IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 100

Civil Appeal No 4 of 2020

Between

CDV

… *Appellant*

And

CDW

… *Respondent*

In the matter of Divorce Petition No 65 of 1993
(Summons No 600205 of 2019)

Between

CDV

… *Petitioner*

And

CDW

… *Respondent*

JUDGMENT

[Courts and Jurisdiction] — [Jurisdiction]
[Family Law] — [Ancillary powers of court] — [Section 112(4) Women's Charter (Cap 353, 2009 Rev Ed)]

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Steven Chong JA, Belinda Ang Saw Ean J and Quentin Loh J
8 September 2020

14 October 2020 Judgment reserved.

Steven Chong JA (delivering the judgment of the court):

Introduction

1 This appeal arises from an application to vary a consent order in respect of the division of matrimonial assets, pursuant to a new statutory power in the Women's Charter (Cap 353, 2009 Rev Ed) which did not exist at the time when the order was made. In such a situation, it is always necessary and judicious for the parties to address the court as to whether such a new statutory power can be invoked to vary the consent order in the first place.

2 Regrettably, in the court below, this issue was not addressed. Instead, both parties proceeded on the basis that the new statutory provision is applicable to the consent order and in turn, the High Court judge below ("the Judge") dealt with the case on the common understanding that it applies.

3 This issue was however identified by this court before the hearing of the appeal and the parties were invited to address this specific point. Having heard the parties' respective submissions, we are satisfied that the new statutory provision does not apply and hence the variation of the consent order ordered by the Judge cannot stand.

4 In any event, we are also satisfied that even if the court is empowered to vary the consent order, the case law is clear that there must be "exceptional reasons" before a variation can be effected. For the reasons set out below, there are no "exceptional reasons" on the facts to justify the variation.

Background facts

The divorce and the Consent Order

5 The Husband and the Wife were married on 12 August 1973. As of 2 December 2019, the date of the first hearing before the Judge, the Husband and the Wife were 73 and 70 years old respectively: see *CDV v CDW* [2020] SGHC 61 ("GD") at [16].

6 The decree absolute (now known as the final judgment) was granted on 21 June 1994. In the course of the divorce proceedings, the parties recorded a consent order before the court on 24 March 1994 ("the Consent Order"). The Consent Order dealt with the Husband's maintenance obligations and the division of matrimonial assets. We reproduce the Consent Order in its entirety:

> **UPON** the questions regarding the maintenance for the [Wife] and the disposal of the matrimonial property coming on for hearing this day and **UPON** hearing Counsels [sic] for the [Wife] and the [Husband], **BY CONSENT**, **IT IS ORDERED** that:-
>
> 1) the [Husband] do pay the [Wife] maintenance in the sum of $2,500.00 per month up to a total of $252,000.00.

> 2) the [Husband]'s liability to pay maintenance shall cease when:-
>
> a) the [Wife] remarries; or
>
> b) the [Husband] reaches the age of 55; or
>
> c) the [Husband] is unable to work or secure employment at a salary which will enable him to pay maintenance in the sum of $2,500.00[.]
>
> 3) The existing joint tenancy in the matrimonial home … be severed and the matrimonial home be held by the [Wife] and the [Husband] as tenants in common in equal shares.
>
> 4) The [Wife] do have exclusive occupation and control of the matrimonial home … during her lifetime after the severance of the joint tenancy.
>
> 5) The matrimonial home … will not be sold during the [Wife]'s lifetime.
>
> 6) If the [Wife] does remarry during her lifetime, she will not be entitled to occupy the matrimonial home … and the matrimonial home shall be sold and the proceeds of sale divided equally between the [Wife] and the [Husband].

7 As is evident from sub-orders 4 and 5 of the Consent Order, the parties agreed that the Wife would have exclusive occupation and control of the "Matrimonial Home" during her lifetime. Further, unless she remarries, the Matrimonial Home would not be sold during her lifetime. The Matrimonial Home was purchased in 1986 for $385,000 and was valued at between $5m and $6m as of 31 July 2019.

The Husband's remarriage and financial difficulties

8 Following the divorce, the Husband married his present wife ("the Present Wife"). They co-own a five-room Housing and Development Board flat ("the HDB Flat") which was purchased in 1998. The Husband and the Present Wife have a son who is 25 years old ("the Son"). The Son matriculated into a local university in 2016.

9 According to the Husband, he has been estranged from the Present Wife for the past ten years. He currently lives with his mother-in-law and the Son in the HDB Flat.

10 At the time of the divorce in 1994, the Husband was earning a salary of about $2,000 per month. As recently as in 2013, his annual income was $98,933.00. However, the Husband claims that he has been experiencing financial difficulties since 2015. Although he drew a salary of around $7,000 per month in 2015, he claimed to have received only $3,000 per month. Thereafter, he joined a new company. Although the agreed monthly salary was $3,000, he claimed to have received only $2,000 per month. At the time the present application was filed, he had "not been paid on a regular basis for almost one and a half years". His current salary is reportedly $2,000 per month.

11 The Husband's financial difficulties resulted in the following consequences:

(a) He was unable to pay the monthly instalments on the HDB Flat for three years, leading to the accumulation of arrears.

(b) He had to use his credit card to pay the household expenses.

(c) He was unable to pay the electricity bills sometime in 2017 and 2018, and the Son had to take over the payment of these bills.

(d) He could not pay the Son's university tuition fees, and his sister-in-law has been providing financial assistance to the Son.

12 We pause here to briefly comment on the Wife's contention that the Husband has provided insufficient evidence of his alleged financial difficulties.

Among other things, she asserts that the Husband has concealed his assets in Malaysia and has "intentionally neglected to pay his HDB mortgage loans, credit card bills and late payment charges". No concrete evidence was adduced by the Wife in support of these allegations.

13 We note that the Judge was satisfied that "the Husband was clearly facing extreme financial difficulty" (see GD at [41]). We see no reason to disturb the Judge's finding of fact in this regard, and will proceed to examine this appeal on the premise that the Husband is indeed facing genuine financial difficulties.

The Husband's debts

14 We turn now to set out the debts owed by the Husband.

15 On 13 March 2019, the Oversea-Chinese Banking Corporation Limited ("OCBC") served a statutory demand on the Husband for outstanding debts of $58,352.85 on various credit card accounts. The Husband did not satisfy the statutory demand.

16 On 11 December 2019, the Husband wrote to OCBC, stating that he would settle the full outstanding amount with OCBC after he was able to sell his half-share in the Matrimonial Home.

17 On 13 December 2019, OCBC's solicitors responded as follows:

> We refer to your letter dated 11 December 2019.
>
> We are instructed to inform that our clients have responded to your client's queries on every occasion when he attended our clients Clementi Branch office. However, your client was unable to commit to an acceptable repayment plan with our clients.

> Please be informed that the following sum is still due and owing from your client to our clients: [$72,807.83]
>
> We are instructed and hereby do demand that your client makes payment of $4,000.00 ($1,000.00 to each account) by 20 December 2019. Thereafter, the payment of the balance outstanding shall be reviewed by our clients.
>
> Please also let us have copies of the duly exercised option to purchase and/or the Sale and Purchase Agreement by 31 December 2019 and a letter of undertaking from the solicitors acting for your client in the conveyance of your client's property by 15 January 2020.
>
> Please note that if your client is unable to fulfil the above, we have firm instructions to commence legal action against your client without further notice.
>
> Meanwhile, our clients' rights against yours are hereby expressly reserved.

18 On 25 March 2020, after the Judge's decision, OCBC served a second statutory demand on the Husband, with the debt now amounting to $80,557.68.

19 Apart from OCBC, the Husband owes $5,877.07 to Standard Chartered Bank (as of 18 June 2019). He also owes his sister-in-law $70,200.00 for the financial assistance she has rendered to the Son (as of 12 November 2019).

Compulsory acquisition of the HDB Flat

20 As noted above at [11(a)], the Husband has accumulated arrears in respect of his HDB monthly instalments. He was informed by the Housing and Development Board of its intention to compulsorily acquire the HDB Flat. On 22 April 2019, the Husband and the Present Wife appealed against the compulsory acquisition. It appears that no decision has been made to date, and the parties concerned are awaiting the outcome of the present appeal before us. In the event that the HDB Flat is compulsorily acquired, the compensation sum would be $585,000.

Application to vary the Consent Order

21 On 8 August 2019, the Husband filed HC/SUM 600205/2019. Relying on s 112(4) of the Women's Charter, he sought to vary the Consent Order by replacing sub-orders 4 and 5 with the following orders:

> (i) The [Matrimonial Home] shall be sold in the open market within 3 months from the date of this order and the sale proceeds after deducing all expenses of sale be divided equally between the [Wife] and the [Husband]. Parties shall refund their respective CPF moneys withdrawn for the purchase plus accrued interest.
>
> (ii) Parties shall have joint conduct of the sale of the [Matrimonial Home].
>
> (iii) The [Wife] shall be entitled to continue to stay in the [Matrimonial Home] until the date of completion of the sale but she will cooperate in the sale by allowing parties' appointed property agents and all potential buyers to view the [Matrimonial Home] for the purpose of the sale.
>
> (iv) The Registrar of the Supreme Court shall execute, on behalf of the [Wife], the Option to Purchase, Transfer and all related documents in connection with the sale of the [Matrimonial Home] in the event that the [Wife] does not do so after 7 days' notice having been given to her.

22 Before the Judge, the Husband submitted that he did not have sufficient funds to pay off his debts and faced imminent bankruptcy. He applied for the Consent Order to be varied such that the Matrimonial Home could be sold within three months of the date of variation, in order to avoid a forced sale upon bankruptcy (see GD at [24]).

The decision below

23 On 16 December 2019, the Judge granted the Husband's application.

24 At the outset, the Judge noted that "[i]t was common ground between the parties that sub-orders 4 and 5 [of the Consent Order] were 'continuing

orders'" (see GD at [38]). In principle, such orders are capable of being varied, following our decision in *AYM v AYL* [2013] 1 SLR 924 ("*AYM*") (at [27]).

25 The Judge rightly identified that the applicable test before a variation can be effected is that of "unworkability". In *AYM*, we explained that one instance of unworkability is "where new circumstances have emerged since the order was made which *so radically change* the situation so that to implement the order as originally made would be to implement something which is radically different from what was originally intended" [emphasis in original] (at [25]). We also stated in *AYM* that where there has been a change in circumstances "invalidating the very basis on which the court made a continuing order" [emphasis in original omitted], that would constitute a radical change in circumstances amounting to unworkability, and the court will be empowered to make the necessary variation under s 112(4) to deal with such a change (at [27]).

26 The Judge was satisfied that there were indeed new circumstances invalidating the very basis upon which the Consent Order was made. The purpose of sub-orders 4 and 5 was to provide the Wife with a place to live in by giving her exclusive occupation and control of the Matrimonial Home. There was sufficient evidence of the Husband's probable bankruptcy which would result in the forced sale of the Matrimonial Home. This would undermine the basis of sub-orders 4 and 5 and thereby constitute a radical change in circumstances amounting to unworkability (see GD at [38] and [39]).

27 The Judge was of the view that there was no reason to wait for OCBC to actually commence bankruptcy proceedings, before he could vary the Consent Order. He considered that it was only a matter of time before bankruptcy proceedings were commenced. OCBC was aware of the Husband's

half-share in the Matrimonial Home and the Husband did not have any other substantial assets to discharge his debts (see GD at [40] and [42]).

28 The Judge clarified that it was not the Husband's probable bankruptcy *per se* which would cause the Consent Order to become unworkable. Instead, it was the *likelihood of a forced sale of the Matrimonial Home*. Upon the Husband's bankruptcy, the Official Assignee would likely seek and obtain an order of sale of the Matrimonial Home. This would "undermine or invalidate the very basis of the [Consent Order], which was to provide the Wife with a home to live" (see GD at [43] and [44]).

29 In arriving at his decision, the Judge bore in mind that the Husband was not seeking to increase the size of his existing share of the Matrimonial Home. While he appreciated that the sale would cause the Wife distress, in his view, there would be sufficient funds for the Wife to buy another property (see GD at [46] and [47]).

30 The Judge granted a stay of execution on 27 March 2020 in the light of the Wife's appeal against his decision.

The issues to be determined

31 There are two main issues in this appeal:

(a) Whether the High Court could have invoked s 112(4) to vary the Consent Order ("Issue 1"); and

(b) If Issue 1 is answered in the affirmative, whether the High Court should have varied the Consent Order ("Issue 2").

32 We outline the parties' respective positions on these two issues.

33 On Issue 1, the Husband contends that s 112(4) remains operative and applies to the present proceedings. Section 186(3) of the Women's Charter, which is set out at [54] below, does not exclude the operation of s 112(4) because it only applies to *hearings* which commenced before 1 May 1997. Furthermore, the plain reading of s 112(4) indicates that the court has the power to vary an order "at any time it thinks fit". At the hearing of the appeal, counsel for the Wife, Mr Liaw Jin Poh, initially submitted that he was prepared to align himself with the provisional observations of the court that s 112(4) may not be applicable to the Consent Order. However, when queried by the court as to whether he would be addressing the further written submissions tendered by the Husband, Mr Liaw changed his position and instead agreed with the Husband's position on this issue.

34 On Issue 2, the Wife submits that the Judge erred in varying the Consent Order. She contends that sub-orders 4 and 5 are "executory orders" that could not be varied. A variation of the Consent Order also "destroys the core or spirit" of the order, which is the Wife's "life interest" in the Matrimonial Home. The Husband's financial difficulties are self-induced and do not amount to a radical change in circumstances amounting to unworkability. There is also no certainty that the Husband will be made a bankrupt, or that any such bankruptcy will lead to a forced sale of the Matrimonial Home.

35 On the contrary, the Husband contends that sub-orders 4 and 5 are continuing orders, and do not confer on the Wife a "life interest" in the Matrimonial Home. In varying the Consent Order, the Judge had correctly applied the principles in *AYM* ([24] *supra*).

36 For completeness, we briefly comment on the Husband's contention that the Wife is no longer living in the Matrimonial Home. The Husband and the

Son had visited the Matrimonial Home on at least three occasions in July 2019 but apparently found the place to be deserted. In response, the Wife claims that she is still living in the Matrimonial Home and has adduced evidence in support of this assertion (for example, utility bills and telephone bills). We note that the Judge did not make any finding on whether the Wife is presently living in the Matrimonial Home (see GD at [13], [19] and [27]). The Husband did not invoke O 57 r 9A(5) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) to affirm the Judge's decision on an alternative ground, and we therefore do not need to consider this point further. In any event, based on the contested affidavit evidence alone, the Husband is unable to made good his assertion that the Wife is no longer living in the Matrimonial Home.

Issue 1: Whether the High Court could have invoked s 112(4) of the Women's Charter to vary the Consent Order

37 We turn to consider the first issue, which is whether the High Court could have invoked s 112(4) to vary the Consent Order. We begin by identifying the relevant statutory provisions.

The relevant statutory provisions

38 Section 112(1) and s 112(4) of the Women's Charter state as follows:

> **Power of court to order division of matrimonial assets**
>
> **112.**—(1) The court shall have power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable.
>
> …
>
> (4) The court may, at any time it thinks fit, extend, vary, revoke or discharge any order made under this section, and may vary

> any term or condition upon or subject to which any such order has been made.

39 Section 112 was introduced through the Women's Charter (Cap 353, 1997 Rev Ed) on 30 May 1997. As noted above, the Consent Order was recorded before the court on 24 March 1994 (see [6] above). Significantly, at the material time, the provision governing the division of matrimonial assets was s 106 of the Women's Charter (Cap 353, 1985 Edition) ("Women's Charter (1985 Edition)"). We set out that provision in its entirety:

> **Power of court to order division of matrimonial assets**
>
> **106.**—(1) The court shall have power, when granting a decree of divorce, judicial separation or nullity of marriage, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale.
>
> (2) In exercising the power conferred by subsection (1) the court shall have regard to —
>
> (*a*) the extent of the contributions made by each party in money, property or work towards the acquiring of the assets;
>
> (*b*) any debts owing by either party which were contracted for their joint benefit; and
>
> (*c*) the needs of the minor children (if any) of the marriage,
>
> and, subject to those considerations, the court shall incline towards equality of division.
>
> (3) The court shall have power, when granting a decree of divorce, judicial separation or nullity of marriage, to order the division between the parties of any assets acquired during the marriage by the sole effort of one party to the marriage or the sale of any such assets and the division between the parties of the proceeds of sale.
>
> (4) In exercising the power conferred by subsection (3) the court shall have regard to —
>
> (*a*) the extent of the contribution made by the other party who did not acquire the assets to the

> welfare of the family by looking after the home or by caring for the family; and
>
> (*b*) the needs of the minor children, if any, of the marriage,
>
> and, subject to those considerations, the court may divide the assets or the proceeds of sale in such proportions as the court thinks reasonable, but in any case the party by whose effort the assets were acquired shall receive a greater proportion.
>
> (5) For the purposes of this section, references to assets acquired during a marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.

40 We make two brief points in relation to the two provisions which have a material bearing on Issue 1.

41 First, there is no subsection equivalent to s 112(4) in s 106 of the Women's Charter (1985 Edition). Indeed, this conspicuous omission is consistent with the prevailing legal position at the time that the courts had no power to vary any order for the division of matrimonial assets, whether consent or otherwise. We elaborate on this at [59] and [60] below.

42 Second, s 106 was amended via the Women's Charter (Amendment) Act 1996 (Act 30 of 1996), which came into effect on 1 May 1997. The amended version of s 106, which remained in force until s 112 of the Women's Charter (Cap 353, 1997 Rev Ed) was introduced on 30 May 1997, contained s 106(4) which is identical to s 112(4) of the Women's Charter. However, we are presently concerned with the *pre-amended* s 106 as set out at [39] above, given that the Consent Order was recorded before the Women's Charter (Amendment) Act 1996 came into effect.

Whether s 112(4) applies retrospectively to orders made under s 106 of the Women's Charter (1985 Edition)

43 The central question in the present case is whether s 112(4) applies *retrospectively* to orders made under s 106 of the Women's Charter (1985 Edition). The relevant principles governing the retrospective application of legislation are set out in our decision in *ABU v Comptroller of Income Tax* [2015] 2 SLR 420 ("*ABU*") (see also *Li Shengwu v Attorney-General* [2019] 1 SLR 1081 at [131]). There are broadly two steps.

44 First, the court should apply the purposive approach to statutory interpretation to determine the temporal application of the legislation. This entails a "single overarching inquiry" as to parliamentary intent, which is to be found in the words of the law, its context, and the relevant extrinsic aids to statutory interpretation (see *ABU* at [76]).

45 Second, it is *only* if there is ambiguity that persists that recourse may be had to the various presumptions concerning the retrospective application of legislation. In this regard, we endorsed Lord Mustill's formulation of the presumption against retrospectivity in *L'Office Chefifien Des Phosphates v Yamashita-Shinnihon Steamship Co Ltd* [1994] 1 AC 486 (see *ABU* at [76]). Whether or not the presumption of retrospectivity should apply is a question of *fairness*. This question, in turn, requires an assessment of several factors including the degree of retrospective effect, the purpose of the legislation and the hardship of the result (at 526–527).

First step – purposive interpretation of s 112(4)

46 We turn now to consider the first step. Section 112(4) provides that "[t]he court may, at any time it thinks fit, extend, vary, revoke or discharge any

order made under this section, and may vary any term or condition upon or subject to which any such order has been made" [emphasis added].

47 There are two possible interpretations of s 112(4):

(a) First, s 112(4) only applies to orders made under s 112 of the Women's Charter ("the Narrow Interpretation").

(b) Second, and in the alternative, s 112(4) applies not only to orders made under s 112, but also to orders made under s 106 of the Women's Charter (1985 Edition). This means that the phrase "order made under this section" should be interpreted broadly to refer to the applicable section, in any iteration of the Women's Charter, that concerns the division of matrimonial assets ("the Broad Interpretation").

48 In our judgment, the Narrow Interpretation is the correct interpretation, for the following two reasons.

49 First, the Narrow Interpretation is consistent with the historical context which led to the repeal of s 106 and the introduction of s 112. Although s 112 and s 106 both concern the division of matrimonial assets, there are significant differences between them. In introducing s 112, Parliament did not simply renumber s 106 and added s 112(4) to that provision. In this regard, a helpful summary of the historical context can be found in the decision of the High Court in *UYP v UYQ* [2020] 3 SLR 683 ("*UYP*") at [38]–[43].

50 Under s 106, there was a distinction between assets acquired by the parties' *joint* efforts and those acquired by one party's *sole* effort.

(a) In respect of the former group of assets, the court was to consider, among other things, "the extent of the contributions made by each party in money, property or work towards the acquiring of the assets". Subject to these considerations, the court was directed to "incline towards equality of division" (see s 106(2) of the Women's Charter (1985 Edition) at [39] above).

(b) As regards the latter group of assets, the court was to consider, among other things, "the extent of the contribution made by the other party who did not acquire the assets to the welfare of the family by looking after the home or by caring for the family". The court was directed to ensure that the party "by whose effort the assets were acquired … receive[d] a greater proportion" (see s 106(4) of the Women's Charter (1985 Edition) at [39] above).

51 As recognised by the then Minister for Community Development during the second reading of the Women's Charter (Amendment) Bill (Bill No 5/1996), an anomaly existed under s 106. Where the asset was acquired *jointly*, s 106 did not require the court to take into consideration the parties' homemaking efforts. Section 112 of the Women's Charter (initially s 106 of the Women's Charter (Amendment) Act 1996) was therefore intended to be a "new section" that "provide[d] for a more equitable and just division of matrimonial assets" (see *Singapore Parliamentary Debates, Official Report* (2 May 1996) vol 66 at col 68 (Abdullah Tarmugi, Minister for Community Development)):

> Clause 19 seeks to repeal section 106 and to re-enact a ***new section*** *106 to provide for a more equitable and just division of matrimonial assets upon the breakdown of a marriage.* Under the existing provisions, there is a dichotomy between 'sole' and 'joint' efforts in the acquisition of matrimonial assets. If a homemaker has made a small financial contribution to the acquisition of the assets, his or her share would be considered under the 'joint efforts' head and is constrained by the size of

> the contribution made by him or her. The homemaking efforts are ignored. However, if the homemaker did not make any contribution to the acquisition of the assets, the homemaking efforts are taken into consideration as his or her claim would be brought under the 'sole effort' head. In this instance, the homemaker is better off not making any financial contribution to the acquisition of the assets. The amendments aim to remove this anomaly as a strict interpretation of the provisions could lead to very absurd results.
>
> In addition, Sir, the ***new section*** *provides for the definition of matrimonial assets and enables the court to take into consideration all the circumstances of the case in the division of matrimonial assets*. These include the contributions made by the parties to the welfare and care of the family and the needs of their children.
>
> The amendments also empower the court to make other orders and to give directions which are necessary or expedient to give effect to any order. It also empowers the court to extend, vary, revoke or discharge any order or conditions.
>
> [emphasis added in italics and bold italics]

52 Section 112 therefore jettisoned the segregation of matrimonial assets between those jointly acquired and those acquired by one party's sole effort. It also provided a single direction to the court, which was to achieve a just and equitable division of matrimonial assets. The circumstances that the court should take into account in determining a just and equitable division were also enlarged (see *UYP* at [40]).

53 In our judgment, given that s 112 was to operate as a "new section" which provided a new set of principles for the courts to apply, it appears to us that the reference to an "order made under this section" in s 112(4) is intended to refer exclusively to an order made pursuant to s 112.

54 The second reason in support of the Narrow Interpretation flows from s 186(3) of the Women's Charter. We set out s 186 in its entirety:

> **Savings for proceedings before 1st May 1997**

> **186.**—(1) Nothing in section 12 shall affect any proceedings under the Women's Charter commenced before 1st May 1997 or any decree, order or judgment made or given (whether before or after that date) in any such proceedings.
>
> (2) Nothing in Part VII shall affect proceedings instituted under the repealed sections 68 and 69 of the Women's Charter (Cap. 353, 1985 Ed.) before 1st May 1997 and those sections in force immediately before that date shall continue to apply to the proceedings as if the Women's Charter (Amendment) Act 1996 (Act 30 of 1996) had not been enacted.
>
> (3) Section 112 shall not apply to the *hearing* of any proceedings which has begun before 1st May 1997 under the repealed section 106 of the Women's Charter (Cap. 353, 1985 Ed.) in force immediately before that date and the repealed section 106 ***shall continue to apply to that hearing*** as if the Women's Charter (Amendment) Act 1996 (Act 30 of 1996) had not been enacted.
>
> (4) Nothing in this section shall be taken as prejudicing section 16 of the Interpretation Act (Cap. 1).
>
> [emphasis added in italics and bold italics]

55 By way of s 186(3), Parliament had therefore explicitly limited the temporal application of s 112. However, s 186(3) is not a savings provision for *all* proceedings commenced before 1 May 1997. Instead, it only applies to a "hearing" which had begun before 1 May 1997 and was not fully heard as of 1 May 1997, the date of commencement of the Women's Charter (Amendment) Act 1996. Section 186(3) does not apply to proceedings which had been fully heard as of 1 May 1997, such as the present case. That s 186(3) has a narrow scope of application can be discerned from the phrase "shall continue to apply to that hearing", highlighted in bold italics at [54] above. Furthermore, the word "hearing" is specifically included in s 186(3) and is omitted from s 186(1) and s 186(2). If s 186(3) was intended to apply to all proceedings commenced before 1 May 1997, then it could have been phrased like s 186(1) and s 186(2) by referring to "proceedings" as opposed to "that hearing". It is well established that Parliament shuns tautology and does not legislate in vain. The court should

therefore endeavour to give significance to every word in an enactment (see *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [38]).

56 However, if s 186(3) is to be interpreted in the manner we have explained, then it would create an anomalous result *if the Broad Interpretation were adopted*. In respect of proceedings commenced before 1 May 1997, the court would have the power to vary an order made under s 106 if the proceedings were fully heard by that date. It would, however, *not* have the power to vary the order if the proceedings were only partly heard as of 1 May 1997. We do not see any reason why Parliament would have intended to create such an anomalous interpretative outcome. The concern over the retrospective effect of s 112 applies equally to both scenarios, and arguably with even more force when the proceedings have been fully heard. In the circumstances, the Narrow Interpretation must be the correct one.

57 For these reasons, we are satisfied that s 112(4) *only* applies to orders made under s 112 of the Women's Charter and not to orders made pursuant to s 106 of the Women's Charter (1985 Edition) as was the case for the Consent Order.

Second step – whether it is unfair for s 112(4) to apply retrospectively

58 For completeness, assuming that there is ambiguity in s 112(4), we turn to examine the question of fairness under the second step referred to at [45] above. The effect of applying s 112(4) retrospectively would be to confer on the court a power which it did not have at the material time. It *displaces* the prevailing legal position that the courts did not have the power to vary an order relating to the division of matrimonial assets. In our judgment, it is not inconceivable, in the case of consent orders, that parties would have entered into

an agreement on the expectation that such an order could not be appealed against and may only be set aside in very limited situations such as fraud (see *Chiang Shirley v Chiang Dong Pheng* [2017] 1 SLR 283 at [18]). The expectation of finality in litigation may have had a bearing on the terms of the parties' consent order and it would be unfair to invoke s 112(4) to undermine that settled expectation retrospectively. We would therefore have reached the same conclusion that s 112(4) does not apply retrospectively even if we had found that there was ambiguity in that subsection.

Consequences of s 112(4) being inapplicable to the present case

59 As we have alluded to above, the settled legal position prior to the introduction of s 112(4) was that the court had *no power* to vary an order for the division of matrimonial assets. This principle is well settled by this court's decision in *Sivakolunthu Kumarasamy v Shanmugam Nagaiah and another* [1987] SLR(R) 702 ("*Sivakolunthu*"). There, the High Court had made an order for the matrimonial property to be sold and for the proceeds of sale to be divided between the parties equally. One issue which arose was whether the High Court had the power to *vary* this order. F A Chua J held that the court had no power to do so. His decision was affirmed on appeal by this court, which stated that (at [42]):

> [t]he remaining issue for determination is whether Chua J's decision not to vary the terms of the settlement order was correct. In our view, his decision was correct. His Lordship had no power to vary the settlement order as there is no provision in the Women's Charter which empowers a court to vary such an order. When made, it takes effect like any other court order and may only be varied upon appeal. There was no appeal against the settlement order.

60 In a similar vein, this prevailing legal position was explained by Chao Hick Tin J (as he then was) in *John Chin Ah Chai alias John Chin*

(formerly known as Chin Ah Chai) v Hee Ee Chu and Another [1994] SGHC 16, in the following terms:

> It is clear that under the Women's Charter, an order for the division of matrimonial assets is quite different from an order for the payment of periodic maintenance. Whereas an order for periodic maintenance may be varied, if there is a material change in circumstances …, the same is not so for division of matrimonial assets. *Such an order once made is final, subject only to appeal by the dissatisfied party.* There is no power or jurisdiction in the High Court to vary it. That was the ruling of the Court of Appeal in [*Sivakolunthu*] where it affirmed a High Court decision that there was no power to vary an order for the division of matrimonial assets. … [emphasis added]

61 The Husband does not contend that *Sivakolunthu* was wrongly decided. Indeed, he accepts that "the Court was correct to state that they had no power to vary an order for the division of matrimonial assets". On our part, we do not see any reason to depart from the position established in *Sivakolunthu*.

62 Accordingly, in the absence of s 112(4), the High Court did not have the power to vary the Consent Order.

Distinguishing the cases cited by the Husband

63 We turn now to consider the three cases cited by the Husband in support of his contention that the Consent Order should nonetheless be varied. In the first two cases, the court appeared to have varied the Consent Order notwithstanding the position in *Sivakolunthu* ([59] *supra*). In the third case, the court seemingly applied s 112(4) to an order that was made under s 106 of the Women's Charter (1985 Edition). However, on closer examination, all three cases can be distinguished and are of no assistance to the Husband.

64 The first case is the decision of the High Court in *Kupusamy s/o Jaganathan v Kannaiya Kala Devi* [1997] 1 SLR(R) 895 ("*Kupusamy*"). There,

the parties entered into a consent order which provided, among other things, that the wife was to give up her interest in the matrimonial property upon the husband paying her $35,000 within six months from the date of the order. The husband did not make the necessary payment within the stipulated timeline, and the wife applied to vary the consent order. The husband objected to the wife's application. Relying on *Sivakolunthu*, he contended that the court had no power to vary the consent order (at [6]). C R Rajah JC disagreed and held that *Sivakolunthu* could be distinguished on the basis that the order there was "still capable of being carried out in accordance with its terms". On the contrary, he explained (at [7] and [8]) that the order before him was "no longer capable of being performed in accordance with its terms":

> 7 The position in *Sivakolunthu*'s case, however, is different from the present case. There the Court of Appeal appears to have proceeded on the basis that *the order of court dividing the matrimonial assets was at all material times still capable of being carried out in accordance with its terms*. In the present case, order 1 was *no longer capable of being performed in accordance with its terms*. Order 1 provided that if the petitioner paid $35,000 to the respondent within six months, the respondent had to transfer all her interest in the matrimonial flat to the petitioner. No provision was made in order 1 or any of the other orders for the event of the petitioner failing to make payment within the six months. As the petitioner did not pay the $35,000 within the six months, order 1 cannot be enforced against the respondent unless the petitioner obtained an extension of time. On the facts in this case there would be no basis for the court to grant him any such extension. In any event no extension was sought by the petitioner.
>
> 8 Order 1 is therefore no longer capable of being complied with in accordance with its terms. This left the issue of the division of the matrimonial flat outstanding and unresolved. In such a case s 106 of the Women's Charter (Cap 353) empowers the court to make an order to resolve this outstanding issue. …
>
> [emphasis added]

65 We note that *Kupusamy* has not been affirmed or overruled by this court. Nonetheless, it is not necessary for us to decide in this appeal whether

Kupusamy was correctly decided. This is because the Consent Order in the present case is still capable of being carried out in accordance with its terms, unlike the order in *Kupusamy*.

66 The second case is the decision of this court in *Chia Chew Gek v Tan Boon Hiang and another appeal* [1997] 1 SLR(R) 383 ("*Chia Chew Gek*"). The parties owned two HDB flats and were awarded joint custody of their child. They entered into a consent order which provided that they were each to have ownership of one HDB flat, on the mistaken belief that each of them could form a separate family nucleus with their *only* child. The order expressly stated that it was subject to HDB's approval, which the parties were eventually unable to obtain. Thereafter, the husband made a fresh application to the court for the division of matrimonial assets (at [11]). The wife objected to this application and submitted, on the authority of *Sivakolunthu*, that the court had no power to vary or set aside the consent order. However, this court explained that *Sivakolunthu* could be distinguished on the basis that the order in *Chia Chew Gek* was a *conditional* consent order. If HDB did not permit the arrangements made in the consent order, "the very foundation or the basis of the agreement between the husband and the wife would cease to exist and the consent order would *ipso facto* be negated or nullified" (at [15]). Accordingly, the consent order had "completely failed" and there was "no jurisdictional bar" to the court dividing the matrimonial assets under s 106 of the Women's Charter (1985 Edition) (at [16]).

67 The present case can thus be distinguished from *Chia Chew Gek* in so far as the Consent Order is not a *conditional* consent order. The Consent Order was not stated to be subject to any condition, the failure of which would result in the order being negated or nullified.

68 The final case is the decision of the High Court in *Teh Siew Hua v Tan Kim Chiong* [2010] 4 SLR 123 ("*Teh Siew Hua*") where the High Court appeared to have applied s 112(4) to vary an order that was made on 30 January 1992. However, two points should be emphasised. The first point is that the issue of whether s 112(4) applies retrospectively was not considered in *Teh Siew Hua*. The second point is that although the wife in *Teh Siew Hua* had sought to invoke s 112(4), it was not necessary for her to have done so at all. In brief terms, the relevant order provided that the husband was to transfer his interest in the matrimonial property to the wife. The parties took no steps to effect that transfer until 2009, when the wife requested the husband to do so (at [4]). The husband, however, refused to comply, and asked for the property to be sold and the proceeds to be divided equally (at [5]). The wife not unexpectedly did not accept this proposal and applied to "vary" the order by including the following two orders:

> 1. That the [husband] is to sign all the necessary documents to effect the transfer of the matrimonial flat referred to in paragraph 1 of the Decree Nisi within 7 days of the service of this order on the [husband] by ordinary post ('the stipulated time').
>
> 2. That should the [husband] fail to sign the necessary documents to effect the said transfer within the stipulated time, the Registrar of the Supreme Court is to be empowered to sign all the necessary transfer documents on his behalf.

69 The High Court granted the wife's application. However, it should be emphasised that properly construed, the wife's application did not involve any *variation* to the order at all. Indeed, she was seeking the very relief that she was already entitled to under the original order. Effectively, the wife's application was an application to *enforce* the order, a point that was noted by the High Court in *Teh Siew Hua* (at [38]). Accordingly, *Teh Siew Hua* provides no assistance to the Husband in the present case.

70 For the foregoing reasons, the High Court could not have invoked s 112(4) to vary the Consent Order. It did not have the power to vary the Consent Order. Strictly speaking, our decision on Issue 1 alone is sufficient to dispose of the appeal. Nonetheless, for completeness, we address whether the High Court *should* have varied the Consent Order under s 112(4).

Issue 2: Whether the High Court should have varied the Consent Order under s 112(4) of the Women's Charter

71 We begin by considering three peripheral arguments raised by the parties.

Sub-orders 4 and 5 do not confer on the Wife a "life interest" in the Matrimonial Home

72 The Wife contends that sub-orders 4 and 5 of the Consent Order confer on her a proprietary "life interest" in the Matrimonial Home. This is to be contrasted with a license to reside at the Matrimonial Home. The Matrimonial Home should therefore not be sold during her lifetime against her objections.

73 We do not accept the Wife's characterisation of the Consent Order. In our judgment, sub-orders 4 and 5 do not confer a "life interest" in the Matrimonial Home on her. Sub-order 3 of the Consent Order severed the joint tenancy to a tenancy in common in equal shares (see [6] above). It is well established that as tenants in common, the Husband and the Wife would each be entitled to the use and occupation of the Matrimonial Home. A co-owner can commit a legal wrong against another co-owner by excluding the latter from exercising his or her right to occupation (see *Tan Chwee Chye and others v P V R M Kulandayan Chettiar* [2006] 1 SLR(R) 229 at [23] and [24]).

74 Therefore, the effect of sub-order 4 is simply that the Husband had agreed *not* to exercise his right to occupation as a tenant in common during the Wife's lifetime. Without his agreement, the Wife's exclusive occupation of the Matrimonial Home, depending on the facts, could constitute a trespass of the Husband's rights. The Wife's assertion to a "life interest" in the Matrimonial Home is therefore misconceived.

Sub-orders 4 and 5 are continuing orders

75 As we stated at [24] above, the Judge had observed that "[i]t was common ground between the parties that sub-orders 4 and 5 were 'continuing orders'" (see GD at [38]). However, on appeal, *contrary to the position taken before the Judge*, the Wife now submits that sub-orders 4 and 5 are *not* continuing orders. Instead, these are executory orders which cannot be varied. According to the Wife, a continuing order is an order that "has yet to be implemented and/or there are matters left to implement". An executory order, on the other hand, is an order which "had been completely implemented or spent inasmuch as everything that was required to be done had been effected". Sub-orders 4 and 5 are not continuing orders since there is nothing left to be implemented.

76 In our judgment, the Wife's submission is untenable. The distinction between continuing orders and executory orders was explained by Valerie Thean J in *TYA v TYB* [2018] 3 SLR 1170 at [28]:

> … In this regard, a continuing order is different in nature from a merely 'executory' order (of the type in [*Barder v Caluori* [1988] AC 20]), as the former is *expressly intended to be implemented over time* while the latter has *not been implemented for usually purely administrative reasons*. [emphasis added]

77 To recapitulate, sub-orders 4 and 5 provide that, during her lifetime, the Wife is to have exclusive occupation and control of the Matrimonial Home and it will not be sold. It is plain that these are orders of a *continuing nature* that are *expressly intended to be implemented over time*. Indeed, this is entirely consistent with our description of continuing orders in *AYM* ([24] *supra*). There, we observed that continuing orders are "orders or directions [that] are of a continuing nature and [that] may not be as quickly spent as an order for the sale of certain property and the distribution of the proceeds thereof" (at [27]). We also provided an example of a continuing order – where the court ordered the property not to be sold until the passing of a certain number of years, so that the child could have a place to live in. Sub-orders 4 and 5 are, in fact, similar to the example that was provided in *AYM*.

78 In the circumstances, there is no merit to the Wife's submission which, we reiterate, is a change of position on appeal.

Alleged common understanding at the time of the Consent Order

79 The final peripheral argument concerns the Husband's submission that there was a "common understanding" between the parties that the Matrimonial Home could be sold earlier "if anyone of [them needed] money". However, the Wife claims that such an understanding is "entirely fictitious". In our judgment, there is no basis to go beyond the terms of the Consent Order, which do not support the existence of this alleged common understanding. The Husband's submission in this regard can therefore be summarily rejected.

The relevant legal principles

80 We return to the main issue of whether the High Court should have varied the Consent Order under s 112(4). The applicable principles were rightly

identified and summarised by the Judge at [30] of the GD. There is also no dispute between the parties as to the applicable principles.

81 We reiterate the relevant principles which were enumerated in *AYM* ([24] *supra*):

> (a) Section 112(4) does not furnish the court with a *carte blanche* to vary an order it has made. There must be "exceptional reasons" before a variation can be effected (at [11]). These principles would apply *a fortiori* when the order of court made pursuant to s 112 is itself premised upon a consent order entered into between the parties. Where a consent order is concerned, there are two relevant policy considerations – "the desideratum of finality embodied within s 112 itself [and] … freedom of contract and the (related) concept of sanctity of contract" [emphasis in original omitted] (at [15]).
>
> (b) The court should consider whether the order has been completely implemented or spent (that is, everything that is required to be done has been effected and the assets have been distributed to the parties). If so, the court does *not* have the power to revisit or reopen the order (at [22]).
>
> (c) If the order has *not* been completely effected or implemented, "the court would make … the necessary variations to [the] order … *only* where the order was *unworkable* or *has become unworkable*" [emphasis in original] (at [23]). This is a higher threshold than a "material change in the circumstances" (at [28]).
>
> > (i) An order may be unworkable in the literal sense in so far as it is practically impossible to even implement it (at [25]).

(ii) An order may also be unworkable in the purposive sense. "[W]here new circumstances have emerged since the order was made which *so radically change* the situation so that to implement the order as originally made would be to implement something which is radically different from what was originally intended, this would amount to unworkability, and the court would make, *inter alia*, the necessary variations to deal with such unworkability" [emphasis in original] (at [25]). The possible instances under which a subsequent change in circumstances can be considered radical enough to constitute unworkability must be "very rare and very extreme" (at [26]).

(d) An instance of a radical change in circumstances amounting to unworkability may arise after the court makes a continuing order, and "there has been a change in circumstances invalidating the very basis on which the court made [the] order" [emphasis in original omitted]. Thus, returning to the example stated at [77] above, if the court orders the property not to be sold until the passing of a certain number of years so that the child would have a place to live in, and if the child moves out before the said period has elapsed, the court may be permitted to invoke s 112(4) to vary the order (at [27]).

(e) The mere fact that the order does not provide for a particular situation or contingency which has subsequently arisen does not, in and of itself, justify the invocation of s 112(4). The test of unworkability must still be satisfied (at [28]).

82 Our decision in *AYM* itself provides a helpful example of how the aforesaid principles should be applied. There, the consent order provided,

among other things, that the matrimonial property was to be sold within six years and the husband would receive 20% or 30% of the proceeds depending on the sale price. Thereafter, the husband applied to vary the terms of the consent order. He relied on a *change in financial circumstances.* Subsequent to the making of the consent order, investors had withdrawn from his business, which led to business failure and a loss of income. He was unable to find a new job. He therefore sought for the division of matrimonial assets to be varied to an *equal division* (at [2] and [3]).

83 Both the District Judge and the High Court judge refused to vary the terms of the consent order (at [1]). We agreed and explained as follows (at [33]):

> … It is clear, in our view, that the change in circumstances which the Husband prayed in aid fell far short of the radical change in circumstances referred to above (at [25]) and did not amount to the order becoming unworkable. Even if business failure and a loss of income amounted to a 'material change in the circumstances' sufficient to justify a variation of an order for maintenance, they did not suffice in the present case to justify the invocation of s 112(4) in so far as the division of matrimonial assets was concerned. It should also be noted that the order concerned was the result of a *consent order* between the Husband and the Wife (and see generally above at [15]). Indeed, the Husband was, in the final analysis, merely attempting to obtain a further amount because the matrimonial asset concerned was now worth more than what the parties had originally thought (see above at [3]). Such attempts to undermine the finality of orders with regard to the division of matrimonial assets are wholly undesirable as well as unmeritorious and are, indeed, the very antithesis of the rationale underlying such orders in the first place, and aptly demonstrate the dangers of a wide interpretation of s 112(4). … [emphasis in original]

84 It is clear from the passage above that financial difficulties *per se* do not constitute unworkability. In this regard, we also refer to the following observations of Aedit Abdullah JC (as he then was) in *Seah Kim Seng v Yick Sui Ping* [2015] 4 SLR 731 (at [42] and [43]):

> 42 However, a change in economic conditions or circumstances cannot be a sufficient basis of unworkability. The whole approach in *AYM v AYL* is predicated on variations being rarely permissible. Economic difficulties are often cyclical, and the precise impact of any downturn or slump will depend on the means of each party. Allowing variation because of economic conditions would be far too liberal, and render the restrictions contemplated by in *AYM v AYL* illusory. Unworkability, at least in the sense of a change in circumstances, has to require much more than a change in financial position. It may be that unworkability *ab initio* may contemplate a broader approach, but even then, it cannot be taken too widely either as court orders should have an element of finality, save for exceptional circumstances.
>
> 43 *AYM v AYL* stands clearly for the proposition that a material change in circumstances would not be sufficient. The Court of Appeal required a radical change rendering the order quite different from what was originally intended. An improvement in conditions from an economic slump, a low market price or financial difficulties on the part of the parties would not be a radical change. Such variation in position is part of life.

Whether the Consent Order is presently unworkable

85 We turn to consider whether the Consent Order is *presently* unworkable. In this regard, although the Judge observed that "[t]he basis of the [H]usband's application was his deteriorating financial situation" (see GD at [29]), the Judge did not grant the Husband's application on that basis. Indeed, as we have stated at [28] above, the Judge's decision was premised on the "likelihood of a forced sale of the Matrimonial Home" upon bankruptcy (see GD at [43]).

86 In our judgment, bearing in mind the high threshold of unworkability, and that financial difficulties *per se* do not constitute unworkability, the Judge was correct not to grant the application based on the Husband's deteriorating financial situation alone. We therefore turn to consider whether the Consent Order will be unworkable *in the future*.

Whether the Consent Order will be unworkable in future

87 There are two points in respect of this sub-issue.

88 The first point relates to the unworkability of the Consent Order if it is self-induced (for convenience, we refer to this as "self-induced unworkability"). In the context of an application to vary a *maintenance order*, it is well established that a variation will be disallowed if the adverse change in circumstances is self-induced (see, for example, *UNC v UND* [2018] SGFC 62 at [24]; *VCF v VCG* [2019] SGFC 120 at [58]; and *UWY v UWZ* [2019] SGFC 60 at [22]). It seems to us that there is no reason why this principle should not apply in a similar manner in the context of an application to vary an order for the division of matrimonial assets. Where the order becomes unworkable due to a self-induced change in circumstances, the court should not permit a variation. Nonetheless, in the absence of full arguments, we leave this point open for determination on a future occasion.

89 The second point is that it is far from certain that the Consent Order will become unworkable. With respect, while the Judge appeared to have assumed that the Husband's financial difficulties would result in his bankruptcy and a forced sale of the Matrimonial Home, there is a distinct possibility that these events may not materialise.

90 We elaborate on each of these two points in reverse order.

Uncertainty over whether the Consent Order will become unworkable

91 In our judgment, there is considerable uncertainty over whether the Consent Order will, *in fact*, become unworkable. For this to happen, at least three events must come to pass:

(a) First, OCBC commences bankruptcy proceedings against the Husband, and the Husband is made a bankrupt by the court and the Husband fails to settle the judgment debt from other sources such as from the sale of the HDB Flat.

(b) Second, the Official Assignee exercises its power to sell the Husband's half-share in the Matrimonial Home, and applies to the court for an order that the *entire* Matrimonial Home be sold (given the unlikely scenario of a third party who is willing to purchase only the Husband's half-share).

(c) Third, the court orders the Matrimonial Home to be sold against the Wife's objections.

92 We note that based on the evidence before us, the Husband is likely to be able to avoid bankruptcy if he sells his HDB Flat. We elaborate on this at [99]–[104] below. For present purposes, we focus on the third event referred to above, namely, that the court orders the Matrimonial Home to be sold against the Wife's objections.

93 In this regard, the applicable principles were set out in our recent decision in *Ooi Chhooi Ngoh Bibiana v Chee Yoh Chuang (care of RSM Corporate Advisory Pte Ltd, as joint and several private trustees in bankruptcy of the bankruptcy estate of Freddie Koh Sin Chong, a bankrupt) and another* [2020] SGCA 83. Although the court has the power to direct a sale of land under s 18(2) read with para 2 of the First Schedule of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"), the court must be satisfied that it is "necessary or expedient" to do so. In this regard, the court has to undertake a

balancing exercise, having regard to the following non-exhaustive factors (at [24]):

> (a) Whether the expected share of sale proceeds would be sufficient to discharge the debts owed by the bankrupt to his creditors.
>
> (b) Whether the co-owner resisting the sale has contributed, benefited or is in any way related to the events that led to the bankruptcy.
>
> (c) The potential prejudice that the co-owner(s) and any third parties might face in each of the possible scenarios, namely, if a sale is granted and if it is not granted. An example of such prejudice to the co-owner(s) could include their inability to find feasible alternative accommodation once a sale is ordered due to the low price their property might fetch.
>
> (d) The potential prejudice that creditors might face in each of the two abovementioned scenarios.
>
> (e) Whether there is sufficient time and opportunity given to source for alternative accommodation.
>
> (f) If the property is being used as a family home, any exceptional and irremediable hardship to the family should also be considered.

94 In the present case, the *possibility* that the court may not order a forced sale of the Matrimonial Home cannot be ruled out since: (a) the Wife has not contributed to or benefited from the events leading to the Husband's bankruptcy, and is not in any way related to these events; (b) the effect of allowing the forced sale would be to undermine the Consent Order; and (c) the Husband is able to sell the HDB Flat to satisfy his debts owed to OCBC (see [99]–[104] below). That said, we should emphasise that we do not, in this judgment, express any view on whether the court should or would ultimately order a forced sale. That is a question for another time and another forum. The only point that we make for present purposes is that a forced sale is unlikely to be as straightforward as the impression conveyed by the Judge.

95 Furthermore, even if the aforesaid events do eventually materialise, any unworkability in the Consent Order will be resolved by the supervening court order. In other words, if the Official Assignee succeeds in obtaining an order for the entire Matrimonial Home to be sold, that order effectively addresses the unworkability of the Consent Order. There is therefore no reason why the court should *anticipate* any potential unworkability and proactively amend the Consent Order. In this regard, it is also irrelevant that the Matrimonial Home is likely to fetch a lower selling price in a forced sale as compared to a voluntary sale. This is a consequence that the Wife is willing to accept. On the Husband's part, it will be a consequence of his own financial predicament and he could hardly complain otherwise.

96 For completeness, we note that the Judge considered that even if bankruptcy did not ensue, OCBC would likely be entitled to obtain judgment against the Husband and seek an execution of its judgment debt against his half-share of the Matrimonial Home. OCBC could apply for a forced sale of the Matrimonial Home (see GD at [45]). However, it should be noted that the court will still be required to conduct the balancing exercise set out at [93] above. Furthermore, there is also an anterior question as to whether a *judgment creditor* has the right to apply for a sale of the property under s 18(2) of the SCJA. In *Chan Lung Kien v Chan Shwe Ching* [2018] 4 SLR 208, Chua Lee Ming J considered that this right is only given to *co-owners* of the property (at [40]). It is not necessary for us to decide this question in this appeal, but this underscores the point that a forced sale of the Matrimonial Home is far from straightforward.

Self-induced unworkability

97 We turn now to the point on self-induced unworkability. To the extent that the unworkability of the Consent Order rests on the Husband being made a

bankrupt, it appears to us that there are concrete steps that the Husband can take to avoid that outcome. For present purposes, we focus on the debts owed by the Husband to OCBC which amount to $80,577.68. Although the Husband also owes Standard Chartered Bank and his sister-in-law the sums of $5,877.07 and $70,200.00 respectively (see [19] above), there is nothing before us to suggest that either of them is likely to commence bankruptcy proceedings against the Husband.

98 In relation to the debts owed to OCBC, we note that OCBC appears amenable to working out an "acceptable repayment plan" with the Husband. It seems to us that the Husband has not seriously explored this option to date (see [17] above).

99 More importantly, the Husband *does* have another substantial asset to discharge his debts owed to OCBC, namely, the HDB Flat. The Judge appeared to accept the Husband's assertion that the sale of the HDB Flat would *not* suffice for the Husband to discharge his debts owed to OCBC. The Judge stated as follows (see [21] of the GD):

> In his latest affidavit, the Husband provided details on whether he would be able to discharge his existing debts by selling the HDB [F]lat. In the event that the HDB [F]lat was compulsorily acquired, he would receive $585,992.00 from the HDB. After paying the outstanding mortgage of $197,052.62 on the flat, and assuming an equal split of the remainder (with the other half going to the [P]resent Wife), the Husband would have to refund $192,48[8].34 to his CPF retirement account. He would then be left with $1,980.35 in cash. The Husband pointed out that this cash balance would be wiped out by the time HDB *actually* acquired the HDB [F]lat. [emphasis in original]

100 However, the Husband's assertion rests on two assumptions.

101 First, it assumes that the HDB Flat will be compulsorily acquired. However, there is nothing to prevent the Husband from selling the HDB Flat in the open market, which, in all likelihood, would result in a higher selling price. Indeed, the Wife has adduced evidence that, based on comparable transactions, the HDB Flat can be sold for at least $630,000 in the case of a voluntary sale.

102 Second, the Husband assumes that upon the sale of the HDB Flat, he will have to refund $192,488.34 to his CPF retirement account and the *entire amount* will have to be restored in that account. However, given that the Husband is past the age of 55, this assumption is likely to be incorrect. Indeed, CPF's statement dated 10 December 2019, which is addressed to the Husband, states as follows:

> The amount to be refunded as shown in the statement is valid as of today. The actual amount to be refunded depends on the amount withdrawn and the date of sale of the [Matrimonial Home].
>
> *The amount refunded to your CPF account will be used to top up your Retirement Account, up to your Full Retirement Sum.* ***Any balance refund will then be paid to you automatically.***
>
> [emphasis added in italics and bold italics]

103 Further, when we raised this point to the Husband's counsel, Ms Seenivasan Lalita, at the hearing, she did not disagree that the Husband would be entitled to the balance refund beyond the amount that has to be set aside in his retirement account.

104 Following the hearing of the appeal, Ms Lalita wrote to the court with additional details. She pointed out that while the Husband's retirement sum was $65,000, the amount that had to be set aside "may be more". It is unclear to us what, if any, is the additional amount that has to be set aside. In any event, this confirms our understanding that the *entire sum* of $192,488.34 does not have to

be set aside in the Husband's retirement account. Assuming that only $65,000 has to be set aside, the remainder sum of $127,488.34 would be sufficient for the Husband to discharge his debts owed to OCBC (and, for that matter, Standard Chartered Bank). Accordingly, any unworkability of the Consent Order stemming from the Husband becoming a bankrupt is arguably self-induced when he can avoid that outcome by selling the HDB Flat.

Conclusion

105 In summary, the High Court could not have invoked s 112(4) of the Women's Charter to vary the Consent Order because that subsection only applies to an order made under s 112. In any event, the Consent Order should not have been varied. There is considerable uncertainty as to whether the Consent Order will become unworkable in the first place, and any unworkability in the Consent Order is arguably self-induced. In the circumstances, there are no "exceptional reasons" which warrant a variation of the Consent Order. We therefore allow the Wife's appeal.

106 On costs, taking into account the parties' respective costs schedules, we order the Husband to pay the Wife the costs of the appeal, fixed at $20,000 inclusive of disbursements as we disagreed with most of her arguments. In fact, the point that s 112(4) could not be invoked to vary the Consent Order was not only not raised by the Wife, she in fact argued to the contrary. The costs order below – that the Husband is to pay the Wife costs of $5,000 inclusive of disbursements – shall remain. The usual consequential orders, if any, will apply.

107 Finally, although the Wife has succeeded in her appeal, this would not resolve the Husband's debts. It is unclear how the Husband's situation *vis-à-vis* his debts will eventually pan out. However, should an application for a forced

sale of the Matrimonial Home come to pass, the parties should seriously consider mediation in order to avoid protracted and costly legal proceedings.

Steven Chong Judge of Appeal	Belinda Ang Saw Ean Judge	Quentin Loh Judge

Liaw Jin Poh (Tan Lee & Choo) for the appellant;
Seenivasan Lalita (Virginia Quek Lalita & Partners) for the respondent.