

HONG KONG / JUDGMENT

YCKS v. MPKC

[2023] HKCA 447

COURT

Court of Appeal

DECIDED

27 March 2023

CASE / FILE NUMBER

CACV113/2021

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CACV 113/2021

[2023] HKCA 447

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF APPEAL

CIVIL APPEAL NO 113 OF 2021

(ON APPEAL FROM FCMC 5771 OF 2018)

BETWEEN

YCKS

Petitioner

and

MPKC

Respondent

Before: Hon Kwan VP and Yuen JA and B Chu J in Court

Date of Hearing: 8 March 2023

Date of Judgment: 27 March 2023

JUDGMENT

The Court:

Introduction

This is an appeal of the respondent husband against an ancillary relief judgment handed down on 10 November 2020 (“AR Judgment”) by Deputy District Judge J Chow (“Judge”), after a trial of over 2 days (“AR Trial”). Notwithstanding a decree nisi of divorce has been granted, for convenience sake, the petitioner and the respondent will be referred to herein respectively as “Wife” and “Husband”.

The Husband first issued a summons in December 2020 seeking leave to appeal against the AR Judgment. The draft grounds of appeal attached to his summons contained 32 paragraphs (“1st Draft Grounds”). On 15 March 2021, the Judge handed down her decision (“Leave Decision”) and granted the Husband leave to appeal on grounds specified in paragraphs 1, 22, 25 and 27 of the 1st Draft Grounds, and a stay of execution of the judgment. On the same day, 15 March 2021, the Judge also handed down a decision dismissing the Husband’s summons for variation of the costs order nisi made against him in the AR Judgment (“Costs Decision”).

On 29 March 2021, the Husband issued a summons under CAMP 97/2021 to renew his application for leave to appeal on his other grounds. This time, the draft grounds attached to his summons contained 34 paragraphs (“2nd Draft Grounds”). There are two new paragraphs. The new paragraph 33 concerns the Judge failing to recuse herself from hearing the AR Trial and the new paragraph 34 concerns the Judge failing to vary the costs order in her Costs Decision.

This Court granted leave for additional grounds 3, 7, 10, 11, 13-18, 20, 21, 23, 24, 28-30 and 34 of the 2nd Draft Grounds, with the decision reserved on ground 19, pending receipt of the relevant pages of the transcript from the Husband. Thereafter, on 13 December 2021, leave on ground 19 was also given. In short, there are now a total of 23 grounds (“Grounds”) contained in the Husband’s re-amended notice of appeal for which the Husband has been granted leave.

Brief Background

The Husband was born in October 1966 and was aged about 53 at the time of the AR Trial. The Wife was born in April 1972 and was then aged about 47. They were married in July 2001 and have 4 children C, R, L & T, aged respectively 17, 16, 13, 11 at the time of the AR Trial. The parties separated in about March 2015 and the Wife issued a petition for divorce in July 2015. The duration of the marriage was some 14 years when they separated.

As seen in the background set out by the Judge in the AR Judgment, the Husband used to work in securities and investments, but was made redundant in 2012. The Wife has a degree in psychology but has not worked since 2000. Prior to the Husband moving out, the family was living in rented accommodation on Lamma Island where the Wife and the children have remained. There is another property nearby on Lamma Island registered in the Husband's name ("Lamma Property"), but this had always been rented out. The children have been receiving education at international schools in Hong Kong.

The Wife first issued a divorce petition in July 2015 based on the Husband's unreasonable behaviour (FCMC 8480/2015) ("1st Petition"). This was defended by the Husband. Eventually, the Wife issued a fresh petition in May 2018 based on the parties separation since March 2015 (FCMC 5771/2018) ("2nd Petition") upon which a decree nisi of divorce was eventually granted on 29 April 2020. Suffice to say, the divorce proceedings have been highly litigious throughout.

The Wife had applied urgently for maintenance pending suit/interim maintenance for herself and the children in May 2016. On 20 May 2016, Principal Family Court Judge Bruno Chan made an order on ex parte basis, without prejudice to the Husband's right to oppose or to apply to set it aside, for the Husband to pay the Wife a total sum of HKD 40,000 per month, namely HKD 4,800 per month as maintenance pending suit for the benefit of the Wife herself and HKD 35,200 per month as interim maintenance for the benefit of the 4 children ("1st MPS Order").

At the time, the Husband was paying the rent and the school fees directly to the landlord and the schools respectively. After the 1st MPS Order, on 28 June 2016, the Husband decided to act in person and he issued a summons to set aside and/or to alternatively vary downwards the 1st MPS Order ("H's 1st Variation Application"). Thereafter the Wife changed solicitors and on 20 October 2016, she issued a summons to vary the 1st MPS Order to formally include in the order the Husband's direct payments for the rent and school fees for the children ("W's 1st Variation Application"). Both applications were initially adjourned sine die. At that time (until end of June 2017) the Husband was complying with the 1st MPS Order and continuing to pay the rent and school fees directly.

However, starting from 1 July 2017, the Husband stopped paying the children's school fees. This then led to the Wife applying for leave to issue committal proceedings against the Husband and restoring W's 1st Variation Summons, seeking a variation of the 1st MPS Order to include the Husband's direct payments for rent and school fees.

In the meantime, the parties also had disputes over the children's arrangements and this had led to a trial. There was no issue at the trial that the Wife should have the sole care and control of the children and the disputes were mainly over whether the Husband should be granted joint custody of the children and his access to them. There had been a total of 5 social investigation reports and/or clinical psychological reports. After a 3 day trial, on 28 February 2018, the Wife was granted sole custody, care and control of the children, with reasonable access/defined access granted to the Husband stated therein ("Custody Order"). The Judge had handed down a judgment giving her reasons why sole custody was granted to the Wife ("Custody Judgment").

Thereafter, on 27 April 2018, upon hearing the W's 1st Variation Summons, the Judge varied the 1st MPS Order and ordered the Husband to pay to the Wife, as from 1 May 2018, in addition to HKD 40,000 per month, a sum of HKD 52,000 per month as maintenance pending suit, being HKD 12,000 for rent and HKD 40,000 for school fees ("2nd MPS Order"). The Judge further ordered that the payment of HKD 40,000 per month be backdated to 1 July 2017, and that the Husband was to pay to the Wife the sum of HKD 400,000, being HKD 40,000 per month from July 2017 to April 2018, within 28 days of the order. The Judge handed down a judgment on 27 April 2018 setting out her reasons for variation ("Variation Judgment"). As seen in the Variation Judgment, the Judge had allowed both parties to testify orally at the hearing before her.

Thereafter, the Husband applied to restore H's 1st Variation Application. This was followed by W's summons issued on 28 June 2018 to strike out H's 1st Variation Application, which was subsequently ordered by the Judge on 30 July 2018 to be struck out.

The Husband did not comply in full with the 2nd MPS Order. Pursuant to a judgment handed down by the Judge on 20 November 2018 ("Committal Judgment"), the Husband was committed to 4 weeks imprisonment by the Judge.

As for the Custody Order, the Husband had applied for leave to appeal against the order, which application was eventually dismissed on 17 May 2018, but thereafter, on 21 February 2019, the Husband then issued a further summons to, amongst other things, vary the Custody Order, and again to seek joint custody and also more extensive access ("Custody Variation Application").

By a notice of application dated 21 February 2019 (formally filed on 8 March 2019), the Husband applied for a variation of the 2nd MPS Order to seek (i) the total MPS awarded to the Wife be reduced to HKD 20,000 per month backdated to 27 April 2018; (ii) the HKD 400,000 back payment to the Wife be cancelled; (iii) the previously paid expenses of HKD 100,000 to ESF schools, to the landlord, and to the Wife each month in past 7 years be apportioned for reimbursement to the Husband in any future financial settlement ("H's 2nd Variation Application").

On 23 April 2019, the Wife also issued a summons to vary the 2nd MPS Order for an order for the Husband to pay to the Wife a further sum of HKD 105,620 per month in addition to HKD 40,000, namely a total of HKD 145,620 per month, representing (i) monthly personal expenses of the Wife of HKD 7,000, (ii) monthly personal expenses of the four children of HKD 107,120 (including monthly school fees of \$54,900), (iii) total household expenses including monthly rental payment of the matrimonial home of HKD 31,500, and that the total payments of HKD 145,620 per month to be payable to the Wife from 1 May 2019 until further order. ("W's 2nd Variation Application").

On 29 April 2019, the Judge ordered that the parties' respective variation applications be heard as the ancillary relief application of both parties on 4 days between 12 to 15 November 2019 ("Directions Order"), the Judge's intention being that the parties' variation applications would be heard at the same time and/or as part of their ancillary relief applications. The Judge dispensed with a Financial Dispute Resolution hearing, and directed the parties to file their respective section 7 affirmations within 56 days, namely affirmations regarding the matters in section 7 of the Matrimonial Proceedings and Property Ordinance, Cap 192 ("MPPO"). The Judge further

directed that the Wife was to file an agreed and signed statement of issues in dispute (“Statement of Disputed Issues”) and an agreed list of the parties’ assets and liabilities before the PTR (“Schedule of Assets and Liabilities”), and failing agreement, each was to file their own. The Judge also directed the parties to submit a joint valuation report of their assets, and failing agreement, the parties were to file their own. The Judge further directed the parties to lodge and serve their respective “Open Offers” in accordance with paragraph 11 of the Practice Direction 14.11.

Pursuant to the Directions Order, the Wife filed her section 7 affirmation, namely her 31st affirmation, on 24 June 2019. Insofar as this Court can see, there was no section 7 affirmation filed by the Husband pursuant to the Directions Order. Further, pursuant to the Directions Order and prior to the PTR, on 10 October 2019, the Wife’s solicitors sent to the Judge a draft trial bundle index, the Wife’s Statement of Disputed Issues and the Wife’s Schedule of Assets and Liabilities, and a valuation report with a copy of the search record of the Land Registry relating to the Lamma Property. Insofar as we can see, the Husband did not lodge any documents pursuant to the Directions Order.

Shortly after the PTR hearing, the Husband’s Custody Variation Application also came before the Judge for directions and on 29 October 2019, the Judge directed that this application be fixed for hearing immediately after the AR Trial.

Just prior to the commencement of the AR Trial, the Husband sent an urgent letter on 8 November 2019 to the Judge trying to amongst other things, seek an adjournment of the AR Trial and requesting for the Wife’s registration of her Form 25 notice (for application for ancillary relief including a transfer of the Lamma Property) against the property be lifted in order for him to secure funds for legal representation (“Urgent Letter”). According to the receipt chop of the Family Court Registry, the Urgent Letter was only received by the Family Court Registry on 12 November 2019.

The AR Trial went ahead for over 2 days. Subsequently, after a short hearing on 14 November 2019, the Husband’s Custody Variation Application was settled on 15 November 2019.

Eventually, the AR Judgment was handed down on 10 November 2020. The Judge ordered amongst other things that:

H’s Variation Application be dismissed, and an order nisi that the Husband was to pay the costs of the application to the Wife, to be taxed if not agreed;

Subject to the first charge of the Director of Legal Aid, the Husband to transfer the Lamma Property to the Wife at nil consideration within 30 days from the granting of decree absolute and the Husband to pay all expenses of the transfer, including legal costs and taxed;

The outstanding maintenance pending suit in the sum of HKD 2.68m due and owing by the Husband to the Wife be discharged;

There be an order nisi that the Husband do pay the costs of the ancillary relief, including W's Variation Application and all costs reserved, to be taxed if not agreed. ("AR Order")

In the AR Order, the Judge further made a declaration pursuant to section 18 of the Matrimonial Proceedings and Property Ordinance, Cap 192, that the court was satisfied with the arrangements for the children. The Wife had applied for the decree nisi to be made absolute but this was opposed by the Husband and the Wife subsequently undertook not to continue with that application until the determination of this appeal.

The Grounds

Ground 1 is in relation to the delay in the Judge handing down the AR Judgment. Ground 3 is in relation to the Judge's failure to allow the Husband to refinance and borrow loans from the Lamma Property so as to provide funding for him to engage a legal representative for the trial.

As for the other grounds, briefly, Grounds 7, 10, 11, 16, 17, 18a, 18f concern the Husband's assets, financial resources, income, and earning capacity; Grounds 13, 14, 15, 18b, 23, 24, 28 concern the Wife's assets, financial resources, income and earning capacity; Grounds 18c, 18d, 18e, 19, 20, 21, 22, 25, 27 concern the Wife's and the Children's financial needs.

Finally, Grounds 29 and 30 concern the structure of the AR Order. As for Ground 34, the Costs Decision is based on the AR Judgment, and this will depend on the Court's decision on the present appeal.

We will consider the other Grounds first before dealing with Grounds 1, 29, 30 and 34.

Ground 3 - the Judge's failure to allow the Husband to refinance and borrow loans from the Lamma Property

In Part 6.1 of H's Form E filed on 24 April 2019 (later defined as "H's 2nd Form E"), the Husband indicated that he wanted to seek an order for the removal of the registration of the Wife's Form 25 against the Lamma Property for him to seek legal representation for equality of arms. There was no summons issued by him at that time. Then, as mentioned earlier, there was the Urgent Letter sent by the Husband but received by the Family Court Registry only on 12 November 2019, ie sometime during the 1st day of the AR Trial. There was no information as to when notice of the Urgent Letter was brought to the Judge, save that on the original copy of the Urgent Letter in the court file, there was a handwritten remark "13/11 ct 11".

The only proper summons issued by the Husband to "lift the caveat Form 25" against the Lamma Property to enable him to have litigation funding was issued by the Husband on 15 November 2019, ie the last day of the AR Trial. The reason given by the Husband was that he was "emotionally distraught at the ongoing rejection and alienation over the past four years and was ill equipped to face the jaws of a seasoned professional without representation and equality of arms". By the 15 November 2019, the AR Trial was already completed and the litigation funding the Husband was seeking in his summons appeared to be in any event for his application to vary the Custody Order.

The Husband has been acting in person in the proceedings in the Family Court throughout since 28 June 2016, and he has been able to issue numerous summonses on his own and to file numerous affirmations without legal representation. He had not made any formal applications for litigation funding in relation to the contested 3 day custody trial or the contested hearing for W's 1st Variation Application, which resulted in the 2nd MPS Order. He also did not issue any summons to seek litigation funding in respect of the committal proceedings. There was no evidence that the Husband had contacted any solicitors with respect to instructing them for the AR Trial, nor had the Husband produced any estimates of legal costs provided by a solicitor for any proper litigation funding application.

As there was no proper summons before the Judge to lift the Wife's registration of her Form 25 against the Lamma Property for any litigation funding prior to the commencement of the AR Trial, the Judge cannot be criticised for failing to allow the Husband to refinance and borrow loans against the Lamma Property. There is clearly no merit in Ground 3.

Grounds 7, 10 ,11, 16, 17, 18a, 18f - the Husband's assets, financial resources, income, and earning capacity

There were two Form Es filed by the Husband. In his Form E of 11 January 2016 ("H's 1st Form E"), the Husband deposed to having total net assets of almost HKD 11m including HKD4m for the Lamma Property, and in his Form E of 24 April 2019 ("H's 2nd Form E"), he deposed to having total net assets of about HKD 3.3m including HKD 4m for the Lamma Property. The Husband's assets and liabilities in his two Form Es can be seen in the following table:

Assets & Liabilities

H's 1st Form E

H's 2nd Form E

Section B

Lamma Property

HKD 4,000,000

HKD 4,000,000

Section C

Bank accounts

HKD 1,684,118.11

HKD 25,000

Section D

Shareholding in private companies

-HKD 30,000

0

Section E Other business interests

(left blank)

-HKD 250,000

Section F

All holdings (e.g.stocks)

HKD 2,782,904.32

HKD 554,000

Section H

Debts owed to the Husband

HKD 2,373,200:-

(i) a loan to the “Ancestral Estate” as down payment to rebuild the “Ancestral House” – RMB 1,200,000 (HKD 1,423,200)

(ii) a loan to Marine Sky Limited – HKD 950,000

HKD 1,220,000:-

(i) rent outstanding from tenant – HKD 320,000

(ii) a loan to “Ancestral Estate” – HKD 900,000

Section K

Pensions

HKD 365,545.92

HKD 627,355

Section L

The Husband's liabilities

HKD 193,129.70

HKD 2,910,000

Net total

HKD 10,982,638.65

HKD 3,266,355

In the H's 1st Form E, under Part 2.3, he disclosed that he held 4 bank accounts in UK and stated that he was applying for bank statements of those accounts. Under Part 2.7, the Husband also disclosed investment accounts and bonds and stated that he was applying for statements. Under Part 5.2, he disclosed amongst other things that he had been trying to set up some business projects over the past few years and had made some investments but both without success. Under Part 5.5, the Husband mentioned amongst other things, that the family had a plan to rebuild the ancestral house for future accommodation and possible income, and that a sum of HKD 1.2m had already been lent to the "Ancestral Estate" to the builder to rebuild the ancestral house.

In H's 1st Form E, under the section concerning his income, H had put "N/A", save rent from the Lamma Property of HKD 32,000 per month. In relation to his monthly expenses, he gave a total amount of HKD 125,227 per month.

Under Part 2.3 of the standard Form E, the deponent has to give details of all bank accounts held in Hong Kong or elsewhere which the deponent holds or in which the deponent has an interest in the past 12 months, and the bank statements for the past 12 months for each disclosed account have to be attached. Although the Wife filed her Form E on 30 October 2015, the Husband did not file his (ie H's 1st Form E) until January 2016. Thus, the 12 month period would in his case be from about December 2014 to about December 2015.

On 17 January 2017, the Wife had filed and served on the Husband a financial questionnaire ("1st Questionnaire") to which the Husband filed his answers on 1 March 2017 ("Answers"). The Husband refused to provide an extra 12 months of bank statements of say, his HSBC Premier Account, namely from December 2013 to December 2014 as requested by the Wife in the 1st Questionnaire, saying that there was no basis for further account history, and that by then, he had already provided more than required, namely those between January – June 2016 in his affirmation to set aside the 1st MPS Order.

Further, by way of example, the Husband was asked by the Wife in the 1st Questionnaire to provide explanations on the source of various deposits and the purpose of various withdrawals in his HSBC Premier Account. Insofar as deposits were concerned, all the Husband said was that they were transfers from other HSBC bank accounts in his name and/or securities investment accounts or from other bank accounts. No proper answers were provided by the Husband as to which account/securities investment accounts/other bank accounts the deposit was transferred from. Suffice to say, the duty was on the Husband to provide full and frank disclosure of his financial means, and it was not for the Wife or her solicitors to plough through the Husband's bank statements to try to identify the source of the deposits/transfers. In any event, some deposits were marked "cash deposits" or "credit as advised", for which the Husband failed to identify their source in the Answers.

In the Answers, the Husband also suddenly said two of his accounts in UK were closed down long ago and no statements were available. There was no mention that these accounts were "closed long ago" in his 1st Form E, and in any event, no supporting documentations/statements had

been provided by the Husband. In the Answers, the Husband had said that his Standard Chartered Bank account was used primarily for receiving the rental income from the Lamma Property and for time deposit for higher interest rates. Further, according to the Husband, the Bank of China account disclosed in H's 1st Form E was/is used as a "holding vehicle to segregate collective funds accruing to the male descendants" of the ancestral estate of his great-great grandfather ("Ancestral Estate") and the purpose was/is for maintaining the Ancestral Estate and burial grounds and ancestral worship, and not for his own or others' personal benefit, and that he has only approximately 5% beneficial interest in the account ("Ancestral Estate Account"). In the Answers, he claimed all the details were maintained on a USB memory card which was last located in the possession of the Wife in the former matrimonial home.

As required in the standard Form E, so long as the Husband has an interest in the Ancestral Estate Account, he should have provided bank statements for at least 12 months prior to the date of H's 1st Form E. Even if he did leave his USD memory card behind, there was no reason why he could not have obtained the bank statements from the bank.

As to those questions in relation to the Husband's loan to the Ancestral Estate, in the Answers, the Husband had said the loan was the initial down payment to builders to demolish and rebuild the ancestral house plots, and that the members of the Ancestral Estate are living male descendants of his great grandfather with the Husband himself as the acting representative of the Ancestral Estate. The Husband further said that the loan of RMB 1.2m was to be repaid by way of new rental income from the reconstructed flats/houses when completed and that the repayment would be complete within 10 years, which would encompass a 5% interest rate p.a. The Husband had said that the source of the loan was the matured RMB time deposit with Standard Chartered Bank, but he then said since then (presumably he meant since the 1st Form E), the loan had since been returned in full and replaced with a new loan of RMB 900,000 for the same purpose. He then said the source of the new loan was a matured RMB time deposit with China Construction Bank. All one can see was that on 5 February 2016, there was a deposit of CNY884,406.11 into his HSBC Premier Account, and on 3 March 2016, there were withdrawals of a total of CNY876,000 and on the same day, there was a HKD deposit of 1,029,036 and again on the same day there appeared to be HKD 900,000 debited by way of a cashier order. No documentation was provided as to its whereabouts. No details of the location, or lot number or district demarcation number, were given of the "ancestral house plots", nor were there any loan documentations, receipts in relation to the payment of the loan, or rebuilding plans or estimates of total costs etc.

As for the Husband's loan to a company called Marine Sky Limited ("Marine Sky"), in the Answers, the Husband said this company was intended to be the investing vehicle for a leisure business project in UK and now intended for a stake in an agricultural start-up project cultivating vegetables hydroponically. He then said the loan to Marine Sky was an unconditional personal loan from him and had since been reduced to HKD 800,000 as HKD 150,000 was repaid on 7 February 2017 to his HSBC Premier Account to meet his funding requirements including the interim maintenance obligations under the 1st MPS Order. He did not provide any bank statements of Marine Sky, nor were there any supporting documents regarding the alleged loan.

On 14 March 2018, the Wife had obtained leave to serve a further questionnaire (“2nd Questionnaire”) in which she had sought amongst other things, 5 years’ bank statements for those bank/credit card accounts disclosed by the Husband, and 6 years’ bank statements for those bank/credit card accounts which the Husband had failed to disclose including his bank accounts in UK. The Husband was asked again to produce documentary evidence of the “new loan” allegedly made by him to the Ancestral Estate, and also the loan to Marine Sky and the bank account of Marine Sky and copies of bank statements thereof. Although the Husband was ordered to provide answers within 28 days, there were no such answers filed within the deadline imposed by the Judge.

In the Variation Judgment, the Judge had already pointed out certain material deficiencies in H’s 1st Form E as identified by the Wife, and the Judge had found that the Husband had at that stage “blatantly failed to disclose relevant materials as required in the Form E”. It was in light of the Husband’s deficient Form E and non-disclosure of his financial assets, the Judge decided to vary the 1st MPS Order and made the 2nd MPS Order.

On 13 August 2018, the Judge ordered the Husband to file his updated Form E within 28 days, but it was not until 24 April 2019 that H’s 2nd Form E was filed. He had not provided the bank statements for the periods sought by the Wife. He had continued to fail to provide copies of bank statements of the Ancestral Estate Account and merely said he only had “circa 5 % interest and have debt obligations to the account”. He had also failed to provide bank statements of his bank accounts in UK as requested by the Wife, and also the banks statements of Marine Sky.

It was not until the AR Trial that the Husband produced some banks statements of his HSBC Premier Account for month ending 17 July 2013 and month ending 16 November 2013. Eventually, he produced bank statements of his HSBC Premier Account for the period from October 2013 until January 2015 by attaching them to his “Combined Opening and Closing Submissions” lodged on 13 December 2019, after the AR Trial. The Husband had also attached 3 bank statements of Marine Sky to his “Combined Opening and Closing Submissions” after the AR Trial, namely those dated 27 May 2017, 27 June 2017, and 27 March 2019.

As seen above, the Husband’s financial disclosure was clearly piecemeal, deficient, incomplete, and in any event less than full and frank and far from satisfactory.

In H’s 2nd Form E, the net value of his assets (including the Lamma Property) were reduced to HKD 3,266,355. He had put “0” for his income, and further he indicated that the rent of HKD 32,000 (gross) from the tenant of the Lamma Property had been outstanding for 10 months. For monthly expenses, the Husband had put an amount of HKD 133,500, plus he needed to pay rent of HKD 10,000 per month for new accommodation for himself in 2019.

As set out in paragraph 29 of the AR Judgment, the Husband's net value of his assets had reduced from about HKD 10.983m in H's 1st Form E (as at 12 January 2016) to about HKD3.266 m in H's 2nd Form E (as at 24 April 2019), ie by about HKD HKD 7.716 m. In paragraph 31, the Judge indicated she was not satisfied that the Husband had sufficiently explained the whereabouts of the matrimonial assets after filing H's 1st Form E and had found him evasive under cross examination.

Under Ground 10, the Husband complained that the Judge had unfairly and wrongly concluded in paragraph 32 of the AR Judgment that he did not disclose the building of a house in San Tin when he had already disclosed the same. On our reading of that paragraph, there was no finding by the Judge that the Husband did not disclose the building of the house. In any event, whether it was the Ancestral Estate or the Husband building a house or rebuilding (or reconstructing) an ancestral house which had collapsed, the Husband clearly had/has an interest in a house which was said by him to be on ancestral plots, and therefore the Husband clearly had/has an interest in landed property, albeit according to him only circa 5%. It was thus not correct for the Husband to merely state in his Form Es that he had no interest in any landed property apart from the Lamma Property.

In any event, in paragraph 32, the Judge had also pointed to the other material deficiencies in H's 1st Form E which were found previously by her in the Variation Judgment, including the Husband's failure to disclose his UK assets. The Judge had said that the Husband was given opportunity to further disclose his financial position for the AR Trial, but the only documents he produced during the trial were two hand drawn graphs illustrating the family's cash flow and expenses. The Judge repeated relevant paragraphs in the Variation Judgment in paragraph 33 and in paragraphs 34-37, she set out reasons for drawing adverse inference against the Husband that he had failed to disclose his true financial position.

As said earlier, the Husband's financial disclosure was less than full and frank and far from satisfactory. The Husband had failed to provide supporting documentations. He had further disregarded court orders. In our view, the Judge was entitled to conclude that there was dissipation or hiding of family assets since the date of H's 1st Form E, ie since 12 January 2016 and that the Husband had deliberately not made full and frank disclosure. The Judge was entitled to draw an adverse inference against the Husband in respect of his assets and that there was no change in his financial position since the filing of H's 1st Form E. We find that the Husband's complaints under Ground 7 have not been made out.

Under Grounds 16, 17 and Ground 18a, the Husband criticised the Judge's calculations of the family/matrimonial assets.

In paragraph 39 of the AR Judgment, the Judge had used the Husband's figures in H's 1st Form E with the value of the Lamma Property revised to HKD 10.1m, and she came to a total of some HKD 17.3m as the value of the matrimonial assets.

The Husband complained that the Judge had failed to take into account his liabilities and debts set out in Part 2.13. In H's 1st Form E, the liabilities disclosed by him were about HKD193, 130, consisting of mainly a sum of HKD 89,184 paid to Inland Revenue Department on 14 December 2015 for tax, and a total sum of HKD 100,000 said to be debts owing to the HSBC accounts belonging to the children. It would appear that the Husband had received two tax refund cheques of around HKD 90,000 at end of 2017. There was also no evidence that he needed to repay the debts to the children.

Having considered the above, in paragraph 39 of the AR Judgment, the Judge was entitled to use only the value of the Husband's assets in H's 1st Form E, namely (i) Section C-cash in bank (HKD1,684,118.11), (ii) Section F -stocks & shares (HKD 2,782,904.32) (iii) Section H - debts owed to him (HKD 2,373,200), and Section K – pensions (HKD 365,535.92) totalling HKD 7,205,768.35, plus the Lamma Property valued at HKD 10,100,000, making a grand total of HKD 17,305,768.35 without taking into account the Husband's liabilities. As seen hereinafter in this judgment, the Wife was found to have no assets and only liabilities. In the circumstances, the Judge was entitled to find that the Husband's assets totalling HKD 17,305,768.35 were the total of the matrimonial assets available for distribution.

Thus, Grounds 16, 17 and Ground 18a have not been made out by the Husband.

Under Ground 11, the Husband complained that the Judge turned a blind eye to and ignored his explanations as to why he could not find a job. This Court noted when granting leave, in paragraph 57 of the AR Judgment, the Judge seemed to have been unaware of paragraph 5 of the Husband's affirmation filed on 28 June 2016 in which he listed the companies to whom he had applied for various positions. In that paragraph 5, the Husband had set out names of no less than 16 companies to which he claimed to have applied for various positions, but there were no supporting documents save those emails produced by him in paragraph 6. The Husband had alleged that his application letters were left in the former matrimonial home and the Wife had refused to return the same. In paragraph 6, the Husband did produce various emails to support his application for some positions but those appeared to be between 2013 and early 2016.

The Husband's affirmation filed on 28 June 2016 was in support of H's 1st Variation Application, and as mentioned earlier, H's 1st Variation Application had in fact already been struck out on 30 July 2018. This affirmation was not part of the documents included in the trial bundles for the AR Trial. Only those affirmations filed after the Variation Judgment/2nd MPS Order had been included in the trial bundles for the AR Trial. What the Judge referred to in paragraph 57 of the AR Judgment was the Husband's evidence during the AR Trial in which he had referred to certain WhatsApp conversations with a female of a Taiwan firm to indicate he was close to having a job offer in May 2018. The Husband had worked in the summer of 2019 driving some passengers from San Tin to a shuttle bus station for Mainland China earning HKD 40 an hour. During the trial, the Husband had also provided a letter dated 23 August 2019 which he sent to CICC for a position on the Asian Equity desk.

In paragraph 8 of the AR Judgment, the Judge had pointed out that the Husband was well educated and had worked in securities and investments for over 20 years with a lucrative salary but stopped working after being made redundant from his last job in 2012. The Judge had gone on to say that “with unknown reasons”, the Husband found his earning capacity was restrained to a large extent and opportunities were limited. Having said this, in paragraph 55 of the AR Judgment, the Judge did set out the Husband’s explanation as to why he could not secure new employment in the same industry that he had been working for in the past 15 years.

Further, in paragraph 57, the Judge noted that the Husband said his earning capacity was considerably lower than before and that he denied refusing to work for 7 years. It was after having considered the Husband’s evidence that in paragraph 62, the Judge rejected the argument that the Husband had no working capacity or was unable to secure a permanent job since his unemployment in 2012, and found that with his qualifications and working experience, he should be able to find a job at least to make ends meet. The Judge had also pointed out in paragraph 60 that although the Husband claimed he had various health issues, no medical evidence was produced.

In other words, the Judge in fact accepted the Husband’s explanation as to his efforts in trying to find positions in the same industry in which he had previously worked and she did not find that the Husband had the same earning capacity as before he was made redundant, namely a capacity to earn a monthly income of HKD 130,625. In both paragraphs 62 and 65, the Judge only found that the Husband had the working capacity to earn and pay for his monthly living expenses/needs which the Judge found to be HKD31,500.

Having considered the above, we are of the view that the Judge did not turn a blind eye or ignore the Husband’s explanations. In our view, Ground 11 has not been made out.

In light of the Judge’s findings that the Husband’s needs which she found to be HKD 31,500 per month can be met by his working capacity, she did not fail to consider or cater for his needs as alleged by the Husband in Ground 18f. Further, in light of the adverse inference drawn by the Judge, the Husband was left with not only HKD6,982,638.65 of the total family assets as at the date of his 1st Form E, but also any undisclosed/unknown assets. Ground 18f has also not been made out.

Grounds 13, 14, 15, 18b, 23, 24, 28 - the Wife’s assets, financial resources, income and earning capacity

The Wife had been granted legal aid to issue her 1st Petition and had been under legal aid throughout until it was discharged in March 2021 after the AR Order.

The Wife had filed two Form Es, the 1st one on 30 November 2015 (“W’s 1st Form E”) and a further one on 10 July 2018 (“W’s 2nd Form E”).

In W's 1st Form E, she disclosed no savings, only a balance of about HKD276 in her bank account and she had liabilities of about HKD 469, which resulted in a negative value of her assets of about HKD 193. The Wife's evidence was that the Husband had been paying her HKD 46,000 as household expenses prior to separation and HKD 20,000 with delays thereafter, and that the Husband paid for the children's school fees and rent direct.

In W's 2nd Form E, she disclosed a balance of about HKD 4,800 in her bank account, and liabilities of about HKD 290,000, and thus negative value of HKD 285,500. It was the Wife's evidence that as the Husband had failed to comply with the MPS Orders, she had to borrow loans from various acquaintances and at the time of the AR Trial, her liabilities had totalled HKD 606,900. The Judge accepted the Wife had needed to borrow to maintain herself and the children.

In relation to the Wife's earning capacity, there was no real challenge that the Wife had been a full time housewife since 2000 earning no income and this was prior to the parties' marriage and appeared to be about the time the Wife was pregnant with the eldest child. Thus, throughout the marriage, the Wife was completely financially dependent on the Husband. What was challenged by the Husband in H's 1st Variation Application when he applied to set aside the 1st MPS Order and/or vary it downwards was the amount he should pay to the Wife for interim maintenance for her and the children, which he said should be HKD 20,000 per month in addition to rent and school fees. After H's 1st Variation Application was adjourned and up to the end of June 2017, the Husband had in fact paid the periodical payments ordered under the 1st MPS Order together with the rent and school fees.

Under Ground 13, the Husband had alleged that the Wife had some earning capacity at least working part-time while the children were at school. At the time of the trial of the Wife's 1st Variation Application, the Husband had queried why the Wife did not return to the work force when she had a domestic helper at home. As seen in the Variation Judgment, the Judge accepted the Wife's evidence that it would be difficult for one adult to look after 4 children without assistance of a domestic helper, especially when the Wife needed to take one of the children to see the doctor, someone would have to take care of the other 3 children at home. The Judge had also pointed out that the Wife has no immediate family members in Hong Kong and she is the only person who can take care of the 4 children. Thus, the Judge had already rejected the Husband's suggestion at that time that the Wife had any earning capacity, whether working full time or part time.

In any event, as pointed out by the Judge in paragraph 43 of the AR Judgment, all 4 children developed behavioural and psychological problems, some of these problems appeared to flow from the fact that the children were suspended from school due to the Husband's failure to pay their school fees, and that the Wife was required to be hands on to manage them all.

By the time of the AR Trial, the Wife had stopped being in gainful employment and had been a housewife for some 19 years. According to the Wife, prior to 2000, she was working as a TV producer in an advertising agency earning about HKD 20,000 per month. There was no evidence to contradict this part of Wife's evidence. Thus, by comparison, the Wife's past earning capacity was much less than the Husband's.

The Judge had pointed out in paragraph 46 of the AR Judgment that the Wife was not avoiding work and that she was hoping to return to work in 5 years' time. In paragraph 49, the Judge had taken into account the Wife's ability to work. The Judge had said the Wife would be expected to have some gainful employment after 6 years when the youngest son would be in tertiary studies and that was why the Judge calculated the Wife's monthly maintenance/needs of HKD 13,300 for only 6 years. It was clear that the Judge was of the view that the Wife would be able to earn at least HKD 13,300 per month after 6 years. We therefore reject the Husband's Ground 13.

Under Ground 14, the Husband complained that the Judge had failed to consider the Wife's real financial resources and that the Judge blindly accepted the Wife's loans of HKD 606,900 as genuine, despite that most of them were not supported by any evidence. However, there was no evidence that the Wife was challenged or cross-examined on her loans. Insofar as we can see, there was no evidence that the Wife had any other financial resources. The parties had a joint SmartVantage bank account (savings and current) at HSBC into which the Husband was paying maintenance for the household, the Wife and the children. Apart from this, the Wife only had another current account at HSBC in her personal name with little savings. The Husband had never filed or raised any questionnaire on the Wife's Form Es. The Husband has not made out Ground 14.

In light of the above, there was no reason why the Judge should reduce the Husband's contributions towards the Wife's and the children's monthly expenses/needs to below 100% as contended by the Husband under Ground 15 or to reduce the Husband's contributions towards capital amounts to below 100% as contended by the Husband under Ground 28.

The Husband complained under Ground 18b that the Judge failed to ask for updated financial disclosures from the Wife with only the Husband's updated Form E, ie H's 2nd Form E, before the Judge during the trial. The fact was the Wife filed W's 2nd Form E after issuing her fresh petition and her fresh Form A, but the Husband had failed to do so. Eventually, on 13 August 2018, the Judge ordered the Husband to file his updated Form E within 28 days. Again, the Husband failed to comply with the order. He only filed H's 2nd Form E on 24 April 2019, some 7 months after he was ordered to do so. At the hearing on 29 April 2019 when the Directions Order was made, the Judge did not order either party to file any further updated Form Es prior to the AR Trial, but as mentioned earlier, she did order the parties to file their respective section 7 affirmations, which the Husband failed to comply with. There was no evidence that the Husband had sought any order at the hearing on 29 April 2019 for the Wife to file any further updated Form E or to make any updated financial disclosure. In any event, in the Wife's 30th affirmation and 31st affirmation (section 7 affirmation), she had disclosed relevant updated information about her own income, earning capacity, property and other financial resources and these affirmations were in the trial

bundles before the Judge.

In paragraph 51 of the AR Judgement, the Judge took into account the Wife's liabilities of HKD 606,900 at the time of the trial and that by the time when the AR Judgment was handed down, another 12 months had elapsed. Having taken this into account, the Judge then estimated that the Wife would incur further loans of HKD 960,000 (being HKD80,000 x 12 months). Under Ground 23, the Husband complained that the Judge was arbitrary in adopting a figure of HKD 80,000 per month. As explained by the Judge, in paragraph 51, the Judge arrived at the figure of HKD 80,000 based on the 2nd MPS Order, which was HKD 92,000 less HKD 12,000 rent which had been continuously been paid by the Husband. It was not an arbitrary figure or groundless as claimed by the Husband under Ground 23.

Under Ground 24, the Husband complained that the Judge failed to take into account the fact that once the Lamma Property is transferred to the Wife, she will have a rental income of about HKD 32,000 or more in the future and that the Husband will have no income, and that as a result the Wife should contribute to the expenses for herself and the children, and that this had not been considered by the Judge and was not reflected in the computation of the capitalised maintenance in the Judgment.

However, it can be seen in paragraph 69 of the Judgement, that by ordering the transfer of the Lamma Property to the Wife's sole name, it was the Judge's intention that the Wife was to make use of the Lamma Property to pay off the needs of herself and the children. In any event, this will be made clear in this Court's order.

Grounds 18c, 18d, 18e, 19, 20, 21, 22, 25, 27 - the Wife's and the Children's financial needs

Under Ground 18c, the Husband complained that the Judge failed to assess what were the reasonable expenses of the household, the children and the Wife given the current family financial circumstances and limited family resources. As mentioned earlier, in light of the Husband's lack of full and frank disclosure of his financial means, the Judge did not accept that there had been any change in the Husband's assets or his financial resources since 2016, or the H's 1st Form E, and we have said earlier that she was entitled to do so.

Under Ground 18d, the Husband complained that the Judge wrongly accepted the family's lifestyle and living standard should remain the same as pre-divorce level while the Husband was still employed or when they still had sufficient liquid assets. Under section 7(c) of MPPO, the standard of living enjoyed by the family before the breakdown of the marriage was a matter which the Judge had to have regard to in deciding on the question of ancillary relief. As the Judge found there had been no change in the Husband's financial assets or financial resources since the filing of H's 1st Form E in January 2016, the Judge was entitled to accept the family's lifestyle and living should remain to be that prior to and/or at the time of the parties' separation.

Under Ground 18e, the Husband complained that the Judge wrongly accepted that the two elder children, C and R should study abroad in UK and the US with expensive tuition fees and costs given the limited family resources available which are way out of proportion. In paragraph 44 of the AR Judgment, the Judge stated that the oldest child C wanted to further his studies in product design in UK beginning 2020 and that this would cost roughly HKD 1.2m over 3 years. Also, the second oldest child R intended to study business in a US university in September 2021 and that the cost over 4 years was roughly HKD 2.1m. The Husband's complaint under Ground 18 was mainly that such tuition fees were out of the limited family resources. The estimated amounts were not really challenged by the Husband during the AR Trial.

The Husband's complaints under Grounds 19, 20, 22, 25 and 27 are mainly in relation to the children's needs/expenses. Insofar as the Wife's needs were concerned, as set out earlier, this came to HKD 13,300 per month, namely the general expenses of HKD 31,500/5 plus her personal expenses of HKD 7,300. This was in fact much lower than the amount of HKD 30,100 per month which the Judge found to be the Husband's needs.

Further, insofar as the children's needs/expenses were concerned, it was not clear which item or part was challenged by the Husband during the AR Trial, apart from the school fees. In any event, we see no ground for saying that the Judge was wrong in accepting the needs of the Wife and the children to be HKD 145,620 per month (General expenses HKD 31,500 + Wife's personal expenses of HKD 7,000 + the children's personal expenses of HKD 107,120), save for the school fees.

In relation to the children's needs, as seen in the Leave Decision, the Judge accepted that there was double counting on her part in the two elder children's school fees.

The Husband had also criticised the Judge for ignoring the fact that the children had received substantial financial assistance from the ESF with reduction in their school fees since the school year 2017/2018 when considering the outstanding maintenance owed by the Husband to the Wife as well reasonable needs of the children. The Husband also pointed out that the school fees are payable for 10 months instead of 12 months. Further, the Judge erred in her computation of maintenance that each child should be entitled to a further 10 years of maintenance, whilst the children are of different ages, and that under the law, child maintenance should only be payable until each of them reaches the age of 18 or finishes full time education, whichever is the later.

Suffice to say, leaving the school fees of the children out for the time being, the children's personal expenses would be HKD 13,055 per month each, namely 1/4 of HKD 52,220 (ie HKD 107,120 less HKD 54,900) plus their respective share of the general expenses of HKD 6,300 per month (ie. 1/5 of HKD 31,500), this would make a total of HKD 19,355 per month per child in Hong Kong.

At the hearing before us, the Wife updated the Court over the children's circumstances. C has remained in Hong Kong due to lack of funds and is now attending his 3rd year of a 4 year degree course in product design at a university in Hong Kong. R managed to obtain some loans from friends and he went to UK (instead of USA) and is now attending his 2nd year of a 3 year degree course in sports science and exercise at a university in UK. The two younger children, L and T have remained studying in Hong Kong at their previous school.

In light of the latest information regarding C and R, their reasonable needs will need to be adjusted. C's estimated needs would remain at about HKD 19,355 per month (without his tuition fees) from the AR Trial until June 2024 when he completes his degree course, namely a total of at least HKD 1,083,880 (ie about 56 months x HKD 19,355 per month). R's estimated needs would have been HKD 19,355 per month (without his tuition fees) from the AR Trial until he went to UK in September 2021, namely a total of HKD 445,165 (ie HKD 19,355 x 23 months) and thereafter another HKD 900,000 for his 3 year degree course (based on the W's estimate of HKD 1.2m for a 4 year degree course which was accepted by the Judge). Thus for R, his needs will be at least a total of HKD 1,345,165 until he completes his degree course.

There is no reason why the two younger children should not receive tertiary education, and even assuming they receive their tertiary education in Hong Kong, it would be at least another 8 years for L and another 10 years for T from the time of the AR Trial until they complete tertiary education. Even without school fees, the estimated capital sum for L and T would be at least HKD4,180,680, namely HKD1,858,080 for L (ie 19,355 per month x 12 months x 8 years) and HKD2,322,600 for T (ie HKD 19,355 per month x 12 months x 10 years). The total would be HKD 4,180,680 for both L and T.

As seen above, the total needs for the 4 children from the AR Trial until they complete tertiary education would be a total of at least HKD 6,609,725, namely HKD 1,083,880 (for C), HKD 1,345,165 (for R), and HKD 4,180,680 (for L and T). Suffice to say, the Judge's errors in double counting the education fees of the two older children C and R, and in any other aspects regarding the school fees of the children will not affect our decision herein.

Grounds 1, 29 and 30

First, for Ground 1, although there was delay in the Judge handing down the AR Judgment, the Judge was the docket judge in charge of the matter since about 2017 until after the AR Judgment. She had handed down a number of decisions/judgments in these proceedings. Even after the AR Trial and prior to the handing down of the AR Judgment, she continued to deal with various applications by the parties. In granting leave to appeal on Ground 1, the Judge had referred to *Allied Success Creation Ltd v Cheung Hon Kuen* [2015] 5 HKLRD 355 and acknowledged that the delay had weakened the advantage of the trial judge. Even so, having considered the errors in her factual findings and/or calculations, they did not in our view affect her final award.

As set out by the Judge in paragraph 18 of the AR Judgment, the Wife lacked confidence that the Husband would satisfy any periodical payments for her and the children. To seek closure to these proceedings, she sought a transfer or sale of the entire Lamma Property with which she could satisfy the needs of herself and the children. As for the Husband, as seen in paragraph 20, he had suggested sharing the Lamma Property with the Wife on 50/50 basis, with 50% for the Wife and 50% on trust for the children, but that at the AR Trial, his offer was for the Lamma Property to be held entirely for the children, and that he was to hold 50% of the Lamma Property in trust for the two younger children.

In paragraph 69 of the AR Judgment, the Judge had said she agreed to order a transfer of the Lamma Property to the sole name of the Wife, the advantage of this being the Wife would then be able to make use of the Lamma Property to satisfy the needs of herself and the children.

The Judge had accepted in paragraph 67 of the AR Judgment that the marriage was a long one. There was no challenge that both parties had made equal contribution (either in cash or in kind) towards the marriage and that the Wife had /has always been the primary carer of the children. The Judge had found the matrimonial assets to be HKD 17,305,786.35.

Applying the principles in *LKW v DD* (2010) 13 HKCFAR, as a start, we see no reason for departure from an equal division of the matrimonial assets, which meant that the Wife herself should be entitled to about HKD 8,652,893.15, being 1/2 of HKD 17,305,786.35. As the Wife's needs were capitalised to only about HKD 957,600 for 6 years, she would have surplus over and above her needs out of her share of the matrimonial assets. However, the Wife had indicated at the AR Trial that if the Lamma Property were to be transferred to her sole name, she was willing to satisfy the children's needs, which as seen earlier, would come to at least another HKD 6,609,725 or some HKD 6.6m without taking into account the tuition fees of those children in Hong Kong.

Bearing in mind the Wife's concern that the Husband would not be complying with any order for periodical payments for the children's maintenance and/or school fees, the Judge's decision in awarding the Wife the entirety of the Lamma Property was a correct one. The Wife may wish to sell the Lamma Property, or to raise a loan secured by the property, and/or to simply continue to rent it out to receive the rental income. This is a matter for her so long as she is willing to shoulder the children's expenses and school fees. However, the Wife should provide an undertaking to this effect, namely that she undertakes to the Court to meet all the children's reasonable financial needs in the foreseeable future, including their education expenses until they complete tertiary education, out of net sale proceeds and/or net rental income of the Lamma Property. At the hearing, the Wife has indicated that she is willing to provide such an undertaking.

Further, for clarity sake, and to achieve the closure as sought by the Wife, we are of the view that the transfer should be on basis of a clean break as between the Husband and the Wife, and their respective applications for ancillary relief against each other and/or each other's estate should be dismissed upon the transfer of the Lamma Property to the Wife. being effected. It follows that upon the transfer being effected, the 2nd MPS Order should be discharged.

In the AR Order, the Judge did not make clear that the transfer was to be on the basis of a clean break or that the 2nd MPS Order should be discharged upon the transfer of the Lamma Property, save that she ordered that the outstanding maintenance pending suit in the sum of HKD2.68m to be discharged. It is not clear from the AR Judgement as to how the sum of HKD 2.68m was arrived at and it would appear that the sum would have included the children's tuition fees. As the Wife did obtain financial assistance from the 4 children's school, we will replace this part of the AR Order by an order simply discharging all the Husband's outstanding liabilities under the 2nd MPS Order as at the date of the AR Trial.

However, due to the delay in the handing down of the AR Judgment, the Husband's appeal and the consequent stay, the decree absolute has not been granted, and the Lamma Property has not been transferred to the Wife. On the other hand, the Husband has been receiving the rent of HKD 32,000 per month from the Lamma Property and save for paying the rent for the Wife, he has not been complying with the 2nd MPS Order. There is no reason why the Husband should not be paying at least the monthly sum of HKD 52,000 (ie HKD 92,000 per month less the school fees) under the 2nd MPS Order from the date of the AR Trial until the transfer of the Lamma Property has been effected, with credit for any amounts (including rent) which have been paid by him since then until the transfer of the Lamma Property to the Wife has been effected.

As for the children, there cannot be any clean break for their maintenance under the law but we find that the Wife's undertaking should suffice for the foreseeable future.

Conclusion

In light of all said above, we will replace the AR Order with the following:

Leave to the Wife to apply for the Decree Nisi to be made absolute forthwith, notwithstanding the expiration of more than 12 months from the date of the Decree Nisi.

Subject to the first charge of the Director of Legal Aid, the Husband shall transfer the Lamma Property to the Wife or her nominee at nil consideration within 28 days from the date of granting of decree absolute. The Husband shall pay all expenses of the transfer including legal costs and stamp duty, if any.

The above transfer is subject to the Wife's undertaking to the Court that she will meet all the reasonable financial needs of the children in the foreseeable future, including their education expenses until they complete tertiary education, out of net sale proceeds and/or net rental income of the Lamma Property and/or any loans she may obtain against the security of the Lamma Property.

All of the Husband's outstanding liabilities, whether under the 1st MPS Order or the 2nd MPS Order, as at the AR Trial shall be discharged. The Husband shall continue to pay a monthly sum of HKD 52,000 (ie HKD 92,000 per month less the school fees) under the 2nd MPS Order from 1 December 2019 (the month after the AR Trial) until the transfer of the Lamma Property has been effected, with credit for any amounts (including rent) which have been paid by him since then

until the transfer of the Lamma Property to the Wife has been effected. For avoidance of doubt, save as provided herein, H's 2nd Variation Application and W's 2nd Variation Application are dismissed.

Upon the transfer of the Lamma Property to the Wife being effected, the parties' respective claims for all forms of ancillary relief against each other and/or each other's estate shall be dismissed and the 2nd MPS Order shall be discharged.

As neither party is legally represented, we make no order as to costs of this appeal. We will not disturb the costs orders previously made by the Judge, including those in the Costs Decision.

(Susan Kwan)

(Maria Yuen)

(Bebe Pui Ying Chu)

Vice President

Justice of Appeal

Judge of the Court of First Instance

The Petitioner (Respondent), unrepresented, acted in person

The Respondent (Appellant), unrepresented, acted in person

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