

HONG KONG / JUDGMENT

CSF v. KMC

[2019] HKFC 180

COURT

Family Court

DECIDED

18 July 2019

CASE / FILE NUMBER

FCMC3992/2012

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bjbj FCMC 3992 /2012

[2019] HKFC 180 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NUMBER 3992 OF 2012

BETWEEN CSF Petitioner and KMC Respondent and KWC Intervener

Coram : Her Honour Judge Grace Chan in Chambers (not open to public) Date of hearing : 5 and 7
8 December 2017; 12 March & 15 August 2018 Date of respective parties written closing
submission : 28 September 2018 Date of respondent s written closing submission in reply : 10
October 2018 Date of petitioner s written closing submission in reply : 12 October 2018 Date of
judgment : 18 July 2019

JUDGMENT

(Ancillary relief)

The issues The petitioner of this case is the wife, while the respondent is the husband. The
intervener is their adult son, who joined into these proceedings to dispute the beneficial
ownership of various family properties or companies. However, the son does not feature any
more in this trial, as the dispute on the beneficial ownership was later settled pursuant to a
consent order dated 13 February 2014 (to be elaborated in the later part of this judgment). This
case has a long and convoluted history. It commenced more than 7 years ago in 2012. Before
decree nisi was granted, a number of consent orders were already made by the family court on
the sharing and distribution of the assets and properties within the family pot. Upon failed
financial dispute resolution conducted on 25 January 2017, the case was transferred to this court

in March 2017 for ancillary relief trial. Two pre-trial reviews were held, as a result of which the parties were able to file an agreed chronology of facts dated 27 March 2017 and to narrow down the issues which are listed out more particularly in a joint scott schedule dated 8 November 2017. The joint scott schedule sets out 5 major issues to try. Two of the main issues concern the size of the family pot, ie whether a sum of about \$1,852,000 withdrawn by the husband and the net rental income of a shop (Lee Fung Property) in the sum of about \$2,070,000 can be accounted for by him. On the 1st day of trial, both parties, through their counsel, confirmed that they have reached a settlement on these 2 issues, in that the husband agreed to pay the wife a sum of \$1,500,000 to settle these 2 issues, and to continue paying 40% of the net rental income of the Lee Fung Property to the wife. In such circumstances and after reviewing the submission as well as evidence, I am of the view that the remaining and specific issues that call for my determination are as follows: Whether the wife should be paid the outstanding interim maintenance pending suit (Interim MPS) in the sum of \$50,000 per month since 1 September 2012; How to deal with the remaining properties in the matrimonial pot, including a shop (Lee Fung Property) and the husband s share in a flat and a carpark in Wonderland Villas (respectively Flat 29B and Carpark L3)? Whether the wife, upon sharing and distribution of the family assets in equal shares with the husband, should be granted periodical payment in the sum of \$137,810 per month (rounded up to \$138,000 by the wife in her written submission) or in the form of lump sum payment representing 5 years of such periodical payment in the total sum of \$8,268,600 (rounded up to \$8,280,000 by the wife in her written submission) to satisfy her needs? Whether there is non-disclosure of the financial means of the husband and/or the wife, which shall have bearing on the ancillary relief order and/or costs order to be made. In order to understand why this case has taken 7 years to reach the final ancillary relief trial, I shall give a detailed background of the parties and the case history which appear in the following. Background & case history The wife was born in 1950 and is now almost 69 years old. The husband was born in 1944 and is now 75 years old. They were married in 1973. They have 2 children, namely a son (the intervener herein) who is now aged 45, and a daughter who is now 42. It is indisputable that the children are close to the wife, but not to the husband. In March 2012, the wife filed her petition for divorce alleging that the husband had assaulted her, to which he filed an answer and cross petition. The petition was later amended to the ground of 1-year separation, after which decree nisi was made on 24 July 2013, which was made absolute on 11 September 2017. It is a long marriage of about 40 years. The parties started off their marriage life in a humble way. They ran a small shop selling children s clothing and later operated a garment factory in China. In the 1980s, they started to run various amusement game centres through company vehicles, and the profits generated therefrom were used to support the family, including sending their children away to study in Australia at a young age, and for investment into landed properties. Indisputably, during the marriage, the wife assisted the husband in running the family business by keeping books and records, and preparing cheques for him to sign. But the boss of the family business was always the husband, at least until 2012. There was a time in or around early 1990s when she emigrated to Australia with the children. By 1997, she and the children all returned to live in Hong Kong. And since then, she continued to assist in the financial and accounting matters of the game centre business. After his return to Hong Kong, the son also started to work in the family business, mainly for maintaining

and repairing of the game machines. He later became a shareholder and/or a director of some of the companies operating the amusement game centres. At their hey-day, the parties operated 5 amusement game centres at Diamond Hill, Mong Kok, Sham Shui Po, Tsim Sha Tsui and the Lee Fung Property. Further, they owned a total of 8 residential properties, shops and car parking spaces. These properties were/are either registered in the sole name of the husband, or in the joint names of the couple, or in the joint names of the husband and the son, or held through company vehicles. The running costs of the 5 amusement game centres were satisfied by the overdraft facility of \$4,500,000 made available to the husband by his mortgaging 2 flats and 2 carparks at the Wonderland Villas. Since 2000 until 2010 or 2011 the family business generated substantial profit for the family. The total family assets as revealed in the Form Es filed by the parties in 2012 were well over \$75,000,000. As the years gone by, all the amusement game centres run by the family were either sold or ceased operation, save and except the Tai Po Road Game Centre. Since 2011 or so, it generated the major source of income for the family. On the other hand, divergence emerged between the husband and the wife in the later part of their marriage. The husband complained that the wife was too indulged of the son who became over-reliant on the parties and the family business to pay for all his lavish expenses, such as his sports cars and the international school fees of his own children. On the other hand, the wife claimed that the husband was hot-tempered, abusive and had physically assaulted her. Their relationship had a sharp turn in 2012. On 22 March 2012, the wife issued her petition for divorce. On/about 24 March 2012, the son took over the operation of the Tai Po Road Game Centre from the husband. There is dispute between the parties as to the circumstances of this taking over of the running of the Tai Po Road Game Centre. I shall come to that in the later part of this judgment. On 16 August 2012, the wife took out an application for maintenance pending suit (in the sum of \$50,000). On the return day of her summons on 22 August 2012, HH Judge Bruno Chan (as he then was) made an interim order that the husband do pay her \$50,000 per month starting from 1 September 2012 (Interim MPS Order). On 6 September 2012, the husband filed a summons seeking leave to appeal the Interim MPS Order and maintenance pending suit for himself. Despite these applications, it is noted that the family court has never made a formal MPS Order; what has been made is an interim interim order only. As to the husband's application, he subsequently withdrew his summons, after the case was transferred to me, on 28 March 2017. As said, the son joined into these proceedings because there was a dispute on the beneficial ownership of various family assets and properties. The parties and the son were able to settle their dispute by way of 2 major consent orders in 2014. The 1st consent order was made on 13 February 2014 by HH Judge Bruno Chan (as he then was) (13/2/2014 Order), under which the son undertakes to the court that all his interests in the family companies, ie S International Ltd, T Investment Ltd and K International Ltd, would be held in trust by him for his 2 sons (ie the grandsons) as their education fund until they complete full time education, and that any balance of such interests would be transferred to them upon their reaching 25 years of age (Trust Arrangement). The 2nd consent order was made on 4 April 2014 by the learnt judge (4/4/2014 Order), which, among other things, provides for the sharing and distribution of all the family properties and business, including the Tai Po Road Property and the Lee Fung Property which are the two most valuable assets of the family. The 4/4/2014 Order is thus worth going into some details. The 4/4/2014 Order

and thereafter The 4/4/2014 Order broadly provides that: Clause 1 The parties shall share equally their assets (net of their debts and the liabilities including tax liabilities of the amusement game centres); The overdraft liabilities owed to the SC Bank shall be borne by the parties and the son according to the ration of 40%:40%:20% (Ratio) respectively; Clause 2 (relating to the Tai Po Road Property/Game Centre) The Tai Po Road Property shall be sold at market value on/before 20 August 2014; On completion, the net sale proceeds shall be shared among the parties and the son pursuant to the Trust Arrangement and according to the Ratio; Clause 3 (relating to the Lee Fung Property) The Lee Fung Property shall be sold at market price on/before 20 February 2015; During the period when it is put for sale, the net rental income received shall be shared by the parties and the son pursuant to the Trust Arrangement and according to the Ratio; The husband shall have a 1st option to purchase the wife s 40% and the son s 20% (as trustee) shares in K International Ltd, the company holding the Lee Fung Property, or to purchase the Lee Fung Property itself, at market price on/before 20 February 2015; Should the husband give up the 1st option to purchase, the Lee Fung Property shall be sold to 3rd party and the net sale proceeds (after deducting the legal fees and miscellaneous expenses; outstanding mortgage; all outstanding overdraft liabilities owed to Shanghai Commercial Bank; all liabilities owed to various companies holding the amusement game centres business) shall be shared among the parties and the son pursuant to the Trust Arrangement and according to the Ratio; Clause 4 (relating to Flat 19A, Wonderland Villas) The husband may buy out the wife s share in the property by paying of its price; Clause 5 (relating to single joint expert) The parties are to agree on the prices of all of the above properties, failing which a single joint expert shall be engaged to give an opinion on the valuation. Clause 6 If no agreement is reached between the parties on the following issues, the parties shall within 42 days relay the matters to the court for trial: the parties non-disclosure; the unpaid maintenance; the parties net joint assets. Pausing here, I must point out that the 4/4/2014 Order contains various property sale orders, but yet at that time, decree nisi had not been granted. Under section 25 of the Matrimonial Proceedings and Property Ordinance (MPPO), no order under section 6, eg property transfer or sale orders, shall be made unless a decree nisi of divorce has been granted, and no such order made on/after granting a decree nisi shall take effect unless the decree nisi has been made absolute. In such circumstances, the property transfer/sale orders provided in the 4/4/2014 Order should not have taken effect before decree nisi is made absolute. Nevertheless, I am told by the counsel acting for the respective parties that neither the husband nor the wife is going to take issue of this, and are still willing to follow the 4/4/2014 Order. The major stumbling block is that the husband would still wish to exercise the 1st option to buy the Lee Fung Property, while the wife insists that it be sold to a third party. Subsequent to the 4/4/2014 Order, 3 further follow-up orders were made by the court, all dated 9 March 2015, in respect of the sale arrangement of the Lee Fung Property, the Tai Po Road Property and Flat 19A Wonderland Villas. These follow-up orders have already been complied with, save and except those relating to the sale of the Lee Fung Property. Hence, as at this trial, save and except the Lee Fung Property, Flat 29B and Carpark L3, all other properties in the family pot were sold or dealt with. They are set out in the following table for easy reference: Property Registered Owner(s) Remarks Waldorf Garden, Tuen Mun Husband Sold on 17/4/2012 at \$2,360,000. The sale proceeds were used to settle the outstanding tax liabilities of

about \$1,520,000. The net balance was shared between the husband and the wife, each getting about \$400,000. Alpine Garden, Tuen Mun Husband Sold on 30/12/2013 at \$3,350,000 (net to about \$1,760,000). The husband used the net sale proceeds to pay off his debts, tax and mortgage repayment/ penalties. Flat 19A, Wonderland Villas (former matrimonial home) Joint names of husband and wife Pursuant to the 4/4/2014 Order, the husband paid the wife \$4,850,000 on 5/6/2015 to buy out her share in the former matrimonial home. Flat 29B Joint names of husband and son The joint tenancy was severed and has become a tenancy in common, which means that the husband now owns 50% of this property. Carpark L3 Husband The husband continues to hold 100% interest in this car parking space. Car parking space L4, Wonderland Villas Son Pursuant to the consent order of 13/2/2014, the husband and the son agree that this car parking space belongs solely to the son. Tai Po Road Property (where the Tai Po Road Game Centre was operated) JS international Ltd Sold on 30/4/2015 pursuant to the 4/4/2014 Order for \$37,500,000. The net sale proceeds were shared among the parties and the son according to the Ratio. The husband and the wife each received a net sum of \$10,925,056.95. The Lee Fung Property K International Ltd It is partitioned in 4 cubicles for renting out. The rental income is paid into the bank accounts of K International Ltd or OM Ltd, both of which are under the control of the husband. According to the updated valuation report prepared by the single joint expert dated 3 September 2018, its open market value is \$51,000,000. There are 2 major points to note out of the above table. Firstly, the sale proceeds of Tai Po Road Property was applied to redeem all outstanding mortgages and/or settle all outstanding liabilities of the properties/business in the family pot, so that as at the trial, none of the undistributed properties is subject to any mortgage or loans any more. Secondly, pursuant to the 4/4/2014 Order and as at June 2015, the wife has received a total sum of \$15,775,056.95 (\$4,850,000+ \$10,925,056.95) out of the sale of her share in Flat 19A Wonderland Villas and the Tai Po Road Property. On the other hand, the husband has obtained the whole interest of Flat 19A Wonderland Villas and retained a net balance of \$6,075,056.95 (\$10,925,056.95 - \$4,850,000) out of the net sale proceeds of the Tai Po Road Property. Applicable law In considering the distribution of family assets including periodical payment between spouses in ancillary relief matters, the court is required to consider the factors set out in section 7(1) of the MPPO which states,

- (1) It shall be the duty of the court in deciding whether to exercise its powers under section 4, 6 or 6A in relation to a party to the marriage and, if so, in what manner, to have regard to the conduct of the parties and all the circumstances of the case including the following matters, that is to say- the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future; the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future; the standard of living enjoyed by the family before the breakdown of the marriage; the age of each party to the marriage and the duration of the marriage; any physical or mental disability of either of the parties to the marriage; the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family; in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the

marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring. As to how to approach section 7, the Court of Final Appeal has enunciated 4 guiding principles in its landmark judgment of *LKW v DD* [2010] 13 HKCFAR 537, namely (i) objective of fairness, (ii) rejection of sex or role discrimination, (iii) yardstick of equal division, and (iv) rejection of minute retrospective investigation. Further, it has laid down a 5-step approach as follows: to ascertain the financial resources of each of the parties calculated as at the date of the hearing; to assess the financial needs of the parties; to apply the sharing principle to the parties total assets (if surplus assets would remain after the parties needs have been catered for); to consider whether there is/are good reasons for departing from the principle of equal division; to decide the outcome. The family pot The major family assets, whether solely or jointly by the parties or through company vehicles, and how they have been shared or distributed, have been identified in the earlier parts of this judgment, in particularly at [REF _Ref10733375 \r \h] of this judgment. I thus shall not repeat myself here. According to the joint scott schedule, the size of the family pot was originally an issue to try, in that the wife says that there is unexplained withdrawal of money from the husband s bank accounts and the undistributed rental income of the Lee Fung Property. The issues were settled on the 1st day of trial (see [REF _Ref10733063 \r \h] above). Neither the husband nor the wife seeks to argue that there is any other asset in the family pot that requires further sharing or distribution. Hence, the size of the family pot is not a live issue in this trial. Pausing here, I take note that the wife complains about the husband s new and belated disclosure of the bank accounts of OM Ltd and K International Ltd, as well as the Dah Sing VIP account (to be further discussed below). However, it is important for me to point out at this stage that it is not her case that there are additional assets disclosed in these accounts for spousal capital sharing. According to the closing submission of Mr Robin Egerton, counsel for the wife, counsel merely argues that the balances of these accounts show that the husband has the means to pay her all the outstanding Interim MPS (accumulated to \$3,600,000 as at September 2018) and periodical payment for 5 years to be capitalised in a lump sum of \$8,280,000 (totalling \$11,880,000) out of his pocket to satisfy her needs, which now brings me to the specific issue of the wife s claim for the unpaid Interim MPS. The wife s claim for unpaid Interim MPS As a recap, the Interim MPS Order was made on 22 August 2012. Of note is that the family court has never made a formal MPS order. As at the trial, the Interim MPS Order has been made for more than 5 years. Yet, the husband has not paid any Interim MPS to the wife since the making of this order, nor has the wife taken out any enforcement proceedings, such as judgment summons. The husband vehemently disputes the wife s claim for the Interim MPS. It is his case that at the material times, the wife and the son colluded together by the wife s first serving him the petition on/about 22 March 2012 and then followed by the son s assaulting and ousting him from the Tai Po Road Game Centre on/about 24 March 2012. As the husband was in and out of hospital around that time, he was too weak to fight back. Since then, the son took away the operation of the Tai Po Road Game Centre and its generated income from him, leaving him to bear the mortgage/overdraft repayment and tax liabilities. Mr Egerton for the wife submits that since the husband has

withdrawn his application for leave to appeal the Interim MPS Order, the Interim MPS Order stands good. The lack of enforcement by the wife does not mean that she has acquiesced in his non-payment. Quite on the contrary, she has pursued the arrears throughout the proceedings. That is the reason why clause 6 of the 4/4/2014 Order states that the parties may relay the matter of unpaid maintenance to the court for trial. The intention of the 4/4/2014 Order is thus to grant leave to the wife to pursue the arrears of the Interim MPS which can only practically take place at the substantive ancillary relief trial. Counsel concludes that the husband should pay the wife the arrears of \$4,500,000 as at September 2018. In response, Mr Hylas Chung, counsel for the husband, avers that the wife has not overcome the hurdle of section 12 of the MPPO, which, in so far as it is relevant, provides that a person shall not be entitled to enforce any arrears of MPS payment without leave of the court if the arrears have become due for more than 12 months. These stale arrears, Mr Chung says, are not to be enforced unless good reason is demonstrated or special circumstances are shown (See: *Russell v Russell* [1986] 1 FLR 465). Further, counsel submits that the wife does not need the Interim MPS, because after the son ousted the husband from the operation of the Tai Po Road Game Centre on/about 24 March 2012, it is not difficult to infer that she continued to assist and/or control the operation of the same and enjoy the income generated therefrom until its demise by the end of 2014, for which she has failed to account. Mr Chung reminds the court that the wife has money, because she has received the sale proceeds of the Tai Po Road Property and Flat 19A from the husband pursuant to the 4/4/2014 Order. Upon due consideration of all the circumstances of the case, I am unable to accede to the wife's claim for unpaid Interim MPS. There are several major reasons for that and they are these. First, and with the greatest respect to Mr Egerton, it is erroneous to suggest that the outstanding Interim MPS should run until the date of the final ancillary relief trial or until the closing submission. Section 3 of the MPPO provides the duration of a MPS order like this: "... the court may order either party to the marriage to make to the other such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date of presentation of the petition or making of the application and ending on the date of the determination of the suit, as the court thinks reasonable." (emphasis added) Here, decree nisi was made on 24 July 2013, which was made absolute on 11 September 2017. The wife is thus no longer entitled under the law for any further MPS from 11 September 2017. Further, it is pertinent to note there is a wide time gap of more than 4 years between the said 2 decrees. Plainly, there should be any reason why the wife, as the petitioner of this case, could and should have not applied for decree absolute after expiry of 6 weeks from the making of the decree nisi, the failure of which has unnecessarily prolonged the duration of the Interim MPS Order, which in turn is not fair to the husband. Second, there cannot be any dispute that despite that the Interim MPS Order was made on 22 August 2012 and that the husband has never complied with it, the wife has not taken up any enforcement proceedings, such as judgment summons, against him. Her attempted reliance on clause 6 of the 4/4/2014 Order does not bring her case further, for a mere intention but without taking any actual enforcement action is not sufficient to satisfy the requirement of section 12 of the MPPO, which provides,

- (1) A person shall not be entitled to enforce through the court the payment of any arrears due under an order made by virtue of section 3 without leave of the court if those arrears became due more than 12 months before proceedings to enforce the payment of them are begun. (emphasis added) In my view, she should have at least issued a judgment summons within the 12 month s period to protect her right on the enforcement of the Interim MPS Order, but she has failed to do so. It is my further view that it is too far-fetched to submit that by virtue of the said clause 6, requisite leave of the court has already been granted to enforce the said arrears. I accept Mr Chung s submission that the wife has not been able to show any special circumstances that leave should be granted for her to enforce the unpaid Interim MPS due for more than 12 months. Third, it is necessary to consider background in which the Interim MPS Order was made. On 16 August 2012, the wife took out her application for MPS, seeking \$50,000 per month from the husband. In her supporting affirmation of even date, she claimed that she was a housewife entirely and financially dependent on the husband since her retirement in or about 2010. She said that she did not have any current asset and was in an urgent need for MPS from the husband, who was in control of the family assets, but failed to disclose his Form E so far. Her summons was returnable on 22 August 2012 before HH Judge Bruno Chan (as he then was). From the transcript of that hearing, it seems clear to me that the learnt judge was quite dissatisfied with the husband s failure to file his Form E, and when he was told by the wife s legal team that the husband was holding over \$10,000,000 worth of assets, the learnt judge made the Interim MPS Order and fixed the summons for substantive argument. It is thus plain and clear that the Interim MPS Order was not made by the court upon hearing full argument from both sides. More importantly, it needs to be pointed out that the wife had not disclosed the full picture to the learnt judge in her supporting affirmation. She failed to disclose that since about March 2012, the son had taken over the operation of the Tai Po Road Game Centre, and thus deprived the husband of the major source of family income. She claimed in the same affirmation that she was a housewife since 2010 but in actual fact, her imprints could still be found in the cheque stubs of the family companies as late as 2011. When confronted with such cheques stubs showing her handwriting in this trial, she had to confess that she did not retire in 2010; she worked in the family game centre business until she filed the divorce proceedings in 2012. Fourth, the parties next came before the learnt judge on 28 November 2012 supposedly for the substantive argument, by which time the husband had filed his Form E and affirmation. The overall impression that I receive from reading the transcript of the hearing is this. The wife did not expressly object that the rental income of the Lee Fung Property at the material times could barely cover the mortgage repayment, which confirms that the Tai Po Road Game Centre was then the only major source that generated income for the family. Besides, she agreed that the son had taken over the operation of Tai Po Road Game Centre from the husband, which means that latter had not received any income since then. She then openly proposed through her legal team that she shall continue to hold the amusement game centre licence of the Tai Po Road Game Centre but would let the husband continue running its business so that MPS could be paid to her. However, the husband had concern of his health and counter-suggested that the wife/the son should return the said Game Centre to him so

that he could rent it out (together with the amusement game centre licence) at the rate of about \$170,000, and the rental income would then be applied to pay the mortgage/overdraft repayments and other liabilities/expenses of the family business, with the net balance to be shared equally between the parties as their respective daily expenses. The picture thus becomes clear to me. It must be true that during the time when the son operated the Tai Po Road Game Centre from March 2012 until it closed down in 2014, the husband could not have any other possible income source to support the wife, unless and until the same could be rented out for a rental income. On the other hand, due to the very close relationship of the wife and the son, as well as due to the fact that the wife was the appointed licensee of the amusement game centre licence of the Tai Po Road game Centre, it is not moonshining for the husband to suggest that the wife would help out the son in operating of and thus be able to enjoy the fruits of the income of the Tai Po Road Game Centre during the said period of March 2012 to 2014. In my view, she was/is not in an urgent need for financial support from the husband at the material times. It is thus very telling that HH Judge Bruno Chan (as he then was) did not make any formal MPS Order in the argument hearing of 28 November 2012. The learnt judge further commented that the application had to be adjourned due to insufficient information and uncertainty of the parties actual financial situation. Given the above view of mine, whether the husband was forcefully ousted by the son on/about 24 March 2012 or not has become irrelevant, and thus there is no need to make a specific finding on it. Fifth, pursuant to the 4/4/2014 Order, the wife received capital sharing of the family assets, which is more than \$10,000,000, as at June 2015 (see [REF _Ref13594048 \r \h] above), which further reinforces my view that she was/is not in an urgent need for MPS. Due to the matter aforesaid, I conclude that the wife should not be entitled to the unpaid Interim MPS. The husband s financial means and needs In this trial, neither party seeks to argue that the other side has any earning capacity to continue to work. To avoid any doubt, I say that given the advanced age of the parties, namely the wife at 69 and the husband at 75, it is unlikely that they can work any further in the future. Besides, the wife does not challenge the expenses of the husband stated in his Form Es, which are set out below for the records: 1st Form E (2012) Updated Form E (2017) General expenses \$14,700 \$15,000 Personal expenses \$20,000 \$35,000 Total: \$34,700 \$50,000 As to the financial resources of the husband, I have already set out the landed properties/companies owned solely by the husband and/or jointly with the wife and/or the son. The sharing ratio of these assets is already agreed pursuant to previous consent orders, eg the 4/4/2014 Order, and thus I shall not repeat the same here. What need further discussion are the bank accounts held or controlled by the husband, including those bank accounts of the family companies, because the wife raises the argument of non-disclosure of some of these bank accounts. The husband s late or non-disclosure According to the husband s 1st Form E (dated 18 September 2012), he had 16 bank accounts held in his sole name or jointly with the wife. Most of the accounts did not show any substantial or meaningful balances, save and except the following 2 accounts: Current account with SC Bank: \$4,499,911 (debit); Stock account with BOC: \$3,617,120. It is indisputable that the debit balance of the aforementioned SC Bank account related to the overdraft facility used to feed the mortgage repayment of the Tai Po Road Property and the

Lee Fung Property, and the running costs of the game centre(s) before their closure. The husband thus said in his 1st Form E that he has a debit balance in the sum of \$223,770.38 in his bank accounts. By the time his updated Form E was filed in September 2017, the Tai Po Road Property was already sold, the sale proceeds of which were applied to pay off the overdraft facility of the aforesaid SC Bank. The overall balance of the bank accounts was \$492,631.54. During these proceedings, the wife filed at least 4 rounds of questionnaires against the husband, seeking extensive disclosure from him on, among other things, his bank accounts (in particularly his SC Bank accounts), various cash/cheque withdrawals. At the beginning of this trial (as shown in the joint scott schedule), the wife argued that that there was still a total withdrawal of about \$1,800,000 - \$1,900,000 and a total net rental income of the Lee Fung Property of about \$2,070,880 that the husband had not accounted for. But as said earlier in this judgment, the parties finally settled these 2 issues as per set out at [REF _Ref10733063 \r \h] in this judgment. Towards the end of the 3rd day of the trial, the husband was cross examined on the whereabouts of the net balance of the sale proceeds of the Tai Po Road Property in the sum of about \$6,000,000 (see [REF _Ref13594048 \r \h] above) and where the rental income of the Lee Fung Property has kept. It was then revealed that he has kept a Dah Sing Bank VIP account and that the rental income of the Lee Fung Property has been paid into the bank account of OM Ltd and K International Ltd. However, he has not disclosed these bank accounts before in his Form Es. The trial was thus adjourned to 12 March 2018 for him to provide the bank records of these accounts. But since he was already in the witness box, his solicitors could not take instructions from him. As a result, his solicitors did not receive the further bank records until the very morning of 12 March 2018. The trial had to be adjourned again to 15 August 2018. And with the consent offered very fairly by Mr Egerton, Mr Chung and his team were allowed to take instructions from the husband during the adjournment period on these new documents. Mr Egerton points out that the newly disclosed bank accounts and statements shows the following balances: Account As at Balance As at Balance OM Ltd 31/1/2018 \$326,648.02 6/2018 \$834,640.12 K International Ltd 31/1/2018 \$586,020 6/2018 \$807,100 Dah Sing Bank VIP account (husband) 29/3/2018 \$1,008,265.26 (savings) \$12,805,688 (investment) 6/2018 \$410,562.18 (savings) \$11,537,514 (investment) SUB TOTAL: \$14,726,621.28 \$13,589,816.30 SC Bank 1st security account (husband) 7/2018 \$628,831.87 SC Bank 2nd security account (husband) 6/2018 \$1,237,430 TOTAL: \$14,726,621.28 \$15,456,078.17 He submits in his closing submission that the above new disclosure demonstrates that the husband does have the means to satisfy the wife s future capitalized needs of \$8,820,000. Of note is that counsel is not arguing that the wife shall share such balances with the husband. In my judgment, I do not agree that the bank balances of OM Ltd and K International Ltd should be taken as the financial means of the husband to pay any future periodical maintenance to the wife. Such bank balances represent the rental income of the Lee Fung Property, which the parties have settled on the 1st day of the trial, and which the husband has already paid the wife s share pursuant to that settlement. It is beyond argument that the husband has failed to disclose his Dah Sing Bank VIP account in his updated Form E and that the same was disclosed belatedly. The explanation offered by him is that he did not know that he needed to disclose

it, because it is his logic that this account comprises mainly of the sale proceeds of the Tai Po Road Property, the gains he received from stock/funds trading and the loan amount obtained by mortgaging Flat 19A Wonderland Villas, which are all post-separation or post-divorce assets accumulated by him after the distribution of the family assets pursuant to the 4/4/2014 Order. Here, I should remind the husband that Part 2.3 of the statutory Form E requires him to disclose all bank accounts which are held by him solely or jointly for the last 12 months. In such disclosure, Form E does not make any differentiation between pre- or post-separation/divorce assets. His above explanation is thus rejected. Although the husband's belated disclosure of bank accounts is not something which should be encouraged, it does not necessarily follow that any belated disclosure must lead to adverse influence be drawn. Importantly, it is beyond argument that the 4/4/2014 Order provides the sharing and distribution of the family assets, including the most valuable family assets of the Tai Po Road Property and the Lee Fung Property, pursuant to which the husband and the wife each has received their equal share. The husband has made use of his share to invest/trade in stock/funds (which he has made substantial gains) and/or to raise further funds by securing a mortgage of Flat 19A, Wonderland Villas, which in my judgment are post separation accrual relates to a new venture and not built up by the joint efforts with the wife during the span of the partnership. The same logic would apply to the equal share of the family assets that have been obtained by the wife. I reckon that this may explain why she has not suggested to share the bank balances of these newly disclosed bank accounts on the principle of sharing. Rather, she argues on her needs. Further, I have taken a closer look to the bank statements of the Dah Sing Bank VIP account. I notice that there are no meaningful or substantial changes in this account between May 2013 (when it was opened) and April 2015, which was in the region of \$1,000,000 or less. Then came the completion of the sale of the Tai Po Road Property in late April 2015 subsequent of which the balance of the Dah Sing VIP account soared up to about \$15,000,000, comprising mainly of cash and stocks/funds, in May 2015. He later withdrew \$4,850,000 to buy out the wife's share in Flat 19A of Wonderland Villas. Since then, the balance in this account does not show any material or unexplainable changes sufficient to affect the conclusion reached by me which appears in the following: the husband has sufficient assets to cater for his future needs; as at the last date of the trial, the husband had a balance of about \$13,800,000 in his Dah Sing Bank VIP account and SC Bank security accounts. After the trial and pursuant to the partial settlement reached on the 1st day of the trial, he has paid the wife \$1,500,000 to settle the alleged unexplained withdrawal from his other bank accounts, which means that he is left with about \$12,300,000. The wife's request that the husband should pay all outstanding Interim MPS and 5 years of periodical maintenance, in the total sum of about \$11,880,000, would almost exhaust the bank reserves of the husband at his Dah Sing VIP account and SC Bank security accounts. She has not suggested that the husband has other concealed assets. If her request was allowed, the husband would be left with a balance of merely about \$420,000, which needless to say, is far from sufficient to cater for his future needs; assuming that (just assuming) the husband, after his needs are taken into account, had the financial means to pay the wife periodical maintenance, it remains to be considered by this court, in

the overall circumstances of this case that the parties have actually settled the sharing of the family assets pursuant to the 4/4/2014 Order, whether the wife has the financial means to satisfy her own needs. The wife's financial means The wife explains her needs in her 16th affirmation like this:

47. After the sale of the Tai Po Road Property, and the sale of my interest in Matrimonial Home [Flat 19A Wonderland Villas] to the [husband] and the repayment of my liabilities, I have received the remaining sum of around HK\$8,000,000 in or around May 2015.
48. During the marriage, I had lived with the [husband] at the Matrimonial Home, which is about 1,000 square feet with 3 bedrooms, we had one domestic helper. I considered my lifestyle to be better-than-average and relatively luxurious. I now live in [Mei Foo Sun Chuen] with [the daughter] and my mother [name]. I pay for the rent of the said Mei Foo Sun Chuen.
49. Throughout the marriage, the [husband] had been responsible for the financial matters of the game centre business and the family. I am a very traditional woman in that I simply follow the [husband's] instruction and never involved in any decision making. I have been retired since 2010 and I don't see myself to gain any meaningful employment in future. According to her Form E filed in August 2012, she had 10 bank accounts, 6 of which were held jointly with the husband. Her own major account was with Hang Seng Bank, which had a balance of \$202,374. Her MPF in the sum of about \$121,745 was withdrawn by her in October 2010. She claimed that she owed total debts of over \$2,000,000 to her siblings, banks and inland revenue department as follows: CSF (sister) \$1,200,000 CSL (sister) \$300,000 Credit card (HSBC) \$3,148 Credit card (DBS) \$1,480 Inland Revenue Department \$511,300 TOTAL: \$2,015,928 In her updated Form E filed in August 2017, she said that she has moved to a bigger flat in Mei Foo Sun Chuen and was now living with her 91-year-old mother (who is suffering from dementia), the daughter and a maid. She continued to hold 6 bank accounts jointly with the husband. She had 5 bank accounts in her own name, with a total balance at \$1,495,437.50. She had stock worth of \$60,437.50 and held an insurance policy with value of \$172,694. She has borrowed from her mother \$1,500,000, but no longer owed any debts to her 2 sisters, CSF and CSL. Hence, on the face of it, the total assets of the wife (excluding the properties) are thus about \$1,728,569, but she has liabilities of \$1,500,000, which means that her net assets are merely \$228,569. She thus proffers that she needs the husband's periodical payment of \$138,000 per month for 5 years to support her. However, one must not overlook the fact that pursuant to the 4/4/2014 Order, she has received a total sum of \$15,775,056.95 (say \$15,775,000) out of the sale of her share in Flat 19A Wonderland Villas and the Tai Po Road Property as at June 2015 (See [REF _Ref13594048 \r \h] above). However, by the time of her updated Form E of August 2017 (ie within roughly 27 months), she is left with gross assets of \$1,728,569 only. A cursory calculation would show that she has allegedly spent/used \$14,046,431 within these 27 months. More than that, she said in her updated Form E that she has loaned from her mother \$1,500,000, in order to pay for her living expenses during the interim period. Hence, the composite amount that has been allegedly spent/used within these 27 months is thus \$15,546,431 (averaged out to be about

\$575,793 per month). The wife attempted to offer an explanation in the trial by saying that she has spent her money in this way: she has used her own money to repay the debt of \$1,200,000 owed to her sister. Further, she claims that she has borrowed various sums from her siblings and friend, including \$550,000 from the sister who loaned her \$1,200,000, \$600,000 from another sister, \$650,000 from her younger brother and \$600,000 from a friend, to cater for her personal and general expenses before she received the sale proceeds of the Tai Po Road Property in/about March April 2015. All these debts (which added up to \$3,600,000) have now been fully repaid; she has purchased an insurance investment plan worth of \$1,000,000; she has lent \$4,000,000 to the son (who has been unemployed). Taking the wife's case to its highest, ie just assuming that her allegation stated at [REF _Ref11679260 \r \h] were true, the total amount of money involved is about \$8,600,000 only, which means that there is still a sum of about \$6,946,431 (\$15,546,431 - \$8,600,000) that requires explanation, to which the wife offers in her oral evidence that these were spent for her living expenses. Yet, according to her case, she had already borrowed \$5,100,000 (including \$3,600,000 from her various siblings and friend, and \$1,500,000 from her mother) to cover her living expenses since about her application for MPS in August 2012 until her updated Form E of August 2017. That would mean that on her case, she spent over \$12,046,431 (\$6,946,431 + \$5,100,000) over a period of about 61 months for her living expenses, averaged out to be about \$197,482 per month, which in turn does not sit well with her own Form Es stating her monthly expenses at \$50,000 (as at August 2012) or \$137,810 (as at August 2017). Further, in my judgment, I do not believe that the wife has loaned the son \$4,000,000 to cover his living expenses. This is her bare oral assertion only. Of note is that to the husband's allegation that the son sold the amusement game machines of the Tai Po Road Game Centre and pocketed the sale proceeds, the wife responded in her oral evidence that these machines were bought with the son's money. As such, not only that there is no documentary evidence provided by her to show that the son is in need of her financial help, but in fact it is her own evidence that the son is financially capable to purchase amusement game machines with his own resources for the family business. In the totality of all evidence, I come to the only irresistible inference that the wife has parked the said \$4,000,000 with the son so as to create an impression that she does not have sufficient assets, even after the distribution of the sale proceeds of various landed properties within the family pot, to satisfy her needs. Under such circumstances, I conclude that the wife has concealed and/dissipated the sale proceeds of various landed properties. Even if I am to take into account that she has used some of the sale proceeds to support her reasonable living expenses during this interim period up to this trial, I am of the view that she still holds at least \$10,000,000 out of such sale proceeds of the Tai Po Road Property and Flat 19A Wonderland Villas to satisfy her future needs, not to mention that on top of this sum, she is also entitled to 40% of the sale proceeds of the Lee Fung Property pursuant to the 4/4/2014 Order. According to the single joint expert, the market value of the Lee Fung Property is \$51,000,000, which means that she will get about \$20,400,000. She has an additional \$1,500,000 from the husband pursuant to the settlement reached on the 1st day of trial to settle the alleged unexplained withdrawal of money from the bank account(s) controlled by

the husband. She continues to receive her 40% share of the rental income of the Lee Fung Property until the same is sold. The total assets that she will have at her disposal upon the sale of the Lee Fung Property will be at least \$31,900,000 (\$10,000,000 + \$20,400,000 + 1,500,000). The wife's needs I now turn to the wife's expenses and her needs. In her 1st Form E filed in 2012, the wife was then living with the daughter and a maid in a flat of 400-500 sq feet. Her monthly expenses were \$50,000. In her updated Form E filed in 2017, her total monthly expenses have leaped up by 275% to \$137,810. The major explanation offered by her for the drastic increase of expenses is that her mother has been living with her since 2015, because her sister's flat is too small for her mother who has been suffering from dementia. Hence, she has to rent a bigger flat to house her mother and incur additional expenses to buy her mother nutrition food such as nutrition milk powder and bird's nest. She has spent extra on tissue papers because her mother, due to her dementia, often tears off a lot of tissue papers. Her itemised expenses are set out below for easy reference: Items 1st Form E (2012) Updated Form E (2017) General Rent \$15,000 \$37,000 Utilities \$1,500 \$4,500 Food \$5,000 \$25,000 Household expenses \$10,000 Car expenses \$2,500 Domestic helper \$4,000 \$4,310 Other (occupational therapy for mother) \$2,500 Sub-total: \$25,500 \$85,810 Personal Meals out of home \$5,000 \$10,000 Transport \$3,000 \$3,000 Clothing/shoes \$2,000 \$10,000 Personal grooming/ haircuts/cosmetics \$4,500 \$5,000 Entertainment/presents \$1,000 \$2,000 Holiday \$2,000 \$20,000 Medical/dental \$2,000 \$2,000 \$5,000 Sub-total: \$24,500 \$52,000 GRAND TOTAL: \$50,000 \$137,810 Instead of going through each and every item of the above alleged expenses, I propose to take a broad brush approach and give my general observation and/or findings as follows. Firstly, I shall start off by reminding myself that while needs of a spouse should be generously interpreted, it has to be reasonable and is often measured against the benchmark of the living standard during the marriage. According to the oral evidence of the wife, the household expenses during marriage for 4 persons, including the husband, the wife herself, the daughter and the maid amounted to \$45,000 per month only. She also told that during marriage, neither she nor the husband took holidays. This must be true, because the evidence shows that both of them were hardworking and focused on the game centre business which generated much profit to flourish the family over the years so that substantial wealth was able to be accumulated. One can thus conclude that the living standard of the parties during the marriage was of an average middle class level only, never come close to be described as luxurious. As a matter of fact, the wife conceded in her oral evidence that she did not enjoy that magnitude of alleged spending set out in her updated Form E before she received the sale proceeds of the Tai Po Road Property. She also agreed during cross examination that she did not have to live with nor financially support her mother during the marriage. I thus hold the view that the general and personal expenses claimed in her updated Form E are grossly excessive and not commensurate with the living standard during the marriage. Her expenses claimed in her 1st Form E are, however, more commensurate with the living standard during the marriage. Secondly, during her oral evidence, the wife clarifies that the general household expenses stated in her updated Form E cover 5 persons, including herself, the daughter, her maid, her mother and the maid hired by her siblings for her mother. In so far as the daughter is concerned, she is well over 40

years old and working. In my judgment, it defies logic and common sense for the wife to suggest that the daughter, who graduated in Australia and has been working for about 20 years, cannot earn enough for her own meals and thus needs to be supported by the wife without any contribution to the household expenses. It must be right for the husband to argue that neither he nor the wife has any legal obligation to support the daughter anymore. As to the wife's mother, I find it hard to accept, on the balance of probability, that she now has to shoulder all (except the salary of a maid) the expenses of her mother without any contribution from her siblings. Plainly, two of her siblings are medical doctors and one sibling is an officer working at the Labour Department. They have stable and handsome income. They paid for the mother's expenses during the span of the marriage without any contribution from the wife. In my view, it is contrary to logic and common sense that they would pass all the financial responsibilities of supporting the mother to the wife, knowing that the wife was allegedly in such grave financial difficulty that she had to borrow millions of dollars from them in order to keep her head above the water. It is also pertinent to note that the mother has bank reserve kept in bank account(s) held by the siblings, and owns a property in the Soho area of the Central District, Hong Kong. It remains unexplained by the wife as to why she has to dip into her own purse to financially provide for the mother, when the latter has the aforesaid financial assets/means. It is not helpful for her to resort to the convenient excuse that she does not know the details of the bank account(s) of the mother, and whether the Soho property is rented out for an income or not. In such circumstances, I am convicted to say that I do not believe that the wife has to shoulder all the financial responsibilities of the mother. Further, it is my view that it is more likely than not the alleged loan of \$1,500,000 from the mother is the living expenses paid to the wife for the benefit of the mother since the latter started to live with her. Thirdly, my overall impression of the wife's evidence is that she has been paying for some of the expenses of the son, which should not and cannot be counted as her own expenses, eg the petrol expenses of the son's car(s). The car expenses should be discounted as her general expenses. Due to the matters aforesaid and by adopting a broad brush approach to interpret her needs generously, I rule that her total expenses, including general and personal, should be around \$50,000 per month way forward. I have already found that upon the sale of the Lee Fung Property, she will have at least 31,900,000 in her purse. She is now 69 years old. Even if I generously assume that she will live for another 20 years up to 89 years old at the rate of \$50,000 per month to spend on her living expenses, her assets are more than sufficient to satisfy her future needs. She fails to persuade me that a periodical maintenance order for 5 years should be made in her favour. Deciding on the AR order This is a long marriage of over 40 years. Both the husband and the wife are or nearly are in their 70s. Over the years, they worked to build up their family business in the operation of amusement game centres, which provided the seeds for the family to flourish. The family pot, making up of, inter alia, various shops and residential properties, amounted to over \$70,000,000 as at the time of the 4/4/2014 Order. Sadly, their relationship broke down in or about 2012. The wife moved out of the matrimonial home and later filed her petition for divorce in March 2012. A few days later, their adult son took over the operation of the Tai Po Road Game Centre, which profit

formed the major source of the family income, without the consent of the husband (who was coming in and out of hospital due to illness around the same period of time). Since then, their relationship could never be mended. In so far as the ancillary relief matters are concerned, the son joined into these proceedings to dispute the beneficial ownership of some of the family assets. The parties, including the son, later settled their dispute by way of various consent orders, including the 4/4/2014 Order which essentially provides that the husband and the wife shall share the net assets equally, or with the son according to the Ratio stated therein. Through their respective counsel, the parties have confirmed in this trial that they are still agreeable to follow the 4/4/2014 Order, ie to equally share the assets. As a matter of fact, much of the assets and liabilities within the family pot have been distributed or dealt with pursuant to the 4/4/2014 Order and its follow-up orders, save and except 3 properties, namely the Lee Fung Property, Flat 29A and Carpark L3. Apart from these assets and properties, neither the husband nor the wife alleges in this trial that there are any further assets for sharing. The wife, however, asks for periodical payment for 5 years from the husband to satisfy her needs, and for full repayment of unpaid Interim MPS. Given the analysis set out in the above and having considered all the circumstances of the case, I agree that it is fair to equally share the assets between the parties. I am of the view that the sale proceeds of these assets that have been distributed or will be distributed to the parties pursuant to the 4/4/2014 Order are substantial and sufficient to cater for their own future needs. In particular, I conclude that upon the sale and distribution of the sale proceeds of the Lee Fung Property, the wife will possess a total sum of about \$31,900,000 which is more than sufficient to satisfy her reasonable future monthly needs of around \$50,000 per month. Hence, it is my ruling that she does not require any periodical maintenance from the husband. A clean break arrangement between them is appropriate in the circumstances of this case. In the following, I shall address to the remaining properties that are not yet fully transferred or sold pursuant to the 4/4/2014 Order. Flat 29B & Carpark L3 Currently, the husband is still holding 50% of Flat 29B (by way of tenancy in common with the son) and 100% of Carpark L3. Flat 29B is now occupied/used by the son and his family, including the 2 grandchildren of the parties, pursuant to the consent given by the husband under the 13/2/2014 Order. There is no evidence on the user of Carpark L3 before me in this trial. The original open proposal of the husband is to transfer his 25% share in Flat 29B and 50% share in Carpark L3 to the wife. Mr Egerton for the wife takes this offer to mean that he would transfer all his shares in these 2 properties to the wife, and thus she has no problem in accepting this offer. The rationale explained by counsel is this. By virtue of the 4/4/2014 Order which provides that the assets of the parties will be shared equally, the wife has already become an equal beneficial owner of whatever shares that he possesses in Flat 29B and Carpark L3. And by this open proposal to transfer his 50% share in these properties to the wife, which she gladly accepts, she thus becomes the whole owner of all of his shares in these 2 properties. It comes as no surprise that Mr Chung for the husband vehemently disputes this interpretation of the husband's open proposal by Mr Egerton, and bluntly says that it is that interpretation to be taken, he has to formally withdraw this open proposal because it does not accord with the instruction from the husband. Upon due consideration

and with respect to Mr Egerton, I do not accept his submission stated above. If it is the true case of the wife that she has already become an equal beneficial owner with the husband in respect of Flat 29B and Carpark L3 by virtue of the 4/4/2014 Order, it would defy logic for her to suggest in her 16th affirmation (dated 6 October 2017) that the husband shall pay merely her half of the estimated market value of the shares owned by him in these 2 properties. Due to the bad relationship between the wife/son on one hand and the husband on the other hand, I do not think it is advisable to tie them together in the ownership of Flat 29B and Carpark L3. The better way forward is for the husband to transfer all his shares in Flat 29B to the wife who shall pay him 25% of the market price of Flat 29B. The husband shall keep Carpark L3 and pay the wife 50% of its market price. The transfer costs, including the stamp duty, will be shared equally between them. As to when the transfer shall take place, I bear in mind the current stamp duty chargeable to the 2nd property owned by a person, and thus suggest that the transfer be done upon completion of sale of the Lee Fung Property in order to cut down the possible costs payable by the parties. The Lee Fung Property The Lee Fung Property is held in the name of K International Ltd (registered in Hong Kong), which in turn is held by T Investment Ltd (registered in British Virgin Island). The shareholders of T Investment Ltd include the parties and the son. An order to sell the Lee Fung Property by 20 February 2015 is made under clause 3 of the 4/4/2014 Order, with the 1st option to purchase given to the husband (see [REF _Ref10733665 \r \h] above). However, there was dispute between the parties as to the price and practical arrangement of the sale of the Property, which I need not go into depth in this judgment because subsequently, another court order dated 9 March 2015 was made. By that subsequent order, the Lee Fung Property should be sold by private treaty on a first-come-first serve basis at no less than \$30,000,000, failing which by public auction to be arranged by the wife s solicitors, and should any party neglect or refuse to execute the conveyancing documents relating to the sale of the Lee Fung Property, the wife s solicitors be directed to execute it on his behalf. It is clear from the documentary evidence that at some stage both parties made an offer to buy out the other s share in the Lee Fung Property. Again, they were in a deadlock. According to the wife, before the commencement of this trial, there was a ready purchaser who offered \$43,300,000 to purchase the Lee Fung Property. However, the husband refused to sign the conveyancing documents or to produce the company seal of the company holding the Lee Fung Property for the execution of the conveyancing documents, so that her solicitors were unable to sign any conveyancing documents on behalf of the husband. The husband explained that he would like to keep the Lee Fung Property so that it could be passed down to the grandchildren. When asked how he could afford to buy out the shares of the wife and the son (under the Trust Arrangement), he said that he could raise a loan of about \$10,700,000 (based on an estimated market value of about \$43,000,000) from his 5th brother whose financial ability is more than sufficient to help him buying back the Lee Fung Property. Mr Egerton submits on behalf of the wife that the husband cannot on one hand avers that he does not have the ability to pay her any Interim MPS or periodical maintenance, but on the other hand proffers that he is able to raise a substantial loan to buy out her share in the Lee Fung Property. In my view, Mr Egerton has made a forceful argument on this point. I would

myself add that given the husband's advanced age and poor health, his ability to repay the alleged possible loan to his brother is seriously doubted. Besides, the estimated market value of the Lee Fung Property has risen to \$51,000,000. There is no evidence before me as to the alleged financial ability of his brother to loan him more. Further, I actually cast doubt as to the availability of such loan from his brother. When being cross-examined by Mr Egerton as to why there were big sums of money in tens of thousands coming in and out of his Dah Sing Bank VIP account from time to time, the husband explained that he would wish to obtain a loan from his banker to buy back all the interests/shares in the Lee Fung Property. But since he did not have any earnings now, the bank manager advised him to arrange for more in and out transactions in order to create an impression that he would have the ability to borrow and repay a loan. The contradiction is this. If the husband can readily obtain a loan from his brother to buy out the shares of the wife and the son in the Lee Fung Property, there would be no needs for him to make all these transaction arrangements to his Dah Sing Bank VIP account in order to raise another loan from his banker. Upon due consideration, I am of the view that the Lee Fung Property should be sold in open market, failing which it should be sold by public auction. Costs Both the wife and the husband ask for costs in her/his favour. The wife additionally asks that her costs be paid on indemnity basis with certificates for 2 counsel. The fundamental case of the wife on costs relates to the litigation conduct of the husband in suppressing information and material non-disclosure of his financial means. According to her, the husband displays woeful and chronic attitude to disclose his financial documents, such as his Dah Sing Bank VIP account, the bank accounts of OM Ltd and K International Ltd. He deliberately affirms in his updated Form E that his assets are zero but in fact had kept the rental income of the Lee Fung Property all to himself. His conduct before this trial, such as withdrawal of his application for leave to appeal against the Interim MPS Order should also be taken into account. By his closing submission, Mr Chung for the husband vehemently refutes and argues that the wife has done harm to and/or sabotage the matrimonial assets by refusing the husband's suggestion to rent out the Lee Fung Property, which has caused a loss of rental income of \$5,100,000 (\$170,000 x 30 months), or by her deliberate cancellation of the game centre licence held by HP Ltd without the husband's consent. He also accuses the wife of non-disclosure of her insurance investment worth \$1,000,000, of her fictitious allegation about repayment of loans to her dementia mother and various sisters, and of unfathomable exaggeration of her expenditure. I believe that there should be no dispute that the discretion of the court in determining costs in family cases is much wider than that in other civil proceedings. In *HK v BD*, CACV 252 of 2009, date of judgment 15/10/2010, Hartmann JA (as he then was) cited the English case of *Gojkovic v Gojkovic* [1992] Fam 40 and expounded on the legal principles on costs in family matters as follows:

78. In family matters, as in all civil proceedings, the basic principles are that costs are in the discretion of the court but that costs should follow the event except when it appears to the court that, in the circumstances of the case, some other order should be made. In family matters, because of their particular dynamics, the exercise of discretion is broader-based

than in other civil proceedings. However, as was observed by Butler-Sloss LJ in *Gojkovic v Gojkovic* [1992] Fam 40, there still remains the necessity for some starting-point. That starting-point, as we have indicated, is that costs *prima facie* follow the event.

79. On behalf of the wife, the oblique criticism was made that the judge proceeded on the basis of honours even, that seemingly being the essential reason why he came to his determination that both parties should bear their own costs. We do not see that the judge can be criticised in that respect. If costs were to *prima facie* follow the event, it was necessary for the judge to identify who had been successful and who had not.
80. But there were of course many issues which the judge in the present case had to take into account in considering how best to exercise his discretion as to costs. It is a long established principle that, after analysing the case of each party, costs must be judged by way of overall impression. They are not to be assessed by breaking down the litigation into its many component and interlocking parts in order to draw up some kind of profit and loss account (my emphasis added) The applicable legal principles on whether costs on indemnity basis in matrimonial litigation should be awarded are explained by Lam VP (then Lam J) in *ML v LJ* [2008] HKEC 1977:
 19. Mr Yu asked for costs of the ancillary relief proceedings to be paid by the Husband on indemnity basis. Suppressing information, material non-disclosure, litigation misconducts are matters that the court will take into account on the issue of costs. In the context of matrimonial proceedings, as I have explained in *L v C HMC* 5 of 2006, 15 May 2006, material non-disclosure can often have significant impact on costs because the other party inevitably has to incur much costs to seek redress. The Court of Appeal in *L v C* [2007] 3 HKLRD 819 at paras.67-70 also took a serious view on such misconduct and endorsed the following passage from *Rayden & Jackson on Divorce and Family Matters* 18th Edn., para.17.28, Shortcomings in disclosure will be visited by orders for costs against the offending party, often on the indemnity basis.
 20. In the present case, I have found that the Husband had embarked on the concealment of his assets on a massive scale. Assets of substantial worth were put under the names of his nominees to facilitate his scheme of misleading the court. The tactics he deployed to frustrate proceedings in Hong Kong and his subsequent absence from the trial are also relevant conduct for the purpose of costs. As I said in paragraph 68 of my judgment of 23 May 2008, it is my finding that his deliberate absence from the trial was to frustrate the exposure of his non-disclosure.
 21. It is time for the court to take a firm stance to discourage such litigation misconduct. Whilst I recognize indemnity costs should not be ordered unless there are exceptional circumstances, and if it is to be awarded on the ground of unreasonable conduct, the conduct has to be unreasonable to a high degree (see *Liam v MGN Ltd (No 2)* [2002] 1 WLR 2810 at para.12), I am of the view that the Husband's conduct in the present case warrants such an award. In arriving at the costs order in this judgment, I bear in the mind the aforesaid

legal principles as well as take into account all the circumstances of the case, in particularly the following factors. First, of the issues to try that are set out in the joint scott schedule, the husband conceded on 2 issues only on the 1st day of trial and settled with the wife before evidence was called. However, the trial had to proceed on the remaining issues of unpaid Interim MPS and periodical maintenance, of which the wife is the loser. Merely looking at the result of this case, neither of them can be said as an overall winner of the case. Second, the trial had to be prolonged from 3 days to 5 days, due to the late disclosure of the husband of his bank accounts, such as the Dah Sing Bank VIP account. Although I do not accept that adverse influence should be drawn by such late disclosure, it remains true that the lengthening of the trial is caused by the husband, but not the wife. Third, time and time again, family judges cannot stress more on the positive duty on each party of matrimonial litigation to frankly and fully disclose his/her financial means. The starting point of such positive duty must be the statutory Form E. It is the fundamental duty of each party (and thus the fundamental duty of their legal team to so advise their client) to provide all the financial particulars and documents requested in the Form E in a timely manner. To discharge this duty properly, each party (and thus their legal representatives) must exercise diligence and care in collecting and disclosing the requested information in Form E. The legal representatives should not be merely pigeon hole collecting financial documents from their client, but should be more pro-active in overseeing if their client has really fulfilled the basic duty in disclosing all the required documents in the Form E with more skeptical eyes. These core duties on the part of each party and his/her legal representative should in no time be taken lightly or loosely. In this case, it is plain and clear that the husband failed to disclose all the bank accounts held or controlled by him in his updated Form E without an acceptable reason. Had he read the description of Part 2.3 of Form E carefully, he would have no difficulty in realizing that he is required to disclose all his bank accounts, irrespective of whether the same come into being pre- or post- separation/divorce. In saying so, I am very puzzled and concerned that his legal representatives would let the husband claim in his updated Form E that the total value of his interest in all bank accounts and the total value of his stock holdings were both zero, when it is very obvious that subsequent to the sale of the Tai Po Road Property, the husband had received over \$10 million out of the sale proceeds, because the wife's solicitors had sent a letter dated 15 May 2015 to the husband's solicitors setting out a statement of account upon the sale of the Tai Po Road Property. I am also concerned whether specific instruction was taken from the husband as to the whereabouts of the sale proceeds. Had that been done, it is more likely than not that the new accounts revealed by the husband would have already been included in his updated Form E, with the likely result that the 4th and 5th day of trial could have been avoided. Fourth, having said so, however, I refuse to go as far as to make a costs order on indemnity basis. In *ML v LJ* (supra) which is relied on by the wife, the husband there was found to have concealed his assets through nominees in order to mislead the court, which does not happen in our case here. Here, the husband failed to disclose the new accounts before the trial, but upon disclosing them during the trial, I find that these were explainable funds, consisting mainly of the sale proceeds of the Tai Po Road Property and rental income of Lee

Fung Property. Fifth, in previous discovery applications sought by the wife, costs order against the husband were already made, eg the order of 21 September 2017 made by me; Sixth, of the husband's allegation that the wife has unreasonably refused to rent out the Tai Po Road Game Centre which in turn has done harm to the family assets, the wife explained in her 3rd affirmation dated 22 November 2012 like this:

6. I do not think that it is a good idea to lease out the game centre at the present moment. I am the Licensee of the [Tai Po Road Game Centre] and I have to bear all the legal liability if anything illegal happened within the shop. So I will not agree to lease out the game centre to a third party while I remain as the Licensee. I also do not agree that the licence should be transferred to a third party at the present moment as without the licence, [the family company] would not be able to run the game zone business at the Tai Po Road Property anymore. If at the end of the day, the game zone business has to be sold to a third party, the selling price will be significantly enhanced if it is sold together with the licence. My overall impression is that the wife tried hard to distance herself from the Tai Po Road Game Centre since the son took over its operation in 2012. She insisted in her oral evidence that she did not know that the son had seized its operation from the husband, which is in direct contradiction to her 2nd and 3rd affirmations in which she purports to explain why the son took over the business of the Tai Po Road Game Centre from the husband, namely the husband had defaulted in repaying the mortgage repayment of the Tai Po Road Property and the Lee Fung Property for several months. I thus have doubt as to the explanation offered by her in her 3rd affirmation set out in the preceding paragraph. However, since I have refused her claim for unpaid Interim MPS because I accept the husband's suggestion that it was more likely than not that she enjoyed the income of the Tai Po Road Game Centre since the time the son took over its operation from the husband, I would be prone to the danger of double-counting if I accept Mr Chung's submission that she has failed to agree to rent out the Tai Po Game Centre. At the material times, the Game Centre can either be run by the son or be rented out for rental income; it cannot be of both. For all these matters set out above, I shall make a costs order that there be no order as to costs of the ancillary relief proceedings/trial and the wife's MPS summons, including all previous costs reserved, save and except that the husband shall bear the wife's costs of and incidental to the trial of 12 March and 15 August 2018, including all the court documents, affirmations and correspondences immediately after the conclusion of the 3rd day of trial of 8 December 2017, to be taxed if not agreed, on party and party basis. Although this case has a convoluted history, it is not a complex case. I thus certify the attendance of 1 counsel on the wife's side, being Mr Egerton.

Conclusion

Due to the reasons set out in the above, I shall make the following order, which shall be drawn up by the wife's solicitors: The Lee Fung Property shall be sold in open market at not less than \$51,000,000. The formal sale and purchase agreement shall be executed within 3 months from the date of the order and the date of completion shall be within 2 months from the date of the

formal sale and purchase agreement; If a formal sale and purchase agreement cannot be executed within the said time limit, the Lee Fung Property shall be sold by public auction with a reserved price of not less than \$51,000,000. The public auction shall be held within 2 months from the expiry of the said time limit; Both the parties shall execute all the necessary conveyance, contract or documents incidental to the sale of the Lee Fung Property; the party who possess, controls or keeps safe custody of the company seals of K International Ltd and/or T Investment Ltd shall produce the same for the execution of such conveyance, contract or documents; On completion of the sale of the Lee Fung Property, upon deducting all necessary expenses of the sale such as legal costs and agency fees, the net sale proceeds shall be distributed between the parties and the son according to the Ratio stated at clause 3 of the 4/4/2014 Order; During the period when the Lee Fung Property is put for sale in the open market or by public auction (as the case may be), the rental income (net of government rates and rent, management fees, other related expenses arising out of the rental arrangement) shall continue to be shared among the parties and the son according to the Ratio and pursuant to clause 3 of the 4/4/2014 Order; Within 14 days upon the completion of the sale of the Lee Fung Property, the husband shall transfer all his shares/interest in Flat 29B to the wife, at the same time of which the wife shall pay the husband 25% of the market price of Flat 29B. The market price shall be agreed by the parties, failing which a single joint expert be engaged to give a valuation. Each party shall bear their own legal costs of the transfer, save and except that the stamp duty and the single joint expert's fees shall be shared equally; Within 14 days upon the completion of the sale of the Lee Fung Property, the husband shall pay the wife 50% of the market price of Carpark L3. The market price shall be agreed by the parties, failing which a single joint expert be engaged to give a valuation. Each party shall bear their own legal costs of the transfer, save and except that the stamp duty and the single joint expert's fees shall be shared equally; Within 28 days from the date of this judgment, the parties shall equally share and distribute the balances of all bank accounts jointly registered in their names, and thereafter these bank account shall be closed; Subject to the above clauses (1) to (8), each party shall keep the assets now under their respective names; Upon compliance of the above clauses (1) to (8), all other ancillary relief claims between the parties, including the wife's claim for unpaid Interim MPS, do stand dismissed; there be no order as to costs of the ancillary relief proceedings/trial and the wife's MPS summons, including all previous costs reserved, save and except that the husband shall bear the wife's costs of and incidental to the trial of 12 March and 15 August 2018, including all the court documents, affirmations and correspondences immediately after the conclusion of the 3rd day of trial of 8 December 2017, to be taxed if not agreed, on party and party basis and with certificate for 1 counsel; penal notice be endorsed; personal service of this court order be dispensed with; liberty to apply in respect of the implementation of this court order. Last but not the least, I urge the solicitors acting for the respective parties to clearly explain to the husband and the wife of the meaning and effect of a penal notice and/or contempt of court. I thank counsel for their assistance in this matter. Grace Chan District Judge Mr Robin Egerton and Mr Charles HL Kwok instructed by Simon CW Yung & Co for the petitioner (wife) Mr Hylas Chung instructed by Huen & Partners for the respondent (husband) According to the wife's written closing submission dated 28/9/2018, the husband's solicitors sent a cheque of \$1,998,000 to the wife's solicitors on 30/8/2018 to settle the said sum of

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Prepared on 27 October 2026 · Esheria