

HONG KONG / JUDGMENT

WSSA v. SYH**[2023] HKFC 125****COURT**

Family Court

DECIDED

30 June 2023

CASE / FILE NUMBER

FCMC4633/2020

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FCMC 4633 / 2020

**[2023] HKFC 125 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NO. 4633 OF 2020**

BETWEEN WSSA Petitioner and SYH Respondent

Coram: His Honour Judge G. Own in Chambers Date of Hearing : 23 August 2022 Date of
Decision : 30 June 2023**D E C I S I O N (Recusal)**

This Application 1. This is the trial of an application taken out by the Respondent Husband (“H”) by way of summons dated 30/12/2021 (filed on 3/1/2022) seeking :- “1. His Honour Judge George Own shall recuse himself from participation in these proceedings under FCMC 4633/2020 including any further hearings (“Recusal Application”); 2. All further hearings under FCMC 4633/2020 be vacated, adjourned and re-fixed until after the determination of the Recusal Application; and 3. There be no order as to costs of this application.” 2. I will refer to this as “H’s Recusal Summons” in this Decision. 3. H filed his 17th Affidavit in Support of the application. W filed her 15th Affidavit in Opposition. H then filed his 20th Affidavit in Reply.

Background

- Parties married with each other in 2007. There are 2 children of the family, namely, a boy born in 2009 and a girl born in 2012. Parties separated in 2017. A 9-page Mediated Agreement was signed by the parties in February 2018 in the presence of a lawyer of Messrs.

Withers, the legal team now representing H in these proceedings. 5. Parties marriage was dissolved by a Decree Nisi granted in June 2021. Parties are persistently in high conflict momenta over children's matter which ended up with a number of interlocutory application(s) taken out over the past years. 6. Parties' acrimony can be reflected by the interlocutory reliefs sought in these proceedings such as ouster order; injunctive reliefs; non-molestation orders; committal proceedings and that most of them had yet to be disposed of after determination of this Recusal Application. 7. It may be worth to mention that throughout these proceedings, the legal teams for the parties had engaged in protracted and lengthy correspondence exchange over different areas most of which would still have to end up with filing application(s) with the Court. Undesirably, parties' legal teams (both of which are reputable law firms specialized in matrimonial practice) chose to send over most, if not all, of their letters exchanged to this Court for no meaningful purpose except to increase costs and elevate acrimony between the parties. 8. Worst still, there are also numerous letters from the legal teams on both sides directly sent over to this Court and copied to the other party either complaining upon other party's litigation conduct or seeking directions from the Court over different matters stated in their letters. 9. That said, this Court was "bombarded" with no less than 15 letters, most of which are also lengthy and with enclosures, within a month. Such conduct must be deplored and would not be accepted or condoned. The law on bias 10. In the unreported case of *Chau Siu Woon & anor v Cheung Shek Kong & Ors*, CACV No.164 of 2007 (date of decision : 19/4/2010), Hon Cheung JA gave useful information on the law of bias :- "Bias 8. Traditionally the recusal of a judge is pursued under the ambit of bias. The absence of bias is, after all, an aspect and illustration of the fair hearing requirement. If bias is established then clearly the fair hearing provision is engaged. Actual bias 9. Bias may be in the form of actual bias or apparent bias. Actual bias means the decision maker was influenced by either partiality or prejudice and it has been demonstrated that he was actually prejudiced; actual bias is a conclusive vitiating factor : see Fordham in *Judicial Review Handbook* 5th Ed, Para 61.2.1. In *In re Medicaments and Related Classes of Goods (No.2)* [2001] 1 WLR 700, Lord Phillips MR (as he then was) stated : '[38] The phrase "actual bias" has not been used with great precision and has been applied to the situation (1) where a judge has been influenced by partiality or prejudice in reaching his decision and (2) where it has been demonstrated that a judge is actually prejudiced in favour of or against a party.' 10. But as Fordham explained at Para 61.2, the shortage of relevant cases on actual bias reflects the fact that actual bias is rare, difficult to prove and largely redundant given the other grounds of bad faith, improper motive and apparent bias. As Lord Bingham in *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451 at 471 observed. '[3] The proof of actual bias is very difficult, because the law does not countenance the questioning of a judge about extraneous influences affecting his mind, and the policy of the common law is to protect litigants who can discharge the less burden of showing a real danger of bias without requiring them to show that such bias actually exists' The reference to 'a real danger of bias' by Lord Bingham is, of course, a reference to apparent bias. 11. Nonetheless Mr. Wong had boldly taken on the task of saying that the Master was guilty of actual bias. He relied on the hostility and partiality of the Master

against the 1st plaintiff. These are also the grounds for his case on apparent bias. Apparent bias 12. The relevant test for apparent bias has been reviewed by the Court of Final Appeal in *Deacons v White & Case Ltd Liability Partnership & Others* (2003) 6 HKCFAR 322 which took into account the development of the English law in this area in cases such as *Director General of 'Fair Trading' v Proprietary Association of Great Britain* [2001] 1 WLR 700 and *Porter v Magill* [2001] UKHL 67. The test can be stated as follows : The Court must first ascertain all the circumstances which have a bearing on the suggestion that the Judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the tribunal was biased. Fair-minded observer 13. Further as observed by the House of Lords in *Helow v Secretary of State for the Home Department* and another [2008] 1 WLR 2416, per Lord Hope of Craighead at 2418, '2. The observer who is fair-minded is the sort of person who always reserves judgment on every point until she has seen and fully understood both sides of the argument. She is not unduly sensitive or suspicious, as Kirby J observed in *Johnson v Johnson* (2000) 201 CLR 488,509, para 53. Her approach must not be confused with that of the person who has brought the complaint. The "real possibility" test ensures that there is this measure of detachment. The assumptions that the complainer makes are not to be attributed to their observer unless they can be justified objectively. But she is not complacent either. She knows that fairness requires that a judge must be, and must be seen to be, unbiased. She knows that judges, like anybody else, have their weaknesses. She will not shrink from the conclusion, if it can be justified objectively, that things that they have said or done or associations that they have formed may make it difficult for them to judge the case before them impartially.' 11. Senior Counsel for both parties referred me to some other cases and authorities in their Written Submissions. I do not intend to go through each of them unless they are of relevance and importance. H's grounds in support of the "Recusal Summons" 12. H referred to several matters that had arisen, including orders made by me, in respect of which if one considered them individually or collectively, would suggest to any objective bystander to conclude that there was a real possibility that I was biased against him. 13. In H's Counsel Miss Anita Yip, SC's Written Submissions, those matters were categorized under 7 headings from D1 to D7. In addition, reference was made to my decision to vacate the hearing on 15/11/2021 scheduled to hear H's Committal Summons and also my directions granted on paper on 9/12/2021. 14. I recite below each of the Grounds of complaint put forward by H, using his numbering from D1 to D7 :- "D1 - the Order dated 29 July 2021; D2 - the Court's dismissive attitude and unwarranted criticism towards H's attempt to very access as shown in the letter dated 18 August 2021; D3 - The Court's order to vacate the Trial without parties' input; D4 - The Court's unwarranted criticisms towards H at the hearing on 7.9.2021; D5 - The Court's unwarranted imposition of leave requirement against H in light of H's intended Holiday Summons; D6 - The Court's unwarranted criticisms against H in light of H's intended Holiday Summons; D7 - The Court (indirect) pre-mature dismissal of H's Intended Summons by using its case management power. 15. Since H had not specifically stated that he was complaining me of actual bias against him, I would approach his recusal application from the apparent bias perspective. 16. W's Senior Counsel filed her Written

Submissions (38 pages with 52 paragraphs) in response to H's Senior Counsel's Submissions (35 pages with 143 paragraphs). The test for apparent bias 17. On the topic of apparent bias, I will start with the cardinal and often cited case of *Deacons v White & Carter (Councils) Ltd Liability Partnership & Ors* [2004] 1 HKLRD 291 where the Appeal Committee of the Court of Final Appeal formulated the test applicable in England and Wales said :- "The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal was biased." 18. In the later case of *Falcon Private Bank Ltd v Borry Bernard Edouard Charles Ltd & Anor* [2014] 17 HKCFAR 281 (Date of Decision : 13 May 2014) where Mr Justice Ribeiro PJ giving the judgment of the Appeal Committee said :- "38. Judges must be wary of unjustified applications for their recusal motivated by tactical or forum-shopping considerations. By its very nature, it is generally in quite exceptional cases that recusal is called for. As Kwan JA noted, Judges can generally be expected to exercise proper judicial standards even after they have found it necessary to criticise wayward legal representatives. Judges should accordingly feel confident of appellate support if they continue with the case where there are no reasonable grounds for apprehending a risk of bias. On the other hand, if there is a real possibility that a risk of bias might objectively be apprehended, this should be recognized and they should prudently arrange for a colleague take over the proceedings. To press on with hearing the matter in such cases poses a risk of costs being thrown away if, on appeal, it is held (as in the present case) that the judge should not have continued to hear the case. Even if there is a suspicion that forum shopping motivates an application, the fact and appearance of judicial impartiality must have priority and the prudent course should be followed where a real risk of apprehended bias exists." 19. In the same case of *Falcon* [2014] 3 HKLRD 375, where the Court of Appeal (Date of Judgment : 10 September 2013), per Hon Kwan JA, elaborated the test for apparent bias and said :- "51. As the Constitutional Court of South Africa had observed in *President of the Republic of South Africa v South Africa Rugby Football Union*, 1999 (4) S.A. 147 at 177, the question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not brought or will not bring an impartial mind to bear on the adjudication of the case, that is, a mind open to persuasion by the evidence and the submissions of counsel. (Emphasis added) 52. Regarding the notional "fair-minded observer", this court in *Chau Siu Woon* at paras 13 and 42 had adopted and applied the following dicta: "The observer who is fair-minded is the sort of person who always reserves judgment on every point until she has seen and fully understood both sides of the argument. She is not unduly sensitive or suspicious, as Kirby J observed in *Johnson v Johnson* (2000) 201 CLR 488, 509, para 53. Her approach must not be confused with that of the person who has brought the complaint. The "real possibility" test ensures that there is this measure of detachment. The assumptions that the complainant makes are not to be attributed to the observer unless they can be justified objectively. But she is not complacent either. She knows that fairness requires that a judge must be, and must be seen to be, unbiased. She knows that judges, like anybody else, have their weaknesses. She will not shrink from the

conclusion, if it can be justified objectively, that things that they have said or done or associations that they have formed may make it difficult for them to judge the case before them impartially.” (Helow v Secretary of State for the Home Department [2008] 1 WLR 2416 at 2418, per Lord Hope of Craighead) “Such a person is not a lawyer. Yet neither is he or she a person wholly uninformed and uninstructed about the law in general or the issue to be decided. Being reasonable and fair-minded, the bystander, before making a decision important to the parties and the community, would ordinarily be taken to have sought to be informed on at least the most basic considerations relevant to arriving at a conclusion founded on a fair understanding of all the relevant circumstances. The bystander would be taken to know commonplace things, such as the fact that adjudicators sometimes say, or do, things that they might later wish they had not, without necessarily disqualifying themselves from continuing to exercise their powers. The bystander must also now be taken to have, at least in a very general way, some knowledge of the fact that an adjudicator may properly adopt reasonable efforts to confine proceedings within appropriate limits and to ensure that time is not wasted. The fictitious bystander will also be aware of the strong professional pressures on adjudicators (reinforced by the facilities of appeal and review) to uphold traditions of integrity and impartiality. Acting reasonably, the fictitious bystander would not reach a hasty conclusion based on the appearance evoked by an isolated episode of temper or remarks to the parties or their representatives, which was taken out of context. Finally, a reasonable member of the public is neither complacent nor unduly sensitive or suspicious.” (Johnson v Johnson (2000) 201 CLR 488, 508 to 509, para 53, per Kirby J). 53 54 55. Lastly, it is incumbent on the party seeking recusal to articulate the relevant reasoning by which the fair-minded observer would attribute a level of prejudgment justifying recusal. There must be an articulation of the logical connection between the conduct giving rise to the apprehension of bias and the possibility of departure from impartial decision-making (Barakat v Goritsas (No 2) [2012] NSWCA 36 at paras 9 to 12).” 20. In Hong Kong, in the case of Komal Patel v Chris Au & Ors [2016] 1 HKLRD 328 (Date of Judgment : 10 November 2015), where Zervos J citing Deacons v White & Case (supra) said :- “8. The application in the present case is based on apparent bias. Where a recusal application is made on the grounds of apparent bias, the test to be applied is one of a “reasonable apprehension of bias”. The test has been expressed by the Appeal Committee of the Court of Final Appeal as follows :- “The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the tribunal was biased.” 9. The reasonable apprehension of bias test underwent some adjustment upon concern that the “reasonable likelihood” and “real danger” tests in R v Gough [1993] AC 646 which tended to emphasize the court’s view of the facts and to place inadequate emphasis on the public perception of the irregular incident. Lord Hope of Craighead in Porter v Magill [2002] 2 AC 357 articulated the test in the following way which emphasizes the need to consider the relevant established facts. He said at 494H: “The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was

biased.” 10. Kwan JA in *Falcon Private Bank Ltd v Barry Bernard Eduardo Charles Ltd* [2014] 3 HKLRD 375, at paragraph 51, articulated the test in terms of “.... whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge had not brought or will not bring an impartial mind to bear on the adjudication of the case, that is, a mind open to persuasion by the evidence and the submissions of counsel.....”

11. The test looks as bias from the point of view of a fair-minded and well informed observer. The courts have provided guidance on how the fair-minded and informed observer should be conceived and it has been best explained by Lord Hope of Craighead in *Helow v Secretary of State for the Home Department* [2008] 1 WLR 2416 where he said : “2. The observer who is fair-minded is the sort of person who always reserves judgment on every point until she has seen and fully understood both sides of the argument. She is not unduly sensitive or suspicious, as Kirby J observed in *Johnson v Johnson* (2000) 201 CLR 488, 509, para 53. The approach must not be confused with that of the person who has brought the complaint. The ‘real possibility’ test ensures that there is this measure of detachment. The assumptions that the complainer makes are not to be attributed to the observer unless they can be justified objectively. But she is not complacent either. She knows that fairness requires that a judge must be, and must be seen to be, unbiased. She knows that judges, like anybody else, have their weaknesses. She will not shrink from the conclusion, if it can be justified objectively, that things that they have said or done or associations that they have formed may make it difficult for them to judge the case before them impartially. 3. Then there is the attribute that the observer is ‘informed’. It makes the point that, before she takes a balanced approach to any information she is given, she will take the trouble to inform herself on all matters that are relevant. She is the sort of person who takes the trouble to read the text of an article as well as the headlines. She is able to put whatever she has read or seen into its overall social, political or geographical context. She is fair-minded, so she will appreciate that the context forms an important part of the material which she must consider before passing judgment.” 21. Guided by the above principles which are binding upon me, I will now consider each of the grounds under D1 to D7 individually in their order of sequence followed by the further complaint(s) of bias over the other directions granted by me. Chronology preceding the Order dated 29 July 2021 22. I will start with some of the application(s) preceding the Order dated 29/7/2021. 23. W issued a Summons dated 10/9/2020 (“W’s 2020 Summons”) seeking ouster order and non-molestation order(s) against H. W issued a further Summons dated 28/6/2021 (“W’s 2021 Summons”) seeking leave for “W’s 2020 Summons” be heard together with H’s Summons dated 17/9/2020 (“H’s 2020 Summons”) where H sought for interim shared care and control of the 2 children. By that time, H’s 2020 Summons had already been scheduled for a 4-day trial commencing 7/9/2021. 24. W’s 2021 Summons was heard on 30/6/2021 within the 1-hour time slot scheduled for the Pre-Trial Review of H’s 2020 Summons and also for the 1st Appointment hearing. According to the Court’s records, the hearing ended up with the whole morning (from 9:36 a.m. to 12:29 p.m.). The following case management orders/directions were granted by me :- “W’s 2020 Summons” be adjourned to 29/7/2021 at 2:30 p.m. (1 hour reserved) for directions; “W’s 2021 Summons” be adjourned to 7/9/2021 at 9:30 a.m. for directions (that is, the 1st day of trial of

“H’s 2020 Summons”); The trial dates of “H’s 2020 Summons” do stand; The Single Joint Psychological Expert Report by Miss Lora Lee (“SJE”) dated 25/6/2021 be provided to the Social Welfare Officer for preparing a short memo, on an expedited basis, on 26/7/2021 as to :- appointment of Official Solicitor to represent the 2 children; or, only the elder child; and any views or comments in light of the SJE Report. Both H and W to undergo psychiatric assessment/treatment and report to this Court at the hearing on 29/7/2021; Both parties to attempt to agree on the psychiatrist for the elder child. 25. Next come along was the hearing on 29/7/2021 which was originally scheduled for 1 hour to start at 2:30 p.m. According to the Court’s records, this hearing started at 2:33 p.m. but ended at 8:31 p.m. There was a “stand-down” of around 90 minutes for me to attend a meeting and the hearing was resumed afterwards. Even excluding the 90-minute break, this was a quite lengthy hearing. Senior Counsel on both sides have had sufficient time to address me on the dilemma and overall situation of the family at the time. 26. H’s legal teams had helpfully obtained the 83-page full transcript of the hearing on 29/7/2021. Ground of Complaint – D1 27. On 29/7/2021, there was before me the SJE Report prepared by Miss Lora Lee dated 25/6/2021 and the Update Memo from Social Welfare Officer dated 26/7/2021, the latter of which was directed by me earlier and to be prepared on an expedited basis. 28. At 61M to 61O of the transcripts, I said :- “As for today, there was the Social Welfare report and the SJE, Miss Lora Lee’s report. And also at the court’s direction, a social welfare officer memo was also produced by the Social Welfare officer in charge to assist the court today for considering any necessary directions.” 29. At the end of the hearing, I granted various interim orders and case management directions after hearing lengthy submissions from Senior Counsel on both sides. I have also reviewed the aforesaid SJE Report and the Update Memo of the Social Welfare Officer. H is now complaining that I was biased against him in granting (i) the interim ouster order; (ii) the interim non-molestation order; and (iii) the interim supervised access order. H also said by granting the said interim order(s), I have “pre-judged” the matter. 30. H submitted that I sought to appear as “neutral, objective, unbiased and open-minded” when I granted the 29/7/2021 Order; in particular, I stressed that it was only on an interim basis for the next 5 weeks and without deciding who was the “bad guy” causing the situation. The principles I stressed above did not justify the (i) ouster order; (ii) non-molestation orders; and (iii) Supervised Access order that I have made on that day. Interim Ouster Order 31. H said if it was traumatic for him, W and both children to live under the same roof, given W’s recurring physical confrontation with the elder child; and that it was in the best interests of both children to reside together, why should the children stay with W instead of H ? 32. It appears that H has now agreed that it was in the best interests of the 2 children residing together. However, this was not H’s position at the hearing on 29/7/2021. This is obvious from reading the transcript of that hearing. From 52N to 52P of the transcripts where Miss Yip, SC said :- “Now, your Honour, another thing really is this. You have to think whether excluding the father is practically possible. He has not secured a place. All that he has ever said would be, if the mother is amenable to an amicable solution for him and [elder child] to move out (emphasis added) temporarily, he tries to secure a place within walking distance, every, very close to the former matrimonial home so as to facilitate interaction between the siblings and

so on.....” 33. “At 62B to 62Q of the transcripts which recorded part of my ruling where I expressly said that whatever decisions or directions that I made, I only have the best interests of the 2 children in mind to the exclusion of the parties’ numerous cross allegations against the other (see 62B to 62D of the transcripts). 34. At 62H to 62K of the transcripts, I then said :- “Well, the question then followed is whether [elder child] should stay with the father or the mother. Father’s suggestion of leaving the matrimonial home, bringing along with him [elder child], would separate the siblings’ bonding. I believe this is not in the best interests of both children (emphasis added). The simple reason is that this may or might cause the children to believe he or she was being isolated by the other parent. Therefore, I decided that both [elder child] and [younger child] should stay with one parent.” 35. Reading from the above transcripts, it was clear that H had offered (i) to leave the matrimonial home; but (ii) he would bring with him only the elder child (emphasis added). This was not accepted by me to be the best interests of the 2 children. There was no suggestion or offer from H that he would bring with him both (emphasis added) children no matter he leaves or stays in the former matrimonial home. How could H now complain that I have chosen W and the 2 children instead of him to stay when he offered to take only the elder child (emphasis added) and not taking both children with him ? 36. Further, despite the admittedly traumatic situation of the family at the time and the tense relationship between W and the elder child, W had never refused to stay along to look after both children. The true reason for the elder child’s behavior towards W was something which need to be explored in due course with the assistance of experts. It was common ground, and supported by the SJE Report and Social Welfare Officer’s report, that the [elder child] required further investigation on his behavior and probably follow up treatment which had yet to begin. The SJE Report even suggested that the [elder child] be separated and stayed away from both parents. The SJE’s suggestion was not welcomed by both parties and not being adopted by me for the time being. 37. Hence, with respect, I do not accept Miss Yip, SC’s submission of “W’s recurring physical confrontation with [elder child]” without paying heed to the true reason of [elder child]’s behavior had yet to be explored and simply assertively said “W’s recurring physical confronted with [elder child]”. The simple expression of “W’s recurring physical confrontation” without any qualification might suggest that it was W (with the use of “W’s”) who caused the confrontation with [elder child]. With respect, this was not factually correct. I must say that such submission lacks objectivity. 38. It can be seen at 62P to 62R of the transcripts where I said :- “Given that this is just an interim arrangement, I decided that I should err on the safe side (emphasis added) by putting both children under the mother’s care and control for the time being whilst the true reason for the behavior of [elder child] towards the mother has yet to be explored after trial (emphasis added).” 39. I decided that in the interim W should be the carer of both children, and it was also in the best interests for both children to maintain the status quo and reside together at the former matrimonial home, a place where they are familiar with. Clearly, it was more easy for H himself to leave the former matrimonial home temporarily rather than for W bringing along with her the 2 children (3 persons) to move out to avoid the already traumatic family situation and not to continue keeping the 4 of them under the same roof.

40. I do not see that an objective by-stander would conclude that there was any apparent bias or risk of apparent bias against H in granting the interim ouster order. Interim non-molestation order 41. H's other complaint was that the interim non-molestation order was a unilateral one granted against him only. Such complaint was not justified as can be seen from reading the following transcripts. 42. At 62U to 63C of the transcripts, I said :- "Therefore, I will grant the interim ouster order against the father to take effect by 4 p.m. on 1 August until further order. Since the father offered no undertaking (emphasis added) on the non-molestation reliefs sought by the mother, I will also grant an interim non-molestation order against the father as both children would now be under the interim care and control of the mother....." 43. In most cases, a party against whom non-molestation order(s) or injunctive relief(s) are sought would normally agree to provide undertaking(s) similar or identical to the reliefs sought against him or her for the interim period (emphasis added) pending substantive argument of the application(s). This was done in order to avoid any interim order(s) being granted before the matter was fully argued. There was no admission of any liability or prejudice of rights by offering the undertaking(s). 44. Being represented by reputable law firms specialized in matrimonial practice and assisted by Senior Counsel Miss Yip, I believe the common practice and advantage of providing undertaking(s) in the interim period must have been fully explained to H. It was only that H did not agree with providing any undertaking(s). This was, of course, a choice of his own. 45. Being the docket judge overseeing the case noting the parties' acrimonious relationship with each other, and with children being caught in between their parents, I am of the view that precautionary measures are needed in the interim period to ensure some form of security and protection over the children. I also saw there was the need to regulate the parties' conduct in order to maintain some form of discipline of the parents. 46. At paragraph 29 of Miss Yip, SC's Written Submissions, it was said that the non-molestation order(s) that I granted was "unilateral" as it was only against H. This was a replication of the argument of the ouster order. 47. At the adjourned hearing on 29/7/2021, in respect of W's 2020 Summons for non-molestation order(s), there are 3 options available to me, that is :- (i) dismissing W's application outright; or (ii) granting an order in terms of W's application outright; or (iii) adjourning W's application and granting such necessary directions and/or interim orders as the court considers appropriate to cater for the circumstances of the case. 48. Without a full hearing of W's application for the non-molestation order(s) and to thoroughly consider H's defence/contention, options (i) and (ii) must not be granted. Option (iii) is the only one left. Such option is an exercise of one of the many case management power(s) at the discretion of the Court. 49. H's complaint the interim non-molestation order(s) was granted only against him, hence being "unilateral", and in so doing I was biased against him. Such submission must fail for the following reasons :- There was no cross application taken out by H against W by way of Summons before this Court seeking any similar or reciprocal interim reliefs against W; It would be wrong for me to grant "mirror/reciprocal" non-molestation order(s) only because I had granted such order(s) against H. This is not a question of fairness, equality or an issue of bias. In the absence of any application or in this case, cross application from H, to do so would be akin to me granting non-molestation order(s) on my

own motion (emphasis added) without an application. 50. Given that the 29/7/2021 hearing was, amongst others, the adjourned hearing of W's 2020 Summons, I need to consider all the evidence before me, including any expert report(s) and, in appropriate circumstances, whether or not to grant interim order(s). 51. For these reasons, I do not see that an objective by-stander would conclude that there was any apparent bias or risk of apparent bias against H for me to grant the interim non-molestation order(s).

- (c) Interim Supervised Access Order 52. For the Supervised Access Order, H was complaining that since I made it clear that there was no finding of who was the "bad guy" in the case, the Supervised Access Order does not chime on such overt finding. The Supervised Access Order was seeking to minimize H's involvement in the children's life by quantum and degree whilst in no way had I placed any limit on W's involvement of the children. The differential treatment was obvious to anyone and wholly uncalled for which suggested that I was biased against H. 53. The interim Supervised Access Order was granted by me after reviewing the SJE Report of Miss Lora Lee and the Update Memo from the Social Welfare Officer, both of which recommended supervised access should be arranged; in particular, over the elder child who required treatment over his behavior but the treatment had yet to begin. It was said in both reports that the children's nanny, Ms. S, was a suitable person to assist on access if the Court found supervised access was appropriate. 54. Ms. S told the Social Welfare Office that she had a close relationship with the children and she was ready to accompany the children in case her assistance was required. In the Update Memo of the Social Welfare Officer, it was said that both H and W considered Ms. S was not the professional person in arranging and supervising the access if there was such a need. 55. The ouster order required H to move to another place and the address of which was not available at the hearing on 29/7/2021. From reading the transcripts, there was quite lengthy discussion with Miss Yip, SC on the place of access given that I was minded to grant the interim ouster order against H. I reproduced below some of the relevant paragraphs of the transcripts :- "Court : So, would the father be prepared to give an undertaking to confirm that the place is a safe place ? Like the windows had window has frames, etc, no dogs, etc. I don't know where is the new place. Miss Yip : Well, why So why is that necessary ? I mean there is no evidence that he will find somewhere which is uninhabitable and unsafe for himself. Court : No, no, no, I'm not saying that he will find something somewhere uninhabitable, just about Court : Anyway, we got the Ms. S and the Rent-A-Mum. I think that that can be safeguard. Miss Yip : Did you say that it should be supervised by Ms. S and Rent-A-Mum ? Court : And Rent-A-Mum Miss Yip : Well, Why is that ? I mean the recommendation is only either/or; why do we need both ? Because the arrangement itself is going to be extremely difficult. What if only Ms. S is avail what if Ms. S is not available or Rent-A-Mum is not available ? Then we'll be denied of the access. I mean why is that ? I mean there is no such recommendation. Court : No, I think well, I think Ms. S is well prepared to assist. That's my understanding from reading the report. Miss Yip : Yes. Court : And Rent-A-Mum is some kind of arrangement, Rent-A- Mum. Miss Yip : Yes. So either/or is fine; why is it both ? Court : Because Miss Yip : Either/or..... Court : Because we're talking about two children.

Miss Yip : Well, there is no indication that the father is not going to be able to look after both children. I mean they are not there they're just supervising/assisting with the access, they are not there to supposed to take care of the children. One is 9, the other is 12, and all the indication is that the father is very able to or used to be able to take both of them out for activities, so on and so forth. Why is it necessary that both of them ? I can immediately see the practical difficulty of one is available, the other is not, then my client ends up having no access at all. Court : Miss Yip, because, well, at this moment we do not have any information about any other person in the new residence. For instance, if the father got a maid, then things may change. All right, he may hire a maid or get somebody....a helper, I don't know. So unless and until we got that information, then probably he can apply for variation or just to take out one of the Ms. S or the Rent-A-Mum. Otherwise, if you just leave it with the father himself and two children with Ms. S, okay, and, as I say, we are talking about two children. Miss Yip : Your Honour, I do ask that the situation about renting about the arrangement of Rent-A-Mum be reviewed upon my client getting a new helper. He will definitely try to get a new helper as soon as Court : Yes, at least give the identity. Because a new helper will be residing together at the same place, so at least the court gets.....court got more information. Miss Yip : But I want to put down as a marker that the situation will need to be reviewed once the domestic helper..... Court : You can always apply for variation, no worry.” 56. I must stress that the above transcripts were crafted out from lengthy back and forth discussion with Miss Yip, SC which contained only those part(s) which are of relevance to access as to whether it should be supervised by Ms. S and/or Rent-A-Mum. 57. H's complaint of bias under his Ground of complaint D1, insofar as the interim Supervised Access Order was concerned, said such order had minimized the quantum and degree of H over children's involvement. I noticed that the need for Ms. S and/or Rent-A-Mum was not made under this Ground of complaint D1 but it was raised under his Ground of complaint D2. I will deal with D2 in the following paragraphs and I would say no further on the issue of supervised access here. 58. According to the records, the matter was once stood down for about 1½ hour for Miss Yip, SC to take instructions on access arrangement. However, no solid or substantive submission on access was provided by H after the adjournment. 59. Miss Yip, SC sought to argue for the lack of proposals on access by submitting that the Supervised Access Order was factually wrong. Miss Yip, SC went on to argue that a 50:50 split/week-on week-off access was clear which effectively means H should have unsupervised access. In her Written Submissions, she referred to the transcripts at 52N to 53D and 59S to 60L. Within 52N to 53D, the issue of access started from 52T to 53D which, for the sake of completeness, was reproduced below together with 59S to 60L, all of which are Miss Yip, SC's submissions. 60. At 52T to 53D, Miss Yip, SC said : “.....you must seriously consider giving unsupervised access. Now, the only satisfactory arrangement is to have week-on, week-off. It is very simple because this is allowing the children the same amount of time that they now enjoy with the parties. And if you are not going to make any decision at this stage, then this must be the only satisfactory solution. The children will not be confused, although I mean they will be....the confusion will be minimized. Now, [elder child] will be receiving treatment and [younger child] will also be away from the toxic alienation

from the mother by balanced out by being able to see the father on a week-on, week-off basis, your Honour.” 61. At 59S to 60L, Miss Yip, SC said : “Your Honour, the interim access, if you were minded to exclude on a week-on, week-off basis, is the only way so as to allow the children to be able to spend sufficient time with the parents as if as that is what they are doing. Your Honour, after all, you are not going to make any decision on interim care and control until September. Now, this is the issue and you only focus on the outster issue. The interim, so-called interim care and control only rides on the so-called ouster application. You should not therefore disturb, even if you are satisfied on may be it’s practical, but, your Honour, I disagree totally that you should simply because of practical solution, finding a practical way out, and try to remove the husband, try to exclude him. You have to be faithful to the evidence, and given the state of the evidence, I don’t think that any sane judge.....sorry, not saying that.....it’s a slip of my tongue and I have to withdraw that. No tribunal being faced with such evidence and only invited to look at snapshot.....we have ten bundles between us....to come to the firm conclusion that it is the husband’s doing. And if, as I said, you are really minded to take such an extreme course, and I urge you not to do it just because it is practical, then you should not exercise your discretion to exclude the husband. Even if you do, then please on a week-on, week-off basis so as to allow the children a fair amount of time, an equal amount of time, because care and control and access is the issue which you will investigate thoroughly in five weeks’ time. You don’t have.....why are you rushing into this decision just because it is a rider, simply a rider on the ouster application ? You have not focused on this issue. The application is just an ouster application, it is not an interim care and control arrangement. No such application has been put before you.” 62. With respect, I do not accept that there were any proposals coming from H by reading 52T to 53D of the transcripts on access arrangement when the ouster order was in place. The submissions made by Miss Yip, SC of 50:50 split/week-on week-off access could only match with H’s case of a shared care and control scenario and was not made for the situation where there was an ouster order in place. 63. Miss Yip, SC saw fit to remind me not to disturb the access which H had been enjoying even if I found it practical to do so, or simply because of practical solution and in finding a practical way out that I had only focused on the ouster issue. I was also reminded by Miss Yip, SC that I need to be faithful to the evidence and that, given the state of the evidence, any sane judge would not only look at snapshots given that there were bundles of evidence before me which are to be investigated at trial. 64. I have a few observations. 65. First, the Supervised Access Order was not granted out of any practicality; because it was a practical solution or simply a practical way out with only the ouster order in mind. With all due respect, Miss Yip, SC’s submission crossed the bridge and missed the point. There was the necessity (emphasis added), after having reviewed the SJE Report and the Social Welfare Officer’s Update Memo before me on 29/7/2021; both of which are evidence that I have faithfully considered (emphasis added) to grant the Supervised Access Order. To be fair to Miss Yip, SC, I believe she was referring to the state of the evidence of the parties (emphasis added) that I had to be faithful and was not referring to the evidence of the SJE Report and the Update Memo from the Social Welfare Officer which I just mentioned. 66. Secondly, I accept Miss Yip, SC’s apology and withdrawal of those words

“...any sane judge...” (implicating that I may be “insane”) which came from her out of a slip of the tongue. The point which I would like to make was that there was meticulous and careful analysis by me of all the circumstances; including leading Counsels’ submissions at length, SJE Report and the Update Memo, before I granted the Supervised Access Order. The Supervised Access Order was never a product of any snapshot or flip through on papers. This could be reflected by the hearing time of that day which eventually ended at 8:31 p.m. in the evening. 67. Thirdly, I noticed Miss Yip, SC in her able submissions took the point that I have considered the Mediated Agreement which the parties had signed when deciding the access arrangement. Such reliance indicated bias on my part for the following reasons :- - why isn’t W being held to the general agreement that there shall be staying access at H’s residence on alternate weekends in lieu of H’s access on Saturdays ? - nowhere in the Mediated Agreement suggests H’s access shall be supervised; - access was meant to take place at the former matrimonial home and I have ousted H; - when determining access, I gave effect to the part disadvantageous to H, namely, the duration of access, and ignored the advantageous part to H, namely, staying access, location and no supervision. 68. It was pertinent for me to go back to the transcripts at 63M to 63O which was my ruling on Supervised Access. They are now reproduced below :- “About the defined access, and I have considered Miss Eu’s submission that it was copied or recorded in the Mediated Agreement and which I have also invited Miss Yip for submissions on the access arrangement.... I had given chance for Miss Yip to do so but I unfortunately I haven’t got any solid submission on the access..... So I decided for the time being it’s an interim defined access as per the suggestion of Miss Eu, Tuesday, Thursday, 7 to 9, and Saturday, 4 to 9 p.m. The question which follows is whether it should be supervised, and given consideration on the material, I decided that again on the basis of erred on the safe side (emphasis added) ... that it need to be supervised by Ms. S and Rent-A-Mum.” 69. I was being open-minded and gave both parties the liberty to propose interim access arrangement. Miss Eu, SC for W came back with Tuesdays, Thursdays and Saturdays for day access which she frankly admitted copied from the Mediated Agreement. Given that such access interval would mean that the children would be able to see their father within, say, every 2 days (or 48-hour intervals), I accept this would be in the best interests of the children whilst with the ouster order in place. 70. Miss Yip, SC’s submissions of “reliance” on the Mediated Agreement and, by so doing, I have singled out the advantageous part of it to H and that this was bias against H was, with respect, incorrect if not misconceived. There was no “reliance” in the first place. Miss Eu, SC referred to and saw fit to copy from the Mediated Agreement those dates for proposing day access arrangement which I accepted, with the best interests of the children in my mind. This was not “reliance” by me on the Mediated Agreement in any legal or even common sense or by their ordinary literal meaning. “Reference” must not be misconstrued to mean “reliance”. Refer to something or someone must mean differently from relying on something or someone. 71. For all the above reasons, I do not see that an objective by-stander would conclude that there was any apparent bias or risk of apparent bias against H when I granted the interim Supervised Access Order against him. 72. I find H’s Ground of complaint D1 unjustified. Ground of Complaint – D2 73. On Ground of complaint D2, specific reference was made to

the Court's letter dated 18/8/2021 sent to H's lawyers ("the 18/8/2021 letter"). The contents of the letter was now reproduced below :- "1. Please identify precisely, apart from Respondent's personal wishes and desire, the material change of circumstances (if there is any) since the interim defined access Order was granted on 29/7/2021 which call for an urgent variation of the said Order despite the fact that the substantive trial proper of access is due to start on 7 September 2021 (that is, in only 3 weeks' time). 2. Please also note the Respondent appeared to be seeking variation of the interim defined access before the children's summer holidays end, that is, 31 August 2021 (which is only about 2 weeks ahead from now (paragraph 5 of Respondent's 11th Affidavit)." 74. A lot must be said as to what had happened from the time after the 29/7/2021 Order was granted which led to this Court sending over the 18/8/2021 letter after 20 days. 75. On 30/7/2021 (Friday), that was the next day after the 29/7/2021 hearing, H's lawyers wrote to this Court and sought variation of the 29/7/2021 Order. In this letter, there are suggested amendments by H's lawyers. This letter was only received by this Court with a stamp chop of "2/8/2021 at 12:08 p.m.") 76. On 3/8/2021 (Tuesday), H's lawyers wrote 2 letters to this Court. The 1st letter (received with a stamp chop of "3/8/2021 at 5:12 pm.") informed this Court that a live-in domestic helper had been hired by H. Request was made for substitution of the supervised access by Ms. S and a representative from Rent-A-Mum by Ms. S and the newly hired domestic helper. The 2nd letter (received with a stamp chop of "3/8/2021 at 5:13 pm.") attached with a draft of the 29/7/2021 Order lodged by W's lawyers for the Court's approval. In the draft, H's lawyers marked up their intended amendments in red ink ("H's variation request"). 77. On 3/8/2021 (Tuesday), this Court replied to the letter dated 30/7/2021 as follows :- "Please make proper application (if so advised and if necessary)." 78. On 4/8/2021 (Wednesday), that is within 24 hours, H's lawyers wrote to this Court again re-visiting H's variation request. As a matter of fact, W's lawyers in the meantime had also written to this Court 5 letters dated 2/8/2021, 4/8/2021, 5/8/2021, 6/8/2021 and 11/8/2021, responding to H's variation request made unilaterally (emphasis added); complaining H's lawyers' litigation conduct, both as to the absence of a proper Summons to seek variation even if so advised (despite that I have already directed) and also as to the absence of any material change of circumstances to seek variation. W's lawyers also attached in their letter dated 5/8/2021 The Law Society's Circular 18-242 (PA) on "Family Proceedings Correspondence with Court" to support their complaint on H's lawyers sending letters to me. 79. On 10/8/2021 (Tuesday), H's lawyers wrote to this Court again, unilaterally (emphasis added) seeking directions by way of letter for an Updated Social Welfare Report/Memo to be obtained for the upcoming trial on 7/9/2021. 80. On 13/8/2021 (Friday), H's lawyers wrote to this Court (received with a stamp chop of "13/8/2021 at 12:50 pm.") and attached with a draft Summons ("H's Variation Summons") seeking an "urgent" hearing to vary the time and mode of supervised access as per the 29/7/2021 Order. 81. On 18/8/2021 (Wednesday), this Court replied to H's lawyers' letter in those terms set out above. 82. Viewing the above chronology from any perspective, with the trial of H's 2020 Summons starting from 7/9/2021, it could hardly be denied that H's request as per his letter dated 13/8/2021 for an "urgent" hearing within the next 24 days (counting from date of letter of 13/8/2021 to 6/9/2021, which was the date before 1st day of trial

including intervening Saturdays and Sundays) would only be considered under utmost urgency and exceptional circumstances. From reading H's 11th Affidavit in support of H's Variation Summons, I failed to see any utmost urgency and exceptional circumstances existed which justify H "hijacking" the already limited court resources to the prejudice of other court users. It is the underlying objectives of the Civil Justice Reform that court resources must be fairly and evenly distributed. The Court must not yield to any monopoly or dictatorship of any particular litigant and compromised its case management powers and duties to do justice. 83. It was submitted that I had "criticized/making unjustified comment" on H's request to file H's Variation Summons for his personal wishes and desires and that this was without basis and totally uncalled for. With respect, this submission is a complete non-starter. An expression of my observation upon reviewing the materials submitted (emphasis added) must not be taken as "criticism/making unjustified comment" over H personally. 84. It was also submitted that I refused to entertain H's request for variation by sending over the 18/8/2021 letter and, in so doing, I had been biased against H. Reference was made about H having followed my indication/direction and within 6 days he arranged his helper to start working and this had been made known to me by letter. Thus, it was said that my rhetorical query whether there was change of circumstances was unwarranted. 85. Paragraph 1 of the 18/8/2021 letter must be read in context. The words "...apart from the Respondent's personal wishes and desire...." which came after the words "Please identify precisely" could have no other meaning or interpretation other than to pass on my observation of the application being lack of utmost urgency and exceptional circumstances for asking an "urgent" hearing. The basis and the need for such expression of observation was to reinstate and reinforce the underlying objectives of the Civil Justice Reform which I said above. 86. The rest of paragraph 1 of the 18/8/2021 letter was to amplify the obvious timeline which should not have gone astray in the mind of H. This was far from any kind of "criticism/unjustified comment" against H. 87. Paragraph 2 of the 18/11/2021 letter was stating the obvious by referring to H's Variation Summons to vary the interim access arrangement before the end of the summer holidays (that is, 31/8/2021), which was a week even earlier than the 7/9/2021 trial, was unrealistic and even more impractical. 88. The short answer to all this complaint could be fairly summarized by asking one simple question :- "Were all these intended variation of the interim access arrangement, granted on 29/7/2021 before the 4-day trial on custody, care, control and access scheduled to commence on 7/9/2021, was costs effective and practical ?" 89. The answer to this question must be "No." 90. On 2/9/2021, H's lawyers applied by letter and obtained leave on 3/9/2021 to file his Summons for variation of access. On 6/9/2021, H's lawyers filed the Summons (the contents of which was not the same as the draft of H's Variation Summons attached to the letter dated 13/8/2021) and, with leave of this Court (emphasis added), it was scheduled for hearing the next day on 7/9/2021 at 9:30 a.m. Such arrangement speaks volume. Why would I grant leave for hearing this Summons just 4 days before if I am minded to refuse to hear H's variation application complained by H as one of his grounds for seeking the recusal ? 91. All in all, I find H's Ground of complaint D2 unjustified. Ground of Complaint – D3 92. Complaint was levelled against me for vacating the September trial without parties' input. 93. Going back to

the transcripts of the lengthy hearing on 30/6/2021 (from 9:36 a.m. to 12:29 p.m.), I have already raised with the parties the possibility that the September trial may not proceed. At that hearing, Counsel Mr. Neal Clough appeared for W and Miss Yip, SC appeared for H. 94. At 35S to 36T where it was recorded :- “Court : Yes, okay. So I decided that there will be no interim ouster order for the time being. I hope the parents, Ms __ and Mr. ____, could or should tolerate with each other for the next four weeks, 29 July will be four weeks from now on. And after 29 July, the trial commence in six weeks’ time. So on the date, on the next hearing, 29 July, I need to review everything to see how things go, whether I need to make any urgent interim orders within the next six weeks or so. And that’s my decision. Anything else, parties ? Miss Yip and Mr Clough, Miss Chow ? Mr Clough : Costs reserved ? Miss Yip : So your Honour, just questions arising from the directions. Now that the September trial will proceed as fixed, would there be a final PTR whereby..... Court : That’s why I put down 29 July. It’s just it’s not for the further PTR for the father’s summons. It’s for everything. Miss Yip : Yes Court : By that time I would have got the affirmations from both parties on the ouster application. I would also have the short memo from welfare officer. I made it on the 26th, three days before the 29th hearing. And I review everything. But for today, I will not make any temporary ouster order. So that’s why I said the parties should tolerate with each other for the next four weeks and behave well before..... in front of the children. And I believe they are sensible persons. Miss Yip : Yes. Sorry for being thick here, I thought I heard that the September trial on care and control would go ahead, right ? Court : Yes. Miss Yip : Because, yes, I think between now and leading the leading time up to the first day of trial we need to do a lot of preparation. I mean that’s what I want to clarify. If it really goes ahead, then we’ll have to start preparing because, after all, there are a lot of materials to digest and so on. Court : Because we don’t know whether the officer will recommend Official Solicitor. In case the officer recommends appointment and there may some a lot of changes because the Official Solicitor. Then the trial might not proceed as scheduled (emphasis added), as you can expect. I don’t know. I’ll see how things go. Miss Yip : Yes.” 95. Further, at the next hearing on 29/7/2021, which was a more lengthy hearing (from 2:33 p.m. to 8:31 p.m.), where I said :- “.....I decided not to change the September trial to include the ouster for the time being because, well, I am not persuaded that the time arranged..... that the time scheduled will be enough for dealing with two applications together. Of course, whether there will be any change in the trial dates after the appointment of the Official Solicitor, we have to wait and see. If it is likely, I would only say it’s likely that the trial may not go ahead but I cannot say for sure, it all depends on the position of the Official Solicitor after they came.... joined into the picture.” 96. On 25/8/2021, the OS, having been appointed by me on 29/7/2021 to represent the 2 children in these proceedings, reported to me that there are 4 outstanding matters which need to be addressed. Briefly said, they are :- The parties had not yet (emphasis added) arranged the elder child to attend 1st psychological therapy by Professor Peter Lee so directed by me; Both parties had not yet (emphasis added) undergo psychiatric assessment/treatment with their own psychiatrist or psychiatrist appointed by the other party; The parties had not yet (emphasis added) explore the possibility of placing the elder child with foster family as recommended by the SJE Miss

Lora Lee; and An updated social investigation report may be required. 97. Given the aforesaid outstanding matters, the OS expressed reservation that their Report to be prepared could properly and correctly reflect the true voice and best interest of the children. Their Report would definitely have to be subject to the outstanding matters having been done. 98. The OS was of the view that an adjournment of the trial for the parties to settle those outstanding matters would be more appropriate. 99. As can be seen, 3 out of the 4 outstanding matters raised by the OS could only be carried out by the parties. As the OS was representing the 2 children, their Report was crucial to assist me in determining the best interests of the children at the trial in September. It was abundantly clear that there was no chance of the full OS Report could be ready in the next 13 days (counting from 26/8/2021 to 6/9/2021) before the September trial on 7/9/2021 starts. I then decided to vacate the September trial. 100. H's complaints against me included :- intentionally not copied OS letter to the parties; not copying the OS letter to the parties to invite their submissions; vacating the September trial without the parties' input; prolonging the then access arrangement which minimized H's involvement in the children's lives which originally intended to last for only 5 weeks; adjourning a milestone date without offering the parties a chance to be heard, at least hearing H, by itself suggested bias on my part against H as he would be most adversely affected. 101. OS's concern of not able to prepare their full Report was clear and well founded. H's complaints that I "intentionally" did not copy the OS letter to the parties could only be justified, if and only if, it could be shown that had the parties received the OS letter, they could handle all the first 3 concern at once and that I wanted to prevent that to happen by not copying the OS letter to them; or affording them a chance to be heard, so to speak. Taking H's complaint to the highest, even if he could manage to "wipe away" (a) to (c) of those outstanding matters raised by OS, the updated social investigation report (item (d)) could not be dispensed with and would definitely not be available in 13 days' time. Hence, the OS Report would still not be available before the September trial commences. That said, this was exceptional circumstances well justifying vacating the September trial as it was certain that the trial could not be proceeded along as originally scheduled. 102. The appointment of the OS by me to represent the children was never contested by the parties. There was no appeal against such an appointment or against my direction requiring the OS to prepare their Report for the custody, care, control and access trial in September. 103. I failed to see what input could the parties provide had they been informed of the OS's letter and the OS's concern even if they were invited to provide submissions. I could foresee possibly there would be a further attempt by either or both parties to push for another so-called "urgent" hearing within the 13-day period between 26/8/2021 to 6/9/2021 under the disguise of tackling OS's concern which apparently for no practical purposes other than increasing legal costs and "hijacking" the Court's limited resources to the prejudice of other court users. This was not a question of fairness to the parties or affording them the right to make submissions. How could the parties manipulate OS's concern by providing their submissions ? 104. To proceed or not to proceed with a trial is definitely a case management decision of the Court, the exercise of such discretion must be rested upon sound and justifiable grounds; especially, to vacate the milestone date of a 4-day trial. For the above

reasons, I firmly believe that the threshold for vacating the September trial was met without the need of any input by the parties now raised by H as one of his grounds seeking recusal.

105. I do not see that an objective by-stander would conclude that there was any apparent bias or risk of apparent bias against H that the OS letter was not copied to them followed by vacating the September trial constituted bias which called for recusing myself.

106. I find H's Ground of complaint D3 unjustified. Ground of Complaint – D4

107. This complaint referred to what had happened at the hearing on 7/9/2021, the date originally scheduled as the 1st day of the 4-day trial which had been vacated. Nonetheless, the time slot at 9:30 a.m. was scheduled for hearing H's Inter Partes Summons issued 1 day ago on 6/9/2021 for variation of interim access.

108. There was the submission that at the hearing on 29/7/2021, I decided that the need of Rent-A-Mum together with Ms. S during H's Supervised Access was to provide assistance. By the time of the hearing on 7/9/2021, this was no longer required because H had employed his live-in domestic helper who had started work and might be able to provide assistance. This was made known to me by H's lawyers Withers in their letter dated 3/8/2021 ("Withers's 3/8/2021 letter"). Despite H had his live-in domestic helper, I decided that Rent-A-Mum and Ms. S was continuously needed. If for any reason Ms. S was unavailable, I even directed that 2 Rent-A-Mum should be arranged. H submitted that this was contrary from what I said at the hearing on 29/7/2021. Either my stance at the hearing on 29/7/2021 was merely lip-service and I had already viewed H with bias; or I had changed my stance since 29/7/2021 and viewed H negatively based on newly formed bias.

109. At paragraph 55 of H's Written Submissions, it was further said that I had made highly prejudicial yet unwarranted remarks against H at the hearing on 7/9/2021. For the sake of completeness, I reproduced below what I said with reference to the pages in the transcripts :-

110. At 50R to 51J of the transcripts, I said :- "As to the father's application for uplifting the supervised access arrangement by Rent-A-Mum, the reason put forward was that the father had all along been a caring and capable parent in taking care of the children. This was seen and revealed by the Rent-A-Mum reports. The father-child access requires no surveillance, no supervision by any third party. I find there is an oddity in such a submission. On the one hand, father heavily relied upon the Rent-A-Mum reports to support his ability and capability of taking care of [elder child and younger child] during access in the past weeks. Senior Counsel Miss Yip has taken the effort to take me through a number of paragraphs in those reports prepared by Rent-A-Mum. Having said, without the presence of the Rent-A-Mum during access in the past, where would be the evidence to support the father's own case that he is a suitable carer of the children ? Why would the father now be so concerned with the presence of Rent-A-Mum and would ask for uplifting the supervision arrangement ? Would the father now want something to happen during access without being notified or recorded by any third-party witness, say, the Rent-A-Mum ? As a matter of fact, there is no evidence before the court that the presence of the Rent-A-Mum had obstructed or hindered or affected the access which was reportedly to have happened smoothly. I decided that the supervision by Rent-A-Mum and Ms. S should continue for this interim period until further order."

111. H complained that I had paid lip-service at the hearing on 29/7/2021 was unfounded when reading the transcript(s) of that hearing. Within the 82-page transcript of

the 6-hour hearing on 29/7/2021, the relevant parts on the use of Rent-A-Mum are as follows :- 112. At 71C to 72C of the transcript :- “Miss Eu : Well, can I assist in this matter ? First of all, there is no issue of availability of Ms. S. In fact, the Social Welfare Officer has already asked Ms. S and in fact this is also one of the recommendation of the Social Welfare Officer. And this is the line : “The investigating officer recommends that access should take place in a venue arranged by independent third party in the presence of Ms. S who can offer a sense of safety to both children.” So if you suddenly have a stranger from Rent-A-Mum without Ms. S, it’s not beneficial to the children. And the reason why there should be and Rent-A-Mum, and not just Ms. S, is because again, as you can see from the update, in the same report that I’m reading, both Miss ___ and Mr ___ consider that Ms. S is not the professional person in arranging and supervising the access if there is to be such arrangement. Rent-A-Mum are professionals and they offer their professional advice in relation to supervised access. They’re expert in these things and that is why we suggested both, not to make any difficulties or to create a situation where one is available and not the other. That is the recommendation from the Social Welfare Officer. Miss Yip : Then it is either/or. Your Honour, let’s not Court : Because, Miss Yip..... Miss Yip : create unnecessary trouble for the father’s access. I mean he’s only got very limited access with the children starting this Sunday, from seeing the children every day to only every other day and limited to just a few hours. And the trouble with – it would begin to give trouble. What if the children really miss the father ? Not what if; I’m sure the children will miss the father. Court : No, of course, Miss Yip, I think --- well, I think the Rent-A-Mum and the Ms. S will be taking the assisting role and not interfering or intervening in the access. Because if you look at the time, for instance Saturday, 4 to 9 p.m., that covers dinner time and may be take a bath, I don’t know. How about if the daughter requires to take a bath and requires somebody to help ? Miss Yip : She is 9 years old and there is no..... Court : I don’t know, I don’t --- just in case. Then when --- then Ms. S might help her, might help the daughter. Then [elder child] would be with the father, then we need the Rent-A-Mum. Miss Yip : Your Honour, it’s not.... Court : Just in case.” 113. At 74T to 75F of the transcript :- “Miss Yip : Your Honour, I do ask that the situation about renting --- about the arrangement of Rent-A-Mum be reviewed upon my client getting a new helper. He will definitely try to get a new helper as soon as ... Court : Yes, at least give the identity. Because a new helper will be residing together --- at the same place, so at least the court gets --- court got more information. Miss Yip : Yes. Court : If there --- there’s no point to get so many people in the house. Miss Yip : But I want to put down as a marker that the situation will need to be reviewed once the domestic helper Court : You can always apply for variation, no worry (emphasis added).” 114. As to H hiring a new domestic helper, this was revealed in “Withers’s 3/8/2021 letter” to this Court as follows :- “Pursuant to the directions made by the Learned Judge at said hearing, our client’s access to the Children shall be supervised by Ms. S and a representative from Rent-A-Mum. It was further commented that once our client employs a helper or nanny to assist him in looking after the Children, his access shall be supervised by Ms. S and his helper or nanny in substitution for a representative from Rent-A-Mum. We are instructed that our client has now been able to employ a live-in domestic helper to assist him in looking after the Children

and his access which will start today 3 August 2021 can therefore be accompanied by Ms. S and his domestic helper (emphasis added). We have already written to the Petitioner's solicitors on 2 August 2021 to inform the Petitioner the address of our client's new residence and the name of our client's domestic helper. Our client also confirmed in the same letter that the names and identities of those residing in his residence are the domestic helper and himself." 115. From reading the above, there are 3 important observations. 116. First, nowhere in the above transcripts did I say or comment that once H hired a domestic helper, the then existing access shall be supervised by Ms. S and his helper or nanny in substitution for a representative from Rent-A-Mum. The statement in "Wither's 3/8/2021 letter" was utterly wrong. What was actually said by me at the hearing, as per the transcripts, was : "You could always apply for variation, no worry." 117. Secondly, I also made it clear that I need to have more information about the new helper, at least the identity. However, this was distorted in "Wither's 3/8/2021 letter" when they simply said, "....as our client had now been able to employ a live-in domestic helper to assist him in looking after the Children and his access which will start today 3 August 2021 can therefore be accompanied by Ms. S and his domestic helper.". 118. Again, such statement distorted the meaning by removing the need to apply for variation before any replacement of Rent-A-Mum by the new domestic helper could take place. If the new domestic helper could "automatically" replace the Rent-A-Mum without the need of application for variation (emphasis added), there was no reason for me to tell Miss Yip, SC that : "You could always apply for variation, no worry." 119. Thirdly, from reading the 2nd paragraph of "Wither's 3/8/2021 letter", H was apparently under the misapprehension that : once he had hired a new domestic helper; and once he had informed W his new place of residential address and name of the new domestic helper; and once he had informed W the names and identities of persons residing in his new place of residence, what then follow would be the "automatic" replacement right away. For the same reasons, why would I have to say "You could always apply for variation, no worry." 120. For the submission that I made unwarranted and highly prejudicial criticisms in my Ex Tempore Ruling on 7/9/2021, such submission was made completely out of context. Miss Yip, SC had extracted 5 paragraphs from the transcripts in her Written Submissions and underlined the 3rd paragraph of it as emphasis for the alleged words of criticisms that I made. The 3rd paragraph starts with : "Having said,....." 121. So, what did I say then ? At the 2nd paragraph, I made my observation of the "oddity" that H on the one hand apparently accepted the presence of Rent-A-Mum for the supervised access for the past weeks but now he sought to replace the Rent-A-Mum. The 3rd paragraph which follows was clearly a "self-serving remark" justifiably made in respect of the unexplained "oddity" which I observed in the preceding paragraph. Clearly this was not prejudicial criticisms against H or any sign of bias towards him. Further, such "self-serving remark" on the "oddity" was justifiably made given the assertive attitude of H to replace Rent-A-Mum with his domestic helper as stated in "Wither's 3/8/2021 letter" to this Court. 122. It was then said by Miss Yip, SC that my remarks of "neutrality" actually reinforced the bias that I held against H since there was no basis for continuation of supervised access when there was sufficient manpower assisting H during his access. Further, Miss Yip, SC submitted that my agenda of monitoring H by Rent-A-Mum

was reinforced by my decision that two Rent-A-Mum to assist in the supervised access in case Ms. S was unavailable. 123. From reading the relevant part of the transcripts, it was Miss Yip, SC who raised the supervised access arrangement in case Ms. S was unavailable. Following from there was the lengthy discussion with both Senior Counsel Miss Eu and Miss Yip. The options discussed for substituting Ms. S in her absence include (i) having the helper from W's side; (ii) having the new helper from H's side; or (iii) having another representative from Rent-A-Mum (see 64D to 70F of transcripts of hearing on 7/9/2021). 124. At the end, option (iii) of having another representative from Rent-A-Mum was decided by me in order to avoid any unnecessary allegation of "snooping" by H or W through the domestic helper if option (i) or option (ii) was chosen to substitute Ms. S when she was unavailable. From all perspective, choosing option (iii) was reasonable and fair to both parties. The criticism of having an "agenda to monitor" H by Rent-A-Mum simply does not stand. 125. I do not see that an objective by-stander would conclude that there was any apparent bias or risk of apparent bias against H for the arrangement that I have made on supervised access and substitution of Ms. S by a second Rent-A-Mum when she was unavailable. 126. I find H's Ground of complaint D4 unjustified. Grounds of Complaint – D5, D6 and D7 127. I intend to deal with these 3 grounds of complaint together as they related to the same matter of H's intended Holiday Summons. 128. A short description of the chronology and matters arising is useful. 129. On 8/11/2021 (Monday), H's lawyers wrote to this Court attached with (i) a draft of the Holiday Summons; and (ii) a copy of the 13th sworn Affidavit of H together with 8 exhibits. There was a chop on this letter by the Family Court Registry that it was received at 9:53 a.m. on 9/11/2021. 130. The 13th Affidavit of H together with the 8 exhibits added up to 135 pages. 131. In this letter, H requested for the Holiday Summons to be listed for hearing on 15/11/2021 (that is, in 7 days' time) which was the call over hearing of H's Committal Summons against W. It was said in the letter that the parties had agreed on directions for the Committal Summons and the hearing on 15/11/2021 would be vacated. However, no Consent Summons had been filed (emphasis added) at that stage. 132. At 4:51 p.m. on the same day of 9/11/2021 (that is, 7 hours later) another letter was received from H's lawyers for an Ex Parte Summons (On Notice) about schooling issue of the elder child. Such Ex Parte Summons (On Notice) was dealt with the following date, that is, 10/11/2021 and fully disposed of. 133. On 9/11/2021 (Tuesday), this Court replied to H's lawyers' letter as follows :- "1. The hearing on 15/11/2021 still stands for directions on Respondent's Committal Summons; 2. The Intended Summons should be scheduled for call-over hearing on separate date." 134. On 10/11/2021 (Wednesday), H's lawyers again wrote to this Court and this letter was received at 3:26 pm in the afternoon. Despite my directions in reply made on 9/11/2021 for the Holiday Summons to be listed for hearing separately, H's lawyers still insisted to use the date of 15/11/2021 (Monday) to hear the Holiday Summons. 135. In this letter, it was attached with a copy Consent Summons with a filing date of 10/11/2021 to vacate the hearing on 15/11/2021 for H's Committal Summons, along with agreed directions on exchange of affidavit evidence, and that a hearing for substantive argument be fixed in consultation with Counsel's diaries (1 day reserved). It was again attached the draft of the Holiday Summons and the copy 13th sworn Affidavit of H together with the 8 exhibits. 136. On 12/11/2021 (Friday), this Court granted an

order in terms of the said Consent Summons in respect of H's Committal Summons. The hearing date of 15/11/2021 was accordingly vacated. 137. On the same day of 12/11/2021 (Friday), given the fact that various factual issues were raised by H in his 13th Affidavit, this Court replied to H's lawyers' letter as follows :- "Please seek consent from Petitioner's Solicitors and Official Solicitors as to their readiness." 138. On 15/11/2021 (Monday), H's lawyers approached the Listing Officer of the Family Court to request for the Holiday Summons to be listed for hearing on the next available date, which was said to be 13/12/2021. However, it was noted that what was prayed for in paragraph 6 of the Holiday Summons was that the application be dealt with by way of paper disposal. In the absence of clarification from H's lawyers, no date was arranged by the Listing Officer. 139. On 19/11/2021 (Friday), still not received any clarification from H's lawyers, this Court sent to H's lawyers (by facsimile at 9:40 a.m.) on my comments/directions granted on 17/11/2021 as follows :- "1. Paragraph 6 of the Intended Summons sought for the application to be dealt with by way of paper disposal. Hence, no date should be fixed for the Intended Summons.

2. However, the reliefs prayed for in the Intended Summons would normally have to be dealt with through hearing instead of paper disposal.
3. Moreover, it is noted that a CDR has not been fixed for 8 March 2022 at 10:30 a.m. (1 day reserved) for Respondent's Summons dated 2/9/2021. Please substantiate the urgency (if any) for Intended Summons to be issued now." 140. On the same day of 19/11/2021 at 3:53 p.m., H's lawyers wrote back to this Court and again requested for the Holiday Summons to be listed for hearing on 13/12/2021. It was also said if the date of 13/12/2021 was no longer available, the Holiday Summons be dealt with by way of paper disposal. 141. On 25/11/2021, this Court replied to H's lawyers' repeated requests as follows :- "Please refer to Paragraph 3 of Chapter 10.02 of the Hong Kong Solicitors' Guide to Professional Conduct Volume One." 142. On 30/11/2021, H's lawyers again wrote to this Court, briefly setting out their contact with W's lawyers and the Official Solicitor's Office as to their readiness and, further making the same request of listing the Holiday Summons for hearing on 13/12/2021 or to be dealt with by way of paper disposal. 143. On 6/12/2021, this Court replied to H's lawyers' as follows :- "1. Hearing date on 13 December 2021 no longer available.
2. Please seek consent from all parties on other options for the Intended Summons." 144. On 8/12/2021, H's lawyers wrote back to this Court bombarding with the same request for the Holiday Summons either to be heard as soon as possible or by way of paper disposal given the "urgency" of the application. 145. Notwithstanding the fact that there was already in place increased (emphasis added) interim weekday access on every Tuesdays, Wednesdays, Fridays and Saturdays (emphasis added) totaling 4 days within a week and that such pattern of interim access also run through the Christmas and Chinese New Year holidays until further order, the "urgency" raised by H as per his Holiday Summons, amongst others, was simply extended hours on weekday access over the first half of long holidays, 1 overnight staying access from 22/12/2021 to 23/12/2021; 1 overnight staying access from 4/2/2022 to 5/2/2022; dinner access on 31/1/2022; day access on 1/2/2022. The original interim access was

on every Tuesdays, Thursdays and Saturdays, that is only 3 days within a week. 146. On 10/12/2021, this Court sent to H's lawyers on my comments/directions granted on 9/12/2021 as follows :- "1. Your letter refers. 2. The so called "urgency" for hearing the Intended Summons prior to commencement of the coming Christmas school holiday on 21/12/2021 was based upon the Respondent's personal wish, aspiration and/or manipulative and/or assertive manner of conducting litigation as opposed to any legitimate juridical grounds considered objectively. 3. Given the limited resources and valuation time of the Court, bombarding requests for immediate or short-notice hearing under the disguise of "urgency" should be refrained as such requests would not be considered by the Court. 4. Paragraph 2 of the Court's directions dated 6/12/2021 was to ensure all other parties were given the fair chance and option(s) of expressing their views over the way to dispose of the Intended Summons and not directing them to concede to the reliefs within the Intended Summons." 147. With the above short description of the chronology fully reviewed and carefully considered, there was every justification for the Court to uphold procedural fairness and ensure resources are evenly distributed amongst other court users. To express the Court's concern by giving a stern warning over H's clear manipulative litigation conduct with the view to prevent the Court's agenda and diary being steamrollered and hijacked could not be said to be casting criticisms against H or being biased upon him. 148. In Miss Yip, SC's Written Submissions, it was said that I had made a Grepe v Loam order or a Restricted Application Order against H which was clearly unwarranted and unjustified. With all respect, this was a non-starter. It was clear from the above short description of the chronology, that there was no clarification from H's lawyers as to why they requested to list a hearing date for the Holiday Summons whilst, in paragraph 6 therein, he sought for the application to be dealt with by way of paper disposal. 149. Apparently, the either "listing a date" or "by way of paper disposal" of H's Holiday Summons was only clarified in H's lawyers' letter dated 19/11/2021 after such conflicting scenario having been raised by this Court by letter on the same day. This was not a case of any Grepe v Loam order in any perspective. 150. The submission of this Court (indirect) pre-mature dismissal of H's Holiday Summons by using my case management power, with due respect, was also a complete non-starter. The legal teams are expected to ensure the terms of the application are clear and unambiguous. Seeking a date of hearing before the Court of an application when simultaneously asking for the application to be dealt with by way of paper disposal is clearly unclear and ambiguous which called for clarification. 151. Had a Grepe v Loam order or a Restricted Application Order been made against H, the Court would not have sent the letter to H's lawyers dated 19/11/2021. 152. I do not see that an objective by-stander would conclude that there was any apparent bias or risk of apparent bias against H for the arrangement of his Holiday Summons. 153. I find H's Grounds of complaint D5, D6 and D7 unjustified. Directions as to the potential hearing date of 15/11/2021 154. It was said that I had taken away H's opportunity to be heard timely on 15/11/2021 by :- asking H to check with W for consent and on their readiness for the hearing on 15/11/2021; in so doing, giving W the veto power to refuse H's opportunity to be heard when W refused to give consent to the 15/11/2021 hearing be used by H, this was within my reasonable contemplation given this is

a high conflict case. 155. It is trite that procedural fairness must not be compromised to a party's preference. According to the aforesaid short description of the chronology, it was only on 8/11/2021 that H's lawyers requested to make use of 15/11/2021 hearing for his Holiday Summons, a date which had yet to be vacated (emphasis added). On that day, there was no Consent Summons before me to vacate the hearing scheduled for H's Committal Summons. This caused the Court to send over the letter of reply on 9/11/2021. 156. When the hearing on 15/11/2021 (Monday) was vacated on 12/11/2021 (Friday) by the Order granted in respect of the Consent Summons, there was only 2 days left over the weekend. From any perspective, it would be procedural unfair for W to tackle with H's 13th Affidavit and the 8 exhibits (adding up to 135 pages) over the weekend within 48 hours. 157. The direction to H to seek consent and check on readiness with W and Official Solicitors (representing the children) was granted, from any objective views, on all fairness to H to secure his right and chance to be heard (if W and OS are ready) rather than rejecting outright his opportunity to be heard on 15/11/2021. 158. There was no basis for an objective by-stander to conclude that there was any apparent bias or risk of apparent bias against H on granting the orders/directions in respect of the potential hearing date of 15/11/2021. Directions on 9/12/2021 159. The directions granted on 9/12/2021 had been set out in paragraph 144 of this Decision. H submitted that this Court's directions simply refused to hear H's Holiday Summons for the reason of lack of urgency. 160. On 15/12/2021, H's lawyers wrote back to this Court in response to the said directions and, insofar as the Holiday Summons was concerned, it was said :- "In the premises, even if this Court considers the application is not urgent, could we seek the Learned Judge's permission for our client to file his Intended Summons and have it fixed the usual way (i.e. by allowing the Listing Officer to provide our client the first available return date)?" 161. I failed to see what H was addressing upon. 162. It was not necessary to seek for permission to issue Summons if it was done in the usual way. Why would H's lawyers said in their letter that they would seek my permissions is a complete mystery. As a matter of fact, they chose not to issue the Holiday Summons after their letter of 15/12/2021. Hence, it was utterly wrong to say that H was not even allowed to take out the Holiday Summons in the usual way. There is no room for H to be able to shift his fault, hopefully not misunderstanding of the simple procedure of issuing Summons in the usual way requires no permission to do so (emphasis added), into a blame on me to support his recusal application. 163. This part of H's complaint was completely groundless and unsubstantiated. 164. Finally, in the case of *Locaball (UK) Ltd v Bayfield Properties Ltd & Another* (unreported PTA 1999/6041-42) the Court of Appeal in England was of the view that a judge should not yield to tenuous or frivolous objection on the ground of bias to recuse himself from hearing a case. It found force in the views expressed by Mason J in the Australian case of *Re JRL ex parte CJL* (1961) 161 CLR 342 : "Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualifications of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour." Decision 165. For all the above reasons above, I decided that H's Recusal Summons dated

30/12/2021 (filed on 3/1/2022) fails. 166. All applications pending this Decision could now be restored on giving the other party 48 hours' notice in writing. Upon restoration, parties may approach the Listing Officer for arrangement of hearing date(s) in the usual way. Costs 167. Given the fact that H completely fails in his application, it is fair and reasonable for him to bear W's costs of and occasioned by his application, including all costs reserved (if any). 168. And I will so order. 169. I will also grant Certificate for one Counsel.

Orders

170. I now grant the following orders :- H's Summons dated 30/12/2021 (filed on 3/1/2022) be dismissed; H do pay to W the costs of and occasioned by his application to be taxed; if not agreed, and There be Certificate for one Counsel. 171. This is a costs order nisi which would become absolute if no application to vary the same was filed within 14 days from the date of this Decision. 172. Last but not least, I wish to thank Senior Counsel, junior Counsel and the legal teams for both parties for their valuable assistance to this Court. (George Own) District Judge Miss Audrey Eu, SC., leading Miss Theresa Chow instructed by Messrs. Ho & Ip, Solicitors for the Petitioner Miss Anita Yip, SC., leading Mr. Ken Chan instructed by Messrs. Withers, Solicitors for the Respondent

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