

**IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2024] SGHC(A) 38

Appellate Division / Civil Appeal No 47 of 2024 (Summons Nos 35 and 37 of 2024)

Between

WRQ

... Appellant

And

WRP

... Respondent

In the matter of District Court Appeal No 103 of 2023

Between

WRP

... Appellant

And

WRQ

... Respondent

JUDGMENT

[Family Law — Consent orders]

[Family Law — Matrimonial assets — Matrimonial home]

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**WRQ
v
WRP**

[2024] SGHC(A) 38

Appellate Division of the High Court — Civil Appeal 47 of 2024 (Summons Nos 35 and 37 of 2024)

Woo Bih Li JAD, Debbie Ong Siew Ling JAD and See Kee Oon JAD
16 September 2024

12 December 2024

Debbie Ong Siew Ling JAD (delivering the judgment of the court):

Introduction

1 A large number of divorces commenced each year at the Family Justice Courts are filed on the “simplified track”, without parties contesting the divorce and ancillary matters. Such harmonious resolution of issues reached by the agreement of parties is aligned with the endeavours of a therapeutic justice system, which aims to assist parties to move forward without taking adversarial stances against each other.

2 However, divorcing parties who have reached a settlement and agreed to the terms of a consent order may not always have thought through some details within their settlement. They may realise only years later that the consent order is “silent” on a particular matter that is of significance. This judgment

addresses the approach to resolving such an issue in order to assist the parties in moving forward.

Background facts

The parties' divorce and consent order in 2013

3 The parties married on 24 September 1997 and have three children aged 20, 17 and 14 years of age this calendar year. Divorce proceedings commenced on 11 March 2013, and an interim judgment of divorce was granted on 22 April 2013. A consent order on the ancillary matters (the “Consent Order”) was also granted on that date. The Consent Order provided that the appellant (the “Husband”) and the respondent (the “Wife”) would have joint custody of their children, with the Wife having care and control and the Husband having reasonable access. The Consent Order also provided that the Husband was to pay the Wife a sum of \$1m for her maintenance, and another \$1m as maintenance for their three children, within seven days of the order. On the division of the parties’ matrimonial assets, the Consent Order provided as follows in clause 3(C):

DIVISION OF MATRIMONIAL PROPERTY - 1) The Plaintiff and the Defendant shall continue to reside at the matrimonial home known as [redacted address] which shall be sold in the open market at or above valuation price after the youngest of the children, namely, [E], reaches the age of 21 years. 2) Upon the sale of the matrimonial home aforesaid, the balance sale proceeds shall be divided equally between the Plaintiff and the Defendant after repayment of the outstanding housing loan, cost, expense and commissions incurred and incident to the sale. The Defendant shall refund to his own CPF account for the monies withdrawn for the purchase of the property from his share of the sale proceeds. 3) Parties shall each retain in his/her own names the other respective assets not specifically mentioned in this Order to the exclusion of the other and

neither [sic] party shall make any claim against the other in respect of the same.

Of note in clause 3(C) is the provision that the family will continue to reside in the matrimonial home which shall be sold in the open market only after the youngest of the children reaches the age of 21 years. This would be 18 years after the date of the Consent Order, in the year 2031.

4 It is common ground that soon after the Consent Order was made, the Husband transferred a total of \$2m to the Wife, pursuant to his maintenance obligations in the order.

The parties' dispute

5 Disagreement subsequently arose between the parties as to whether the matrimonial home should be sold before their youngest child turns 21 years old, and whether the Wife had to contribute to the household expenses and the monthly mortgage payments for the matrimonial home. This led to the Husband filing two applications in 2023 (a decade after the grant of the Consent Order). In FC/SUM 994/2023, he sought to vary the Consent Order to provide that the matrimonial home be sold forthwith, and for reimbursement from the Wife for payments he made for her and their children's living expenses, as well as the mortgage instalment repayments which he claimed to have paid on her behalf. In FC/SUM 2120/2023, he sought to vary the Consent Order to provide for equal division of the sale proceeds of the matrimonial home after full payment of the outstanding housing loans to the bank, parties' Central Provident Fund ("CPF") refunds to their respective accounts, and all costs and expenses incidental and relating to the sale.

6 The Wife filed FC/SUM 1269/2023 (“SUM 1269”), seeking an order for the Husband to pay her \$1,050,000 as the balance lump sum maintenance under the Consent Order. It later emerged that of the maintenance moneys paid to her pursuant to the Consent Order, she had returned \$1,050,000 to the Husband. Claiming that this had been a loan to the Husband, she re-characterised SUM 1269 as an application for an order for the repayment of a loan.

The decision of the Family Court

7 The District Judge of the Family Court (the “DJ”) ordered that (a) the matrimonial home be sold immediately, (b) parties were to bear the mortgage loan repayments and property tax for it equally from the date of his order on 20 October 2023, and (c) the Wife’s CPF refund was to be made from her own share of the net proceeds. The DJ declined to make any order on the payment of living expenses or for repairs and maintenance of the matrimonial home; he also dismissed the Wife’s application in SUM 1269.

The decision of the Family Division of the High Court

8 On appeal by the Wife, the Judge of the Family Division of the High Court (the “Judge”) ordered that the Husband was solely to bear full responsibility for all outstanding mortgage instalment repayments: see *WRP v WRQ* [2024] SGHCF 12 at [14] (the “Judgment”). The Judge reversed the DJ’s decision to order the immediate sale of the parties’ matrimonial home, finding that there was no basis to vary the term that parties had agreed to in the Consent Order (Judgment at [5]). He observed that the Husband had benefitted from having his other assets excluded from the pool of matrimonial assets in 2013, such as his property located at Shenton Way (the “Shenton Way Property”) (Judgment at [6]). The Judge rejected the Husband’s argument that the Consent Order had become unworkable due to alleged threats of harm made by the Wife

against the Husband's father, who continued to reside in the matrimonial home (Judgment at [9]). The Judge also accepted that the Husband's remarriage influenced his decision to move out of the matrimonial home (Judgment at [10]).

9 However, the Judge agreed with the Husband that the Consent Order was unworkable "in the practical sense" because it did not provide for how refunds were to be made to the *Wife's* CPF account after the sale of the matrimonial home (Judgment at [11]). He ordered that the Wife was to make the CPF refunds to her account from her own share of the sale proceeds, as this was in line with the spirit of the Consent Order.

10 In respect of the mortgage repayments, the Judge agreed with the DJ that it was necessary to provide for this issue, for if the payments were not made, then the matrimonial home might be repossessed by the bank, rendering the Consent Order unworkable. However, the Judge ordered that the mortgage repayments for the matrimonial home ought to be borne solely by the Husband, reversing the DJ's order on this issue. He explained that the Husband was the sole mortgagee, and as the parties' bargain in the Consent Order was that the Wife would receive an equal share in the matrimonial home in exchange for the Husband retaining all his other assets (amongst other things), she should not be made to pay for her share of the matrimonial home as well (Judgment at [14]). Thus, while the Wife would be responsible for an equal share of the property tax and expenses related to the matrimonial home (as she resided there), the Husband was to be solely responsible for the mortgage repayments (Judgment at [12]).

11 The Judge rejected the Husband's attempt to claim reimbursement for the payments he had made towards the Wife's and children's expenses, and the Wife's claim for the alleged balance of the lump sum maintenance due to her

under the Consent Order (Judgment at [15]). It was not disputed that the Husband had already paid the lump sum maintenance of \$2m provided in the Consent Order; if she had lent the money to the Husband, her claim would lie in a separate action. Similarly, if the Husband wished to recover payments made towards the Wife's and children's expenses pursuant to an agreement or understanding rather than the Consent Order, that claim would also lie in a separate action (Judgment at [15]). Finally, the Judge made no order as to costs (Judgment at [17]).

Permission to appeal

12 Both the Husband and the Wife sought permission to appeal against various aspects of the Judge's decision. In AD/OA 6/2024 ("OA 6"), the Wife sought permission to appeal against the Judge's decision to make no order on costs. OA 6 was dismissed by the Appellate Division of the High Court (the "Appellate Division"). In AD/OA 7/2024 ("OA 7"), the Husband sought permission to appeal against the Judge's refusal to vary the Consent Order to provide for the immediate sale of the parties' matrimonial home as well as the Judge's decision that the Husband would be solely responsible for all outstanding mortgage instalment payments on the matrimonial home (the "mortgage issue").

13 OA 7 was allowed by the Appellate Division only in respect of the mortgage issue. As the Consent Order was silent on the issue of which party, or whether both parties, would bear the mortgage repayments, this was *not* a situation where a party sought to vary an *explicit term* in a court order. The question was what the appropriate order would be in respect of an issue where the Consent Order was silent, which in turn involved an inquiry into whether the parties' intentions on that issue were relevant and if so, how such intentions

should be ascertained and taken into consideration. As this was a question on which the decision of a higher tribunal would be to the public advantage, the Husband was granted permission to appeal only on the mortgage issue. AD/CA 47/2024 (“AD 47”) is the Husband’s appeal on this issue.

AD/SUM 35/2024

14 After filing AD 47, the Husband filed AD/SUM 35/2024 (“SUM 35”), seeking permission to adduce further evidence on appeal. The evidence sought to be admitted in SUM 35 is set out in the following table, along with the Husband’s reasons for adducing them:

<u>Item</u>	<u>Purpose</u>
(a) Sterling Law Corporation’s letters dated 8 May 2012 and 17 May 2012 showing the Statement of Account on completion of the sale of [xxx], parties’ previous property;	Proof of proportions of parties’ respective contributions to the acquisition of the matrimonial home.
(b) Two Cashier’s orders dated 16 May 2012 for \$56,032 and \$593,216.39 totalling \$649,248.39 made in favour of the Respondent and the Appellant;	
(c) CPF Redemption Statement dated 17 May 2012 showing that \$189,574.86 was refunded into the Respondent’s CPF ordinary account and \$243,344.13 was refunded to the Appellant’s CPF ordinary account;	
(d) Sterling Law Corporation’s letter of completion dated 3 July 2012 and POSB Bank Statement as at 11 August 2012 showing a sum of \$1,577,184.19 which was withdrawn from the Appellant’s POSB Account Nos: [xxx] toward the purchase of [redacted address] (“the Property”) and a loan of \$2,700,000 from DBS Bank Ltd;	Proof that the Wife has not used any of her personal savings or earnings to contribute to the purchase price of the matrimonial home.
(e) POSB Bank Statement as at 12 May 2012 showing that two sums of \$45,000 and \$180,000 were withdrawn on 4 April 2012 and 23 April 2012 from the Appellant’s POSB Account Nos: [xxx] for payment of the 5% deposit of the purchase of the Property;	

(f) CPF Statement dated 26 June 2012 showing that a sum of \$129,600 was withdrawn from the Appellant's CPF account for legal and stamp fees for the purchase of the Property;	
(g) The Appellant's company, [xxx]'s CPF contribution of \$863 to the Respondent on November 2007;	Proof of date of commencement of Wife's employment at Husband's company.
(h) DBS Bank's Letter of Offer dated 27 June 2011 and DBS Bank's Letter dated 7 May 2013 for the financing of the Shenton Way condominium which shows 80% housing loan of \$1,532,160 against the purchase price of \$1,915,200;	Proof that Shenton Way property was purchased with 80% financing with Wife's knowledge.
(i) DBS Bank Ltd Statements for the years ending 31st December 2022, 31st December 2023 and 31st May 2024;	Proof of parties' payments for mortgage instalments and sources thereof.
(j) DBS Bank Ltd letter of Variation for interest rate for the housing loan dated 20th March 2024 showing that the Respondent is the surety and DBS Bank Ltd letter dated 21st May 2024 showing the latest refinancing amount of the Property at \$7,894 in April 2024;	Proof of parties' intention to continue paying mortgage instalments equally, refinancing of mortgage and Husband's intention to honor Judgment if appeal is not allowed.
(k) The Appellant's Notice of Assessment for Year 2022, 2023 and 2024;	Proof of Husband's current financial situation.
(l) The Appellant's CPF Contribution History for 1st January 2024 to 1st July 2024;	
(m) The Appellant's own calculation of payment of the mortgage instalments from his CPF account and in cash and the Respondent's payment of the mortgage from her CPF account from Aug 2022 to July 2024.	Husband's own calculation of mortgage payments made.

AD/SUM 37/2024

15 The Husband also applied to admit further evidence in AD/SUM 37/2024 ("SUM 37") which comprised the original letter of offer (the "Letter") issued by the mortgagee bank to the Husband in 2012, and

correspondence between the Wife's counsel and the mortgagee bank's solicitors (the "correspondence"). The evidence allegedly demonstrates that he and the Wife were in fact co-mortgagors of the matrimonial home, contrary to the Judge's finding at [13]–[14] of the Judgment.

The parties' submissions in SUM 35, SUM 37 and AD 47

The Husband's submissions

SUM 35

16 Relying on the test set out in *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*"), the Husband argues that items (a) to (f) are relevant in demonstrating the parties' common understanding that the mortgage payments would be borne equally by the both of them. Item (g) demonstrates the Wife's financial ability at the time of the Consent Order, and item (h) helps to explain why the Wife was willing to give up any claim in respect of the Shenton Way Property without reference to the mortgage instalments. Items (i) and (j) show that he has "fulfilled his part of the bargain" and demonstrate his intent to continue paying for the instalments until the matrimonial home can be sold. Item (m) shows how much of the Wife's share of the instalments he has paid on her behalf which he is entitled to claim back from her, and items (k) and (l) go towards demonstrating his "perilous" financial condition. The Husband also argues that, while much of this evidence might technically have existed at the time proceedings were commenced, he took some time to find it and was under the impression it was not relevant to the dispute as originally framed.

SUM 37

17 The Husband argues that the Letter shows the parties were joint mortgagors of the matrimonial home and are both jointly and severally liable,

contradicting the Judge's finding that he was the sole mortgagor and bore the ultimate obligation to pay the loan, which was the premise of the Judge's decision on the mortgage issue (Judgment at [13]–[14]). It was not adduced earlier as it only came to the Husband's attention when adduced by the Wife in connection with her application in FC/SUM 1601/2024 to prevent him from disposing of the Shenton Way Property or any proceeds of sale thereof.

AD 47

18 In respect of the mortgage issue, the Husband submits that the parties should bear equally the outstanding mortgage repayments on the matrimonial home until it is sold. He submits that although the Wife's direct contributions to the matrimonial home were only 15%, he had generously agreed to give her 50% in the Consent Order. The Wife's CPF contributions towards the previous matrimonial home were refunded to her CPF account but not applied towards the current matrimonial home, which allegedly demonstrated a "common understanding" that her funds would be applied towards the mortgage instalments. The Husband also estimates that the Wife's earnings of around \$556,000 between 2007 to 2018, combined with the \$2m in total maintenance which he had paid to her, as well as her salary of around \$4,000 per month, mean that she was able to pay her half share of the monthly mortgage instalment repayments. That the terms of the Consent Order were highly favourable to the Wife, such that her only responsibility was to continue paying her alleged share of the mortgage instalment repayments, further supports his reading of the Consent Order.

19 The Husband also argues that even if there was no understanding of equal responsibility for the mortgage instalments, the court should impute a "presumed intention" to this effect. The parties' mutual understanding that they

would continue residing in the matrimonial home “must mean that the *status quo* continues”. He submits that the Wife’s voluntary return of \$1m maintenance to the Husband, and her failure to object to his use of this sum for the mortgage instalments, further supports such a presumed intention.

20 Next, the Husband seeks to rely on the doctrine of estoppel by convention, arguing that the Wife’s initial payment of half of the mortgage instalments out of her CPF account, and her failure to object to his use of the returned \$1m maintenance for family expenses including the mortgage repayments, supports a construction of the Consent Order that parties would bear the mortgage instalments equally. He also seeks to rely on the doctrine of unjust enrichment, arguing that the “unjust factor” is that of payment under legal compulsion, because if he defaulted on the mortgage repayments, the mortgagee would exercise its right of repossession and sue him for any outstanding sum.

21 Finally, the Husband relies on the principle in *TIC v TID* [2019] 1 SLR 180 (“*TIC*”) that mortgage payments during the interim period between the date of the court order and the date of completion should *prima facie* be borne by the eventual owner of the property given that any payment of the outstanding mortgage would solely benefit that party.

22 In the alternative, given that the Husband has not been exercising his right to reside in the matrimonial home and is currently paying rental of \$4,300 per month for other accommodation, he submits that he should be allowed to deduct this sum from his mortgage liability, and should no longer be liable for the mortgage repayments.

The Wife's case*SUM 35*

23 The Wife argues that the requirements in *Ladd v Marshall* ought to apply strictly. The items (a) through (i) do not satisfy the non-availability criterion. She also submits that *all* the items of evidence are ultimately irrelevant to the issue of how responsibility for the mortgage instalment repayments should be borne, or what parties intended in respect of this issue. Thus, she submits that SUM 35 ought to be dismissed in its entirety.

SUM 37

24 The Wife similarly submits that SUM 37 ought to be dismissed. The Husband could have adduced the Letter at a much earlier juncture, given that he was entitled to seek this letter from the mortgagee bank at any time. Moreover, the Letter defines “borrower” as “the person to whom the [Letter] is addressed”, and as it is addressed solely to the Husband, he is the sole borrower. The correspondence simply confirms that the Husband is the sole borrower and that she is only the surety.

AD 47

25 The Wife submits that where a consent order is silent on a particular issue, the overarching question is “whether the reasonable man, having all the background knowledge which was available to the parties at the time of making the consent order, would have concluded that it was the intention of the parties that the [Husband] is solely responsible for the mortgage loan repayments (until the Matrimonial Property can be sold when the youngest child turns 21)”. She submits that in this regard, the Consent Order only provides that the Husband is to refund his own CPF account, indicating that it was only ever contemplated

that the Husband alone would contribute to the mortgage repayments. The Husband was also the sole mortgagor and borrower of the loan and had the primary obligation and liability to pay, which he continued to do without demanding that the Wife contributes. She also argues that the Husband's much stronger financial position, and her relinquishing of any claim on the Shenton Way Property and the Husband's other assets, constitute further support for the position that he would bear sole responsibility for the mortgage repayments. She submits that her voluntary payments towards the mortgage instalments do not support any understanding of equal responsibility. Finally, correspondence in which the Husband appears to request that she make payments towards the instalments suggests that there was no pre-existing understanding or agreement that it would be jointly borne by both.

26 The Wife also submits that there was a "true gap" in the Consent Order on the issue of the mortgage repayments, and that a term providing that the Husband would bear sole responsibility for the mortgage instalments would have passed the officious bystander test for implied terms in contract law. On estoppel by convention, the Wife argues that her cessation of equal payments in May 2016, and the Husband's failure to object to this, contradicts any purported understanding that both parties would equally bear the mortgage instalments. As for unjust enrichment, the Wife argues that the doctrine does not apply as there was no vitiation of intent, no enrichment, and no other vitiating factors at the time the Consent Order was entered into.

27 The Wife submits that in view of these arguments, the Judge's decision that the Husband ought to bear sole responsibility for the outstanding mortgage repayments ought to be upheld.

Decision on adduction of evidence in SUM 35 and SUM 37

28 It is not in dispute that the relevant principles governing adduction of further evidence on appeal are those in *Ladd v Marshall*, as set out above at [16]. We also note that while these principles may not apply as stringently in ancillary matters (*WRX v WRY and another matter* [2024] 1 SLR 851 at [21]; *TOT v TOU and another appeal and another matter* [2021] SGHC(A) 9 (“*TOT*”) at [7]), they are not entirely irrelevant. In *TOT*, the court declined to allow the further evidence to be admitted as it was of equivocal relevance and there was no sufficient reason provided as to why they could not have been retrieved or admitted earlier (*TOT* at [8]–[9]).

29 In the present case, we are of the view that none of the evidence which the Husband seeks to adduce in SUM 35 or SUM 37 would have a perceptible influence on the outcome of the appeal. The Husband relies on items (a) to (c) to establish the parties’ common intention that both would contribute to the subsequent mortgage instalments from their respective CPF accounts. However, it is not in dispute that both parties did so contribute – the Wife made “regular and equal contributions to the mortgage loan repayments from her CPF funds” of a monthly sum of \$6,216.50, which over time reduced the funds available until there was only \$716.02 left in her ordinary CPF account. As we explain more fully later, this occurred without either party giving much thought to the matter, and hence the evidence does not shed light on the parties’ intentions.

30 In respect of items (d) to (f), the parties’ direct financial contributions to the purchase of the matrimonial home are simply not in issue. It is not disputed that the Wife contributed less than the Husband, but still the parties agreed that she would have 50% of the matrimonial home in the Consent Order. As for items (g) and (h), they do not show that the parties came to an agreement on

who would bear the mortgage instalments and are likewise not material. Item (j) is also immaterial, as the Husband's "commitment to pay for the monthly mortgage instalments" is not disputed and the evidence is thus unnecessary.

31 With regard to items (i) and (m), it is not in dispute that the Wife had initially been contributing to the mortgage repayments out of her CPF account, and that when the funds in her CPF account fell below the sum required to be paid, the Husband began to cover the shortfall in cash. How much of this shortfall was made up from his own funds, and how much was made up from the \$1,050,000 which the Wife transferred to him out of the maintenance moneys, is immaterial.

32 Items (k) and (l) relate to the Husband's financial position from 2022 onwards. However, his appeal is based on what the parties intended when the Consent Order was made, not how the Consent Order should be varied due to subsequent developments. Given the Husband's case on appeal, evidence going towards events occurring after the Consent Order was made is immaterial.

33 Finally, with respect to the Letter and correspondence, it is not disputed that the Husband was the borrower and that the Wife was the surety. The fact that the terms of the Letter may have defined her as a co-mortgagor is immaterial, for the Husband remains the borrower.

34 Thus, none of the items which the Husband seeks to adduce in SUM 35 or SUM 37 is material to the present appeal. We dismiss SUM 35 and SUM 37.

Decision on the mortgage issue in AD 47***The issue in AD 47***

35 The Husband frames the issue in this appeal as “whether the Husband should solely bear the outstanding mortgage repayments on the matrimonial home or should both parties equally bear the mortgage repayments in the interim period until the Property is sold in the absence of a specific provision in the Consent [Order]”.

The Husband’s submissions

36 The Husband’s application for a variation of the Consent Order is premised on s 112(4) of the Women’s Charter 1961 (2020 Rev Ed) (the “Charter”) which provides:

(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.

37 However, the Husband’s submissions also rely on a clause in the Consent Order providing for “liberty to apply”, to “seek further directions” from this court. Although not stated clearly in his submissions, this appears to be seeking a consequential order under s 112(3) of the Charter rather than a variation pursuant to s 112(4).

38 The Husband cites *AYM v AYL* [2013] 1 SLR 924 (“*AYM*”) which he submits stands for the proposition that “contractual principles are applicable to a consent order as far as is possible in a matrimonial context”. He also cites the case of *TYA v TYB* [2017] SGHCF 29, where the court applied contract law principles to fill a “gap” in a consent order which did not provide for how the

parties' cash contributions to the mortgage payments on their matrimonial home were to be dealt with.

Legal principles in AYM on variation of order in s 112(4)

39 *AYM* involved a consent order which provided, among other things, for the parties' matrimonial home to be sold within six years and for the wife to receive the greater proportion of the proceeds, and for the husband to pay a total of \$19,000 monthly maintenance for the wife and their children. The husband's financial situation allegedly changed as his business failed and he was without income. He sought a variation of the orders based on his changed circumstances, to provide for the sale of the matrimonial home within three months, an equal division of the proceeds and a variation with respect to the maintenance order (*AYM* at [3]). The Court of Appeal cautioned (at [11]–[12]):

[Section 112(4)] does not furnish the court concerned with a *carte blanche* to, *inter alia*, vary an order it has made ... This ***subsection operates within the context of the division of matrimonial assets***. Such division is not, colloquially put, “a moving target” (unlike, for example, the issue of maintenance). In other words, ***there must be some finality once the matrimonial assets have been divided*** between the parties (assuming either that neither of the parties has filed an appeal or, if an appeal has been filed, the final appellate tribunal has rendered its decision). This is only logical as well as commonsensical. After all, a division effected pursuant to s 112 is, *ex hypothesi*, premised on the fact that the parties would each go their own separate ways and want to have nothing more to do with each other thereafter. Hence, ***to allow the court to re-open the distribution already made is to undermine the very finality which is one of the raisons d'être of s 112 itself*** ...

[emphasis added in bold italics]

40 In view of the fundamental importance of finality in matrimonial proceedings, the court opined that the subsection “intended to confer upon the court a *limited* flexibility to adjust, so to speak, an order for the division of matrimonial assets already made” [emphasis in original]: *AYM* at [22]. One limit

is that s 112(4) would *operate only if the order was not yet completely effected or implemented* (AYM at [22]). Another limit is that the *court order must be unworkable to begin with, or has become unworkable* as a result of new circumstances which have arisen (AYM at [25]). Where new circumstances have come about after the order was made which radically changed the situation such that to implement the original order would be to implement something which is “radically different from what was originally intended”, this would amount to unworkability that justifies a variation (AYM at [25]).

41 On the facts of AYM, the variation for s 112(4) did not succeed as the husband’s change in circumstances that he relied on “fell far short of the radical change in circumstances” and did not amount to the order becoming unworkable (AYM at [33]).

42 AYM involved an application for the variation of explicit terms in a consent order. A situation in which a party seeks to vary an explicit term in a consent order is different from one in which a consent order is *silent* on an issue. The present case involves the latter – the Consent Order in the present case is *silent* on how the mortgage repayments should be borne by the parties. The difference is significant – a variation that addresses a matter on which the consent order is *silent* does not necessarily alter the explicit terms in the original order and undermine the fundamental importance of finality of those orders. It may instead supplement the original order to render it workable.

43 In the present case, the Consent Order provides that the parties’ matrimonial home would only be sold when their youngest child reaches 21 years of age, and that parties would continue residing in the matrimonial home until that time (which would be in the year 2031). The Consent Order is thus of a continuing nature. Finality, in the sense that parties would move on with their

separate lives, is somewhat deferred and not yet fully achievable in the practical sense. The continuing nature of the Consent Order also gives rise to the risk that the failure to make mortgage repayments on time might lead to repossession of the matrimonial home by the bank, rendering clause 3(C) of the Consent Order no longer workable. Given that the parties are unable to resolve this matter which could have an impact on the workability of clause 3(C) of the Consent Order, it would be necessary for this court to make an order addressing the mortgage issue, in order to enable the parties to carry out the original Consent Order.

Basis for making an order on the mortgage issue

44 What is the basis for making an order under these circumstances? The divorce and ancillary matters proceedings have already concluded and the Consent Order was a final order. Generally speaking, the basis for a further order in respect of a concluded s 112 order may be found in s 112(3) or s 112(4) of the Charter. Section 112(3) permits consequential orders to be made while s 112(4) permits a variation of the original order.

45 Section 112(3) empowers the court to make orders “as may be necessary or expedient to give effect to any order made under this section” – these are consequential orders that serve to give effect to the s 112 orders; they are not substantive orders. For instance, s 112(3) orders should not change the substance of the s 112 order such that one party’s share of assets becomes larger than that in the s 112 order originally made. To illustrate, the court order made in *TIC*, which was cited by the Husband, can be described as a consequential order. In *TIC*, the ratio of division of the parties’ total matrimonial assets had been decided by the court and the wife was given the option of taking over the husband’s share of a property upon the payment of a fixed sum of money to

him. The Court of Appeal in *TIC* explained that making mortgage repayments increased the net equity of the property during the interim period, “even though the sum to be paid from one party to another is calculated based on the net equity of the property as at the date of the court order” (*TIC* at [18]). As mortgage repayments made by one party will benefit the other party who is the eventual owner of the property, the eventual owner should bear the mortgage repayments during the interim period between the date of the court order and the date of completion of the transfer of the property. Making an order that the eventual owner should bear the mortgage repayments will result in the parties receiving their shares in accordance with the ratio ordered even though the transfer of property occurs much later when the outstanding loan would have been further reduced.

46 In contrast, an order made pursuant to s 112(4) may have an impact on the substance of the original s 112 order to the extent that the s 112 order was unworkable thereby necessitating a variation. We have already summarised the legal principles in respect of s 112(4) earlier at [39]–[41].

47 We are of the view that an order on the mortgage issue should be made pursuant to s 112(4) and we elaborate on this further below. For now, we highlight that unlike the situation in *AYM*, the order sought by the Husband does not seek to vary any of the explicit terms in the Consent Order. Thus, on the facts of this case, making an order on the mortgage issue does not undermine the finality of the order which is one of the *raisons d’être* of s 112. In fact, an order on the mortgage issue better enables the parties to carry out the original Consent Order.

48 In our view, the parties’ intentions or agreement will be relevant in determining a variation order as the Consent Order was granted on the basis of the parties’ agreement in the first place.

49 It is well-established that marital agreements made in contemplation of divorce cannot be enforced in and of themselves, but their terms constitute one of the factors that the court should take into account in dividing the parties’ matrimonial assets (*TQ v TR and another appeal* [2009] 2 SLR(R) 961 (“*TQ*”) at [77]). The legal effect of a consent order in the matrimonial context is not derived from the agreement made between the parties but from the court order itself: *AYM* at [15]. Section 112(2)(e) of the Charter provides that the court shall have regard to “any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce”. This factor in s 112(2)(e) is illustrated by the historical facts in the present case – when the court granted the Consent Order in 2013, it took into account the parties’ agreement and gave it critical weight, thereby incorporating their agreement as a consent order. The Court of Appeal remarked in *TQ* that agreements made by spouses are relevant to the court exercising its power under s 112 but should not be treated in a manner that detracts from the court’s ultimate aim to reach a just and equitable division of the assets (see *TQ* at [73]). It also pointed out in *AYM* that “in the uniquely *matrimonial* context, the ideas of freedom as well as sanctity of contract cannot be taken too far” [emphasis in original] (*AYM* at [15]). What is most important is that the court makes its order within the s 112 regime in the Charter, where the underlying objective is a just and equitable division of assets.

50 In the context of a variation of a s 112 order, where a consent order has been made but is silent on a particular matter, what the parties had agreed on (but which was not included as a term in the consent order), or what they had

intended with regard to the matter in question, can be taken into account in determining the appropriate variation order to be made. However, this exercise is not a strict application of principles of contractual interpretation – the court may consider the parties’ intentions but is not constrained by the strict requirements in contract law on implying a term such as those established in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193.

51 Evidence of the parties’ intentions at the time of their agreement remains relevant in determining the variation order pursuant to s 112(4). We note that where the parties have reached agreement in divorce and ancillary matters proceedings, there is usually little or no evidence or information in the court files which would have disclosed the parties’ total pool of matrimonial assets and the parties’ direct and indirect contributions to the marriage (which would have been necessary for a court determining what a just and equitable order should be). The court may not even have information on all the parties’ assets that have not been included or referred to in the consent order. Hence where a s 112 order is a consent order, the evidence of the parties’ knowledge and intentions at the time the agreement and the consent order were made plays a most significant role in aiding the court exercising its discretion under s 112(4).

52 In the present case, contrary to both parties’ assertions of a common understanding or mutual agreement, the evidence suggests that the parties did not apply their minds to the mortgage issue at all.

Evidence on the parties' intentions or common understanding

53 In this appeal, the parties rely heavily on the principles of contractual interpretation; their submissions focus on what they intended or should be presumed to have intended in respect of the mortgage issue.

54 In her affidavit dated 21 April 2023, the Wife adduced several screenshots of text message correspondence between herself and the Husband concerning the mortgage issue:

If we want to avoid force sell, u start pay half of [the mortgage instalments]

...

you will need to agree as well to pay half of all the house related expense [sic] ... which includes monthly instalment to bank

...

Thats why i suggested we both pay until we sell

55 The overall picture which emerges is that of the Husband trying to persuade the Wife to shoulder half the mortgage instalments, years after the Consent Order was made in 2013. He does so by appealing to practical and financial reasons, rather than any legal obligation or understanding which might have been shared between them which he claims existed. One message shows the Husband acknowledging that:

I did not say i have the right to ask u pay half. I am ASKING u to pay half to prolong so that the house will not end up forfeited by the martgage loan [sic].

56 Thus, not only is there an absence of any common understanding of equal responsibility, there is also evidence of an admission by the Husband that he did not have any agreement or common understanding on which to demand

that the Wife shoulders half the mortgage repayments. It is unlikely that an agreement or understanding on the terms claimed by the Husband existed between the parties.

57 That said, the same evidence would also suggest that there was no common understanding that the Husband was to bear sole responsibility for the mortgage instalments, as the Wife claims. In the same screenshot containing the Husband's admission that he had no right to ask the Wife to pay half, there is also a message from the Wife as follows:

I think u better check the lawyer with the court order are u sure
u have the right to ask me to pay half for the loa...

58 Had there been a common understanding that the Husband bears sole responsibility for the mortgage instalments, the Wife would be expected to have raised this position instead of simply expressing uncertainty as to whether the Husband had a right to ask her to pay half. While the Wife attempts to rely on the Husband's "admissions" in correspondence with their children that she "did not need to pay anything for the house", that is not proof of any positive intention that the Husband would be obliged to bear sole responsibility for the payments.

59 We also do not accept the Wife's submission that because the Consent Order originally provided only for a repayment of funds (from the Husband's share of a subsequent sale) into the Husband's CPF account, there was a mutual understanding that only he would be responsible for making the mortgage instalment payments. The evidence shows equal contributions being made by each of the parties out of their CPF accounts from August 2012. Thus by the time the parties entered into the Consent Order in April 2013, they had *both* been making contributions towards the mortgage instalments. In this light, it

seems more likely that the lack of any provision in the Consent Order on the repayment of funds into the Wife's CPF account was the result of the parties' omission to provide for this specific matter. Thus, the Consent Order has since been varied to provide that the Wife's CPF refunds would be made out of her share of the sale proceeds (the Judgment at [11]), and this part of the Judge's decision is not challenged on appeal.

60 In our view, at the time the Consent Order was granted, the parties simply did not apply their minds to the issue of the ongoing contributions towards mortgage repayments. The parties were content to go along with the *status quo*. It does not appear that the parties shared any common understanding or reached any agreement on the mortgage issue.

The Husband's alternative submissions

61 We address briefly the Husband's alternative submissions relating to the doctrine of estoppel by convention, unjust enrichment, *TIC* principle and claim of rental sums.

Doctrine of estoppel by convention

62 It also follows from our finding that the Husband's submission on the doctrine of estoppel by convention (see [20] above) must also fail. For an estoppel by convention to be made out, the parties must have acted on an assumption shared by both parties pursuant to an agreement or something akin to an agreement made by one party and acquiesced to by the other. Having already found on the evidence that there was no common understanding on the mortgage issue, we reject the Husband's submission on estoppel by convention.

Unjust enrichment

63 Similarly, we do not think that the doctrine of unjust enrichment is of assistance to the Husband. The Husband seeks to rely on the unjust factor of payment under legal compulsion, which would have required him to show that he has been compelled or was compellable by law to make payments which discharged a liability of the Wife. He argues that he was compellable by law to pay the monthly instalments lest the mortgagee bank repossesses the matrimonial home and sues him for outstanding sums, and that in doing so, he also discharged the Wife's liability as the surety.

64 We reject the Husband's contention. He was the borrower who was liable for the mortgage repayments. He did not discharge a liability of the Wife, who was only a surety with obligations secondary to that of the Husband. There is no unjust factor in these circumstances.

TIC principle

65 As noted above at [21], the Husband relies on *TIC* for the proposition that it must be the ultimate beneficiary of a property who has to pay the outstanding instalments on a mortgage, as mortgage payments will affect the net equity of the ultimate beneficiary.

66 The facts of the present case differ from that in *TIC*. We have explained earlier that in *TIC*, making the *consequential* order that the eventual owner should bear the mortgage repayments will result in the parties receiving their shares in accordance with the *ratio of division ordered by the court* (see [45] above). In the present case, the parties did not apply their minds to the significance of the need to keep servicing the mortgage for 18 years and the impact this has on the term for the net sale proceeds of the matrimonial home to

be divided equally between the parties. The proposition in *TIC* relied on by the Husband does not assist him.

Claim of rental sum

67 The Husband submits that as he has a right to co-reside at the matrimonial home, he should be allowed to deduct the rental sums he is paying for his accommodation and no longer be liable for the mortgage instalments. We see no basis at all for such a claim as his argument assumes that we agree that he was denied co-residence by the Wife. It seems to us that he moved out for his own reasons.

Our order on the mortgage issue

68 We are of the view that an order is required to assist the parties in moving forward and in carrying out clause 3(C) of the Consent Order. It is appropriate to make an order on the mortgage issue pursuant to s 112(4) of the Charter. This is justifiable for a few reasons. An order on the mortgage issue does not vary any specific explicit term in the Consent Order, being a matter on which the Consent Order is silent, and hence does not undermine the importance of the finality of orders in matrimonial proceedings. Of note is that clause 3(C) of the Consent Order is a continuing order. The variation order is necessary for the parties to ensure the workability of the Consent Order.

69 We do not think it would be contrary to what the parties would have agreed to at the time of the grant of the Consent Order if the parties were to bear equal responsibility for the mortgage repayments. We think it appropriate for the Wife to bear half the mortgage repayments from the date of the DJ's order on 20 October 2023 (see [73] below). Our approach to making an order in respect of the mortgage issue may be somewhat analogous to that used in

implying a term in a contract, but as we have explained earlier (at [50]), this exercise is not a strict application of principles of contract. This is an order made under the s 112 regime. This is not a claim in contract.

70 At the time the parties negotiated a settlement in 2013, the parties were making equal contributions towards the mortgage instalments, each contributing about \$6,216.50 monthly, from January 2013 to April 2016. In her affidavit dated 24 July 2024, the Wife annexes an email in which her lawyer (“Mr Chai”) explained the circumstances surrounding the drafting of the Consent Order. Mr Chai’s account of his instructions at the time were that:

Parties did not want to dispose of the new property upon divorce. They agreed to continue to reside at the new property as a family after the divorce. **When asked about the maintenance and respective parties’ financial contributions to the new property to be included in the consent order on ancillary matters, we were instructed not to include them** as parties would settle among themselves, among other matters.

[emphasis added in bold]

71 It appears that when the issue of parties’ financial contributions to the matrimonial home was raised, the Wife seemed content to go along with the *status quo*, without addressing it in the agreement that they reached.

72 The Husband also claims that the Wife was aware of his use of her maintenance moneys, which she transferred to him in around June 2014, to continue paying for her share of the mortgage instalments. The Wife argues that this “subsequent conduct” should not be admissible as proof of actual intention but does not go so far as to deny that this took place.

73 In light of the circumstances in this case, we are of the view that it is just and equitable for the *Wife to bear half the mortgage repayments*, and to do so

by reimbursing the Husband for her half share of the mortgage repayments *out of her share of the sale proceeds* of the matrimonial home. We order that the Wife is to be responsible for half of the instalment repayments *from the date of the DJ's order on 20 October 2023*. The Wife remains responsible for the amount she has already paid from her CPF account towards the mortgage instalments. The DJ had ordered at first instance that the parties were to bear the mortgage repayments equally from the date of his order (see above at [7]), and the Husband did not appeal against that aspect of the DJ's decision. To be clear, the Wife need not bear the mortgage repayments due and paid by the Husband prior to the date of the DJ's order.

74 We are aware that ordering the Wife to reimburse the Husband out of her share of the sale proceeds results in the Husband bearing the full repayments first before the matrimonial home is eventually sold. The Wife ought to consider that, if the Husband is unable to meet the monthly mortgage instalments on his own, the mortgagee bank may force a sale of the parties' matrimonial home at a lower price than they would have obtained if they were to sell it on their own terms or after the date stipulated in the Consent Order. This is a point that the Husband has made to her to seek her assistance to pay the mortgage instalments. Given that she will eventually have to bear half the mortgage liability due from 20 October 2023 onwards and that she will be entitled to half the net sale proceeds, it would also be in her own interest to prevent a forced sale from occurring.

75 We also make a note that it is not clear whether the Husband is in as dire a financial situation as he claims. As the Wife observes, he had no difficulty paying \$2m maintenance within a relatively short period of time, which may suggest that he has other assets over and above the matrimonial home and the Shenton Way Property. Even if his income has decreased, he may possess assets

of value. The court does not have sufficient information to make a determination on the parties' respective financial positions.

Conclusion and costs

76 We order that the Wife is to bear half the mortgage repayments from 20 October 2023 onwards, this being the date of the DJ's order. She is to reimburse the Husband for her share of the mortgage repayments out of her share of the sale proceeds of the matrimonial home when it is sold. However, she should consider making contributions to the mortgage repayments in the interim period to avoid a forced sale which will disadvantage her as well.

77 In respect of the costs of AD 47, SUM 35 and SUM 37, we order that the parties are to bear their own costs. While we have found largely in favour of the Husband in AD 47, we have dismissed SUM 35 and SUM 37. We also note that the dispute over the liability for subsequent mortgage instalments arose because both the parties failed to give adequate thought to the question of the responsibility for such mortgage instalments. Thus, we do not order costs to be paid by either party.

78 We make a few closing remarks. We observe that the question that arose in this appeal on who should bear mortgage repayments is usually not an issue in the majority of cases, where it is common for a matrimonial home to be sold within a short period from the date of the court's order. The difficulties and disputes in the present case largely arise from the exceptionally long period of time between the date of the order and the date the matrimonial home was to be sold – in the present case, a period of 18 years. Over such a long period of time, mortgage repayments can total up to very significant amounts. Responsibility

for mortgage repayments ought to have been provided for within the parties' agreement on the ancillary matters.

79 Parties and lawyers working on agreements to be incorporated in consent orders should apply their minds to matters such as the present. It is important that the parties think through with care all the key matters and the workability of their agreements addressing their financial matters after divorce.

Woo Bih Li
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

Tan Lay Hong and Siow Itming (Temple Counsel LLP) for the
appellant;
Govintharasah s/o Ramanathan (Gurbani & Co LLC) for the
respondent.