

HONG KONG / JUDGMENT

CSFK v HWH

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CACV 62/2025, [2026] HKCA 1036 On appeal from

[2022] HKFC 267 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF APPEAL CIVIL APPEAL NO 62 OF 2025 (On appeal from FCMC
15072/2013)

BETWEEN CSFK Petitioner and HWH Respondent

Before: Hon Chu VP and Queeny Au-Yeung J in Court Date of Hearing: 24 April 2026 Date of
Judgment: 6 July 2026

J U D G M E N T

Hon Queeny Au-Yeung J (giving the Judgment of the Court): A. INTRODUCTION 1. The parties drafted a memorandum (the “Memorandum”) during the 1st appointment of the financial dispute resolution (“FDR”) hearing and signed it in the court building shortly after the FDR hearing was adjourned and pursuant to the FDR judge’s urging. By a decision handed down on 19 December 2022 [1] (the “Decision”), HH Judge Simon Lo (the “Judge”) held that the Memorandum was admissible as evidence and ordered that its terms be considered by the Family Court at the trial of ancillary relief. 2. Pursuant to leave granted by the Court of Appeal on 28 January 2025 [2], the petitioner (“W”) lodged an appeal on 10 February 2025. The core issues in this appeal turn on whether FDR privilege applies to the Memorandum. B. THE FACTS 3. The parties were married for over 25 years and have two daughters now aged over 18. W claims that the younger daughter suffers from depression. 4. The divorce proceedings were commenced in 2013. Decree nisi was granted in 2015. At the 1st FDR hearing on 15 March 2017 before Principal Family Judge Bruno Chan (“1st FDR Judge”), the parties engaged in negotiations with a view to settlement. The Memorandum was produced during the 1st FDR hearing but was yet to be signed when it was almost the end of the court sitting hours. As the 1st FDR Judge had another engagement, he urged the parties “to settle everything today within this building, whether inside or outside the courtroom, sign it, and then everyone can leave the court with peace of mind”. The 1st FDR hearing was adjourned at 4:32 pm. Later that day, the parties signed the Memorandum

inside the court building. 5. Five days later, on 20 March 2017, the respondent (“H”) was informed by W’s solicitors that W did not find the terms of the Memorandum acceptable because they made insufficient provision for the children. 6. A 2nd FDR hearing took place on 15 August 2017 before Deputy District Judge J Chow (the “2nd FDR Judge”). Both parties were unrepresented. W sought to back out from the Memorandum while H sought to enforce it. In the end, the 2nd FDR Judge ordered (i) the Memorandum to stand as the parties’ settlement on ancillary relief claims (the “FDR Order”); (ii) the parties to submit a consent summons for approval; and (iii) a 3rd FDR hearing be fixed pending parties’ submission of the consent summons. By a letter dated 22 August 2017, W’s then solicitors requested the 2nd FDR Judge to review the FDR Order before perfecting it because it had not made provision for the medical need of the younger child. [3] Notwithstanding that, the FDR Order was sealed. 7. At the 3rd FDR hearing on 13 February 2018, the 2nd FDR Judge declared that the FDR had failed and directed a pre-trial review (“PTR”) be held on 27 April 2018. 8. With leave granted by the 2nd FDR Judge [4], W appealed the FDR Order [5]. On 8 April 2020, the Court of Appeal (Lam VP, Chu JA and B Chu J) set aside the FDR Order: CSFK v HWH

[2020] 2 HKLRD 586 (the “CA Judgment”). 9. On 16 September 2021, H took out a summons pursuant to rule 6 of the Matrimonial Causes Rules, Cap 179A (“H’s Rule 6 Summons”) seeking several reliefs. At the hearing before the Judge, the only relief sought by H was an order that the terms of the Memorandum be considered at the trial of ancillary relief (the “trial”). 10. By the Decision, the Judge ordered that the terms of the Memorandum be considered by the Family Court at the trial and further made an order nisi that H paid W 50% of the costs of H’s Rule 6 Summons with certificate for one counsel, to be summarily assessed. C. GROUNDS OF APPEAL 11. W advances 5 grounds of appeal:

- (1) The Judge erred in finding that the Memorandum was made outside the course of the FDR when it was in fact made in the course of the FDR and not after the conclusion of the 1st FDR hearing (“Ground 1”);
 - (2) The Judge erred in holding that the Memorandum was not subject to the “without prejudice” rule (“Grounds 2 and 4”);
 - (3) The Judge erred in interpreting the CA Judgment in that whether a settlement agreement reached during a failed FDR is inadmissible is a novel issue before this Court (“Ground 3”); and
 - (4) The Judge erred in finding that W had waived her privilege or confidentiality (“Ground 5”).
12. In opposing the appeal, H relies on the general rules on without prejudice communications (“WP rule”). He submits that W, who was legally represented, chose not to mark the Memorandum “without prejudice”, indicating that she intended its terms to be disclosable to the court, such that those terms would be converted into a court order and enforceable against H. Further, a settlement agreement resulting from without prejudice negotiation is not itself privileged. D. LEGAL PRINCIPLES 13. Before dealing with the grounds of appeal, we would first set out the relevant legal principles relating to the FDR

process and without prejudice negotiations. A proper understanding of their features, underlying rationale and differences will inform on the issues raised in this appeal. D1. The FDR process 14. The FDR hearing is a without prejudice process unique to family proceedings for parties to attempt settlement of disputes over ancillary relief. The parties cannot themselves contract out of it, though they can pre-empt the FDR by embarking upon a “private” FDR. Practice Direction 15.11 (“ PD 15.11 ”) imposes, on both parties, obligations of:

- (1) Full Disclosure: “No offer of proposal...may be excluded from consideration at the FDR hearing by virtue of a claim of privilege” (§8(d));
- (2) Best endeavours to reach agreement on relevant matters in issue between them (§8(f); and
- (3) Mandatory personal attendance at every hearing unless the court otherwise orders (§9). 15. §8(c) of PD 15.11 provides as follows: “8(c). Evidence of anything said or of any admission made in the course of the [FDR] hearing shall not be admissible in evidence in a court, save upon the trial of a person for an offence committed at the hearing. This is a rule on admissibility of evidence. 16. In *AB v MAW*

[2017] 1 HKLRD 385 at §4.7, Cheung JA held that although the FDR procedure in England is underpinned by statute and ours by a Practice Direction, the underlying philosophy is the same, namely, the recognition of privilege and confidentiality. 17. Strict adherence to the rule that the judge presiding over an FDR hearing should not be further involved in processing other contested matters in the same case is necessary to protect the integrity and confidence in the FDR process. The confidentiality of the FDR process is essential so that parties can express themselves before the FDR judge without fear of their statements in such hearing being subsequently taken into account on a substantive determination of the ancillary relief. See CA Judgment at §60; and *AB v MAW* at §§1 and 4.8. 18. There is an absolute bar to the use of anything said or done at the FDR by any party to support his case. See *V v W (Disclosure)*

[2021] 2 FLR 605. 19. Ms Wong [6] for W submits that “FDR is a privileged occasion. The general rule is that nothing said at court before, during, or after the FDR may be referred to in any subsequent proceedings”, quoting from Horton , *Compromise in Family Law: Law and Practice* (2016), §4.18. The footnote to that passage cites the UK Practice Direction 9A – Application for a Financial Remedy , §6.2. We note, however, that PD 9A §6.2 only states that “As a consequence of *Re D (Minors)* (Conciliation: Disclosure of Information)

[1993] Fam 231, evidence of anything said or of any admission made in the course of an FDR appointment will not be admissible in evidence ...” It has not touched upon admissibility of things said after a FDR hearing. 20. An agreement reached between parties in the FDR process does not create a contract enforceable at law, and only becomes binding and enforceable if incorporated into a consent order upon the conclusion of the FDR: PD 15.11, §8(g) . 21. In the CA Judgment (§65), Lam VP (as Lam PJ then was) expressly held, in relation to the Memorandum, that it only had “the status of an agreement between the

parties. Whilst it is possible for a party to ask the court to approve an agreement and convert the same into a court order, in family proceedings, the court is not bound to accept the terms of such agreement as the appropriate ancillary relief. In cases where there are children involved, the court has to examine if sufficient provision has been made for the children. Considerations as discussed in *Edgar v Edgar*

[1980] 1 WLR 1410 and *Xydhias v Xydhias*

[1999] 2 All ER 386 will have to be taken into account: see also *L v C*

[2007] 3 HKLRD 819.” 22. If a party contests the appropriateness of turning an agreement into a court order, it would not be consensual business. In other words, despite agreement previously reached, a party can still argue before a Family Judge that the agreement should not be converted into a court order to resolve the dispute on ancillary relief. In the context of FDR, a FDR judge should not make an order based on an agreement without the continual consent of a party. See CA Judgment at §§66-67. D2. The WP rule 23. The WP rule is likewise a rule governing the admissibility of evidence, which applies to exclude all negotiations genuinely aimed at settlement, whether oral or writing, from being given in evidence. See *Thanki*, *The Law of Privilege* (4 th ed), §7.01. 24. There are two bases for the WP rule, as explained in *Crane World Asia Pte Limited v Hontrade Engineering Limited*

[2016] 3 HKLRD 640 at §16:

(1) “[Without prejudice privilege] is a rule that rests upon public policy: parties should be encouraged so far as possible to settle their disputes without resort to litigation and should not be discouraged by the knowledge that anything that is said in the course of negotiations may be used to their prejudice in the course of the proceedings (per Lord Griffiths in *Rush Tompkins Ltd v Greater Council*

[1989] AC 1280 at p.1299).” Parties should be encouraged to fully and frankly put their cards on the table.

(2) “Another basis for the rule is the express or implied agreement of the parties that communications in the course of their negotiations should not be admissible in evidence if a contested hearing ensues, *Unilever Plc v The Procter & Gamble Co*

[2000] 1 WLR 2436, at pp.2442D and 2448H.” 25. For a claim of privilege to succeed, the party claiming it must establish that the communication in question was made (i) in a bona fide attempt to settle a dispute between the parties, and (ii) with the intention that, if negotiations failed, it could not be disclosed without the consent of the parties: *Re Jinro (HK) International Ltd*

- [2002] 4 HKC 90, § 13, Kwan J (as Kwan VP then was). 26. Application of the WP rule should be firmly based upon a consideration and analysis of the rule's underlying rationale, and should avoid a mechanistic approach. The rule is generous in its application. It recognises that unseen dangers may lurk behind things said or written during this period, and it removes the inhibiting effect that this may have in the interests of promoting attempts to achieve a settlement. See *Muller v Linsley & Mortimer*
- [1996] P.N.L.R. 74, 77A, Hoffmann L.J; *Oceanbulk Shipping & Trading SA v TMT Asia Ltd*
- [2011] 1 AC 662, §28, citing Lord Hope in *Ofulue v Bossert*
- [2009] AC 990, §12. 27. The test for whether a communication attracts WP protection is assessed objectively and by reference to substance, not form. The mere heading of a letter "without prejudice" is not in the least decisive as to whether or not the letter is in fact privileged. The privilege exists in order to encourage bona fide attempts to negotiate a settlement of an action and if the letter is not written to initiate or continue such a bona fide attempt to effect a settlement it will not be protected by privilege. But, conversely, if it is written in the course of such a bona fide attempt, it will be covered by privilege, and the absence of any heading or reference in the letter to show it is written without prejudice will not be fatal. A communication forming part of a continuing sequence of negotiations remains privileged. See *Dixons Stores Group Ltd v Thames Television plc*
- [1993] 1 All ER 349 at 351C-D and F-G. 28. However, that is not to say that the presence or absence of the without prejudice label will be irrelevant. The addition of the without prejudice label shows that the offer of compromise is intended to be without prejudice and gives rise to a rebuttable presumption that the document was intended to be a negotiating document. Conversely, the lack of the without prejudice label has in some cases be seen as significant. See *Best Buy Co Inc v Worldwide Sales Corporation Espana SL*
- [2011] EWCA Civ 618, §§39-40. 29. The protection of without prejudice privilege is not confined to admissions. Whilst the protection of admissions against interest is the most important practical effect of the rule, to dissect out identifiable admissions and withhold protection from the rest of the without prejudice communications would not only create huge practical difficulties but would be contrary to the underlying objective of giving protection to the parties. Parties cannot speak freely at a without prejudice meeting if they must constantly monitor every sentence, with lawyers or patent agents sitting at their shoulders as minders. See *Unilever Plc v Procter & Gamble Co* , at 2448H to 2449 C, cited in *Crane World Asia Pte Limited*, §16(f). 30. A settlement agreement resulting from without prejudice negotiation is not itself covered by privilege because it is not a document prepared, or a communication made between persons in dispute, in connection with an attempt to negotiate a settlement of the dispute, but rather one made by parties who are no longer in dispute, but who have, in fact, arrived at an agreement; and the purpose of the communication or document is not to negotiate, but to conclude the settlement of the dispute. See *Wingecarribee Shire Council v Lehman Brothers Australia Ltd*

[2011] FCA 350, §§17-18 (in the context of s. 131(1) of the Evidence Act 1995 (Cth)); and BGC Brokers LP v Tradition (UK) Limited

[2019] EWCA Civ 1937, §18. 31. The settlement agreement can be proved and put in evidence: Biala Pty Ltd v. Mallina Holdings Ltd

[1990] WAR 174, 180; followed in Wingecarribee, §§16-20. D3. Differences between the FDR process and the WP rule 32. It can readily be seen from the above discussions that there are fundamental differences between the FDR process and the WP rule even though they both set out to encourage negotiations and settlement.

- (1) The FDR process is a creature of Practice Direction, governed by unique principles for disputes in ancillary relief. The confidentiality requirement is derived from the forum itself, with compulsory obligations on the parties. There is no need to use or resort to the WP label in the FDR process. All these are in marked contrast to the common law principles governing WP negotiations that apply to civil cases generally, where the Jinro principles and WP labels are relevant.
- (2) For the FDR process, the confidentiality over, and the privilege against disclosure of, things said or happened during the FDR is an absolute bar unless the exception in §8(c) of PD15.11 applies. Under the WP rule, the without prejudice privilege ceases with the settlement agreement. The court may embark on a finding as to whether or not a settlement has been reached.
- (3) Parties engaged in the FDR process are under compulsory obligations of full disclosure, best endeavours to reach settlement and personal attendance at every hearing, whereas the WP rule imposes no such obligations on parties engaging in without prejudice communications.
- (4) For a settlement reached during FDR, the court's approval is required before the terms can become final and enforceable, whereas under the WP rule the court's approval is not required for the settlement agreement to take effect. 33. Accordingly, care must be taken not to conflate the two regimes. The reference by Mr Ken Chan [7] for H to authorities where a party resiled from a compromise agreement (Xydhias, supra), post-nuptial agreement (Edgar, supra), nuptial agreement (LQ v. SF

[2025] HKFLR 371) and pre-nuptial agreement (Crossley v. Crossley

[2008] 1 FLR 1467), does not assist H as they are agreements not made within the FDR regime. 34. With the above principles in mind, we turn to the grounds of appeal. E. GROUND 1 – WHETHER THE MEMORANDUM WAS MADE “IN THE COURSE OF” THE FDR 35. The Judge held that the Memorandum only came into being after the conclusion of the 1 st FDR hearing; it was not evidence of anything said or of any admission made in the course of the hearing as protected by §8 of PD15.11; and the wording of §8(c) of PD15.11 does not cover the time between hearings as it is not “in the course of” the FDR hearing. See Decision, §16. 36. In supporting the Judge's holdings, H submits that the 1 st FDR Judge was actively involved in the negotiation during the 1 st FDR hearing but not after its

“conclusion” at 4:23 pm. Eventually, the Memorandum was signed without any involvement of the FDR Judge. It is also argued that if W’s arguments under this ground were correct, then anything said or any admission made between FDR hearings would be inadmissible, regardless of how long the interval was, and that on W’s case, the FDR would have spanned some 11 months from 15 March 2017 to 13 February 2018. 37. We do not agree. The draft Memorandum came into being during the 1 st FDR hearing. The 1 st FDR Judge expressly ordered that the FDR be adjourned , as he was empowered to under §8(g) of PD15.11. He expected a consent summons would be filed to seek the Court’s approval of any settlement reached. Plainly, his order was not intended to end the FDR there and then; instead, it was to extend the protective environment of the FDR, at least for that day. 38. H’s complaint that this would mean anything said or admission made between FDR hearings would be inadmissible, regardless of how long the interval was, is more theoretical than real in the circumstances of this case. The time interval between the order of adjournment and the agreement reached on the Memorandum was only a matter of hours; they took place in the same afternoon and the parties remained in the court building. No material change (such as fresh discovery) had occurred to alter the nature of the negotiation during that interval. To draw a line at 4:32 pm as ending the FDR is to apply a mechanistic approach that the authorities have warned against, defeat the policy behind FDR, and is clearly contrary to the intention of the 1 st FDR Judge’s order. 39. Further, to say that the negotiations did not take place in the course of a FDR just because the 1 st FDR Judge was not around in the few hours after the adjournment also reflects a mechanistic approach. Among other things, it is not uncommon for a FDR hearing to be stood down for parties to discuss the terms of settlement outside the court room, during breaks or lunch hour, without the physical presence of a FDR judge. 40. Looking at the circumstances of the case, the 1 st FDR Judge was not a passive bystander, but had guided the parties throughout the negotiation until the time he had to leave the court building . For all intent and purposes, the parties were continuing the negotiation at his behest. The safe harbour of the FDR process should not abandon them the moment the 1 st FDR Judge stepped out of the court room. 41. In the premises, the Judge erred in law in holding that the Memorandum was not made “in the course of” the FDR. His holding has the consequence of catching the unwary, who, when the FDR judge stepped out of the court room each time, failed to use without prejudice labels, failed to monitor each sentence they use, or to distinguish admissions from other materials (see §29 above). 42. We also disagree with Mr Ken Chen’s approach which seeks to distinguish between those parts of the Memorandum discussed during the 1 st FDR Judge’s presence in the court building and the handwritten parts in Clauses 9 and 10 that were agreed in his absence. The negotiation was a process that commenced in the morning and continued to the late afternoon. The added terms could represent admissions against a party’s interest, whereas the deletions could show that a party had refused to accept those terms. In our view, the Judge fell into error in holding that the Memorandum was not evidence of anything said or of any admission made in the course of the hearings. 43. Having regard to the above analyses, Ground 1 is established. This is sufficient to allow this appeal. F.

GROUNDS 2 and 4 44. The reasons, in gist, of the Judge's ruling was that (i) the Memorandum only came into being after the conclusion of the 1 st FDR hearing and therefore was not evidence of anything said or admission made in the course of a FDR hearing as protected by §8 of PD 15.11 [8] ; and (ii) a settlement/agreement resulting from without prejudice negotiation is not itself "a [WP] document and so is potentially disclosable". 45. Our reasons given under Ground 1 are equally applicable to Grounds 2 and 4. The Judge had conflated the principles that govern the FDR process and the WP rule. 46. The confidentiality of the FDR process is absolute. Even under the WP rule, given that the draft Memorandum came into being during the FDR process, the absence of the "without prejudice" label on the Memorandum or its draft is irrelevant. It is also not necessary to establish the second limb of the requirements in *Re Jinro (HK) International Ltd*, supra. 47. W resiled from the Memorandum five days after it was signed, before the parties had an opportunity to see a FDR Judge again. Applying *CSFK v HWH*, by the time the parties went before the 2 nd FDR Judge or the Judge, there was no continual consent from W which would have enabled the court to make a consent order on the Memorandum. 48. Mr Ken Chan submits that the Memorandum "evidenced" a settlement agreement; the fact that W resiled from it five days later does not change the nature of the document; and even if the Memorandum cannot be converted into a consent order the court can still consider it at the trial. 49. We do not agree. §8(c) of PD15.11 is a rule on admissibility of evidence. One has to remember that the Memorandum did not purport to agree ancillary reliefs in part, leaving specific issues for trial. The Memorandum purported to be a full agreement which W later resiled from for reasons relating to the children. If the Court could not convert the Memorandum into an enforceable consent order, there was no reason why the Memorandum could be admitted as evidence at the trial. 50. In our view, the Judge erred in not applying the absolute bar against disclosure in §8(c) of PD15.11 to the Memorandum. Grounds 2 to 4 are established. G. GROUND 3: ADMISSIBILITY REMAINED A LIVE ISSUE 51. In §76 of the CA Judgment, Lam VP held that: " As explained above , whether the memorandum should be converted into a court order is a substantive issue which the trial judge presiding over the ancillary relief trial will have to grapple with. It is not for the Judge sitting as the FDR judge to make any order to pre-empt the same." (underline added) The Judge held that his hands were tied by §76 such that the Memorandum must be admissible at the trial (Decision, §23). 52. With respect, the Judge had misunderstood §76 of the CA Judgment. The core issue in the CA judgment was whether the 2 nd FPR Judge could legitimately make the FPR Order and it was held that she could not (at §79). In §§75 to 78, the Court of Appeal was dealing with H's submission that the FDR Order should be regarded as a direction to guide the future course of proceedings in the ancillary relief application. The Court rejected the submission and pointed out (in §75) that directions for future conduct should only be given when it is clear that no consent order would be made in the FDR. The Court went on (in §76) to explain that directions for future conduct that a FDR judge could legitimately give should confine to procedural directions and should not encompass a determination of substantive issues. Relevantly, §76 was prefaced by "[a]s explained above", and should

be read together with:

- (1) §61, which held that a FDR judge should not make an order which may impinge or pre-empt any issues that may have to be determined by the judge hearing the trial; and
- (2) §71, which reiterated that it was not the business of a FDR judge to determine the issue (raised by W) as to whether sufficient provision had been made for the maintenance of the children. 53. Properly understood, §76 was directed at the issue of whether there was sufficient provision for the children (raised by W), which had prevented the Memorandum from being converted into a consent order. The Court reiterated that this was a substantive issue to be determined at the trial and a FPR judge should not make any order pre-empting the issue. As accepted by H, §76 did not deal with the issue of the admissibility of the Memorandum at the trial, which is the issue now before this Court. The CA Judgment did not decide, and should not be read as deciding, that the Memorandum was admissible at the trial 54. Accordingly, the Judge's view that his hands were tied by §76 of the CA Judgment cannot be supported. Ground 3 is established. H. GROUND 5: WAIVER OF PRIVILEGE 55. The Judge found that W had waived her privilege because she had made open reference to the Memorandum at many non-FDR hearings and the 1 st PTR hearing on 14 May 2021, as well as in the letter dated 9 September 2021, which was four months after the hearing [9] . This is problematic for a number of reasons. 56. Firstly, the Judge was mistaken on the facts because, there is no dispute that W had at the PTR asserted FDR privilege through her counsel's Hearing Note and her List of Disputed Issues, both dated 11 May 2021. That she did not separately assert WP privilege is irrelevant given that the restriction against disclosure under PD 15.11 is absolute and wider than that under the WP rule. 57. Secondly, the other non-FDR hearing during which W referred to the Memorandum was one in which she sought to set aside the Memorandum and the FDR Order. It would be self-defeating if W could not refer to the Memorandum when she sought to have the FDR Order set aside. It would also seem that the Judge had overlooked the CA Judgment, which had rejected the notion that merely alluding to the Memorandum at a contested hearing constituted a waiver (at §78). 58. Thirdly, W's then solicitors did refer to the contents of the Memorandum in the letter to the Family Court dated 22 August 2017 [10] . However, that letter expressly referred to the 2 nd FDR held on 15 August 2017, and requested the court not to perfect the order (if any) as W had a number of challenges to the Memorandum, including the lack of provision for the maintenance of the children. The letter can hardly amount to a waiver. 59. Ground 5 is established. I. CONCLUSION AND COSTS 60. For the above reasons, the appeal is allowed. We set aside paragraphs 2 to 4 of the Judge's order dated 19 December 2022. We order that paragraph 2 of H's Rule 6 Summons be dismissed and direct that the Memorandum shall not be admissible at the trial. 61. Costs should follow the event. We make an order nisi that H pays W the costs of (i) H's Rule 6 Summons and W's application for leave to appeal in the Court below with certificate for one counsel; and (ii) CAMP 105/2024 and this appeal with certificates for two counsel. 62. For the purpose of summary assessment of costs, we direct that: (1) W shall lodge and serve her statement of costs within 14 days after the costs order is made absolute; and (2) H shall within 14 days thereafter lodge and serve his statement of

opposition. We will assess the costs on the papers. J. Postscript 63. Before leaving this judgment, we wish to point out that the parties' dispute over ancillary relief has taken a long and convoluted route with multiple satellite proceedings along the way, most of which stemmed from the Memorandum [11]. It has been more than a decade since the divorce proceedings were commenced in 2013 and the decree nisi was made in 2015, and their children have in the meantime entered adulthood. An early and less costly resolution of their ancillary relief dispute will be in the parties' best interest. We would urge the parties to approach their dispute with pragmatism, a sense of reasonable proportion and procedural economy, and in particular to give serious consideration to resolving the dispute amicably. If the matter must proceed to trial, the case should be set down for trial as soon as possible. (Carlye Chu) (Queeny Au-Yeung) Vice President Judge of the Court of First Instance Ms Athena Wong, Mr Emmanuel Benami and Mr Jason PH Wong, instructed by T. K. Tsui & Co, for the Petitioner (Appellant). Mr Ken Chan and Mr Harry Chan, instructed by Ng & Co., for the Respondent up to 5 July 2026. The Respondent, unrepresented, acted in person as from 6 July 2026. [1]

- [2022] HKFC 267 . §§19 and 20 in the decision uploaded to the Judiciary website did not appear in the version of the decision handed down and given to the parties: see §§3 and 4 of the Judge's judgment refusing leave to appeal dated 31 May 2024
- [2024] HKFC 112 . Nothing turns on this in this appeal. References in this judgment to paragraphs in the Decision refer to those in the uploaded version. [2] CAMP 105/2024. W's application to the Judge for leave to appeal the Decision out of time was dismissed on 31 May 2024:
- [2024] HKFC 112 . [3] In reply, the 2 nd FDR Judge directed on 30 August 2017 that W's solicitors should issue an inter partes summons to fix a hearing for the request. Subsequently on 16 November 2017, W issued a summons to set aside the FDR Order and the Memorandum. The summons was dismissed by another Family Judge on 27 April 2018 for want of jurisdiction. W then commenced HCA 1686/2018 to set aside the Memorandum, which was struck out, upon H's application, on 17 April 2019 on the ground that the FDR Order was not a consent order and W should have challenged it by way of appeal. [4] H's application to the Judge to set aside the leave was dismissed by the 2 nd FDR Judge. H's renewed application was dismissed by the Court of Appeal. [5] CACV 318/2019. [6] Together with Mr Benami and Mr Jason Wong [7] Together with Mr Harry Chan [8] (Decision, §§16 and 18). [9] The letter dated 9 September 2021 was not included in the Appeal Bundles. On H's case, the letter was the first time that W stated that the Memorandum was privileged. [10] See §6 above. [11] See for example, the proceedings mentioned in footnotes 3 and 4 above.

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Prepared on 26 October 2026 · Esheria