IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2026] SGHCF 17

District Court Appeal No 116 of 2025

Between

XWV

… *Appellant*

And

XWW

… *Respondent*

GROUNDS OF DECISION

[Family Law — Ancillary powers of court —Wife seeking to set aside consent order requiring wife to repay moneys to husband — Whether Family Court had power under s 112 of the Women's Charter 1961 (2020 Rev Ed) to record an order for repayment of moneys by consent of parties — Section 112(2)(*b*) Women's Charter 1961 (2020 Rev Ed)]

[Family Law — Matrimonial assets — Division — Wife seeking to set aside consent order requiring wife to repay moneys to husband — Whether the order for repayment was procured on a materially false premise and with incomplete disclosure to the court]

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XWV
v
XWW

[2026] SGHCF 17

General Division of the High Court (Family Division) — District Court Appeal No 116 of 2025
Teh Hwee Hwee J
15 April, 5 May 2026

4 June 2026

Teh Hwee Hwee J:

1 This appeal presented an unusual challenge. A spouse, having agreed to an allocation of financial responsibilities integral to the division of matrimonial assets as part of a global settlement of ancillary matters, and having presented that agreement to the court for the recording of an order by consent, sought to impugn the court's power under s 112 of the Women's Charter 1961 (2020 Rev Ed) ("WC") to give effect to that agreement. That challenge, supplemented by a claim that the consent order was recorded on a materially false premise and involved incomplete disclosure to the court, lay at the heart of this appeal. For the reasons below, I dismissed the appeal.

Background and procedural history

2 The parties were married in August 2016. The Husband was 41 years old while the Wife was 32 years old. They had one child, aged eight. The Wife

commenced divorce proceedings on 1 September 2021. An interim judgment was then granted on an uncontested basis on 29 September 2021 ("IJ"), with ancillary orders entered by consent. The following clauses in the IJ relating to the division of matrimonial assets are relevant:[1]

> 3(b)(i): That the [Husband] shall continue to retain the matrimonial home at [Address] ("Flat") in his sole name.
>
> 3(b)(ii): That within one (1) month from the date of the Final Judgment, the [Wife's] name shall be removed as an occupier of the Flat.
>
> 3(c)(i): *The [Wife] shall repay the [Husband] a sum of S$86,000.00 being repayment of debts owing by the [Wife] to the [Husband].* Such payment shall be made by way of monthly instalment of S$2,000.00 for a period of 43 months, commencing from the date of the Final Judgment, and subsequently on the 1st day of each calendar month and shall be deposited into the [Husband's] designated bank account; and
>
> 3(c)(ii): That parties shall retain all matrimonial assets in their sole names respectively and there shall be no further or other claims against each other.
>
> [emphasis added]

3 At the time of the IJ, the Wife was represented by counsel while the Husband was not. Final judgment was entered on 31 December 2021.[2]

4 On 4 March 2025, the Wife filed FC/OADV 150/2025 ("OADV 150") seeking, *inter alia*, the following orders:[3]

> That paragraphs 3(b) and 3(c) of the Interim Judgment dated 29.9.2021 (FC/IJ 4567/2021) to be set aside; or
>
> in the alternative paragraph 3(c)(i) of the Interim Judgment dated 29.9.2021 (FC/IJ 4567/2021) to be set aside.

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1 FC/IJ 4567/2021 dated 29 September 2021 in FC/D 4177/2021 (Record of Appeal ("ROA") pp 72–73).

2 FC/FJ 6097/2021 dated 31 December 2021 in FC/D 4177/2021 (ROA p 75).

3 FC/OADV 150/2025 dated 4 March 2025 (ROA pp 77–78).

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5 The learned District Judge ("DJ") heard OADV 150 on 6 June 2025. The DJ's decision was delivered with brief reasons on 29 September 2025 ("Decision"), dismissing OADV 150 in its entirety. This was the Wife's appeal against the Decision, where she sought to set aside Clause 3(c)(i) of the IJ ("Repayment Clause"), with costs of the appeal and below to be awarded to her.[4] At the hearing of the appeal, counsel for the Wife confirmed that only the Repayment Clause was in issue.[5]

6 The background to the Repayment Clause was as follows. The Wife had introduced the Husband to a third party, described by the Wife as a mutual friend[6] and by the Husband as the Wife's then-employer.[7] The Husband stood as guarantor for the hire purchase of a car by the third party. There is evidence that it was the Wife who arranged for the Husband to provide the guarantee, having contacted the finance company and furnished the Husband's contact information and a copy of his identification card for that purpose.[8] The third party later defaulted on the loan, and the finance company obtained a judgment against the Husband for $86,900.31 on 9 February 2021.[9]

7 The parties disputed the circumstances under which the Repayment Clause came to be included in the IJ. The Wife's position was that the Husband

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4 Appellant's Case dated 28 January 2026 ("AC") at para 105.

5 Minute Sheet dated 15 April 2026 in HCF/DCA 116/2025 ("NE").

6 Wife's Affidavit dated 4 March 2025 in FC/OADV 150/2025 ("W's Affidavit") at para 14 (ROA p 83).

7 Husband's Reply Affidavit dated 18 March 2025 in FC/OADV 150/2025 ("H's Reply Affidavit") at para 17 (ROA p 353).

8 H's Reply Affidavit at para 24 and Enclosure to Tab G at pp 55–60 (ROA pp 355, 402–407).

9 H's Reply Affidavit at para 23 and Enclosure to Tab F at pp 51–52 (ROA pp 354–355, 398–399).

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pressured her into assuming his debt to the finance company by threatening to make the divorce proceedings difficult, and that she agreed in order to bring the proceedings to a swift conclusion.[10] The Husband's position was that the IJ was drafted by the Wife's solicitors and his understanding as a layperson was that he would receive $86,000 from the Wife in instalments as part of their settlement of the division of matrimonial assets.[11]

The DJ's decision

8 The DJ considered various authorities cited by the parties and concluded that the court had power, under s 112 of the WC, to record the Repayment Clause.[12] Further, he reasoned that the evidence showed that the Husband's guarantee to the third party arose "in connection with the matrimonial relationship".[13] By the time of the IJ, the finance company had already obtained a judgment debt against the Husband, which would have to be factored into the division of matrimonial assets.[14] However, the parties instead agreed to resolve the matter between themselves, with awareness that this would be a potential issue had the ancillary matters been contested.[15]

9 The DJ found that the Wife's assertion that the Repayment Clause was tainted by vitiating factors was not made out. The Wife had not met the high evidential threshold for establishing fraudulent misrepresentation or undue influence. It was implausible that the Husband had misrepresented his liabilities

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10 W's Affidavit at paras 15–18 (ROA p 84).

11 H's Reply Affidavit at para 29 (ROA pp 356–357).

12 DJ's Decision with brief reasons dated 29 September 2025 ("Decision") at [22(c)].

13 Decision at [22(a)].

14 Decision at [22(e)].

15 Decision at [22(k)].

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or the nature of the Repayment Clause to the extent the Wife claimed, especially since the Wife had the benefit of representation.[16] On that basis, the DJ found that the Repayment Clause was not an obligation she had assumed under duress or any operative misrepresentation.[17]

10 In the result, the DJ dismissed the Wife's application, and upheld the challenged clauses, including the Repayment Clause.

The parties' arguments on appeal

11 The Wife advanced two grounds of appeal. First, she contended that the Family Court had no power under s 112 of the WC to include the Repayment Clause in the IJ, even if it was recorded by the consent of the parties.[18] The Wife argued that the Repayment Clause was *not* an obligation absorbed as consideration for a global settlement because under the IJ, the Husband was to retain the matrimonial home without consideration and the Wife had received no equivalent benefit.[19] In response, the Husband contended that the Repayment Clause was part of a global settlement of ancillary matters in divorce proceedings.[20] Therefore, the court had the requisite power under s 112 of the WC to record the Repayment Clause. He further submitted that the Wife had in fact benefitted by retaining assets in her own name without further disclosure or investigations into the respective contributions of the parties,[21] and the

16 Decision at [27(a)]–[27(d)].

17 Decision at [27(g)].

18 AC at para 29.

19 NE.

20 Respondent's Case dated 25 February 2026 ("RC") at paras 37–38.

21 NE.

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Repayment Clause constituted a legitimate order for the division of the parties' matrimonial assets, namely the cash assets held by the Wife.[22]

12 Second, the Wife contended that the Repayment Clause should nonetheless be set aside on the basis that it was entered upon a materially false premise and involved incomplete disclosure to the court as to the nature of the underlying debt or liability.[23] The Husband submitted in response that the Wife had failed to prove fraudulent misrepresentation or non-disclosure warranting the rescission of the Repayment Clause.[24]

Issues for determination

13 There were two issues for determination. First, whether the court had power under s 112 of the WC to record the Repayment Clause by the consent of the parties. Second, whether the Repayment Clause was procured on a materially false premise and with incomplete disclosure to the court.

Whether the court had power under s 112 of the WC to record the Repayment Clause by consent

14 Under s 112(1) of the WC, the court has power, when granting or subsequent to the grant of a judgment of divorce, to divide matrimonial assets between parties "in such proportions as the court thinks just and equitable". In exercising its power under s 112(1), the court is under a duty to have regard to all the circumstances of the case, including "any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage" (s 112(2)(*b*) of the WC).

[22] RC at para 38.

[23] AC at para 86.

[24] RC at para 4.

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15 The Wife argued that the court's ancillary powers under s 112 of the WC may not be enlarged by parties' agreement.[25] That proposition is uncontroversial and undisputed. The court's power to record the Repayment Clause did not, however, rest on the parties' consent. I explain.

16 The Repayment Clause had to be understood in its proper context and in substance rather than form. The Repayment Clause was one of several clauses recorded together in the IJ as part of a single, comprehensive settlement of financial matters between the parties. Clause 3(b)(i) dealt with the matrimonial home, clause 3(b)(ii) with the removal of the Wife's name as an occupier of the matrimonial home, clause 3(c)(i) contained the Repayment Clause, and clause 3(c)(ii) provided that parties would retain all matrimonial assets in their sole names with no further claims against each other. Read together, these clauses bore the hallmarks of a global settlement as to the division of matrimonial assets; they addressed the full range of the parties' financial affairs, they were expressed as a package, and they concluded with a clean break provision. In substance, the Repayment Clause formed part of the agreed outcome of the parties' consideration regarding how their matrimonial assets should be divided. The fact that it was expressed in the language of debt repayment did not alter its essential character as a component of a global settlement of the division of matrimonial assets, which fell squarely within the power of the court under s 112 of the WC.

17 The Repayment Clause, properly understood, was a mechanism for the allocation of financial responsibilities between the parties in the division of their matrimonial assets. Its character was to be determined not by the label attached to it but by its substantive role *within* the overall settlement. Viewed in that

[25] AC at para 29.

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light, the $86,000 which the Wife agreed to repay to the Husband was not a free-standing debt recorded in the consent order as a matter of convenience. Pertinently, there was no evidence of any obligation or agreement on the Wife's part to pay the Husband any specific sum in respect of his liability under the guarantee prior to the ancillary proceedings. The Repayment Clause did not exist independently of the matrimonial assets division exercise but emerged directly from it. The Repayment Clause was the Wife's acknowledgment that the sum specified in the Repayment Clause was due to the Husband in the final settlement of accounts between the parties. That acknowledgement reflected the Wife's own role in bringing about the liability. It was she who arranged for the Husband to stand as guarantor, having contacted the finance company and furnished his particulars for that purpose. Having caused the Husband to incur liability as guarantor, the Wife's assumption of responsibility for it in the consent order was a considered allocation of financial responsibilities between the parties, directly referable to and arising from the circumstances of the marriage. The obligation to pay therefore arose from, and was integral to, the division of matrimonial assets, accounting for liabilities incurred in the course of the marriage. The basis of the court's power to record the Repayment Clause was not merely that the obligation formed part of a global settlement, but that it was itself a financial adjustment between the parties that was central to arriving at the global settlement of the division of their matrimonial assets. The recording of the Repayment Clause by consent of the parties therefore properly fell within the court's power under s 112 of the WC. I turn now to address the key authorities cited by the parties.

18 In *Yeong Swan Ann v Lim Fei Yen* [1999] 1 SLR(R) 49 ("*Yeong Swan Ann*"), a husband was ordered to repay a loan to his former wife as the first-instance judge had found that the loan had been conclusively proved through a

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handwritten note by the husband. On appeal, the husband argued that the issue relating to the loan should not have been determined at the ancillary matters hearing and should have instead been adjudicated in a civil suit. The Court of Appeal dismissed the appeal, holding, at [23], that s 106 of the Women's Charter (Cap 353, 1985 Rev Ed) (*ie,* the predecessor to s 112 of the WC) gave the court "a very wide power to order the division of matrimonial assets in the fairest way possible between the parties", taking into account various factors prescribed by statute.

19 *Yeong Swan Ann* was followed in *WQR v WQS* [2023] SGHCF 41 ("*WQR v WQS*"), where Andrew Ang SJ ordered the husband to repay a loan to the wife. Ang SJ noted at [51] that parties did not dispute the loan's existence, although they disagreed on the quantum due to different exchange rates. As the marriage in that case was found to be relatively one-sided and not a "mutually supportive partnership" where parties would be expected to share the costs and fruits of either party's economic enterprise, the learned Judge ordered the husband to repay the loan (*WQR v WQS* at [54]). On the authority of *Yeong Swan Ann*, Ang SJ held at [53] that the court had the power to order repayment of loans between spouses.

20 In *Yeong Swan Ann*, there was conclusive proof of debt from the debtor spouse through a handwritten note, whereas in *WQR v WQS*, the parties did not dispute the *existence* of an interspousal loan although they disagreed on the quantum. The Wife sought to distinguish these cases on the basis that they involved loans that were "conclusively proved".[26] However, in the present case, there was similarly no question that the Wife had agreed to pay the Husband a sum of money. Instead of a handwritten note, the Wife had prepared agreed

[26] AC at paras 74–77.

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terms drafted by her solicitors and subsequently recorded in an order of court by consent. The evidential foundation for the obligation in the present case was therefore stronger than it was in *Yeong Swan Ann* and *WQR v WQS*. If the court had power to order repayment of interspousal loans under the circumstances in *Yeong Swan Ann* and *WQR v WQS,* where the debt was conclusively proved or its existence was not in dispute, it plainly had power to give effect to an assumption of liability by the Wife on the specific facts of this case, where the obligation was undertaken as an integral part of the parties' agreement on how their matrimonial assets should be divided and recorded by consent.

21 On the facts of the present case, there was no occasion for the court to adjudicate on any debt between the parties when the consent order was recorded, given that the Wife had already agreed and undertaken to repay the Husband $86,000. It followed that the Wife's assertion that a claimant spouse had a separate cause of action in civil proceedings for recovery of debts[27] was beside the point. Before the DJ and on appeal, the Wife sought to rely on *AZZ v BAA* [2016] SGHC 44 ("*AZZ v BAA*") and *UZK v UZL* [2020] 3 SLR 1248 ("*UZK v UZL*") for the proposition that the court will decline to resolve interspousal debt disputes in s 112 proceedings as it is for the creditor spouse to pursue such claims in civil proceedings.[28]

22 In *AZZ v BAA*, the husband asserted that the wife owed him a debt, which she denied. Vinodh Coomaraswamy J declined to take this alleged debt into account in the division of matrimonial assets and held at [168] that it was for the husband to recover this sum from the wife in civil proceedings, as the

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[27] NE.

[28] AC at para 48. Wife's Written Submissions dated 6 June 2025 in FC/OADV 150/2025 at paras 4–5 and 10 (ROA pp 108–110).

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division of matrimonial assets under s 112 of the WC was not an appropriate occasion "on which to resolve the disputes of fact which underlie [the husband's] claim". Likewise, in *UZK v UZL*, the wife alleged that the husband owed her several loans. Tan Puay Boon JC held at [44] that the division of assets under s 112 of the WC was not an appropriate occasion to resolve a civil claim for interspousal debts.

23 In my judgment, *AZZ v BAA* and *UZK v UZL* were distinguishable. In those cases, the court was invited to determine, within s 112 proceedings, what were in substance debt recovery claims between the spouses. That was not the case here. There was clearly no claim for the recovery of any disputed interspousal debt requiring adjudication when the court was asked to consider the terms of the IJ, which included the Repayment Clause, for record by consent. No contractual inquiry or other determination within the province of civil proceedings was required. The Wife's obligation arose from her voluntary assumption of liability for a specific sum as part of the negotiated division of matrimonial assets. That assumption of liability was acknowledged by her in a consent order drafted by her own solicitors. The factual premise on which those authorities rested was entirely absent. If the Wife before this court said that she did not owe the Husband anything, that disagreement did not transform the case into one involving the recovery of a separate interspousal debt that was in dispute. It simply meant that the Wife was attempting to resile from what she had agreed when the consent order was recorded. *AZZ v BAA* and *UZK v UZL* therefore concerned a different scenario and afforded the Wife no assistance.

24 Additionally, the Wife cited *Ho Kiang Fah v Toh Buan* [2009] 3 SLR(R) 398 ("*Ho Kiang Fah*") (at [16]) to support her argument that the court in s 112 proceedings adjudicates spouses' personal rights in relation to matrimonial assets and does not declare or confer proprietary rights on a spouse

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where there are none.[29] In my view, *Ho Kiang Fah* did not support the Wife's case, because the court was not declaring or conferring any proprietary rights on either the Husband or the Wife in recording the Repayment Clause.

25 In *Ho Kiang Fah*, parties were undergoing matrimonial proceedings when the husband filed a civil action seeking certain reliefs in relation to a property that the spouses held as joint tenants, including a declaration that they owned the property in equal shares and a declaration that the husband's liability under the housing loan was only 22.8% of the loan amount. Belinda Ang J (as she then was) held (at [22]) that the husband was attempting to isolate the property from the matrimonial pool, and (at [23]) that the proceedings were a blatant abuse of judicial process. The learned Judge struck out the action, holding that the Family Court was the proper forum for determining the parties' respective shares in the property. She also observed that the husband's real objection to having his claims dealt with in the Family Court was because the wife might be allowed to enlarge her percentage share in the property by more than 50% if the property was subject to division in s 112 proceedings (at [16]). It was in that context, specifically, to explain why the husband's objection to the s 112 proceedings was misconceived, that the learned Judge held (at [16]) that "[s 112] does not seek to declare or confer proprietary rights on a spouse where there are none." The point was that the wife in the s 112 proceedings would not obtain anything that she was not otherwise entitled to. The court held (at [23]) that "[a]ll liabilities of the parties in relation to the property would be resolved at the ancillary hearing" before the Family Court, which was the proper forum for determining the parties' shares in the property. Therefore, *Ho Kiang Fah* simply decided that the Family Court is the proper arena for determining

29 AC at para 46.

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the spouses' personal rights in relation to their matrimonial assets. Here, in recording the Repayment Clause, the court was not declaring or conferring any proprietary rights but giving force to the Wife's own agreement to assume the obligation to repay the Husband as part of the division of their matrimonial assets. That obligation pertained to the personal rights of the parties arising from that division, which is within the purview of s 112 of the WC.

26 I also rejected the Wife's characterisation of the Repayment Clause as an order compelling her to reimburse the Husband for a third-party guarantee liability[30] or to provide a civil indemnity in his favour.[31] That characterisation was not supported by a plain reading of the clause. The Repayment Clause, as drafted by the Wife's own solicitors, made no reference to any reimbursement or indemnity. It was not framed as the Wife's obligation to make good the Husband's loss and to hold him harmless against any claim by the finance company, or for the Wife to be personally liable for any such claim. Instead, that clause provided that the Wife would repay a specified sum of money to the Husband. As I have observed above (at [16]–[17]), the Wife's agreement, recorded by consent in the IJ, constituted an obligation undertaken by her as part of the financial adjustment between the parties that was central to arriving at the global settlement. To re-characterise it as a reimbursement or civil indemnity was not only unsupported by the language of the clause, but also an attempt to disown a characterisation that she had adopted earlier on the advice of her own solicitors. The conclusion that the Repayment Clause was not a civil indemnity was further reinforced by the fact that the Husband had separately entered into a debt repayment scheme for a different amount of $104,468 in respect of the judgment debt he owed to the finance company, after the IJ was

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30 AC at para 47.

31 AC at paras 50–51.

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granted.[32] This demonstrated that there were two distinct obligations operating on separate legal footings.

27 In relation to the Wife's argument that s 112(2)(*b*) of the WC limits the court's consideration of debts and liabilities to debts incurred for parties' joint benefit or for the benefit of any child,[33] she distinguished what she referred to as "shared family liabilities" from "personal liabilities with no real matrimonial nexus"[34] and submitted that the parties' agreement fell under the latter.[35] She contended that the DJ erred in treating the Husband's liability as matrimonial simply because it arose during the marriage and in connection with the marital relationship.[36]

28 I found the Wife's argument to be flawed. I begin by making a general observation that, as submitted by the Husband,[37] the list of matters to which the court must have regard under s 112(2) of the WC is non-exhaustive (*XHG v XHH* [2025] 2 SLR 501 at [96]). The subsection mandates the court to "have regard to all the circumstances of the case", "including" the matters specifically identified. The word "including" is a well-established term of enlargement, not limitation. Accordingly, the matters enumerated in the subsection do not serve as a closed list. The fact that s 112(2)(*b*) of the WC refers to debts taken for the joint benefit of the parties or for the benefit of any child of the marriage does

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32 H's Reply Affidavit at paras 33–34 and Enclosure to Tab H at pp 62–63 (ROA pp 357–358, 409–410).

33 AC at para 54.

34 AC at para 39.

35 AC at para 42.

36 AC at paras 43–45.

37 RC at para 56.

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not mean that *only* such debts may be considered by the court in the division of the matrimonial assets.

29 In any case, I was of the view that the liability resulting from the Husband's guarantee fell within the ambit of s 112(2)(*b*) of the WC as one undertaken for the joint benefit of the parties. The starting point was the evidence that the Wife arranged for the Husband to provide the guarantee. She contacted the finance company, furnished the Husband's contact details and identification card, and thereby set the transaction in motion.[38] I did not accept the Wife's argument that the liability did not fall under s 112(2)(*b*) of the WC simply because the loan moneys were not applied towards the parties' joint benefit or for the benefit of their child.[39] A person may arrange a transaction that benefits a third party and simultaneously derive a benefit from doing so. These are not mutually exclusive. If the transaction was purely for the benefit of her employer or a mutual friend of the parties, the Wife had offered no explanation as to why she drew the Husband into it as guarantor. The fact that she did so, and took active steps to facilitate his involvement, was consistent only with her having had a reason to do so that touched on her own interests. As for the Husband, he explained that the Wife had repeatedly insisted that he act as guarantor.[40] He had perceived the benefit from standing as guarantor at the Wife's request to be the harmony of the matrimonial relationship.[41] I found no reason to disbelieve him. On the facts, the preservation of peace and goodwill within their marriage that came from the Husband's accommodation of the

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[38] H's Reply Affidavit at para 24 and Enclosure to Tab G at pp 55–60 (ROA pp 355, 402–407).

[39] AC at paras 35 and 41–42; NE.

[40] H's Reply Affidavit at para 21 (ROA p 354).

[41] NE.

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Wife's requests and interests was a benefit not just to the Husband, but to the Wife as well. The inference that the guarantee was arranged, at least in part, for the joint benefit of the parties was, in my judgment, the only reasonable one on the facts.

30 For the above reasons, it was my judgment that the court was acting within the limits of s 112(1) of the WC in the exercise of its power of division of matrimonial assets when it recorded the Repayment Clause by consent of the parties.

Whether the Repayment Clause was procured on a materially false premise and with incomplete disclosure to the court

31 I turn next to the Wife's argument that the Repayment Clause should be set aside as it was entered upon a materially false premise, and proper disclosure would likely have led the court to make a substantially different order.[42] Specifically, the Wife contended that a third-party guarantee exposure was presented as a "debt owing by the [Wife] to the [Husband]", which she claimed was a mischaracterisation,[43] as there had never been a debt of $86,000 between parties.[44] According to her, the effect of this mischaracterisation was that the court, in recording the Repayment Clause by consent, had been under the mistaken impression that there was a "genuine interspousal debt" owed by the Wife to the Husband and that the Repayment Clause was an appropriate mechanism to deal with such a debt.[45]

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42 AC at para 86.

43 AC at paras 85 and 96.

44 AC at para 88.

45 AC at para 97.

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32 The Wife's argument could not succeed for two reasons. In *AYM v AYL* [2013] 1 SLR 924 ("*AYM v AYL*") at [31], the Court of Appeal referred to *AOO v AON* [2011] 4 SLR 1169 in which it cited (at [17]) the UK House of Lords' decision in *Livesey (formerly Jenkins) v Jenkins* [1985] AC 424 (at 445), which expressed the view that a consent order may be set aside on grounds of material non-disclosure by either party where the non-disclosure led the court to make, either in contested proceedings or by consent, an order "*substantially different*" from what it would have otherwise made (emphasis by the Court of Appeal). The Court of Appeal further noted that, similar to cases where there was a radical change in circumstances amounting to unworkability, in such cases of material non-disclosure, "a high threshold has to be met" for the court to justify intervening and deviating from the very important consideration of finality in litigation (*AYM v AYL* at [31]). The Wife neither satisfactorily explained why there was a material non-disclosure nor why the court would have been minded to make a substantially different order, given that she had agreed to repay a specified sum of money to the Husband, an obligation which she had assumed as part of the overall settlement of their financial matters. In this regard, the Wife's submission that the consent order cannot create a non-existent debt between parties[46] was misconceived. The Repayment Clause did not conjure a debt out of nothing. Rather, it recorded a *promise* by the Wife to repay a specified sum to the Husband, reflecting the reckoning between the parties in arriving at a settlement of their financial matters. As observed earlier (at [17]), the Repayment Clause was not merely an obligation that formed part of a global settlement but was itself a *financial adjustment* integral to the division of the parties' matrimonial assets.

[46] AC at paras 91–94.

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33 Further, if the Wife took issue with the language of the Repayment Clause, that it was worded as a "repayment of debts owing by the [Wife] to the [Husband]" when in fact it was a financial adjustment, she could not lay that at the Husband's door. That was the language she adopted on the advice of her own solicitors. The Husband, who was unrepresented, played no part in the drafting.[47] If there had been any mischaracterisation, it was not the Husband's but the Wife's, and it would have been unjust to visit the consequences of the choice of the wording by the Wife (on advice of her solicitors) upon the Husband who had no hand in it.

34 I noted above (at [7]) that the Wife had asserted that she was pressured by the Husband into agreeing to the Repayment Clause. For completeness, I rejected this. As the DJ observed in his Decision at [27(g)], there was no evidence of misrepresentation or coercion to substantiate the Wife's assertion. If the Wife had genuine concerns, the expectation was that she would have raised them with her solicitors at the material time. There was no evidence that she did so.

Conclusion

35 I found the Wife's appeal to be without merit, and I dismissed the appeal accordingly. At the appeal hearing, counsel for the Husband asked for costs of $5,000 (excluding disbursements) if the appeal was dismissed.[48] Having regard

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47 H's Reply Affidavit, Enclosure to Tab A at pp 26–31 (ROA pp 373–378).

48 NE.

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to the circumstances of this matter and the work done, I ordered the Wife to pay the Husband costs of this appeal fixed at $5,500 (all in).

Teh Hwee Hwee
Judge of the High Court

Poh Jun Zhe Malcus (Mo Junzhe) (Malcus Poh Law Corporation) for the appellant;
Tan Shu Min Emily (Hoh Law Corporation) for the respondent.

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