gave notice of her intention to retain the matrimonial home. Instead of following up on that notice by obtaining and presenting a valuation within 14 days *after* giving it, she relied on a valuation obtained several months *earlier*. Even though her evidence on affidavit was that the valuer who provided the valuation reconfirmed to her that that valuation remained accurate in September 2009, it is undeniable that the respondent did not follow either the letter or the spirit of the procedure set out in the consent order. But then again, neither did the petitioner. He had the right to procure his own valuation between 16 September 2009 and 30 September 2009 to fix the price he would receive in accordance with the consent order. Yet he also did not do so.

38 Even if the petitioner had taken on the responsibility of securing a valuation by 30 September 2009, however, it is clear from the correspondence that the respondent was intent on not paying the petitioner for his half-share until the parties had reached a resolution on the division of all of the remaining matrimonial assets, save only for the Malaysian assets. As I have pointed out (see [21] and [22] above), that involved resolving the large number of issues which each party set out in their respective applications before the District Judge. That again was contrary both to the letter and the spirit of the consent order. There was no basis in the consent order to support the respondent's attempt to serve notice of her intention to retain the matrimonial home and then to link her obligation to pay the petitioner to the resolution of the remaining matters. I am also satisfied that the respondent had sufficient funds from her share of the proceeds of sale of the flat in Singapore and the factory (see [10] above) not to have to rely on a set-off to discharge her payment obligation to the petitioner.

39 If the respondent wanted a valid basis on which to link her purchase of the petitioner's half-share in the matrimonial home to the resolution of all remaining disputes over their matrimonial assets, she should have sought an order from the court to that effect under the liberty to apply provision in the consent order. She did not do so. The result from 3 May 2010 was that the petitioner had an agreement on the price he was to receive for his half-share but could not make a transfer or receive payment because of the respondent's insistence on deferring both transfer and payment. As a result, he was not only kept out of his money, he suffered an ongoing opportunity cost as a result of the

rising property market.

40 The petitioner, however, was not without recourse. At any time after 27 May 2010, he could have applied to court under the liberty to apply provision for an order to implement the provisions of the consent order as it applied to the matrimonial home. But until 31 August 2011, he took no such steps at all. During the period of his delay, the value of the matrimonial home went from $1.89m to $2.6m, an increase of just over 37%.

41 It is no answer for the petitioner to say, as he does, [note: 47] that one year was a reasonable time to compile and present the documents to support an application as complex as the one he filed on 30 August 2011. There is no reason why the petitioner could not have dealt with the matrimonial home as a discrete issue and as the subject of a separate application on and after 27 May 2010, when the respondent made it clear that she insisted on deferring the transfer. Indeed, it was the petitioner's strong position throughout that the unresolved issue over the matrimonial home should be treated *separately* from all other unresolved issues about all other matrimonial assets.

42 The only reason the petitioner gives for not treating the matrimonial home as a discrete issue in 2010 is that he wanted to save time and costs by dealing with all issues together. [note: 48] I fail to see how the petitioner's approach saved time. If anything, it wasted time. As for costs, the incremental cost of dealing with the matrimonial home by a separate application in 2010 would not have been significant, especially weighed against the financial prejudice to the petitioner arising from the appreciation in the value of the property and the opportunity cost he was suffering, which was the very prejudice that that separate application would have addressed.

43 Further, even as late as 8 July 2011, less than two months before he filed his application for an order that the respondent buy his half-share at the current value, the petitioner reiterated in an affidavit that he was prepared to sell his half-share to the respondent at $875,000, [note: 49] a price fixed in 2010. To that extent, his position on 31 August 2011 that he would accept only the current value was a relatively late change of position.

44 I also agree with the District Judge's finding that both parties are intelligent and shrewd. This is apparent from the positions they have taken in the affidavits the have filed and also from the wealth that they accumulated together during their marriage. If both of them did nothing to force the issue, it was not because of inadvertence, ignorance, naiveté or lack of means. It is a reasonable inference to draw from the correspondence, from their conduct and from the circumstances, as the District Judge did, that it suited both parties' interests to leave the disposition of the matrimonial home unresolved as it was.

45 The petitioner submits that the District Judge was wrong in drawing this inference. [note: 50] The submission relies on the fact that the petitioner throughout the correspondence indicated an intention to sell the matrimonial home on the open market. That is indeed true. But that was always put as an alternative to a sale of his half-interest in the matrimonial home to the respondent. And from 3 May 2010 until 8 July 2011, the petitioner was prepared to sell that half-interest at $875,000 even though it was then worth somewhere between $1.89m and $2.6m instead of $1.75m that the $875,000 figure was based on.

46 In all these circumstances, I agree with the District Judge that it is neither just nor equitable for the respondent to take the full benefit of the increase in the value of the matrimonial home after 2009 or for the petitioner to bear the full burden of that increase.

47 The order which the District Judge made appears to me to be a sensible way of arriving at a just and equitable result on the unusual facts of this case. The latest available value for the matrimonial home in evidence before the District Judge was $2.91m, its value on 16 May 2012. [note: 51] There was no evidence before the District Judge of the value of the matrimonial home in July 2013, the date on which he determined the petitioner's application. The result of the District Judge's decision is that the respondent is entitled to buy the petitioner's half-share in the matrimonial home at a price equal to the average of $2.91m and $1.75m.

48 The value of the matrimonial home under the District Judge's order is therefore $2.33m, being the average of those two figures. Half of $2.33m is $1.165m, which is therefore the value of the petitioner's half-share. That figure represents a 33% increase over the $875,000 which the petitioner agreed to accept on 3 May 2010 and which he was prepared to accept as late as 8 July 2011, just before he filed his application. That figure also represents a discount of 19% from the $1.455m which is the value of his half-share based only on his valuation of $2.91m. That is, to me, a just and equitable result taking a broad brush approach and bearing in mind all the circumstances of this case.

Valuation date

49 The final point made by the petitioner is that the matrimonial home should be valued at its "current value". At the hearing before the District Judge, the petitioner meant by that 17 July 2013, the date on which the District Judge delivered his decision. Before me, the petitioner means by "current value", the value in November 2013. [note: 52] The respondent, on the other hand, submits that the date for valuation should be 2009, because that is the date fixed under the mechanism put in place by the consent order. The respondent gave notice of her intention to retain the matrimonial home on 16 September 2009. The respondent therefore takes the relevant date under the consent order to be either 16 September 2009 or 14 days after that, 30 September 2009, being the latest date on which she should have produced a valuation under the terms of the consent order.

50 To the extent that the District Judge took the latest available valuation before him as one the two values to be averaged together, the District Judge acceded to the petitioner's submission at that time.

51 I declined to adopt the value of $4m set out in the valuation dated 10 October 2013 which the petitioner put in evidence [note: 53] before me as the "current value" to be averaged with $1.75m in the District Judge's formula. I accept the respondent's submission that it would be wholly unprecedented on appeal to value a matrimonial asset as at the date of the appeal. [note: 54] That is so whether that value is applied directly or applied by being imputed into a formula to calculate the value. I am not persuaded by the petitioner's response that using a valuation current as at the date of the appeal is legitimate because the court is in effect making a new agreement for the respondent to retain the matrimonial home. [note: 55] I am not making a new agreement for the parties. I am taking as my starting point the parties' consensus in 2010 that the respondent should retain the matrimonial home and am filling a gap in the consent order by determining a just and equitable price at which the respondent ought to buy out the petitioner's half-interest. I therefore saw no reason to use as the "current value" anything other than the latest value in evidence at the date the District Judge made his order.

52 To the extent that the District Judge ordered that the price for the petitioner's half-share in the matrimonial home be an *average* of the petitioner's latest valuation then [note: 56] ($2.91m) and the previous valuation agreed by the parties in 2010 ($1.75m), he did not accede to the petitioner's

submissions. But I have found that that was the just and equitable outcome in all the circumstances.

Paragraph 5.10 of the consent order

53 There is one aspect of the District Judge's decision which I do not think is entirely correct. That is to do with his construction of paragraph 5.10 of the consent order. Set in context, that paragraph reads as follows:

> **Sale of asset**
>
> 5.09 That in the event parties decide to dispose of a particular asset in the open market, they shall obtain a valuation report to ascertain the value of the particular asset or to agree in writing as to the sale price. The costs and expenses of obtaining the valuation report shall be borne equally by the parties.
>
> 5.10 Each party shall agree to or reject in writing the other party's offer to purchase any of the said asset within forty-eight (48) hours of any communication to them of any such offers. Provided always that both parties shall not unreasonably reject an offer received which is not more than 10% below the valuation.
>
> [emphasis added]

54 The District Judge appeared to think that paragraph 5.10 of the consent order applied to an offer by a retaining spouse to purchase an asset from the other spouse. [note: 57] In my view, paragraph 5.10, like paragraph 5.09, applies only to a sale by the spouses of a matrimonial asset to a *third party*. The purpose of paragraph 5.10 is to ensure that both spouses have an opportunity to consider a third party's proposal to buy a matrimonial asset while imposing an obligation on them to respond quickly and not to reject the third party's offer unreasonably. The confusion arises because paragraph 5.10 uses the words "the other party's offer" (underlined above). In light of the purpose of paragraph 5.10, that is clearly a reference to the "third party" who is buying the asset on the open market and not a reference to a party to the marriage who is retaining a matrimonial asset. Nothing in the District Judge's decision ultimately turned on this point.

Right of appeal

55 I conclude by addressing a point which has escaped both counsel. Counsel for the petitioner appears to be of the view that the petitioner's right of appeal to the Court of Appeal from my decision is governed by s 29A and s 34 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"). [note: 58] Counsel for the respondent appears tacitly to be of the same view. That view is not correct. The petitioner's right of appeal is not governed by the general provisions found in the SCJA. It is, instead, governed by the specific provisions found in a series of transfer orders made under section 28A of the SCJA as it has stood from time to time.

56 The first of these transfer orders was the Supreme Court of Judicature (Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings to District Court) Order (Cap 322, S 110/1996) ("the 1996 Order"). The 1996 Order was in operation from 1 April 1996 until 15 December 2003. The petition in this matter was filed on 5 August 2003 in the High Court. At that time, the 1996 Order was in operation. Pursuant to paragraph 2 of the 1996 Order, therefore, the petition was immediately transferred to be heard and determined by a District Court.

57 The 1996 Order was revoked and replaced by the Supreme Court of Judicature (Transfer of

Matrimonial, Divorce and Guardianship of Infants Proceedings to District Court) Order 2003 (Cap 322, S 557/2003) ("the 2003 Order"). The 2003 Order was in force from 15 December 2003 until 1 January 2008.

58 On 1 November 2004, the 2003 Order was amended. That amendment was significant because it introduced for the first time a requirement that a party secure leave before appealing to the Court of Appeal against a decision of the High Court given in its appellate capacity in a matter governed by the 2003 Order. However, a saving provision in the 2003 Order provided expressly that the 1996 Order continued to apply to matters which had been transferred to a District Court under it as though it had not been revoked. Parties in those matters therefore continued to have an unfettered right of appeal to the Court of Appeal (see *Ong Boon Huat Samuel v Chan Mei Lan Kristine* [2006] 4 SLR(R) 148). Under the 2003 Order, even as amended, the petitioner would not have required leave to appeal to the Court of Appeal against my decision.

59 That changed on 1 January 2008. On that date, the Supreme Court of Judicature (Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings to District Court) Order 2007 (Cap 322, S 672/2007) ("the 2007 Order") revoked and replaced the 2003 Order. The petitioner's right of appeal to the Court of Appeal is now governed by para 6(2) of the 2007 Order. That provision requires a party to seek leave before appealing to the Court of Appeal against *any* order made by the High Court on appeal from the District Court, even one made in a matter governed by the 1996 Order:

> **Appeals**
>
> 6.—(1) An appeal shall lie to the High Court from a decision of a District Court —
>
> (a) …
>
> (b) in any proceedings under section 59 and Part X of the Women's Charter (Cap. 353) or under the Guardianship of Infants Act (Cap. 122) commenced on or after 1st April 1996 but before 15th December 2003 which have been transferred to a District Court for hearing and determination, regardless of the amount in dispute or the value of the subject-matter.
>
> (2) Except with the leave of the Court of Appeal or a Judge of the High Court, no appeal shall be brought to the Court of Appeal from a decision of the High Court in respect of any appeal heard and determined by the High Court pursuant to sub-paragraph (1), regardless of the amount in dispute or the value of the subject-matter.
>
> …

60 The right of appeal to the High Court which the petitioner exercised in this matter arises from paragraph 6(1)(b) of the 2007 Order. It does not arise from s 29A of the SCJA. Paragraph 6(2) of the 2007 Order therefore required the petitioner to obtain leave from the High Court or from the Court of Appeal before he could pursue this appeal to the Court of Appeal. He has not done so.

Conclusion

61 For the reasons set out above in paragraphs [1] to [54], I dismissed the petitioner's appeal. Given that I also dismissed the respondents' cross appeal on this aspect and that both appeals were heard together, I made no order as to the costs of this aspect of the appeal.

[note: 1] RA115.

[note: 2] RA559.

[note: 3] RA810.

[note: 4] RA146 - 153

[note: 5] RA51B

[note: 6] RA7-8

[note: 7] RA151; Petitioner’s written submissions dated 25 October 2013, page 2, item 4.

[note: 8] RA835.

[note: 9] RA816.

[note: 10] RA481.

[note: 11] RA845

[note: 12] RA861

[note: 13] RA867

[note: 14] RA543

[note: 15] RA807.

[note: 16] RA908.

[note: 17] RA816 – 817.

[note: 18] RA544, 545.

[note: 19] RA816 – 817.

[note: 20] RA481.

[note: 21] RA545.

[note: 22] RA545.

[note: 23] RA484.

[note: 24] RA548.

[note: 25] RA865.

[note: 26] RA868.

[note: 27] RA339.

[note: 28] RA53.

[note: 29] RA 559.

[note: 30] RA 562.

[note: 31] RA 810.

[note: 32] RA 812.

[note: 33] GD at [33].

[note: 34] RA 52 at C.

[note: 35] Grounds of decision at [56].

[note: 36] Grounds of decision at [33].

[note: 37] Grounds of decision at [47].

[note: 38] Grounds of decision at [47].

[note: 39] Grounds of decision at [55].

[note: 40] Grounds of decision at [56].

[note: 41] RA 806.

[note: 42] RA 11 – 12.

[note: 43] RA 43E, RA 55A, RA 60A-C; RA 84D.

[note: 44] RA 43E; RA 55C.

[note: 45] RA 55A.

[note: 46] RA9; RA100-104.

[note: 47] Petitioner's written submissions dated 25 October 2013, paragraph 34.

[note: 48] Petitioner's reply submissions dated 14 November 2013, paragraph 79.

[note: 49] RA 220 – RA 222.

[note: 50] Petitioner's written submissions dated 25 October 2013, paragraph 40 to 46.

[note: 51] RA 806

[note: 52] Petitioner's reply submissions filed on 14 November 2013 at paragraph 77.

[note: 53] RA 908.

[note: 54] Respondent's written submissions dated 5 November 2013 at paragraph 69.

[note: 55] Petitioner's written submission dated 14 November 2013 at paragraph 77.

[note: 56] RA 806.

[note: 57] GD at [42].

[note: 58] See petitioner's counsel's letter to the Registry of the Supreme Court dated 14 February 2014.