AQN *v* AQO
[2015] SGHC 19

Case Number	: Divorce Suit No 63 of 2010 (Registrar's Appeals from the State Courts Nos 48, 49 and 50 of 2014)
Decision Date	: 27 January 2015
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Edmund Jerome Kronenburg and Christina Teo (Braddell Brothers LLP) for the appellant in Registrar's Appeals No 48 to 50 of 2014 and the defendant in Divorce Suit No 63 of 2010; Khoo Boo Teck Randolph and Johnson Loo (Drew & Napier LLC) for the respondent in Registrar's Appeals No 48 to 50 of 2014 and the plaintiff in Divorce Suit No 63 of 2010.
Parties	: AQN — AQO

Conflicts of laws – Natural forum

Conflicts of laws – Restraint of foreign proceedings

Family law – Custody – Access

Family law – Custody – Care and control

27 January 2015

Choo Han Teck J:

1 The husband in these registrar's appeals and the related divorce suit is a wealthy businessman and the son of an influential tycoon who ran one of Malaysia's biggest state-owned companies. He is a Singapore citizen. The wife, a homemaker, is an American citizen. Previously, she worked as an institutional equities broker in New York, United States of America ("USA"). Their daughter, now 11 years old, was born in March 2003. She now lives in Oak Brooks, Illinois, USA since June 2012 with her mother after the Singapore High Court affirmed the District Court's decision to allow the daughter to relocate there.

2 The parties married in New York on 12 November 1999. Before marriage, the parties executed a prenuptial agreement on 29 November 1999 in New York. That prenuptial agreement states, *inter alia*, that if the parties divorce, neither shall receive maintenance from the other or any distribution from the other party's property. The prenuptial agreement also provides that it is governed by New York law. After marrying, the parties left New York and have not returned ever since. During the marriage, the parties lived mainly in Malaysia, California and Singapore.

3 On 8 January 2010, the wife filed a writ of divorce in Singapore and sought ancillary relief. The husband commenced proceedings in New York on 13 May 2010 for an order that the wife be restrained from alleged breaches of the terms of the prenuptial agreement. The husband says that the wife, by seeking a final award of maintenance and distribution of property (including those owned by the husband in New York) in Singapore divorce proceedings, is in breach of the terms of the prenuptial agreement. The interim judgment for divorce was granted on 23 August 2011 by the

Singapore District Court on the ground of the husband's unreasonable behaviour.

4 The wife applied for interrogatories and for discovery for ancillary hearings. These applications were stood down as the husband applied for the Singapore hearing on ancillary matters, as well as all discovery and interrogatories, to be proceeded with only after the final determination of the New York action. The wife in turn, applied for an anti-suit injunction restraining the husband from proceeding with the New York action. The husband also applied for matters relating to the care, custody and control of the child to be transferred to the Illinois courts. The District Judge denied the husband's applications, and granted the wife an interim anti-suit injunction restraining the husband from continuing with the New York action until the final judgment for divorce in Singapore is given. The husband appealed the District Judge's decision by way of three registrar's appeals. They are:

(a) RAS 48/2014, the husband's appeal for ancillary matters in Singapore to be held in abeyance until the conclusion of the New York action;

(b) RAS 49/2014, the husband's appeal for interim anti-suit injunction restraining the husband from continuing with the New York action until the final judgment for divorce in Singapore is given; and

(c) RAS 50/2014, the husband's appeal for matters relating to the care, custody and control of the child to be transferred to the Illinois courts.

I heard the appeals and dismissed them. I now give my reasons.

5 I start with RAS 48/2014. The husband commenced the New York action on 13 May 2010 for an order that the wife be restrained from alleged breaches of the terms of the prenuptial agreement. He says that the wife, by seeking a final award of maintenance and distribution of property (including those owned by the husband in New York) in Singapore divorce proceedings, is in breach of the terms of the prenuptial agreement. In April 2011, the wife filed a motion to dismiss the husband's application in the Supreme Court of New York on the ground that New York lacked jurisdiction over the matter. The court dismissed the husband's application on 16 December 2011, holding that although New York has jurisdiction, Singapore is the appropriate forum as (1) it hears the divorce action and (2) is better placed to consider the terms of the prenuptial agreement.

6 The husband then sought leave in the Supreme Court of New York to reargue the matter after the wife challenged the validity of the prenuptial agreement in Singapore on the ground of fraud and/or misrepresentation. The wife alleges that the husband failed to disclose the full value of his assets and means at the time of the signing of the prenuptial agreement. Leave was granted, and on 23 May 2012, the Supreme Court of New York reversed its earlier decision. The court held that the wife's allegations raise factual issues that are not easily adjudicated in Singapore as the witnesses and documents relevant to the creation and validity of the prenuptial agreement are located in New York.

7 The wife filed a motion for leave to reinstate the court's ruling of 16 December 2011. On 27 February 2013, the Supreme Court of New York dismissed the wife's motion. But on 21 May 2013, the court modified and amended its order *sua sponte* and granted the wife's motion to reinstate the court's ruling of 16 December 2011 dismissing the action on the ground of *forum non conveniens*. This decision is without prejudice to any contract claims the husband may have after the divorce action in Singapore is concluded. The court found that it was an error to address the issue of the validity of the prenuptial agreement in New York as the harm caused by the continued delay of the divorce action in Singapore outweighs any inconvenience arising from the presence of witnesses and

documents in New York. The court observed that a prenuptial agreement travels with the parties and upon divorce, the court with jurisdiction over the divorce action will decide any issues concerning the prenuptial agreement.

8 The husband appealed the order of 21 May 2013 and the wife filed a motion to dismiss the husband's appeal. The wife's motion was denied by the Appellate Division of the Supreme Court of New York on 21 January 2014. As a result, the husband's appeal, at least at the time I heard the registrars' appeals, proceeds.

9 The husband's lawyers have made it clear that the husband is not seeking to transfer jurisdiction for the ancillary matters to the New York courts, but is merely asking for the ancillary matters to be determined after the New York action has been completed as the ancillary matters involve the enforcement and validity of the prenuptial agreement. In this regard, the husband submits the following:

(a) First, the Singapore court cannot determine the necessity of the discovery and interrogatories made for the ancillary hearing without first determining the validity of the prenuptial agreement. In this regard, the validity of the prenuptial agreement is already a question before the New York court.

(b) Second, having the Singapore court decide the validity of the prenuptial agreement will go against the following rules on conflict of laws:

(i) The rule against duplicitous proceedings as there would be hearings in both New York and Singapore. There is therefore a real possibility of inconsistent judgments from both New York and Singapore;

(ii) The rule that, where the matter involves a dispute on New York law, it is better for the New York court to determine the dispute on its own laws (as a question of law) rather than have the Singapore court determine it as a question of fact; and

(iii) The rule on *forum non conveniens*. The husband submits that Singapore is clearly not the appropriate forum to try the wife's allegations of fraud/misrepresentation in determining the validity of the prenuptial agreement for two reasons: (1) the place where the alleged fraud/misrepresentation is *prima facie* the natural forum to hear the claim; and (2) the relevant documents and witnesses are in New York.

(c) Third, having the Singapore court decide the validity of the prenuptial agreement will prejudice the husband. The husband's lawyers assert that (1) the allegations of fraud/misrepresentation "are allowed to remain" in the divorce action; (2) the wife is allowed to "fish" for evidence through discovery and the interrogatories to substantiate her allegations; and (3) even if the Singapore court is of the view that the ancillary matters need to be expedited so that the parties can move on with their lives, it should not be done at the husband's expense; according to the husband's lawyers, the husband will lose his "juridical advantages" if the Singapore courts decide on validity of the prenuptial agreement. Specifically, the husband's lawyers contend that Singapore might not give the same effect to an prenuptial agreement as New York might. New York contracts, including prenuptial agreements are, according to the husband's lawyers, accorded a "presumption of legality" where parties will be held to their bargain, except in "extraordinary circumstances" such as fraud. This is because New York has a strong public policy favouring the validity of contacts. Whereas in Singapore, prenuptial agreements do not enjoy such a "presumption of legality". Instead, prenuptial agreements are

only subject to the overall scrutiny of the Singapore courts.

(d) Fourth, the Singapore court is not ahead of the New York court in relation to the stage of proceedings in determining the wife's allegation of fraud/misrepresentation. The interim judgment for divorce and the various interlocutory applications/appeals in the divorce suit do not relate to the wife's allegations. In the result, the Singapore court is no closer than the New York court in determining the wife's allegation of fraud and/or misrepresentation.

I reject the arguments made by the husband's lawyers.

10 First, the determination of the validity of the prenuptial agreement cannot precede the discovery and interrogatories. The discovery and interrogatories will help determine if the husband has under-declared his assets and means. This in turn helps determine if the prenuptial agreement is tainted by fraud and/or misrepresentation and whether it is valid.

11 Second, it lies not in the mouth of the husband to rely on the rule against duplicitous proceedings having commenced the action in New York himself. The divorce action was commenced in Singapore, and court having heard the divorce should hear the question of the validity of the prenuptial agreement as part of the ancillary matters. Held in *AQD v AQE* [2011] SGHC 92 at [4]:

> Whichever jurisdiction was to hear the divorce should also decide the ancillary matters, namely, the children's matters, the division of matrimonial assets, and the maintenance of the former wife and children. That would be the fairest and most expeditious way of adjudicating the entire action. The distribution of judicial tasks across jurisdictions makes it less likely for either court to make just and equitable orders across the entire matter with confidence because cross-jurisdictional orders may result in conflict with each other.

The husband, by commencing the New York action, is the one responsible for the duplicitous proceedings.

12 Third, although there is merit in allowing the New York court pronounce on its own laws as this saves time and resources (*Rickshaw Investments Ltd and another v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 at [42] and *John Reginald Stott Kirkham and others v Trane US Inc and others* [2009] 4 SLR(R) 428 *("John Reginald")* at [44]), this rule is not immutable and absolute (*Siemens AG v Holdrich Investment Ltd* [2010] 3 SLR 1007 at [14]). The divorce proceedings in Singapore have been delayed for close to three years and should not be delayed any further. In this day and age, cross cultural marriages are becoming more prevalent. It is not uncommon to find that prenuptial agreements will not be governed by the laws of the jurisdiction hearing the divorce. In any event, the Singapore courts are competent to determine and apply foreign law. The Singapore courts have done so on several occasions. *TQ v TR and another appeal* [2009] 2 SLR(R) 961 (*"TQ v TR")* is one such example. In *TQ v TR*, the Singapore Court of Appeal construed the terms of a Dutch prenuptial agreement and went on to determine the validity of that agreement in accordance with Dutch law with the assistance of expert opinions. It is similarly open to the parties in this case to tender expert opinions on New York law.

13 Fourth, the continued delay of the divorce action in Singapore outweighs the inconvenience arising from the presence of witnesses and documents in New York. In any event, the inconvenience may be illusory since the wife's claim in fraud/misrepresentation lies in the husband's alleged failure to make full disclosure of his assets and wealth in the prenuptial agreement. This is thus not complex issue as the question is whether the husband has under declared his assets and wealth in the prenuptial agreement.

14 Last, the husband will not suffer prejudice. Even if his "[w]ife's allegations of fraud/misrepresentation are allowed to remain" in the divorce suit, this does not mean that the court will accept that fraud/misrepresentation is made out. It also cannot be said that allowing the Singapore action to proceed will allow the wife to "fish" for evidence through discovery and interrogatories to substantiate her allegations of fraud/misrepresentation. The Singapore court retains overall scrutiny of discovery and interrogatories to prevent such abuse. The claim by the husband's lawyers that he will lose his "juridical advantage" because he loses the "presumption of legality" in the prenuptial agreement is exaggerated. To begin with, the husband cannot expect that the "presumption of legality" will apply. The prenuptial agreement states:

> …it is understood by the undersigned [wife's name] and [husband's name] that no representation is being made by either of their counsel…as to the legal effect or enforceability of the [Pre]nuptial Agreement between them dated September 29, 1999 outside the State of New York.

This statement in the prenuptial agreement shows that it is within the contemplation of the parties that the prenuptial agreement risks being rendered invalid if litigated outside of New York.

15 I now deal with RAS 49/2014. This is husband's appeal in relation to the interim anti-suit injunction restraining the husband from continuing with the New York action until the final judgment for divorce in Singapore is given. An anti-suit injunction is an order of the court compelling the party subject to the order to refrain from instituting or continuing with proceedings abroad. It is an order that is made personally against the person subject to the injunction. The court has no power and does not purport, to give the foreign court any direct orders. Nevertheless, the anti-suit injunction is recognised as an extreme measure amounting to an indirect interference with foreign legal proceedings. In the interests of comity, the court will not grant such an injunction easily (*Bank of America National Trust and Savings Association v Djoni Widjaja* [1994] 2 SLR(R) 898 at [11] approving of *Société Nationale Industrielle Aeropatiale v Lee Kui Jak and another* [1987] AC 871 ("*Société Nationale*") at 892). In practice, most anti-suit injunctions (such as the one in the present case) are sought and granted on an interim rather than on a permanent basis.

16 In determining whether an anti-suit injunction should be granted by the Singapore court, the following elements have to be established (*John Reginald* at [28]-[29]):

(a) whether the defendant is amenable to the jurisdiction of the Singapore court;

(b) whether Singapore is the natural forum for resolution of the dispute between the parties;

(c) whether the foreign proceedings are *prima facie* vexatious or oppressive (or otherwise unconscionable);

(d) whether the grant of an anti-suit injunction would cause the defendant any injustice; and

(e) whether the institution of the foreign proceedings is in breach of any agreement between the parties.

Consideration (e) is not applicable to the present case as there is no agreement between the parties forbidding the institution of foreign proceedings.

17 The husband rightly does not dispute that he is amenable to the jurisdiction of the Singapore court. He made numerous applications in relation to the divorce suit and in doing so, has submitted to the jurisdiction of the Singapore court. So long as a party submits to the jurisdiction of the court, he

is amenable to the jurisdiction of that court (*Koh Kay Yew v Inno-Pacific Holdings Ltd* [1997] 2 SLR(R) 148 at [17]).

18 To satisfy the natural forum requirement, the wife (who is the applicant of the anti-suit injunction) has to demonstrate that Singapore is clearly the more appropriate forum (*John Reginald* at [33]). In this regard, the court must take into account all relevant factors such as those relating to convenience and expense (such as the availability of witnesses) and factors such as the law governing the transaction. But the process of taking into account all relevant factors is not mechanical. The court has to weigh each factor and consider its place in the overall picture (*Peter Rogers May v Pinder Lillian Gek Lian* [2006] 2 SLR(R) 381 ("*Peter Rogers May*") at [20] and *Andre Ravindran S Arul v Tunku Abdul Ismail bin Sultan Iskandar Al-Haj* [2001] SGHC 209 at [8]). In relation to an appellate court's review of a lower court's decision that a particular jurisdiction is the natural forum for determining a dispute, it is trite law that the appellate court should be slow to interfere with such as decision. As stated by the Court of Appeal in *CIMB Bank Bhd v Dresdner Kleinwort Ltd* [2008] 4 SLR(R) 543 in relation to an application to stay proceedings on the basis of *forum non conveniens* (which necessarily requires a determination of the natural forum) (at [84]):

> It is clear that in determining whether or not to grant a stay of proceedings, the judge will be exercising a discretion. Such an exercise of discretion should not be interfered with by an appellate court unless the judge had misdirected himself on a matter of principle, or he had taken into account matters which he ought not to have taken into account or had failed to take into account matters which he ought to have taken into account, or his decision is plainly wrong (see *The Abidin Daver* [1984] AC 398 at 420 *per* Lord Brandon of Oakbrook).

I find myself unable to say that the District Judge had exercised his discretion wrongly. I considered the factors in favour of the wife against those in the husband's favour. The following relevant factors are potentially in the husband's favour:

(a) the location of the witnesses;

(b) the location of documents;

(c) the location of the alleged fraud/misrepresentation; and

(d) the law governing the prenuptial agreement.

19 The location of witnesses is a neutral factor. It is only significant in relation to third party witnesses as issues of compellability arise (*CIMB Bank* at [69] and *Rickshaw Investments* at [19]). But the husband did not raise this as an issue. Furthermore, the availability of video-links greatly reduces the significance of this factor (*Peter Rogers May* at [26]).

20 The location of documents is also a neutral factor. Documentary evidence is easily transportable between jurisdictions (*John Reginald* at [40]). The court can always deal with the issue of costs in transporting these documents by an appropriate order for costs and disbursements (*Good Earth Agricultural Co Ltd v Novus International Pte Ltd* [2008] 2 SLR(R) 711 at [23]).

21 Although the location of the alleged fraud/misrepresentation and the law governing the prenuptial agreement (being New York law) lie in the husband's favour, I find these factors to be insignificant when weighed against the factors in the wife's favour for these reasons:

22 First, as mentioned, divorce proceedings were commenced in Singapore. The fairest and most

expeditious course to take is for the Singapore courts to deal with the validity of the prenuptial agreement as part of the ancillary matters (see above at [11]). Genuine proceedings have been started in Singapore and have developed to the stage where they have had a continuing effect on the parties. Lord Goff of Chieveley held in *De Dampierre v De Dampierre* [1988] AC 92 at 108:

> If…genuine proceedings have been started and have not merely been started but have developed to the stage where they have had some impact upon the dispute between the parties, especially if such impact is likely to have a continuing effect, then this may be a relevant factor to be taken into account when considering whether the foreign jurisdiction provides the appropriate forum for the resolution of the dispute between the parties.

Interim judgment for divorce was granted on 23 August 2011. This judgment, though interim in name, renders the parties permanently divorced in the eyes of the law (*Sivakolunthu Kumarasamy v Shanmugam Nagaiah and another* [1987] SLR(R) 702).

23 Second, the divorce proceedings in Singapore have been delayed for close to three years and should not held in abeyance any further. In any event, the Singapore courts are competent to determine and apply foreign law (see above at [12]). The divorce proceedings should be finalised as soon as possible so that the parties can move on with their own lives. It is on this basis that I hold that on balance, the more appropriate forum is Singapore.

24 I am satisfied that the foreign proceedings in New York are *prima facie* "vexatious or oppressive" (or otherwise "unconscionable"). The terms "vexatious or oppressive" and "unconscionable" have been used interchangeably (both in Singapore and overseas) but they actually mean different things. Belinda Ang Saw Ean J in the Singapore High Court decision in *Evergreen International SA v Volkswagen Group Singapore Pte Ltd and others* [2004] 2 SLR(R) 457 held (at [41]):

> The question for consideration is whether the conduct of the defendants in continuing with the Belgium proceedings is vexatious or oppressive and is hence unconscionable.

Similarly, the Singapore Court of Appeal in *John Reginald* held (at [47]):

> We would observe that the courts have held that there is vexation or oppression in situations such as the following: where a party is subjected to oppressive procedures in the foreign court; bad faith in the institution of the foreign proceedings; commencing the foreign proceedings for no good reason; commencing proceedings that are bound to fail; and extreme inconvenience caused by the foreign proceedings… These situations can also be suitably described by the word unconscionable.

The English courts have also used the terms "vexatious or unconscionable" and "unconscionable" interchangeably (see eg: *Glencore International AG v Exeter Shipping Ltd* [2002] 2 All ER (Comm) 1 at 13-14; and *Sabah Shipyard (Pakistan) Ltd v Islamic Republic of Pakistan* [2003] 2 Lloyd Rep 571 at 580-581).

25 The terms "vexatious or oppressive" and "unconscionable" are not synonymous. They were coined by Lord Goff in *Société Nationale Industrielle Aeropatiale* and Lord Hobbhouse of Woodborough in *Turner v Grovit* [2002] 1 WLR 107 respectively who disagree on the root concepts of the anti-suit injunction (Thomas Raphael, *The Anti-Suit Injunction* (Oxford University Press, 2008) at para 4.02) ("*The Anti-Suit Injunction*"). Lord Goff in *Société Nationale* took the view that anti-suit injunctions are granted to meet the ends of justice where foreign proceedings are "vexatious or oppressive", whereas

Lord Hobbhouse held that anti-suit injunctions are granted on the basis of unconscionable conduct.

26 Thomas Raphael in *The Anti-Suit Injunction* opined as follows:

> [Lord Goff's test] is…to be preferred as a matter of principle. The notion of unconscionability brings with it the danger of excessive closeness to the historical equitable legacy of the common injunction. It is also arguably a legal fiction. In most cases where anti-suit injunctions are granted, there is no real sense in which the injunction defendant's conscience is or should be engaged. The language of 'the interests of justice' or 'vexation and oppression' is a more appropriate way to frame the criticism of the litigation tactics which will warrant the imposition of an injunction. The greater suitability of Lord Goff's tests is illustrated by the fact that in a number of cases where the concept of unconscionable conduct has been formally applied, it has merely served as a redundant conceptual shell for the application of the test of vexatious or oppressive behaviour.
>
> In addition, although Lord Hobbhouse articulated the notion of 'unconscionable conduct' to focus attention on the 'wrongful conduct of the individual', it is submitted that this risks oversimplification. Anti-suit injunctions are not merely a matter of private law, but also inescapably involve public interests, because of the tensions with comity that they produce. Locating the concept of the 'ends of justice' at the heart of the relevant test compels the court to address not merely the conduct of the injunction defendant but also the interests of justice as a whole.

I agree.

27 In the present case, I find that the foreign proceedings are vexatious and oppressive, and an anti-suit injunction should be granted to meet the ends of justice. The wife has not been receiving maintenance from the husband. Her financial resources are strained, having to deal with the numerous applications filed by her husband both locally and in New York. The husband, who is wealthy on the other hand, has the resources to litigate.

28 Having found that a *prima facie* case of vexation or oppression is made out, I move onto consider whether the grant of the anti-suit injunction results in injustice to the husband. Broadly speaking, the husband submits the following against the grant of an anti-suit injunction:

(a) First, the wife brought the application for the anti-suit injunction to have an unmeritorious second attempt after having failed to stay the New York action on grounds of *forum non conveniens*.

(b) Second, the wife's own conduct precludes her from arguing that an anti-suit injunction should be granted. He says that the wife filed an application for the anti-suit injunction more than two years after she was served with a "Summons with Notice" in the New York action. He also says that the wife took "active steps" in the New York action.

(c) Third, the husband would lose the following juridical advantages:

(i) the husband would not be able to specifically enforce the prenuptial agreement as a commercial contract between the parties;

(ii) the husband would not be able to claim for damages; and

(iii) the wife would be permitted to "fish" for evidence through discovery and interrogatories to support her allegations of fraud/misrepresentation.

I am of the view that there is no injustice to the husband by granting the interim anti-suit injunction. The husband's arguments are unmeritorious.

29 First, I reject the husband's argument that the wife applied for an anti-suit injunction to have a "second bite at the cherry" after failing to stay the New York action on grounds of *forum non conveniens* as it is speculative. There is also nothing to preclude her from applying for an anti-suit injunction after failing to obtaining a stay of the New York proceedings. A stay and an anti-suit injunction are different remedies.

30 Second, the wife's delay and supposed "active steps" in the New York action are of no consequence. The delay in bringing the anti-suit injunction is due in large part to the wife seeking to stay the New York proceedings. I also find that her supposed "active steps" in the New York proceedings do not amount to a submission to the jurisdiction of the New York court, or inconsistent with applying for an anti-suit injunction. On the contrary, her "active steps" were in fact attempts to contest the jurisdiction of the New York courts. Her actions in the staying the New York action are also consistent with her seeking the anti-suit injunction. Both the applications for stay of New York proceedings and an anti-suit injunction are her attempts to restrain the New York action, albeit by different means.

31 Third, the husband does not lose any juridical advantages. The anti-suit injunction granted by the District Judge is an interim one, and does not preclude him from enforcing a separate contractual claim later, after the finalisation of the divorce proceedings. The courts will also ensure that the discovery and interrogatories will not be abused for the purpose of "fishing" for evidence.

32 In light of the above analysis, I uphold the District Court's decision in granting the interim anti-suit injunction. I now deal with RAS 50/2014. This is the husband's appeal for matters relating to the care, custody and control of the child to be transferred to the Illinois courts. The husband's lawyers submit that his appeal should be allowed for the following reasons:

(a) First, the Illinois courts have the closest connection to the child and also have mechanisms to effectively manage child-related matters.

(b) Second, the Illinois courts are best placed to hear matters relating to the care, custody and control of the child in her best interest as the child, her teachers, psychologists and counsellor are located in Illinois.

(c) Third, the wife, in her application to relocate the child to Illinois, has expressly asked the Singapore courts to cede jurisdiction over the child in favour of the Illinois courts.

(d) Fourth, the wife will not suffer prejudice if the transfer is granted.

I reject these arguments.

33 First as mentioned, Singapore, being the jurisdiction hearing the divorce, should hear the ancillary matters, including those involving the child (see above at [22]).

34 Second, proceedings in Singapore are in advanced stages compared to those in Illinois. In fact, there are none in Illinois. The husband (at least until the time I heard the matter on appeal) has not

even commenced proceedings in Illinois. On the other hand, the only matters left for the Singapore court are the ancillary matters, which once heard and decided, will result in final judgment of divorce. Furthermore, allowing the transfer application will result in further delay.

35 Third, the child's best interests can be safeguarded by the Singapore courts. It goes without saying that the child's best interests are of paramount importance. The evidence and information needed for determining the child's best interest can still be provided to the Singapore court. While foreign witnesses (such as the child's teachers, psychologists and counsellor) cannot be compelled to give evidence in Singapore, there is no indication that they will not and have not. The witnesses can testify via video-link.

36 Fourth, the wife, in her application to relocate the child to Illinois, has not expressly asked the Singapore courts to cede jurisdiction over the child in favour of the Illinois courts. On the contrary, the Singapore courts continue to have jurisdiction on matters relating to her custody, access, care and control as the divorce action is commenced in Singapore.

37 Fifth, the wife will suffer prejudice if the transfer is allowed. She will have to incur additional expenses in instructing Illinois solicitors (beside those in New York and Singapore whom she already instructs) and in proceedings in Illinois if the transfer is allowed. Further unnecessary expenses have to be incurred as witnesses have to testify before the Illinois courts because the affidavits filed in the Singapore proceedings cannot be admitted into evidence in the Illinois courts as Illinois law forbids the use of affidavits.

38 I therefore dismissed the husband's appeal for matters relating to the care, custody and control of the child to be transferred to the Illinois courts. The appellant has applied for leave to appeal and essentially the grounds are that there are novel issues in this case that warrant the consideration of the Court of Appeal. I am of the view that facts here do not raise issues of novel law. This is a straightforward factual and practical matter and I am of the view that the respondent should not be compelled to face protracted and multiple litigation. The application for leave to appeal by the appellant husband is therefore dismissed.

39 Costs will follow the event and shall be taxed if not agreed. The parties may, alternatively, apply for costs to be fixed.