Leong Mei Chuan v David Chan Teck Hock
[2001] SGHC 80

Case Number : D 3777/1997, RAS 720013 and 720014 of 2000

Decision Date : 25 April 2001

Tribunal/Court : High Court

Coram : Woo Bih Li JC

Counsel Name(s) : V Kanyakumari and Janaine Ong (Sim Hill Tan & Wong) for the petitioner; Anamah Tan and Veronica Ann Joseph (Ann Tan & Associates) for the respondent

Parties : Leong Mei Chuan — David Chan Teck Hock

JUDGMENT:

Cur Adv Vult

1. This is an appeal against some parts of a decision by the District Judge Mrs Emily K Wilfred on ancillary matters of a divorce petition.

2. The parties are David Chan Teck Hock (the Husband) and Leong Mei Chuan (the Wife). They were married on 21 September 1983 but unfortunately their marriage eventually floundered.

3. On or about 10 February 1997, the Husband left the matrimonial home.

4. On 21 November 1997, the Wife petitioned for divorce and a Decree Nisi was granted on 24 September 1998.

5. The parties then fought over the ancillaries and on 20 January 2000, the District Judge made an Order on various aspects of the ancillaries, some of which are the subject of appeal by the Husband and some by the Wife.

6. I set out below those parts of the Order which are the subject of appeal by either party:

> (1) The Wife has sole custody, care and control of the 3 children of the marriage with reasonable access to the Husband as follows:
>
> [The details of access are not material for the appeals before me. However, the Husband is appealing for an order that on the issue of the childrens education, the Wife is to consult and obtain his prior consent. His appeal in respect of the childrens religion was withdrawn before me.]
>
> (2) The Husband is to pay the Wife a sum of $16,000 per month for the maintenance of the 3 children and the Wife ($5,000 per child per month and $1,000 per month for the Wife) with effect from 1 January 2000 and thereafter the first day of each month, payment to be made directly.
>
> [The Husband is appealing that the maintenance be reduced to:
>
> (a) $8,000 per month for the children as follows:
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> (i) $3,500 for the eldest child Cheryl,
>
> (ii) $2,500 for the second child Sean, and

(iii) $2,000 for the youngest child Valerie, and

(b) $500 per month for the Wife.

On the other hand, the Wife is appealing that (a) the maintenance for her be increased to $5,000 per month, and (b) the maintenance for her and the children be paid with effect from February 1996.]

(3)

(4)

(5) The Wife shall be entitled to 15% of the Husbands Dell stocks, namely:-

(i) 111,100 shares purchased from the open market and valued at US$4,575,986.80;

(ii) 10,821 shares bought from the Employee Stock Purchase Plan valued at US$445,695; and

(iii) The gains from Dell stocks vested and exercised by the Respondent under the Non-Statutory Stock Option Agreement scheme amounting to US$2,573,328 less tax to be paid on such gains (proof on demand of payment from the IRAS).

[The Wife is appealing for 30% instead of 15%.]

(6) There shall be no division of Dell stocks in the Non-Statutory Stock Option Agreements which have yet to be vested in the Husband.

[The Wife is appealing for a 30% or 15% share.]

(7)

(8)

(9)

(10)

(11)

(12)

7. The Wifes appeal with regard to a property in Gold Coast, Australia, was withdrawn before me.

Childrens education

8. I refer to para 5 of the Grounds of Decision (GD) of the District Judge:

> There had been umpteen applications for access since 1997 and the parties had resorted to communicating with each other through their lawyers on every small issue concerning the children. It can be gleaned through their numerous affidavits that their relationship was highly contentious and acrimonious. I could not foresee the parents cooperating with each other on the education and religion of the children. Furthermore I was of the view that (*sic*) children were old enough to voice their own views on such matters and if the wife was to force her views on the children, they could inform their father who could then make the necessary application to court . With regard to education, the children are already attending schools. In all fairness, the husband has not accused the wife of being incapable of raising the children. In fact he consented to her having care and control of them. I was of the view that it would be detrimental to the welfare of the children if I made an order that the husbands consent be obtained on matters of religion and education in view of their acrimonious relationship.

9. I have considered the many affidavits filed by the respective parties. The acrimony between the parties is clear.

10. In my view, it is unrealistic to compel the Wife to consult and seek the prior consent of the Husband on the childrens education. That would be a recipe for disaster.

11. As the Husband has consented to the Wife having care and control of the children, he should not qualify his consent by imposing the condition which is the subject of his appeal before me. Much as he loves the children, he should come to terms with the situation.

Maintenance

12. Section 69(4) of the Womens Charter (Cap 353) 1997 Edition requires the court to have regard to all the circumstances of the case when ordering maintenance for a wife or child including various factors listed as (a) to (h) under sub-section (4).

13. The Wifes job history is as follows:

	Description of Job	Remuneration per month	Duration of Employment
(a)	Private Banker with Citibank	$3,000 (1983)	1983 1989
	N.A.	$5,000 (1984)	
(b)	Private Banker with the Royal Bank of Canada (The Wife alleged that she $12,000 resigned to follow the Husband to Tokyo at his request. The Husband said she resigned because she was having problems with an ex-boss. The reason for the Wifes resignation is not material to me.)	Started with $11,000 and then increased to	1990 1991

(c)	Regional Treasurer with Carnaud Metal Box (Pte) Ltd (the name was described differently and the spelling was different between paras 74 and 85 of the Wifes AEIC) (The Wife resigned at end 1993 presumably to look after 3 children)	$13,000	1993
(d)	Private Client Advisor with Kim Eng Securities (Pte) Ltd	$4,000 (basic salary excluding bonus)	19/8/96 and still continuing.

14. The Wife said she received $13,000 per month from the Husband when she resigned from her job with Royal Bank of Canada. This was for six months and the Husband was to continue paying for family and household expenses. The Husband said the $13,000 per month was to include the family and household expenses and the Wife was supposed to look for a job.

15. It is immaterial to me whether the $13,000 per month was to include or exclude family and household expenses. It was obviously given to the Wife because she had resigned from her job. She had also accompanied the Husband to Tokyo. It was a special situation then.

16. As can be seen from the Wifes job history, the Wifes earning capacity was quite great. However she alleged that all her previous jobs required her to travel on a frequent basis. Subsequently, she decided not to take a job which required her to travel as that would mean leaving the children alone for long periods. Her present job with Kim Eng Securities (Pte) Ltd was taken on the basis that she does not have to travel at all, hence her low income (see para 96 of her affidavit filed on 30 August 1999).

17. However, although the Wifes current basic salary is $4,000 per month, she is entitled to receive a bonus.

18. I had asked for the Form IR8A and Notice of Assessment of the parties for Year of Assessment (YA) 1999 and YA 2000.

19. For YA 1999, the Notice of Assessment shows the Wifes income from employment to be $42,736. This was less than $4,000 a month but it was not explained to me why this was so.

20. For YA 2000, the Notice of Assessment shows her income from employment to be $92,657 which was about $7,700 per month.

21. The Husband was working with IBM but stopped in about March 1994. His job history from 1994 is as follows:

	Description of Job	Remuneration per month	Duration of Employment
(a)	Managing Director of Quorum Growth (Singapore) Pte Ltd (Quorum) (but subsequently instead of being paid direct, his services were rendered through CSV Holdings Pte Ltd (CSV) so that his income from Quorum would be paid to CSV. CSV is jointly owned by the Husband and the Wife although not in equal shares. The income from Quorum was re-directed in January 1996 by the Husband to another company which he had incorporated with his brother-in-law).	About $36,000 (including bonus)	3/94 - 5/96
(b)	--	Unemployed	6/96 - 12/96

(c)	Dell Computer Asia Pte Ltd (Dell Asia)	(a) $24,730 (from Feb 98) (b) $27,001 (from Jul 98) (c) $28,352 (from 1/3/1999)	According to affidavit evidence, the Husband worked for Dell Asia in Singapore from 1/1/97 to March 98 and then went to work for the same company in Hong Kong. The tax return filed in Hong Kong shows that his income from Hong Kong started from 1 October 1998.

22. The Husbands income from Dell Asia was not confined to his basic salary. Aside from allowances, he was also entitled to receive a bonus provided targets were met.

23. For 1998, the Notice of Assessment shows his income from employment in Singapore was $181,405. The Form IR8A indicated that this income from Singapore ceased on 30 September 1998.

24. The Employers Return of Remuneration & Pensions for Hong Kong income for the year ended 31 March 1999 showed his income for six months from 1 October 1998 to 31 March 1999, excluding various allowances, to be HK$820,438 (i.e about $182,320 at an exchange rate of, say, HK$4.5 to S$1). There was nothing for bonus.

25. It is easier to consider the Employers Return for Hong Kong income for one full year from 1 April 1999 to 31 March 2000. This was HK$1,792,829 for salary and HK$1,333,283 for bonus, i.e a total of HK$3,126,112 (or about $694,692 at the same exchange rate). This works out to $57,891, say, $58,000 per month (including bonus) or about S$33,200 per month (excluding bonus). Neither figure includes G & S allowance, Auto allowance and Stock Purchase discount or gains realised from stock options for the Husband.

26. At this stage, I refer to the case of *Susy Suryani Santoso v Lee Kong Eng & Alexis Khoo* (Divorce 1704/98 and RAS 95 and 96/99). In that case, Justice Judith Prakash ordered that the husband pay additional maintenance based on each months bonus received by the husband if and when he was paid any bonus. Her decision on this point was reversed by the Court of Appeal but no written reasons were given.

27. I am of the view that the decision of the Court of Appeal does not mean that bonuses should never be taken into account on the issue of maintenance. Each case must depend on its own particular facts and it should be borne in mind that bonuses may not be paid or, if paid, may not be for the same sum each year.

28. Prior to the District Judges order on maintenance, there were two earlier orders for maintenance.

29. On 2 February 1998, the Wife applied for maintenance. The parties then consented to an order dated 13 February 1998 under Summons No MSS 265/1998 (the 1st Maintenance Order).

30. Under the 1st Maintenance Order, the Husband was to pay $11,000 per month for maintenance of the Wife and the three children with effect from 15 February 1998 and thereafter on the 15th of each month.

31. Just a few months later, the Wife applied on 25 June 1998 for an increase in the maintenance.

32. The parties again consented to an order this time dated 13 August 1998 and made under Summons No MSS 3099/1998 (the 2nd Maintenance Order).

33. Under the 2nd Maintenance Order, the Husband was to pay $14,500 per month for maintenance of the Wife and three

children with effect from 15 August 1998 and thereafter on the 15th of each month.

34. However the 2nd Maintenance Order was made without prejudice to the ancillary issues to be dealt with in the divorce petition. The 1st Maintenance Order did not have this qualification.

35. While Counsel for each party stressed that the 2nd Maintenance Order was made without prejudice to the ancillaries, neither was too keen to say much, if anything, as to why her client had agreed to the amount of maintenance ordered under the 1st Maintenance Order. The reason for this was obvious. In the case of the Husband, he was seeking less than what had been ordered thereunder and in the case of the Wife, she was seeking more.

36. After considering various factors, as set out in paras 15 to 17 of her GD, the District Judge made an order for maintenance at $16,000 per month, as set out in para 6 above.

37. In so far as the Husband had sought to use the 1st Maintenance Order and the 2nd Maintenance Order against the Wife, he was not entitled to use the 2nd Maintenance Order to do so as it was made without prejudice to the ancillaries (even though the without prejudice qualification may have been included at his request). The without prejudice privilege applies to both parties and Mrs Anamah Tan for the Husband did not contend otherwise.

38. As for the 1st Maintenance Order, it can be taken into account for or against either of the parties, and not just against the Wife.

39. It is incumbent on either party seeking less or more than what had been ordered under the 1st Maintenance Order to justify why a decrease or increase should be allowed.

40. As for the Wife, her Counsel Ms Kanya submitted that when the Wife agreed to the $11,000 per month, this was because the Husband was supposed to continue paying the utility bills, payments in respect of the matrimonial home as well as supermarket expenses. These were paid by GIRO and when the Husband stopped the GIRO payment subsequently, the Wife sought an increase in maintenance which resulted in the 2nd Maintenance Order.

41. However, this reason turned out to be untrue.

42. Under the 1st Maintenance Order, the Wife was to pay for the mortgage, TAS, PUB, maintenance charges and property tax for the matrimonial home. The 1st Maintenance Order was silent about the subsequent supermarket expenses. I am of the view that it was for the Wife to require an express stipulation if the Husband was to continue paying supermarket expenses.

43. In any event, the Wife herself did not give the reason which Ms Kanya gave when the Wife sought an increase in maintenance which resulted in the 2nd Maintenance Order.

44. In the Wifes second complaint which led to the 2nd Maintenance Order, she gave the following reasons for seeking an increase to about $33,000 per month:

> 2(a) That the maintenance sum of $11,000-00 is insufficient to meet the needs of the Complainant and the children of the family.
>
> (b) That the Respondent has not fully declared his means to the Court and is able to support the family in the sum to be varied.
>
> (c) That the Respondent has not been paying sufficient maintenance since January 1996.

45. I am of the view that her paragraph 2(c) is not a valid reason for increasing maintenance from a consent order.

46. As for her paragraph 2(a), I do not agree that $11,000 per month is insufficient to meet the needs of the children and the Wife. Whether it is sufficient to enable them to live in the lifestyle they were used to is another matter.

47. The real reason for the Wife seeking an increase was her paragraph 2(b). This reason is reiterated in paras 25 to 28 of her affidavit filed on 12 August 1998 i.e one day before the 2nd Maintenance Order was made.

48. Furthermore, in para 20 of her Affidavit of Evidence in Chief 1st for the Ancillary matters filed on 25 June 1999 (AEIC) the Wife said that she was seeking maintenance of at least $33,000 per month, based on the Respondents last known income earned in Singapore of $840,416.15 in 1997, and his last known income earned in Hong Kong, for the period 1 April 1997 to 31 March 1998, of HK$18,735,755. This income was earned by the Respondent prior to his promotion from Vice President, Asia Direct, to President of Dell, Hong Kong/China. This translates to an (*sic*) approximately monthly income of S$382,297.26.

49. This reinforces the point that her ground for seeking an increase in maintenance in June 1998 and later in her AEIC for ancillaries was because she had found out more about the Husbands income.

50. The question I have to consider is whether there is some basis for the Wife to say that she would not have agreed to $11,000 per month had the Husband not misrepresented his income.

51. From the correspondence between solicitors and the Husbands own affidavit filed on 11 August 1998 in respect of the 2nd Maintenance Summons, it is clear to me that the Husband had said that he was earning slightly over $20,000 per month when the Wife first agreed to $11,000 per month for the 1st Maintenance Order (of 13 February 1998).

52. The Husband sought to explain this away by saying that he was not asked to state the exact figure. Even so, I am of the view that he was giving a lower round figure than he should have and he had omitted to mention his eligibility for bonus.

53. I am of the view that the Wife has established that she would not have agreed to the $11,000 per month had the Husbands true income then been disclosed and certainly not when his income for the year 1 April 1999 to 31 March 2000 (see para 25 above) is known.

54. However, I have still to consider the alleged expenses for the children and her.

55. For this purpose, I start with the Wifes initial claim for maintenance which led to the 1st Maintenance Order. She had listed out various alleged expenses.

56. According to Ms Kanya and Mrs Tan, the total of the alleged expenses amounted to $24,340.14.

57. Both Counsel then assumed that the Wife had claimed maintenance of about $24,000 per month.

58. I noted that both Counsel had used an incomplete complaint made by the Wife under s 133(1) of the Criminal Procedure Code. Item 5 of the complaint in which the Wife was to state the amount of maintenance claimed was blank. Therefore I asked for a copy of the completed complaint to be provided to me and eventually this was done.

59. As it turned out, the completed complaint showed that the Wife was then claiming $21,000 (and not $24,000) per month as maintenance for herself and the three children. This is quite telling because it was a claim she had made before she was misled about the Husbands income.

60.In just under five months, she was subsequently alleging that her expenses, and corresponding claim for maintenance, had

increased to $33,000 per month for her 2nd claim for maintenance.

61. The Wife provided a list of alleged expenses for her 2nd claim for maintenance. She also provided a list of such expenses in her AEIC (for ancillaries) and it is this list which I have considered. It appears to me that she had inflated her expenses in an attempt to justify her claim for $33,000 per month. Also, some of the items should not be included in a maintenance order.

62. For example, the Wife included insurance premiums for policies she had taken out. These appeared to have a savings or investment element in them as the premiums were rather high bearing in mind the sums insured. The Wife did not deny this but considered it right that the Husband should pay the premiums. I do not agree. When the policies mature, the Wife or the children will have the benefits and not the Husband.

63. The Wife also claimed for monies given to her mother and for making gifts to relatives and friends. While a court would encourage filial piety and generosity, this cannot be at the expense of the Husband.

64. Also, in claiming for household expenses, the Wife was claiming for a household of seven i.e herself, the three children, a maid and her parents. She gave the reason that her parents were helping to take care of the children but I do not accept that the parents contribution to the care of the children was to such an extent that it was right to compel the Husband to provide for household expenses for the parents.

65. The Wife also said that the amounts paid by CSV from 1994 to January 1995 would support her claim of expenses amounting to about $33,000 per month. She alleged that all payments by CSV were for such expenses. I have considered the payments made by CSV during this period. Some of the payments for large sums were to the Husband or to the Wife for their respective salaries. Some were for their respective credit card expenses and it was unclear what other payments to the Husband were for. Some of the other payments were also dubious, eg there were payments of $1,000 a month to Leong Kuan Swee (the Wifes father) for transport, presumably as some sort of chauffeur, of $800 a month to Tan Cheng Poon (the Wifes mother) for tuition, and of $2,000 a month to Kam Swee Kee (the Husbands mother) for tuition. I doubt that such payments were genuinely for chauffeur services or for tuition. They were probably to draw money out from CSV for these relatives.

66. At this point, I would mention that the Husband sought to use the Wifes new list of alleged expenses to his advantage. That new list had three headings: (a) Household Expenses, (b) the Wifes Expenses and (c) the Childrens Expenses. The Childrens Expenses amounted to slightly over $9,000 per month. Using this, the Husband said that $8,000 per month for the children was fair after taking into account some exaggeration on the part of the Wife.

67. I am of the view that the Husbands approach was not correct. Obviously some of the Household Expenses would also be for the account of the children. Furthermore, he himself had consented to maintenance of a total of $11,000 per month for the Wife and the children under the 1st Maintenance Order and yet was now seeking to convince the court that it should be $8,500 per month (ie $8,000 per month for the children and $500 per month for the Wife).

68. Mrs Tan did not give any reason why the Husband had agreed to $11,000 per month in the first place.

69. Coming back to the Wifes appeal for an increase in maintenance, Mrs Tan had submitted that the Wife was trying to have two bites at the cherry, first, by using the Husbands stock options to claim higher maintenance and, secondly, by claiming a share in the Husbands stock options in the division of matrimonial assets.

70. Ms Kanya denied this. She referred to para 15 of the GD in which the District Judge had determined that the Husbands average monthly income was $44,281 without taking into account his stock options or gains therefrom.

71. However, I note that in para 20 of the Wifes AEIC, the contents of which I have cited in para 48 above, the Wife did take into account the Husbands gains from stock options when she was seeking $33,000 per month as maintenance (see also para 40(2)(g) and (h) at p 32 and p 307 and 310 of the Wifes AEIC).

72. In any event, at present, the Wife is no longer seeking $33,000 per month in her appeal before me but $20,000 per month (instead of the $16,000 per month allowed by the District Judge) for the children and herself. The increase of $4,000 per month is sought for herself.

73. In the light of Ms Kanyas argument, as mentioned in para 70 above, it appears that Ms Kanya is not relying on the stock options to seek the additional $4,000 per month for the Wife. Accordingly, I am disregarding the stock options for the issue of maintenance.

74. After taking into account the Wifes initial claim for maintenance, the amount consented to under the 1st Maintenance Order and the factors I have mentioned as well as the factors listed in s 69(4) of the Womens Charter, and using a broad-brush approach, I am of the view that the maintenance should be $15,000 a month and that it should be spread more evenly among the children and the Wife, ie $4,000 per month for each of the children and $3,000 per month for the Wife.

75. Taking into account the Wifes income, she should have $19,000 per month, even if she does not receive bonuses, for the children and herself.

76. On the part of the Husband, he will have enough for himself even if he does not receive bonuses.

77. According to paragraph 18(ii) of Mrs Tans submissions, the Husband has left Dell Asia since October 2000. However, Mrs Tan pointed out, and I agree, that this is not relevant because I am not dealing with an application or appeal based on a change of circumstances.

Back-dating of maintenance

78. The Wife has sought maintenance from February 1996 on the basis that the Husband has not provided any maintenance since then. Accordingly, if the maintenance ordered by the District Judge is increased under the Wifes appeal, the Wife is also seeking that the increase be back-dated to start from February 1996.

79. The claim for the maintenance to be back-dated to February 1996 was mentioned in an affidavit of the Wife but Mrs Tan pointed out to me that it was not pursued in the submissions on the Wifes behalf to the District Judge.

80. Furthermore, if the maintenance is reduced under the Husbands appeal, the Wifes position is that it should not be back-dated to the effective date of maintenance under the District Judges order i.e 1 January 2000 or to the effective date of maintenance under either the 2nd Maintenance Order or the 1st Maintenance Order.

81. Ms Kanya even took the technical point that the Husbands Notice of Appeal did not say that any reduction should be with effect from 1 January 2000. Therefore any reduction should be from the date of my decision or thereabouts. I am of the view that this argument is a non-starter. The Husband is appealing from the decision of the District Judge and hence any order made by me to reduce maintenance should take into account the effective date of maintenance under the District Judges order.

82. It is clear to me that the Wife is trying to have her cake and eat it.

83. In any event, I am not satisfied that the Wife has established that the Husband has failed to pay any maintenance between February 1996 to 15 February 1998. Indeed I note from the completed complaint leading to the 1st Maintenance Order that her allegation then was that the Husband had failed to maintain her and the three children since January 1996 adequately as opposed to at all.

84. In the circumstances, my order on maintenance is to take effect from the effective date of maintenance under the District

Judges order i.e 1 January 2000. The 2nd Maintenance Order will cease to apply from this date.

Stock Options

85. The Husband was employed by Dell Asia. From time to time he received agreements from Dell Computer Corporation (the Corporation), a Delaware corporation, to grant him stock options in the Corporation which he in turn had apparently agreed to.

86. The terms of each agreement are similar but not identical as I will elaborate below.

87. Under each agreement, the Husband was granted what is described as a Non Statutory Stock Option to purchase a certain number of the Corporations stock. However the option does not vest in him immediately i.e. he cannot exercise the option immediately.

88. Portions will vest at stated periods, for example, 20% on each of the first, second, third, fourth and fifth anniversaries of the date of the grant.

89. Once the option vests, it must be exercised before a termination date which, for example, is ten years from the date of the grant but there may be periods of unexercisability, to be determined by the Corporation, to avoid insider trading.

90. Should the Husband decide to exercise a vested option, he has to give notice for the number of shares of stock being purchased with payment of the exercise price. I was informed by both Counsel that this had been done in the past and the Husband then sold some shares or stock and made a profit although there appears to be no obligation on him to sell them.

91. Ms Kanya categorised the options into three categories:

> (a) options which have vested and which have been exercised by the Husband (the 1st category),
>
> (b) options which have vested but have not yet been exercised by the Husband (the 2nd category),
>
> (c) options which have not vested in the Husband (the 3rd category).

92. The District Judge granted the Wife 15% of the gains from the 1st category but nothing for the 2nd and 3rd categories.

93. The Wifes position is that as regards the 1st category, she should be granted 30% for her indirect contributions to the marriage as that was the District Judges decision in respect of the matrimonial home.

94. As for the 2nd and 3rd categories, the Wifes position is that she should also be granted 30% of the value of the options, or alternatively, 15%. However, Ms Kanya accepted that the options may not vest or, even if vested, may not be exercised by the Husband. That is why she sought an if and when order to be made rather than ask for a value to be ascribed to the 2nd and 3rd categories.

95. Ms Kanya also submitted that an if and when order is within the purview of s 112(5)(e) of the Womens Charter.

96. Section 112(5)(e) states:

> (5) In particular, but without limiting the generality of subsections (3) and (4), the court may make any one or more of the following orders:

(a)

(b)

(c)

(d)

(e) an order postponing the sale or vesting of any share in any matrimonial asset, or any part of such share, until such future date of until the occurrence of such future event or until the fulfilment of such condition as may be specified in the order;

97. In my view, s 112(5)(e) enables a court to postphone the sale or vesting of any share in any matrimonial asset which is already vested in one or both of the parties. It does not apply to the situation where the vesting of a matrimonial asset is delayed under the terms of the agreement which allegedly gives rise to the acquisition of the asset.

98. The Amended Notice of Appeal of the Wife in respect of the 2nd and 3rd categories seeks that:

3. There be a division of Dell stocks in the Non-Statutory Stocks Option agreements which have vested but yet to be exercised by the Respondent and which have yet to be vested in the Respondent.

99. Technically, even with the amendment, it is not appropriate to refer to a division of Dell stocks because no Dell stock has been acquired yet as regards the 2nd and 3rd categories. However it is clear to me that this prayer was intended to refer to a division of the stock options under the 2nd and 3rd categories and indeed, the submission of both Counsel proceeded on that basis.

100. Section 112(1) and (10) of the Womens Charter (1997 Ed) states:

Power of court to order division of matrimonial assets

112. (1) The court shall have power, when granting or subsequent to the grant of a decree of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable.

(10) For the purposes of this section, "matrimonial asset" means

(a)

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

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

101. Ms Kanya submitted that the 2nd and 3rd categories are choses in action and that they come within the wide definition of

any other asset of any nature.

102. She referred to Halsburys Laws of England, Fourth Edition Reissue Volume 6 at para 8 which states:

> 8. **Enumeration of choses in action.** In order that a more comprehensive idea as to the nature and extent of the expression "chose in action" may be formed, it may be convenient to show in some detail what kinds of things and property have been held to be choses in action. The following things have been held to be choses in action; they are grouped in five divisions for purposes of convenience only.
>
> (1) Debts, whether due by specialty or by simple contract, .
>
> (2) The benefit of a contract, including an option to purchase shares, ; a right to be issued shares in a company .
>
> (3) Recognised subjects of property, such as stock in public funds; a share of bank stock; shares in joint stock companies, and presumably in every kind of company, including stock issued by national corporations; a fund in court; .
>
> (4) Equitable rights to property, such as beneficial interests under trusts .
>
> (5) Miscellaneous rights, such as a right of action arising under contract, including a claim for unliquidated damages for breach of contract; .

103. Ms Kanya further submitted that although the Singapore High Court and the Court of Appeal have not in the past made any decision as to whether stock options are matrimonial assets for the purpose of dividing them, these courts have included shares or stocks for the purpose of dividing matrimonial assets.

104. She also referred me to the American case of *Barbara Green v Michael Green* (8 July 1985, Court of Special Appeals of Maryland).

105. In that case, Karwacki J, delivering the judgment of the Court of Special Appeals of Maryland said:

> In *Deering v. Deering, 292 Md. 115, 437 A.2d 883 (1981)*, the Court of Appeals held that a spouses pension rights, to the extent accumulated during the marriage, constitute "marital property" within the meaning of The Marital Property Act. The Court of Appeals emphasized that its holding applied to all pensions, whether vested or unvested, or whether matured or unmatured. This Court in *Ohm v. Ohm, 49 Md.App. 392, 431 A.2d 1371 (1981)* had earlier reached the same conclusion. The Court of Appeals in Deering noted: "It is significant that over the past several years, pension benefits have become an increasingly important part of an employees compensation package which he or she brings to a marriage unit". *292 Md.at 122, 437 A.2d 883*. And in Ohm, this Court identified, through citations to numerous cases, those jurisdictions which have held that rights under a private or public pension plan, to the extent such rights were acquired during the marriage, are property subject to division upon dissolution. We noted that these decisions rested upon the rationale "that retirement benefits are a form of deferred compensation or wage substitute and the right to receive such benefits, being contractual in nature, is a chose in action and thus, property" *Ohm, 49 Md.App. at 397, 431 A.2d 1371.*

As with pension plans, restricted stock option plans like those we consider here are a form of employee compensation, providing to the employee the right to accept within a prescribed time period and under certain conditions the corporate employers irrevocable offer to sell its stock at the price quoted. If the employer attempts to withdraw that offer, the employee has "a chose in action" in contract against the employer. We therefore conclude that stock option plans, like other benefits in an employees compensation package, constitute "property" as used in the definition of marital property. Furthermore, because the plans in the case sub judice granted stock options to the appellee while he was married to the appellant, those options were "acquired" during the marriage. See *Harper v. Harper, 294 Md.54, 448 A.2d 916 (1982).* The stock options are therefore marital property under the terms of 8-201(e) and as such are subject to valuation and equitable adjustment in the form of a monetary award, pursuant to 8-204 and 8-205.

The trial court stated in its memorandum opinion that the stock options were valueless because they had no "fair market value". Although it is true that an unassignable, unsalable option has no fair market value, it is nonetheless an economic resource, comparable to pension benefits, to which a value can be attributed. We will comment briefly upon the method by which the trial court may value and adjust the parties equities in this form of marital property.

The appellate courts of Maryland have recognized the complexity of the task confronting trial courts in properly valuing and allocating certain forms of marital property. *Deering, 292 Md. At 129, 437 A.2d 883; Ohm, 49 Md.App. at 405-06, 431 A.2d 1371*. An elastic approach to the problem is required so as to accommodate the circumstances presented by each case. *Nisos v. Nisos, 60 Md.App. 368, 383, 483 A.2d97 (1984).* As with pensions, the valuation and allocation of stock options necessitates such a flexible approach. In completing steps 2 and 3 of the procedure for allocating this marital property by formulating an equitable monetary award, the court must take into consideration the nature of the appellees property right in the options. In simple terms, the appellees property interest can be described as the right to choose whether or not to purchase 5,000 shares of Network Systems stock on certain dates at specified prices. Thus the court may not adopt an approach to the equitable adjustment of that property which would operate to compel the appellee to exercise his option, since to do so would in effect deprive him of the essence of his property interest; i.e., the right to make a choice regarding the exercise of the options.

The trial court may in its discretion, however, adopt an "if, as and when" approach to the valuation and equitable allocation of the unexercised options, including the 2,500 matured options as well as the 2,500 unmatured options. This approach has proven to be a workable method for the allocation of unmatured pensions, see *Deering, supra,* and we believe, is equally effective in the allocation of stock options. We explain. Under the second of the three step process for the determination of a monetary award in adjustment of this marital property, the court must attach a value to options as of the date of the decree, see *Nisos, 60 Md.App. at 381-85, 483 A.2d 97.* That value may be determined by taking into consideration the market value of shares of Network stock as of the time of that decree, and the cost to the appellee of exercising the options. The court may, then, pursuant to the third step of the process, determine a

> percentage by which the profits should be divided if, as and when the options are exercised. Under such an approach to the equitable allocation of this marital property, the appellee is under no compulsion to exercise his options. At the same time, however, the appellants equitable interest in the options, if exercised, is protected. We believe this approach fairly implements the process of adjusting the equities between the parties with respect to marital property as mandated by the Act.
>
> For these reasons, we hold that the trial court was clearly erroneous in its conclusion that the stock options were valueless and in failing to include them in its determination of the marital property. We will thus remand this case in order that the court may make appropriate findings of fact with respect to the valuation of those assets, and make such adjustment to the monetary award as it deems equitable.

106. Mrs Tan submitted that it was arguable whether a stock option per se is in fact a chose in action.

107. She also submitted that it is not a matrimonial asset to be divided by the court under s 112 of the Womens Charter. She said that our courts have always divided tangible assets but she did not dispute that our courts have considered shares as matrimonial assets.

108. She sought to distinguish stock options from shares by saying that shares are tangible and already belong to someone whereas stock options in the 2nd and 3rd categories do not yet belong to anyone.

109. She argued that there must be certainty of ownership and to include a stock option or a chose in action as a matrimonial asset would have far-reaching ramifications. It will mean that a debt owing to one party would then be a matrimonial asset but this would create a problem if the monies were not recovered.

110. She also argued that the Green case cited by Ms Kanya was not applicable in Singapore as, first, the system of American matrimonial law differs from ours as theirs is based on community property, and secondly, even within their country, it may differ from state to state.

111. She further argued that the Husband had not yet acquired the stock options under the 2nd and 3rd categories. He acquires these stock options only when the same are both vested and exercised by him.

112. Mrs Tans main point was that there were too many uncertainties until the options are vested and exercised by the Husband. For this argument, she referred to various provisions in the agreements granting the stock options.

113. One provision in point is that the options are not vested immediately upon the execution of the stock option agreements.

114. A second provision in point is that the vesting of the options can be deferred, but not beyond a certain date which can be specified in the respective agreements.

115. A third provision in point is that the options will be terminated if the Husbands employment is terminated for serious misconduct. If it is terminated for reasons other than serious misconduct, options in the 3rd category will expire then and options in the 2nd category will expire after a certain time.

116. A fourth provision in point is that in some (but not all) of the agreements granting the stock options, there is also a provision for the forfeiture of option proceeds. Under such a provision, certain option proceeds will have to be repaid by the Husband if he competes with the Corporation within a certain time frame after the termination of his employment.

117. Mrs Tan further supported her argument about non-acquisition by referring to the definition of the word acquired in The Shorter Oxford English Dictionary. It defines acquire as to gain, or get as ones own (by ones own exertions or qualities); to receive, come into possession. She argued that, By this definition, once an asset is acquired, it is yours period and no one can take it away from you.

118. It is not disputed that the Green case involved the consideration of what constitutes martial property within the meaning of a different legislation i.e. The Marital Property Act.

119. However, in my view, that case is authority for the proposition that a stock option is a chose in action. This is similar to the position under English law as set out in Halsburys Laws of England (see para 102 above). That case also illustrates the use of an if, as and when order. I will refer to such an order as an if and when order for simplicity.

120. I am of the view that clearly the stock options in the 2nd category are choses in action. As regards the stock options in the 3rd category, where the options have not yet vested in the Husband, these are also choses in action. The Husband has a benefit under a contract or contracts to have the options vested in him at some future date.

121. I am also of the view that the stock options of the 2nd and 3rd categories come within the wide definition of matrimonial asset under s 112(10)(b) of the Womens Charter i.e. any other asset of any nature. In my view, matrimonial asset is not confined to tangible assets.

122. Accordingly a debt owing to one of the spouses can be a matrimonial asset if acquired during the marriage.

123. I do not agree with Mrs Tans argument about far-reaching ramifications. Indeed, if she were correct, a spouse will be encouraged to lend monies to various persons when the marriage is floundering, and then claim that such debts should not be treated as part of matrimonial assets for the purpose of s 112.

124. I am also of the view that any difficulty in establishing the value of a matrimonial asset should not be confused with its existence.

125. The uncertainties mentioned in Mrs Tans arguments are conditions subsequent to the acquisition of the choses in action. They are not pre-conditions to the acquisition. Accordingly, the Husband has acquired the choses in action under the 2nd and 3rd categories.

126. I also do not think that it is correct to describe a share as a tangible asset but, in the circumstances, it is unnecessary for me to elaborate further on this point.

127. As regards Mrs Tans argument that the provision for the forfeiture of option proceeds (which would apply if the Husband were to compete with the Corporation within a specified time frame of the termination of his employment) demonstrated non-acquisition, this is not a valid argument. If she were correct, then even the stock options under the 1st category cannot be said to be acquired by the Husband if such a provision applies to those options.

128. As regards Mrs Tans argument that once an asset is acquired, no one can take it away from you, this is also not a valid argument. For example, a house bought by the Husband and mortgaged to a bank can be taken away from the Husband if he fails to pay the bank. Yet no one would say that the house has not yet been acquired by the Husband for the purpose of s 112.

129. As for the definition of acquire in The Shorter Oxford Dictionary, I am of the view that it is neither here nor there.

130. Mrs Tan had one other argument. She submitted that the Wife had taken all the stock options into account in determining the Husbands remuneration for the issue of maintenance and the Wife should not be allowed to have them taken into account in the division of matrimonial assets. Otherwise, the Wife would be having two bites of the same cherry.

131. I have already mentioned above that Ms Kanya is not relying on the stock options to claim additional maintenance for the Wife and I have disregarded it for that issue.

132. I now turn to the District Judges reasons for not ordering a division of the stock options in the 2nd and 3rd categories. In para 14 of her GD, she said:

> 14. There was no doubt that the unvested Dell stock options were part of the husbands salary package and although they were allotted to him once in every six (6) months, they were intrinsically tied up with his performance in the company. Furthermore if his employment were to be terminated with just cause, he would lose all the vested stock options, which he had exercised. In *Susy Suryani Santoso v. Lee Kong Eng & Alexis Khoo* (Divorce 1704/98 and RAS 95 & 96/99), the wife had asked for a portion of his year end bonus. The court of the first instance declined to make such an order as bonuses were invariably a discretionary measure contingent on several factors e.g employees performance, companys performance and a variety of other imponderable conditions. On appeal, her Honour, Justice Judith Prakash reversed the earlier decision on the issue of bonus and ordered that "the husband pay the wife additional maintenance of S$6,000 for each months bonus received by him *if and when* (the emphasis is mine) he was paid any bonus". The Court of Appeal in their oral judgment, delivered on 25th January 2000, reversed her decision on this issue. I declined to make a "if, as and when" order for the following reasons:-
>
> > the share value of the stock option was based on market value at the time it was exercised;
> >
> > the husband had, in the past, not exercised his rights to those stock options and this may cause the wife to enquire why he had failed to do so;
> >
> > there may be double counting as the husband was paying maintenance and the stock options form part of his salary package;
> >
> > the "if, as and when" order was vague and posed uncertainty as there would be liabilities to be met when he exercised those rights;
> >
> > the above order also runs contrary to the clean break principle in the division of matrimonial asses; and
> >
> > most importantly, the unvested stock options were allotted to the husband after the breakdown of the marriage and her indirect contribution was not substantial enough to merit a share in his unvested stock options (see para 11 above).

133. The case of *Susy Suryanti Santoso v Lee Kong Eng & Alexis Khoo* cited by the District Judge is not applicable here

because there the question was whether the husbands bonus should be taken into account for the issue of maintenance. That point did not involve stock options or the division of matrimonial assets.

134. Furthermore, as there was no written judgment from the Court of Appeal in that case, I am of the view that it is likely that the decision of the Court of Appeal was on the particular facts in that case. It is not an authority for the proposition that an if and when order should, generally, not be made.

135. As for the list of reasons given by the District Judge, I am of the view that:

> (a) Although it may be said that the share value of a stock option is based on market value at the time the option is exercised, it does not follow that this is the only value that can be ascribed to a stock option. If the option is vested but not yet exercised, its value may be less, and if it is not yet vested, its value may be even lesser. However, as I have already said above, this does not detract from the fact of its existence. Furthermore, any difficulty in valuing share options under the 2nd and 3rd categories is not an adequate ground for denying their existence or for refusing to attempt to divide them. Thirdly, there is no need to give a value at present if an if and when order is made.
>
> (b) Although the Wife had made inquiry in the past as to why the Husband did not exercise any of the unexercised stock options, this is also not an adequate ground for refusing to take such options into account in the division of matrimonial assets. Besides, suffice it to say that the Husband is not obliged to exercise the stock options. If he has chosen not to exercise them bona fide, the Wife has no legal basis to complain. However if, for example, the Husband has given up any right to have the stock options vested in him in exchange for other rights or assets in order to defeat the Wifes claim, then the Wife can pursue her legal rights. However, the burden will be upon her to establish her assertion.
>
> (c) There is no question of double counting if the stock options are not taken into account for the maintenance issue.
>
> (d) While an if and when order poses some uncertainty, this is also not an adequate reason to disregard the stock options in the 2nd and 3rd categories for the purpose of division. That the Husband would have to pay the exercise price can be taken into account in an appropriately worded if and when order.
>
> (e) If such an order is vague and does not cover all the eventualities which subsequently arises, this can be addressed by the parties seeking clarification or further directions. After all, under s 112(3) to (8) of the Womens Charter, the court is given very wide powers to give effect to any order it makes for the division of matrimonial assets. Furthermore, it is open to the parties to agree on a lump sum settlement of the Wifes entitlement to the stock options rather than be troubled with having to comply with an if and when order.
>
> (f) I would add that the concept of stock options is not novel although it appears to be used more and more for so-called New Economy businesses. A scheme for stock options provides the answer to attracting and retaining key personnel without causing the businesses to fail under the weight of huge salaries before huge returns are achieved. Furthermore, very often, it is such a scheme, and not the salary, that attracts the key personnel.

136. Therefore, it is my view that it would be only realistic to take into account stock options in the context of maintenance or the division of matrimonial assets, unless there are reasons on the particular facts of a case why this should not be done. No such reasons exist in the case before me.

137. While an if and when order would not achieve the clear-break principle, this principle is not paramount. It must be subject to the more important principle of justice in accordance with the law.

138. Furthermore, if the stock options (in any of the categories) were allotted to the Husband after the breakdown of the marriage, that is a factor in determining whether the Wife should be granted a share in them and if so, the extent of the share. It is not a reason to deny any division outright. In so far as the District Judge said that the Wifes indirect contribution after the breakdown of the marriage was not substantial enough to merit a share, I will come back to this point later below.

139. As this stage, I need refer only to *Yeo Gim Tong Michael v Tianzou* [1996] 2 SLR 1. In that case, L P Thean JA, delivering the judgment of the Court of Appeal, said at p 4:

> We agree that the husbands CPF moneys accrued or accumulated prior to the date of the marriage should be excluded in the computation of the husbands assets for division under s 106 of the Womens Charter. But, we are unable to accept that assets acquired by a party, and in this case the husband, after the date of the breakdown of the marriage should not be included. Subsection (1) and (3) of s 106 each refer to assets acquired during the marriage, and the marriage is only dissolved when the decree nisi is made absolute. Normally the ancillary matters come before the court for hearing prior to the date when the decree nisi is made absolute. As a matter of practically, the court would take, for the purpose of determining the assets falling within s 106, in the case of CPF moneys of the spouses, the latest statements issued by the Central Provident Fund Board, and in other cases the assets of the spouses as of that date. Therefore any assets acquired during the marriage including those acquired after the marriage has broken down fall to be considered under these provisions. What contribution a spouse makes to the acquisition of such assets during this period depends on the facts of the case. In making a division under s 106(3) the court would have regard to the period in which the husband and wife have ceased to cohabit and the indirect contribution, if any, made by the wife during the period. In this case, the wifes indirect contribution continued: she continued to look after the child after she had filed the petition, and her contribution fell within s 106(3).
>
> [Emphasis added.]

140. Although that case was applying s 106(1) and (3) of the then Womens Charter (1985 Edition) which are not identical with s 112(1) and (10) of the present Womens Charter, the judgment of the Court of Appeal on the meaning of assets acquired during the marriage would still apply to the same phrase in the present s 112(10)(b).

141. I have already set out the provisions of s 112(1) and (10)(b) of the present Womens Charter.

142. For easy comparison, I set out the provisions of s 106(1) and (3) of the Womens Charter (1985 Edition):

> 106(1) The court shall have power, when granting a decree of divorce, judicial separation or nullity of marriage, to order the division between the parties of any

assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale.

(2)

(3) The court shall have power, when granting a decree of divorce, judicial separation or nullity of marriage, to order the division between the parties of any assets acquired during the marriage by the sole effort of one party to the marriage or the sale of any such assets and the division between the parties of the proceeds of sale.

143. I should also mention that the Wife is confining her claim to stock options already granted as at the date of the decree nisi (whether vested or not and whether exercised or not). This is a fair cut-off point.

Share of the Wife in the stock options

144. As regards the 1st category of stock options, the District Judge had granted the Wife a 15% entitlement.

145. Ms Kanya submitted that the Wife should be entitled to 30% which was the percentage granted by the District Judge to the Wife for her indirect contribution in respect of the matrimonial home. She submitted that the same percentage should apply to the stock options.

146. However, the facts in relation to the stock options are not the same as the facts pertaining to the matrimonial home. The latter had been acquired when the marriage had not broken down.

147. The first agreement to grant stock options to the Husband was dated 12 August 1996. The Husband left the matrimonial home in February 1997.

148. There was no suggestion that all was well with the marriage until February 1997. On the contrary, it is clear that some years before, the marriage had already broken down.

149. For example, when the Husband was performing services for Quorum between 1994 to 1996, he was already under severe stress because of his marital problems, although I would add that he is not as blameless as he would like the court to think.

150. The Wife had been extremely suspicious about the Husband and harassed his secretary on his whereabouts and even complained to his boss about him. Apparently she also threatened to complain to the President of Dell Corporation when the Husband was subsequently working for Dell Asia.

151. Although the Wife denied harassing the secretary and complaining to the boss in Quorum, I am of the view that she did complain about him and had been harassing his secretary and him.

152. The situation did not improve when the Husband began to work for Dell Asia in January 1997.

153. Thereafter, the Divorce Petition was filed on 21 November 1997. The 1st Maintenance Complaint was filed on 2 February 1998, the 2nd Maintenance Complaint was filed on 25 June 1998. The Decree Nisi was made on 24 September 1998. The parties were engaged in all kinds of acrimonious disputes including access to the children which entailed the filing of numerous affidavits.

154. It was because of these factors that Mrs Tan submitted that the Wifes indirect contribution was a negative one and that even 15% was generous although the Husband had decided not to appeal against the decision of the District Judge on the 15% entitlement of the Wife in respect of the 1st category. Mrs Tan submitted that the Wife should not be entitled to any share of the stock options as regards the 2nd and 3rd categories.

155. As regards the argument about the Wifes negative contribution, Ms Kanya submitted that the District Judge had taken this argument into account and had nevertheless granted the Wife 15% of the stock options under the 1st category.

156. However, Ms Kanyas submission would in turn detract from her other argument seeking 30% for the Wife for all the three categories.

157. The District Judges reasons for awarding 15% are set out in para 11 of her GD. It includes some of the factors I have mentioned and the fact that notwithstanding the Wifes so-called negative contribution, the Wife was still taking care of the children while the Husband was pursuing his career in Hong Kong.

158. The District Judge also took into account factors like the Wife (a) having had exclusive use of the matrimonial house since February 1997 when the Husband left, (b) had obtained 60% of the matrimonial property and (c) 100% of a property in Gold Coast, Australia, although there is an outstanding mortgage on it which the Wife will be responsible for.

159. I am of the view that the District Judge was correct in awarding 15% of the stock options under the 1st category to the Wife. However, I do not agree that this should be confined to the 1st category only.

160. I have already dealt with the District Judges reasons for declining to give the Wife anything for the stock options under the 2nd and 3rd categories.

161. As regards her last reason i.e that the unvested stock options were allotted to the Husband after the breakdown of the marriage, I have already mentioned that the marriage did not breakdown only when the Husband left the matrimonial home but some time before. Even the stock options under the 1st category were allotted to the Husband after the breakdown of the marriage.

162. In my view, the fact that the marriage had broken down was one of the main reasons for the District Judges decision to allot 15% instead of 30% to the Wife for the 1st category. That reason should not be used again to reduce the 15% to nil for the 2nd and 3rd categories.

163. Accordingly, I am of the view that the Wife is entitled to 15% of the stock options under the 2nd and 3rd categories.

Summary

164. As regards RAS 720014 of 2000 (i.e the Husbands appeal):

> (a) Prayer (a) as regards the childrens education is dismissed. The Wife is not required to consult and obtain the prior consent of the Husband on any issue relating to the childrens education.
>
> (b) Prayer (b) is allowed in part in that the maintenance to be paid by the Husband for the three children is $4,000 per month for each of the three

children, Cheryl, Sean and Valerie. This is with effect from 1 January 2000. The 2nd Maintenance Order ceases to apply with effect from 1 January 2000.

(c) Costs of the Husbands appeal is reserved pending arguments thereon.

165. As regards RAS 720013 of 2000 (i.e the Wifes appeal):

(a) Prayer 1 is allowed in part in that the maintenance to be paid by the Husband to the Wife is $3,000 per month. This is with effect from 1 January 2000. The 2nd Maintenance Order ceases to apply with effect from 1 January 2000.

(b) Prayer 2 is dismissed.

(c) As regards Prayer 3 i.e the stock options under the 2nd and 3rd categories, the Wife is entitled to 15% of the net gain, if any, made by the Husband from such stock options provided that the written agreements from the Corporation granting such options are dated before the date of the Decree Nisi, but regardless of whether the stock options have been vested or exercised as at the said date.

(d) For the purpose of paragraph (c) above:

(i) the Husband is to notify the Wife in writing within thirty days of the sale of the stocks or shares giving rise to the net gain and to provide supporting documents of the net gain or estimated net gain. If the Husbands position is that he has not exercised any of the stock options and/or that he has not made any gain from the exercise of the stock options, the Husband is to notify the Wife in writing of this position by 30th June and by 31st December of each calendar year with written confirmation from Dell.

(ii) The net gain means the gain after deducting any amount paid by the Husband to exercise any stock option, any fee or charge in the sale of the stock or shares resulting from such an exercise and any tax on the gain.

(iii) Within thirty days of the sale of the stocks or shares resulting in the net gain, the Husband shall pay the Wife 15% of the net gain or estimated net gain provided that within thirty days of the determination of the Husbands tax liability in respect of the gain, the Husband is to pay to the Wife any difference due to the Wife and if any difference is due to be paid by the Wife to the Husband, the Wife is to do so within thirty days of written notification from the Husband with supporting documents.

(iv) If there is a term pertaining to the Forfeiture of Option

Proceeds in relation to any of the agreements to grant stock options to the Husband, then within thirty days of the sale of the stocks or shares resulting in the net gain, the Husband shall pay to the Wifes solicitors, instead of to the Wife, 15% of the net gain or estimated net gain, subject to the same proviso as in (iii) above. The monies are to be held by the Wifes solicitors in an interest-bearing escrow account until the said term ceases to apply whereupon the monies and interest thereon shall be paid to the Wife. However, if the Husband is required under the said term to pay the net gain to the Corporation, then the Wifes solicitors shall release the monies held in the interest-bearing account to the Husband upon receipt of supporting documents that the net gains have to be paid to the Corporation under the said term. If the interest earned need not be paid to the Corporation, then the interest shall be paid to the Wife.

(e) The parties are at liberty to apply to a judge or judicial commissioner for directions or for variation of the orders made in paragraph (d) above with the view of giving effect to the intention behind the order in paragraph (c) above or to apply for an assessment of the value of 15% of the stock options under the 2nd and 3rd categories in place of the orders in paragraphs (c) and (d) above.

(f) Costs of the Wifes appeal is reserved pending arguments thereon.

Woo Bih Li

Judicial Commissioner