

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2018] SGHCF 1

Divorce (Transferred) No 1342 of 2013

Between

UJF

... Plaintiff

And

UJG

... Defendant

JUDGMENT

[Family law] — [Matrimonial assets] — [Division] — [Application of structured approach in *ANJ v ANK*]

[Family law] — [Maintenance] — [Former wife]

Table of Contents

INTRODUCTION.....	1
BACKGROUND	1
DECISION ON THE MATRIMONIAL ASSET POOL.....	3
THE WIFE’S CLAIM	6
THE HUSBAND’S CLAIM	14
THE DECISION.....	21
DIVISION OF MATRIMONIAL ASSETS.....	22
THE LEGAL PRINCIPLES FOR DIVISION.....	22
EVIDENCE AND PRESUMPTIONS	25
METHODOLOGY ADOPTED	27
THE IMPLICATIONS OF THE WITHDRAWAL OF THE CIVIL CLAIM	30
ILLEGALITY	32
ADVERSE INFERENCE	35
ASSETS IN MATRIMONIAL POOL	36
DIRECT CONTRIBUTIONS.....	40
INDIRECT CONTRIBUTIONS	48
RATIO ADJUSTMENT	50
<i>The appropriate ratio</i>	51
VALUE OF THE MATRIMONIAL ASSETS.....	51
ALLOCATION	62
MAINTENANCE	63

ORDERS	64
---------------------	-----------

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

UJF

v

UJG

[2018] SGHCF 1

High Court — Divorce (Transferred) No 1342 of 2013

Aedit Abdullah J

4, 5, 7 July 2016, 15 November 2016, 2, 22 February 2017; 24 May 2017

18 January 2018

Judgment reserved.

Aedit Abdullah J:

Introduction

1 The Wife is the Plaintiff in these proceedings, and the Husband is the Defendant. A long period of cohabitation of about ten years or more was followed by a relatively short marriage of just under four years. As would be expected, the property interests of the parties were quite entangled and much of the dispute centred on the division of matrimonial assets. Separate civil proceedings were commenced, but in the end, the civil proceedings were not continued with, and the matter is therefore solely determined under Part X of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Women's Charter").

Background

2 For convenience, the parties are referred to as Husband and Wife respectively, though their marriage has been dissolved.

3 The Husband, who is about 70 years old, has over the years, been involved in and owned a number of businesses. Before marrying the Wife, the Husband had been married twice. He has a total of four children from these earlier marriages.

4 The Wife, who is about 51 years old, has through her life, been involved in various lines of work, and in the various businesses run by the Husband. She has three children from a previous marriage.

5 The parties met either in 1996 or 1997. There was some issue about when the parties first cohabited, either 1997 or 1999. After cohabitation for more than a decade, the parties were married on 9 September 2009.¹ Interim judgment was granted on 30 July 2013,² less than four years after they were married.

6 By 1997, the Wife had started working at the Husband's business. During the relationship and marriage, the Wife was involved in the businesses at various points, including a period in which the Husband was in prison after being convicted for an offence. At one point, some businesses were transferred from the Husband to the Wife. The effect of that transfer is in dispute between the parties, as is the level and significance of the Wife's involvement in the Husband's businesses.

7 Before and during the marriage, various properties were purchased by the Wife. The ownership of these properties was disputed by the Husband, who

¹ Statement of Particulars (Divorce) (Amendment No. 1) dated 28 June 2013, Exhibit A.

² IJ3481/2013/G, Interim Judgment (Divorce).

claimed interests in most, if not all, such properties, arguing that the funds for purchase came from him or his businesses. The Wife denied this, claiming that the money came from her savings or from her businesses.

8 A civil claim alleging beneficial interest in the various properties purchased by the Wife was commenced by the Husband (“the Civil Claim”). This overlapped with the divorce proceedings. In the interests of ensuring consistency and savings of time and cost, I directed that the hearing of the ancillaries be taken first; with evidence to be taken from both parties before the Civil Claim. Following this, and after consulting with the parties, I indicated that I would determine which assets constituted the matrimonial pool. The intention was to simplify proceedings so that parties could be clear as to which assets were subject to the matrimonial regime, and which were not, and fell to be determined solely by the general civil law.

9 After I reached my decision on the pool of matrimonial assets, the Civil Claim was discontinued save for a few outstanding matters.

Decision on the matrimonial asset pool

10 In my earlier decision on the matrimonial pool,³ I found that the parties’ matrimonial home within the meaning of s 112(10)(a)(i) of the Women’s Charter was the property at Park Villas Rise (“the Park Villas Property”). This property has already been sold and the sale proceeds of \$1,836,182.97 are due to the Plaintiff.⁴

³ Certified Transcript dated 2 February 2017.

⁴ Husband’s Core Bundle of Documents filed on 5 March 2016 at p 92.

11 The properties acquired before the marriage and falling within s 112(10)(a)(ii) of the Women’s Charter were as follows:

- (a) P1;
- (b) P2;
- (c) 2 Marina Boulevard, Level 15 (“The Sail, #15”);
- (d) 2 Marina Boulevard, Level 64 (“The Sail, #64”);
- (e) 2 Marina Boulevard, Level 35 (“The Sail, #35”);
- (f) 7 Rodyk Street (“Watermark”);
- (g) 6 Woodleigh Close, Level 1 (“8@Woodleigh, #01”); and
- (h) Block 123 Yishun Street 11 (“Yishun St 11”).

12 The properties acquired during the marriage and falling within s 112(10)(b) of the Women’s Charter were as follows:

- (a) 7 West Coast Walk (“The Parc”);
- (b) 13 Leedon Heights (“Leedon Heights”);
- (c) 222 Depot Road (“The Interlace 222”);
- (d) 188 Depot Road (“The Interlace 188”);
- (e) Block 45 Telok Blangah Drive (“Telok Blangah”);
- (f) 65 Chestnut Avenue (“Eco Sanctuary”); and

- (g) The Sky, Bukit Indah, Nusajaya, Tower B, Johor, Malaysia (“The Sky”).

13 Other than The Sky, the Husband was not the registered owner of any of the properties falling with the matrimonial pool whilst the Wife either had full ownership or co-ownership with someone other than the Husband.

14 Other assets included in the pool were as follows:

- (a) the businesses (“the Businesses”);
 - (i) in the Husband’s name;
 - (A) B1;
 - (B) B2; and
 - (C) B3;⁵
 - (ii) in the Wife’s name;
 - (A) B4⁶; and
 - (B) B5⁷;
- (b) cars, vans and motorcycles bought in the sole name of either of the parties (“the Vehicles”);
- (c) the shares and proceeds of sale of shares by the Wife (“the Shares”);

⁵ Husband’s Affidavit of Assets and Means dated 12 November 2013 at para 4.

⁶ Wife’s Affidavit of Assets and Means dated 12 December 2013 at para 3.

⁷ Husband’s Affidavit of Assets and Means dated 12 November 2013 at para 4.

- (d) bank accounts in the sole name of either the Husband or the Wife (“the Bank Accounts”); and
- (e) Central Provident Funds (“CPF”) funds in both the Husband’s and Wife’s account (“the CPF moneys”).

15 On the other hand, I found that the following properties were not part of the matrimonial pool (“the Non-Matrimonial Properties”):

- (a) Block 113 Ang Mo Kio Avenue 4;
- (b) two properties at Bright Hill Drive;
- (c) 214 Serangoon North Avenue 4;
- (d) 99 Robertson Quay;
- (e) Taman Nusa Bestari, Skudai, Johor;
- (f) Block 406 Ang Mo Kio Ave 6; and
- (g) 6 Woodleigh Close, Level 2 (“8@Woodleigh, #02”).

The effect of my decision was that the Non-Matrimonial Properties would have been the subject of the Civil Claim if it had been continued.

The Wife’s claim

16 The Wife argues that the withdrawal of the Civil Claim by the Husband has several implications. First, relying on the Wife’s evidence that she received about \$686,416 from the proceeds of sale of the Non-Matrimonial Properties, the Wife argues that by withdrawing the Civil Claim, the Husband admits that

at the very least, a sum of \$686,416 of the Wife's own money was available for the purchase of immovable properties that formed part of the matrimonial pool. Second, by withdrawing the Civil Claim, the Husband concedes that his factual grounds for alleging an equitable interest in the Non-Matrimonial Properties are without basis. In particular, the Husband admits, by withdrawing the Civil Claim, that his allegation that the moneys used to purchase the properties acquired in the Wife's name were obtained from an alleged pool of funds belonging to the Businesses ("the Funds Pool") without proper accounting are groundless. Third, given that the Husband relies on the very same factual grounds to allege that he has made direct contributions to the properties in the matrimonial pool held in the Wife's name (*ie*, that the funds for purchasing these matrimonial assets were obtained from the Funds Pool), these allegations of fact must similarly be viewed with circumspection.⁸

17 In respect of the burden of proof, the Wife accepts that the court in matrimonial proceedings takes a rough and ready approximation where the documentary evidence falls short of establishing the direct contributions made by the parties. However, the Husband still bears a burden of proving any fact he relies on to support his contentions on direct contributions. The Husband's entire case on direct contributions to properties held in the Wife's name rests on his allegation that the Wife had a practice of drawing freely from the Funds Pool, without any form of accounting. This material fact was not proven.⁹ Whilst the Wife had made various withdrawals from the safe in which moneys belonging to the Funds Pool were deposited, these were meticulously recorded by her – it would be "odd and incongruent" for the Wife to record her

⁸ Wife's Written Submissions for Division dated 3 May 2017 at paras 13–25.

⁹ Wife's Written Submissions for Division dated 3 May 2017 at paras 27–28 and 30–32.

withdrawals if she was indeed secretly siphoning the moneys from the Funds Pool.¹⁰

18 The Wife further contends that the Husband's assertion regarding the Wife's inability to fund the property acquisitions on her own, is inconsistent with the Wife's evidence that in the early years of their relationship, she did have the financial means to make significant property purchases. It also fails to take into account the proceeds she received from the sale of the Non-Matrimonial Properties as well as her savings, income and lottery winnings over the years.¹¹

19 Given the presence of multiple classes of assets and varying contributions by the parties in the present case, the Wife proposes that the court should adopt "the classification methodology" in determining the respective contributions¹² and divide the various properties into separate categories. Under the Wife's proposal, the first category (Category A) consists of properties registered in the Wife's name which were acquired before the marriage and which have been substantially improved during the marriage, *ie*, falling within s 112(10)(a)(ii) of the Women's Charter (see [11] above). The Wife submits that for these properties, only the increase in the value of the property between the date of marriage and the date of dissolution would be divisible and not the entire value of the property.¹³ The Wife submits that there is no evidence of direct contributions leading to increase in value of the properties in Category A

¹⁰ Wife's Written Submissions for Division dated 3 May 2017 at para 40.1.

¹¹ Wife's Written Submissions for Division dated 3 May 2017 at para 39; Wife's AEIC at paras 193–205.

¹² Wife's Written Submissions for Division dated 3 May 2017 at para 34.

¹³ Wife's Reply Submissions for Division dated 17 May 2017 at para 24.

from the Husband. In contrast, the Wife contributed directly because down-payments and mortgages were paid using moneys in the Wife's bank accounts. Even if the Husband's evidence that the funds for purchasing these properties came from the Funds Pool is preferred, the funds should be considered as a gift to the Wife which can still be counted as the Wife's direct contributions. As for indirect contributions by the Husband, other than being a guarantor for the loans to purchase P1 and P2 and the paternal contributions to the household, there were no other indirect contributions – all investments were initiated and made by the Wife. Following from this, the Wife submits that for the Category A properties both the direct and indirect contributions should be determined to be 95:5 in the Wife's favour.¹⁴

20 The second category (Category B) consists of properties acquired in the Wife's name during the marriage (*ie*, s 112(10)(b) of the Women's Charter) as well as the matrimonial home of the Park Villas Property. The Wife submits that the Husband was unaware of the Wife's purchases of the properties falling under Category B until much later, thereby diminishing the value of his indirect contributions. With respect to direct contributions, the Wife submits that there is no proof of any direct contributions by the Husband to these properties. For these reasons, the Wife submits that for the Category B properties, the proportion for both direct and indirect contributions should similarly be 95:5 in the Wife's favour.¹⁵

21 With respect to the businesses in the Husband's name, the Wife submits that her direct contributions are supported by contemporaneous documentation.

¹⁴ Wife's Written Submissions for Division dated 3 May 2017 at paras 44–50.

¹⁵ Wife's Written Submissions for Division dated 3 May 2017 at paras 51–54.

As for her indirect contributions, she submits that she played a complementary role to the Husband's role in marketing the businesses and highlights that she took over and ran these businesses when the Husband was imprisoned. She accordingly submits that these businesses should be divided in the proportion of 70:30 in her favour.¹⁶ As for the businesses in her own name, she submits that the division should be 100:0 in her favour because the Husband did not contribute at all to them.¹⁷

22 With respect to the other assets falling within the matrimonial pool, the Wife submits as follows:¹⁸

- (a) The Sky should be divided 70:30 in the Wife's favour.
- (b) The vehicles in the Husband's name should be divided 70:30 in the Husband's favour whilst the vehicles in the Wife's name should be divided 70:30 in the Wife's favour.
- (c) The Shares were part of the Wife's pool of investments. Similar to the reasons in respect of the immovable properties in Categories A and B, the Shares should be divided 95:5 in the Wife's favour.
- (d) The bank accounts in the Wife's name would contain moneys arising from her own investment holdings as well as her own employment and business income which have already been accounted

¹⁶ Wife's Written Submissions for Division dated 3 May 2017 at paras 55–63; Wife's Further Submissions dated 19 August 2016 at paras 54–65; Wife's Reply Submissions for Division dated 17 May 2017 at para 29.

¹⁷ Wife's Written Submissions for Division dated 3 May 2017 at paras 64–66.

¹⁸ Wife's Written Submissions for Division dated 3 May 2017 at paras 67–72; Wife's Reply Submissions for Division dated 17 May 2017 at para 30.

for in the division of the other assets. The Wife therefore submits that the appropriate order would be for the moneys in the parties' respective bank accounts to remain as they are.

(e) The Wife also submits that the CPF moneys should remain as they are since these arise from the parties' respective employment incomes.

23 The Wife submits that the division should also take into account the Husband's rent-free use of P2 from December 2012 to the present pursuant to s 112(2)(f) of the Women's Charter (because there was occupation by one party to the exclusion of the other). The Wife accordingly submits that the Husband should pay her the sum of \$404,000 in rental arrears (calculated at a monthly rate of \$8,000).¹⁹ In relation to rental income received by the Wife for the Categories A and B properties which have yet to be sold, the Wife submits that they should be apportioned between the parties in accordance with how the properties should be divided, *ie*, 95:5 in the Wife's favour.²⁰

24 The Wife submits that an adverse inference under s 116(g) of the Evidence Act (Cap 97, 1997 Rev Ed) ("the Evidence Act") should be drawn against the Husband for failing to produce relevant evidence which was within his power to produce such as relevant personal bank accounts and management accounts of the Businesses. Whilst the Husband says he could not produce evidence of direct contributions, the onus is on him to bring such evidence into play.²¹

¹⁹ Wife's Written Submissions for Division dated 3 May 2017 at paras 73–74 and 77; Wife's Reply Submissions for Division dated 17 May 2017 at para 12.

²⁰ Wife's Written Submissions for Division dated 3 May 2017 at para 75.

25 The Wife also submits that the Husband was not a credible witness. The Husband's allegations regarding the Wife's purchase of the properties using moneys in the Funds Pool is not credible. It is also not credible at all for the Husband to allege that he alone provided all the moneys for the cars in the Wife's name, all her bank accounts, and her CPF moneys as this completely ignores the reality that some of the moneys used to purchase these assets must have come from the Wife's salary and her businesses. It is also unrealistic (and selective) for the Husband to allege that the vehicles in the Wife's name have appreciated in value whilst his own vehicles have depreciated in value. Unlike the Husband, the Wife submits that she was candid with the facts and did not seek to conceal unfavourable facts from the court.²²

26 In particular, the Wife points out that the Husband's allegations regarding the Wife's misappropriation of \$113,000 from the bank account of B2 is baseless. The Husband knew and consented to the Wife's taking of these funds for her own use. Further, the Wife was above-board with the circumstances surrounding the withdrawals of funds from B2 and did not attempt to conceal this fact from the Husband or the court. This was in contrast to the Husband who provided no explanation for his one-off withdrawal of \$90,000 from B2 in August 2012.²³ The Wife was also candid about the properties she owned and of her beneficial share in these properties – there is no basis for the Husband to dispute this information in the absence of any substantiation.²⁴

²¹ Wife's Written Submissions for Division dated 3 May 2017 at paras 29–32.

²² Wife's Reply Submissions for Division dated 17 May 2017 at paras 3–5.

²³ Wife's Reply Submissions for Division dated 17 May 2017 at paras 13–16.

²⁴ Wife's Reply Submissions for Division dated 17 May 2017 at paras 17–21.

27 In terms of valuations, the Wife disputes the Husband's estimated valuation of the Businesses as amounting to \$1.5m, contending that it has been arrived at without any factual basis. For the Category A properties, the Wife submits that there must be strict proof of substantial improvements and contribution to such substantial improvements. Since the Husband now concedes by withdrawing the Civil Claim that the Wife had at least \$686,416 of her own funds (see [16] above), which could have been used to contribute solely to any such improvements, there is insufficient evidence of the Husband having contributed to any such improvements to these properties. In the circumstances, it is open to the court to now find that the Category A properties do not fall within the matrimonial pool for lack of substantial improvement.²⁵

28 The Wife finally relies on an alleged illegality of the Husband to disallow his claims of direct contributions. In particular, the Wife claims that the Husband is not permitted to assert beneficial ownership of the Businesses and correspondingly direct contributions as his claim is tainted with illegality arising from his alleged intention to defraud creditors by appointing nominees for the Businesses.²⁶

29 In the event that the Wife is not allowed to retain all the assets in her present name, the Wife sought a monthly maintenance of \$5,000 from the Husband or in the alternative an order for nominal maintenance.²⁷

²⁵ Wife's Reply Submissions for Division dated 17 May 2017 at paras 22–23 and 25–27.

²⁶ Wife's Written Submissions dated 4 March 2016 at paras 17–49.

²⁷ Wife's Written Submissions for Division dated 3 May 2017 at para 80; Wife's Written Submissions dated 4 March 2016 at paras 135–141.

The Husband's claim

30 The Husband's primary contention is that the source of funds for the acquisition of all the immovable properties (including the mortgage payments and other financing) were derived from the Funds Pool (as well as rental yields), which ultimately belonged to the Husband.²⁸

31 The Husband disagrees with the Wife's submission on the impact of his withdrawal of the Civil Claim. First, there was never any concession on his part that he has conceded or admitted to any issue of fact or law by discontinuing the Civil Claim. Second, the Non-Matrimonial Properties had been sold and the funds dissipated or channelled into other property purchases and investments such that it became academic for the Husband to seek adjudication of these funds. In addition, it is still a live issue in the present decision on division as to whether the said sum of \$686,416 from the proceeds of sale of the Non-Matrimonial Properties is the Wife's own money or money that belonged to the Funds Pool.²⁹ On this issue, the Husband argues that the sale proceeds were part of the Funds Pool and thus constituted the Husband's direct contributions to the property purchases that were made from the Funds Pool.³⁰

32 The Husband submits that the Wife has not adduced credible evidence for the source of any savings that she had when she first met the Husband³¹ or the source of any independent funds she had during their relationship.³² In the

²⁸ Husband's Final Submissions dated 3 May 2017 at paras 20 and 25–27.

²⁹ Husband's Final Reply Submissions dated 24 May 2017 at paras 24–34.

³⁰ Husband's Final Reply Submissions dated 24 May 2017 at paras 20–22, and 36.

³¹ Husband's Reply & Supplementary Submissions dated 19 August 2016 at paras 57–69.

³² Husband's Reply & Supplementary Submissions dated 19 August 2016 at paras 83,

circumstances, the only funds available to the Wife to purchase the matrimonial assets were from the Funds Pool. Since the Funds Pool originated from the Businesses of which the Husband is the “true owner” and “main driver”, it was his funds that were used to purchase all the matrimonial assets.³³ The mortgages on the properties were primarily taken out in the Wife’s name as she had a higher credit rating.³⁴ The rental yields from the properties rented out, which were used to foot the mortgages and other financials, should also be considered the Husband’s direct contributions because the Funds Pool was used to purchase these properties in the first place before renting them out.³⁵ Accordingly, the Husband submits that the ratio of direct contributions for all the matrimonial assets (except the Park Villas Property) is 100:0 in his favour.³⁶

33 With respect to indirect contributions, the Husband submits that the indirect financial contributions relating to the welfare of the family came from the Funds Pool or the rental yields. As for non-financial indirect contributions, the Husband accepts that both parties contributed substantially – the Husband took care of the Wife and her son whilst the Wife took care of the home and the Husband.³⁷ The Husband submits that the indirect contributions are in favour of the Wife, at a ratio of 60:40.³⁸

98, 116–131.

³³ Husband’s Final Submissions dated 3 May 2017 at paras 22 and 25.

³⁴ Husband’s Final Submissions dated 3 May 2017 at para 28.

³⁵ Husband’s Final Submissions dated 3 May 2017 at paras 26 and 39.

³⁶ Husband’s Reply & Supplementary Submissions dated 19 August 2016 at para 292.

³⁷ Husband’s Final Submissions dated 3 May 2017 at para 29; Husband’s Reply & Supplementary Submissions dated 19 August 2016 at paras 286–291.

³⁸ Husband’s Reply & Supplementary Submissions dated 19 August 2016 at para 293.

34 Accordingly, the average ratio for all the matrimonial properties (excluding the Park Villas Property) would require division at 30% to the Wife and 70% to the Husband. The Husband then submits that an adjustment of the ratio would involve a 10% uplift to the Wife for her contributions to the wealth and success of the Businesses, but there should also be a 10% reduction for the absence of full disclosure of her assets as well as rental income earned by the Wife.³⁹ This would return the division to a 30:70 distribution for the Wife and the Husband respectively.⁴⁰

35 In terms of the value of the matrimonial pool for division (excluding the Park Villas Property), the Husband submits that it comes up to \$18,582,783.61, derived from the following sums:⁴¹

- (a) the net sale proceeds from the immovable properties sold amounting to \$3,246,666.46;
- (b) the value of immovable properties not sold amounting to \$11,466,377.27;
- (c) the value of the Vehicles amounting to \$441,645.80;
- (d) the Bank Accounts amounting to \$425,384.64;
- (e) the value of the Businesses at an estimated \$1.5m;
- (f) the CPF moneys, which stood at \$502,709.44; and

³⁹ Husband's Final Submissions dated 3 May 2017 at para 39.

⁴⁰ Husband's Reply & Supplementary Submissions dated 19 August 2016 at paras 294–295; Husband's Final Submissions dated 3 May 2017 at paras 30–31.

⁴¹ Husband's Final Submissions dated 3 May 2017 at paras 33–38 and 40–41.

- (g) the sale of the Shares by the Wife at an estimated value of \$1m.

36 Applying the 70:30 division that the Husband proposes, the Husband should get \$13,007,948.52 and the Wife should receive \$5,574,835.08.⁴² The Husband then proposes the following for allocation:⁴³

- (a) the Wife to transfer to the Husband the following properties amounting to \$10,100,492.77:

- (i) P1 and P2 because, *inter alia*, these are the mainstay of the Businesses, were purchased pursuant to his instructions and he needs the properties for his business use;

- (ii) The Interlace 222; and

- (iii) 8@Woodleigh, #01;

- (b) the Wife to pay the Husband the remaining sum of \$2,907,455.76 (since the Wife has already collected the sale proceeds from several of the properties that have already been sold);

- (c) the Wife to transfer her rights and interest in The Sky to the Husband; and

- (d) the other properties and assets to be retained by each party in their sole names.

37 For the Park Villas Property, the Husband submits that a different distribution should apply. The Husband accepts that the Wife paid about 21%

⁴² Husband's Final Submissions dated 3 May 2017 at para 41.

⁴³ Husband's Final Submissions dated 3 May 2017 at paras 42–43 and 45–46.

of the purchase price of the property from her CPF account, which would be counted as her direct contribution, with the Husband having paid the remaining. With the same ratio of indirect contributions, uplift for contribution and corresponding downward adjustment for sale by the Wife of the Park Villas Property at undervalue, the Husband submits that the proceeds received by the Wife should be divided in the average ratio of 40.5% to the Wife and 59.5% to the Husband.⁴⁴ Accordingly, the Wife should pay the Husband \$1,800,578.86.⁴⁵

38 The Husband argues that the Wife's valuation of the properties acquired before marriage in the reports dated 30 April 2017 should not be admitted because it was belated and was not an independent valuation given that it was obtained through the Wife's agent.⁴⁶ The Husband also takes issue with the Wife's late change of evidence in respect of her alleged share of the sale proceeds from The Sail, #64, The Parc and Leedon Heights.⁴⁷

39 The Husband also claims unpaid salaries due to him. Cheque stubs disclosed by the Wife depict monthly deductions of \$3,000 from B2's account, as salary payments due to the Husband but the Husband says that he never received these payments. The unpaid sum amounts to \$113,000. According to the Husband, the Wife's claim that she secretly saved this money for the Husband's retirement and that the Husband subsequently stole this is illogical. The Husband submits that the said sum of \$113,000 was part of the Funds Pool as it was funds from B2 and that the court should order its payment to him.⁴⁸

⁴⁴ Husband's Reply & Supplementary Submissions dated 19 August 2016 at paras 292 and 296.

⁴⁵ Husband's Final Submissions dated 3 May 2017 at para 44.

⁴⁶ Husband's Final Reply Submissions dated 24 May 2017 at paras 2–6.

⁴⁷ Husband's Final Reply Submissions dated 24 May 2017 at paras 8–15.

40 The Husband argues against the claim by the Wife for rental arrears arising out of the Husband's occupation of P2, which he says is not backed up by any rental agreement or invoice. The Husband contends that there was an agreement between him and the Wife for him to occupy P2 rent free in recognition of the fact that the purchase of the property was made using his moneys in the Funds Pool. The evidence of past payments of rental before December 2012 cannot be relied upon as these were unilaterally made by the Wife to boost her credit profile.⁴⁹ The Husband also argues that the repayments for the mortgage for P2 made by the Wife similarly came from the Funds Pool.⁵⁰

41 With respect to the illegality defence run by the Wife, the Husband submits that the Wife has produced no evidence of any intention to defraud creditors on his part. The Husband has never denied that he was the one ultimately responsible for all the assets and liabilities of the Businesses. His sole intention for appointing nominees was to let the Businesses survive in the event of his death or bankruptcy. There is nothing dishonest, nefarious or anything that offends the public interest in appointing nominees for businesses.⁵¹

42 The Husband contends that the court should not use "the classification methodology" proposed by the Wife because it will not lead to a just and equitable division of the matrimonial assets. The methodology works best when there are assets in the pool that are not wholly the gains of the co-operative partnership that marriage represents, which is not the case here.⁵²

⁴⁸ Husband's Final Submissions dated 3 May 2017 at paras 13–17 and 44.

⁴⁹ Husband's Final Submissions dated 3 May 2017 at paras 2–11.

⁵⁰ Husband's Final Submissions dated 3 May 2017 at para 12.

⁵¹ Husband's Reply & Supplementary Submissions dated 19 August 2016 at paras 2–17.

⁵² Husband's Final Reply Submissions dated 24 May 2017 at para 38; Husband's Reply

43 The Husband argues that the Category A properties do not fall under s 112(10)(a)(ii) but rather s 112(10)(b) of the Women’s Charter because there were mortgage payments made during the course of marriage, which count as “acquisition” of the property. The court should also consider the period of acquisitions both before and after the date of marriage in determining the parties’ respective financial contributions. Even if these properties are to be considered under the lens of s 112(10)(a)(ii), the court should not limit the division only to the value of the increase from the date of marriage to the date of dissolution.⁵³

44 The Husband argues that an adverse inference should be drawn against the Wife for not producing any documentary evidence to prove that the funds that she used to purchase the matrimonial properties were her personal funds. The adverse inference would be that the source of the Wife’s funds to purchase the properties came from the Funds Pool as opposed to her personal funds.⁵⁴

The decision

45 I did not in the end accept fully the arguments by either side. While there was some evidence, there was not as much as one would have expected. There was also the conspicuous absence of many documents that would have been present in most other families, where funds in CPF or mortgages are used to purchase properties. The available evidence was insufficient to give a holistic picture.

Submissions dated 2 September 2016 at paras 45 and 49.

⁵³ Husband’s Written Submissions dated 5 March 2016 at paras 72–74; Husband’s Final Reply Submissions dated 24 May 2017 at paras 50–55.

⁵⁴ Husband’s Reply Submissions dated 10 January 2017 at paras 7–10; Husband’s Reply & Supplementary Submissions dated 19 August 2016 at para 126.

46 In the circumstances, I have determined the division of property on the basis of the direct and indirect contributions, as supported by the available evidence. For the adjustment to the ratio between direct and indirect contributions, taking into account the relatively short marriage, a greater emphasis will be placed on direct contributions. The matrimonial assets are then redistributed taking into account the determined share of the pool, and as far as possible, the expressed preferences of the parties.

Division of matrimonial assets

The legal principles for division

47 The division of the matrimonial assets is made under s 112 of the Women's Charter ("s 112"). The relevant parts of the section reads:

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.

(2) It shall be the duty of the court in deciding whether to exercise its powers under subsection (1) and, if so, in what manner, to have regard to all the circumstances of the case, including the following matters:

- (a) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the matrimonial assets;
- (b) 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;
- (c) the needs of the children (if any) of the marriage;
- (d) the extent of the contributions made by each party to the welfare of the family, including looking after the

home or caring for the family or any aged or infirm relative or dependant of either party;

(e) any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce;

(f) any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;

(g) the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business; and

(h) the matters referred to in section 114(1) so far as they are relevant.

...

48 The controlling authority on the approach to division is the Court of Appeal’s decision in *ANJ v ANK* [2015] 4 SLR 1043 (“*ANJ v ANK*”), which stipulated a structured approach to the determination of division (at [22]):

... Using the structured approach, the court could first ascribe a ratio that represents each party’s direct contributions relative to that of the other party, having regard to the amount of financial contribution each party has made towards the acquisition or improvement of the matrimonial assets. Next, to give credit to both parties’ indirect contribution throughout the marriage, instead of giving the party who has contributed more significantly than the other an “uplift” to his or her direct contribution percentage, the court should proceed to ascribe a second ratio to represent each party’s indirect contribution to the well-being of the family relative to that of the other. Using each party’s respective direct and indirect percentage contributions, the court then derives each party’s average percentage contribution to the family which would form the basis to divide the matrimonial assets. Further adjustments (to take into account, *inter alia*, the other factors enumerated in s 112(2) of the WC) may need to be made to the parties’ average percentage contributions ...

The Court of Appeal then elaborated further that indirect contributions, being a question of impression and judgment, is not to be determined mathematically but based on “all the relevant facts” of the case (at [24]).

49 After arriving at the average ratio, the court then considers the appropriate weight to be given as between the direct contributions and indirect contributions. This adjustment is again non-mathematical and is based on the court’s sense of “what is fair and just” (*ANJ v ANK* at [26]). The Court of Appeal also noted in *ANJ v ANK* as follows (at [27]):

The circumstances that could shift the “average ratio” in favour of one party are diverse, and in our judgment, there are at least three (non-exhaustive) broad categories of factors that should be considered in attributing the appropriate weight to the parties’ collective direct contributions as against their indirect contributions:

(a) The length of the marriage. Indirect contributions in general tend to feature more prominently in long marriages (*Tan Hwee Lee* ([18] *supra*) at [85]). Conversely, indirect contributions usually play a *de minimis* role in short, childless marriages (*Ong Boon Huat Samuel v Chan Mei Lan Kristine* [2007] 2 SLR(R) 729 at [28]).

(b) The size of the matrimonial assets and its constituents. If the pool of assets available for division is extraordinarily large and all of that was accrued by one party’s exceptional efforts, direct contributions are likely to command greater weight as against indirect contributions (see *Yeo Chong Lin v Tay Ang Choo Nancy* [2011] 2 SLR 1157 (“*Yeo Chong Lin*”)).

(c) The extent and nature of indirect contributions made. Not all indirect contributions carry equal weight. For instance, the engagement of a domestic helper naturally reduces the burden of homemaking and caregiving responsibilities undertaken by the parties, and to that extent, the weight accorded to the parties’ collective indirect contributions in the homemaking and caregiving aspects may have to be correspondingly reduced. The courts also tend to give weighty consideration to homemakers who have painstakingly

raised children to adulthood, especially where such efforts have entailed significant career sacrifices on their part.

50 In *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 (“*TNL v TNK*”), the Court of Appeal clarified that the approach in *ANJ v ANK* should not be applied to marriages where only one spouse earns income (referred to in *TNL v TNK* at [43] as “Single-Income Marriages”) (at [46]). It was further clarified in *TNL v TNK* (at [47]), that in the application of the structured approach in *ANJ v ANK*, separate ratios should not be applied to indirect financial contributions, on the one hand, and non-financial contributions on the other. The Court of Appeal also noted that in long Single-Income Marriages, the tendency is towards equal division of the matrimonial assets; the Court of Appeal however left open the issue of what considerations may apply in short Single-Income marriages (*TNL v TNK* at [48]).

51 While the marriage was relatively short (see [5] above), there is evidence of contribution by both parties, though this evidence was not abundant.

Evidence and presumptions

52 In the light of the absence of substantial portions of evidence, the question of the burden of proof is particularly significant. I accept the Wife’s submissions that the legal burden does not operate in the usual way as it does in civil claims.

53 The court takes “a rough and ready” approach in the absence of sufficient evidence: see *ANJ v ANK* (at [23]). This flows from the fact that the process of division of matrimonial assets is driven not by pleadings, but rather the role of the court in fulfilling the legislative mandate to order a “just and

equitable” division: see 112(1) of the Women’s Charter. Matrimonial property has to be divided somehow, even if there is scant evidence, as the parties’ divorce requires that division come what may. The court could in cases of little objective evidence turn to broader factors, such as the length of the marriage, and the raising of children, to gauge on a very broad basis, the likelihood of the degree of contribution from each side. In some cases, the court could lean towards equality in division. However, these factors are not present in the present case, given the relative brevity of the marriage as well as the absence of children being raised within the marriage (the children from past marriages or relationships are in any event adults at the material point of division).

54 What is notable here is that the parties were in a relationship for about a decade before they were married. However, I am of the view that the fact that the parties were in a relationship that lasted for many years could not be a relevant factor given the scope of the legislative provision which is concerned only with factors relating to the period of marriage. I could not see anything in s 112 or the scheme of Part X of the Women’s Charter that justifies an expansive approach which allows me to take into account pre-marriage circumstances.

55 Within this context, the factual or evidential burden of adducing evidence to support or rebut a particular position is important. The evidential burden lies on the party asserting a proposition, or refuting other evidence brought into play. In the absence of such evidence, the contrary position stands. In addition, s 116(g) of the Evidence Act may also be invoked to determine factual issues. This allows an adverse inference to be drawn in some circumstances. Its use in the context of matrimonial law must however be nuanced (see [73] below).

56 In the present case, tracing the flow of funds from pre-marriage sources, asset by asset, did not appear to be practical and is not in fact pursued by the parties. I do note that in some cases, it may be possible to trace the flow of funds from asset to asset to determine the direct contributions that were made. That is not however practical at all here, in view of the time lapsed and quantity of assets, and the lack of relevant documentary evidence recording the source of funds. It is that lack of evidence that necessitates a robust approach to be taken, though not at the cost of justice.

Methodology adopted

57 The Wife argues that “the classification methodology” identified in *NK v NL* [2007] 3 SLR(R) 743 (“*NK v NL*”) is more appropriate than “the global assessment methodology”.⁵⁵ As noted in *NK v NL* by Andrew Phang JA (at [35]), “the classification methodology” is more appropriate where there are “multiple classes of assets” which have attracted different contributions. In such a context, it would be more equitable to consider assets by classes. The Wife contends that there are clearly identifiable multiple classes of assets, and that different direct financial contributions were made to each asset. The Husband argues instead in favour of “the global assessment methodology”. I accept that, as between the properties and the Businesses, there were possibly differing direct financial contributions. However, given the dearth of objective and substantive evidence, I find that there would not be much utility in drawing a distinction between these different classes of assets.

58 Instead, what helpfully distinguishes the various assets are that they fall into three distinct categories: (a) matrimonial home, (b) assets purchased before

⁵⁵ Wife’s Written Submissions for Division dated 3 May 2017 at para 34.

marriage, and (c) assets purchased after the start of the marriage. This is not an application of “the classification methodology”, but is simply the consequence of the language of s 112(10) of the Women’s Charter, which distinguishes between three types of assets (see [78] below):

- (a) the matrimonial home;
- (b) assets acquired before the marriage but which were substantively improved; and
- (c) assets acquired after the start of the marriage.

The entire *value* of the matrimonial home as well as the assets acquired after the start of the marriage would fall to be included as part of the matrimonial assets divisible on dissolution of the marriage.

59 As regards (b), prior acquired assets which have been improved, it is only the *improved* value that is subject to division by the court. This approach, advocated by Professor Leong Wai Kum in her book, *Elements of Family Law in Singapore* (LexisNexis, 2nd Ed, 2013) at p 577 was endorsed by Debbie Ong JC (as she then was) in *TNC v TND* [2016] 3 SLR 1172 (“*TNC v TND*”) at [41]. I accept the arguments and follow the approach endorsed by Ong JC in *TNC v TND* that in respect of assets acquired pre-marriage which have been improved, it is only the increase in value from improvement that is subject to division. Subjecting the whole of the value of the asset to division will in effect give an unjustified windfall to the claiming party. In the context of determining whether a global assessment or classification methodology should be adopted, Ong JC made the following observations (at [41]):

Section 112(10)(a), however, places assets acquired *before* marriage, but regarded as matrimonial assets by virtue of

ordinary *usage* or substantial *improvement*, on the same footing as those acquired during marriage (s 112(10)(b)). For property acquired before marriage but regarded as a matrimonial asset due to substantial improvement, Professor Leong suggests treating only the increase in value of the property brought about by the parties' improvement as liable to division. Discounting the value of the property before marriage from the value of the property at the operative date enables the court to derive the value attributable to the parties' efforts, which is a quintessential asset (*Elements* at p 577). However, such discounting cannot be done for property regarded as matrimonial asset by virtue of "ordinary usage" or enjoyment since there is no discernible increase in value that can be ascribed to the parties' efforts. This is why the use of the classification approach for such assets may be more appropriate.

In my view, the requirement of substantial improvement in respect of prior property is meant to exclude *de minimis* or negligible contributions.

60 As noted by Ong JC, the approach does not apply to the matrimonial home, however. The matrimonial home which is acquired before marriage is of a different nature from other improved properties: it serves as the focal point of the family life. The difference in treatment from other pre-marriage properties is clear in the language of the statute. Section 112(10)(a) of the Women's Charter reads:

In this section, "matrimonial asset" means —

(a) any asset acquired before the marriage by one party or both parties to the marriage —

(i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or

(ii) which has been *substantially improved during the marriage* by the other party or by both parties to the marriage; ...

[emphasis added]

The matrimonial home is distinguished from other pre-marriage properties since only the latter must have been substantially improved to qualify as matrimonial assets. In the absence of any linkage to improvement in s 112(10)(a)(i), it would not be appropriate to limit the divisibility of the matrimonial home to only the improved portion.

61 What is important is that, contrary to the Husband's argument,⁵⁶ as I noted above at [54], the period of cohabitation before marriage must be excluded from the court's consideration except in so far as it can indicate the source of funds used during the course of marriage.

62 Some of the properties that were bought before marriage, were as I found earlier, in fact acquired by payments and contributions after marriage. That to my mind would count as acquisition, and such assets would be part of the matrimonial pool under s 112(10)(b) of the Women's Charter (see *BHN v BHO* [2013] SGHC 91 at [36]; *THL v THM* [2015] SGHCF 11 at [40]). However, for such acquisition, the court should not take the whole of the value of the asset, but only that part of the acquisition that coincides with the period of the marriage. Limiting the value subject to division to only that part attributable to acquisition after marriage prevents an unearned windfall. Such assets are distinguishable from assets purchased wholly after the start of the marriage. For the latter, the whole of the acquisition is attributable to the joint enterprise as well as the community of resources and property that constitute a marriage.

⁵⁶ Husband's Final Reply Submissions dated 24 May 2017 at paras 53–55.

The implications of the withdrawal of the Civil Claim

63 The Wife argues that the effect of the withdrawal of the Civil Claim is that the proceeds of \$686,416 is excluded from the matrimonial pool and not subject to division. From this, the Wife argues that \$686,416 was available as the Wife's own money for the purchase of immovable properties that are part of the matrimonial pool.⁵⁷ The Husband argues that this is not the effect of the discontinuance. It is said by the Husband that the outstanding issues in the Civil Claim would be dealt with in the present matrimonial proceedings. The decision of the court in excluding the Non-Matrimonial Properties also renders these funds academic. Whether the source of funds used in property purchases came from the Funds Pool is however an issue that is still live. Additionally, the Wife's argument that she is now entitled to the \$686,416 is yet another sign of a constantly changing evidence and should be disregarded for that reason.⁵⁸

64 I accept the Husband's argument that the discontinuation of the Civil Claim does not lead to the conclusion that the \$686,416 belonged to the Wife absolutely and should therefore be taken as her contribution for the purposes of division in the matrimonial proceedings. All that my decision determined was that the class of assets I identified fell outside the matrimonial pool. By subsequently discontinuing the Civil Claim, this does not necessarily amount to a concession by the Husband that these funds used for the purchase of properties were to be regarded as solely coming from the Wife. I accept the Husband's explanation that it was academic for him to seek adjudication of the ownership of this \$686,416 given that these funds were either dissipated or channelled into other property purchases and investments. Accordingly, the Husband cannot be

⁵⁷ Wife's Written Submissions for Division dated 3 May 2017 at paras 13–25.

⁵⁸ Husband's Final Reply Submissions dated 24 May 2017 at paras 24–34.

said to have conceded the issue as to whether the said sum of \$686,416 is the Wife's own money or money that belonged to the Funds Pool.

65 The Wife argues that the \$686,416⁵⁹ was attributable to funds available to the Wife over the years. The Wife also relies on evidence that she had kept a meticulous record of the withdrawals that she had made from the Funds Pool..⁶⁰ In contrast, the Husband was not able to adduce evidence about his financial contributions even from the Businesses. The Husband relies on the fact that the sale proceeds of \$686,416 must have come from the Funds Pool.⁶¹ In my judgment, the concerns about the position of the Wife's savings and means below lend a considerable blow to the conclusion that this sum of \$686,416 came entirely from the Wife and her businesses. For the same reasons as below, I find that this sum more probably than not involved contributions by the Husband.

Illegality

66 The Wife argues that the Husband is precluded from asserting an interest in the matrimonial assets as a result of the doctrine of illegality. The Wife argues that the Husband was committing an illegal act by using third parties as nominees for the businesses which were registered in the Wife's name as his intention was to defraud his creditors should he be made a bankrupt. He is thus precluded from relying on his assertion that he is the sole beneficial owner of the Businesses even though some of the Businesses were registered in the

⁵⁹ Wife's Written Submissions for Division dated 3 May 2017 at para 39.1.

⁶⁰ Wife's Written Submissions for Division dated 3 May 2017 at para 40.1.

⁶¹ Husband's Final Reply Submissions dated 24 May 2017 at para 26.

Wife's name, in order to claim direct contributions in respect of the matrimonial properties through the Funds Pool.⁶²

67 I do not find in favour of the Wife on this point. First and foremost, in the absence of any dishonest intention to defraud creditors, there is nothing to my mind illegal about using nominees to front a business *per se*. There is no evidence adduced that the Husband intended to defraud any of the Businesses' creditors by appointing nominees for these Businesses. There is also no claim made against the Husband by any creditor of the Businesses under s 340(1) of the Companies Act (Cap 50, 2006 Rev Ed).

68 Even if there is any illegality in question, I am not convinced that it will bar a claim in division of matrimonial assets as there is no cause of action to speak of in such an exercise. I am satisfied that considering that the present application is a matrimonial proceeding, and as the creditors are not involved, in the circumstances before me, that should not bar his claim to a possible division of these matrimonial assets in his favour, and certainly not in a determination of whether an asset could be subject to the regime under s 112 of the Women's Charter.

69 Even if illegality can extend to matrimonial proceedings, I have to consider the proportionality of denying the Husband's claim. The Court of Appeal in *Ting Siew May v Boon Lay Choo and another* [2014] 3 SLR 609 ("*Ting Siew May*") laid down the proposition that where a contract is entered into with the object of committing an illegal act, the response would be proportionate to the illegality. It was made clear in the recent decision of the

⁶² Wife's Written Submissions dated 4 March 2016 at paras 19–49.

Court of Appeal that the proportionality analysis is only relevant where the contract is “not unlawful *per se* but entered into with the object of committing an illegal act” (see *Ochroid Trading Ltd and another v Chua Siok Lui (trading as VIE Import & Export) and another* [2018] SGCA 5 at [176(a)]). In other words, the proportionality analysis is inapplicable where the contract itself is prohibited. Applying by analogy to this case, the Husband’s appointment of nominees for some of the Businesses by itself is not illegal; any illegality can only be said to arise if he had done so with the object of defrauding creditors.

70 In assessing proportionality, the court takes into account considerations such as the purpose of the prohibiting rule, the nature and gravity of the illegality, the remoteness of the illegality to the contract, the object of the parties and the consequences of denying the claim (*Ting Siew May* at [66], [70] and [77]). While these factors in *Ting Siew May* were laid down in a contractual context, if illegality can even extend to matrimonial proceedings in the first place, its approach can also be applied in the present case.

71 Applying the factors highlighted in *Ting Siew May*, any illegality would not be of such a degree that the Husband’s claim under matrimonial law should be denied. The Wife argues that the Husband was relying on an illegality in claiming an interest in the Businesses, as he would have retained an interest in assets that had ostensibly been transferred out of his name. However, on this basis, even if the Wife was not party to the illegality, the proportionate response following *Ting Siew May* would not be to exclude the interest between the Husband and the Wife *inter se*. Whatever may be the position *vis-à-vis* third parties, creditors or the authorities, between the Husband and the Wife, the Wife is not affected or prejudiced by the illegality in relation to her interests. In other words, the illegality is remote from the claim made under matrimonial law.

Allowing the Husband's claim here would not also to my mind undermine the policy of the bankruptcy provisions – the creditors' rights against the Husband remain unaffected. Ironically, it would be denying his share of the matrimonial assets that would affect his creditors' interests as the Husband's assets would then be lowered as a result of his failure to obtain a share in the matrimonial pool.

Adverse inference

72 Both parties argue that an adverse inference should be drawn against the other. In respect of an inference against the Husband, the Wife argues that an adverse inference should be drawn against him for failing to produce relevant evidence which was within his power to produce such as relevant personal bank accounts and management accounts of the Businesses. As for the inference against the Wife, the Husband points to the Wife's failure to fully disclose all her assets, her bank accounts, her positive undervaluation of some of the properties sold and her failure to produce any documentary evidence to prove that the funds that she used to purchase the properties were her personal funds.

73 The mere absence of evidence is not sufficient to trigger any such adverse inference. What must be shown is that there has been a failure to make full and frank disclosure, or a satisfactory explanation as to money or assets that are shown to be either putatively assets or contributions to acquisition of such assets. Thus, it must be shown either that there is failure to give full and frank disclosure, or that there is some evidence of the existence of assets or contributions, which calls for an explanation.

74 As expressed by the Court of Appeal in *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 ("*Chan Tin Sun*") (at [62]):

The law on drawing adverse inferences was succinctly summarised by this court in *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 at [28]. In order for the court to draw an adverse inference, there must be:

(a) a substratum of evidence that establishes a *prima facie* case against the person against whom the inference is to be drawn; and

(b) that person must have had some particular access to the information he is said to be hiding.

In our judgment, a *prima facie* case had been made out against the Husband in the light of the moneys he withdrew. Moreover, what happened to the moneys was clearly within the Husband's knowledge. In the premises, we found that the Judge therefore did not err in drawing an adverse inference against the Husband.

Guidance was also given in *Chan Tin Sun* on how the adverse inference should be effected: either by ascribing a value to the undeclared or hidden assets, or to order a higher proportion of the known assets in favour of the prejudiced party (at [64]; see also *NK v NL* at [61]–[62]).

75 On the facts, I draw no adverse inference against the Husband. The absence of relevant information from him is sufficiently explained; it is apparent that the Husband maintained little record of his business activities and the funds that came in and went out, for whatever reason. No evidence was adduced that this was an aberration from normal practice, which would have shown that there was an attempt to hide or avoid giving the required evidence.

76 Similarly, as against the Wife, no adverse inference is drawn. While there was an absence of documentary evidence as regards her supposed savings of \$300,000 at the time she met the Husband, I could not conclude that there was any *prima facie* case for an adverse inference to be drawn. The failure to adduce such evidence is to be expected given the passage of time. In the absence

of clear evidence to the contrary, I am also not convinced that the Wife failed to disclose all her assets or that she undervalued the properties sold.

Assets in matrimonial pool

77 The matrimonial pool was, as I indicated at [10], determined earlier. For completeness, the reasoning behind that determination is explained briefly.

78 As regards what assets constitute the matrimonial pool, the starting point is the statutory definition in s 112(10) of the Women’s Charter:

In this section, “matrimonial asset” means —

(a) any asset acquired before the marriage by one party or both parties to the marriage —

(i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or

(ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and

(b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,

79 There are three broad classes in s 112(10):

- (a) any property, including property acquired before the marriage, used as a matrimonial home or for what I term matrimonial purposes;
- (b) any property, including property acquired before the marriage, which has been substantially improved during the marriage; and
- (c) any assets acquired during the marriage.

80 The pool comprised the Park Villas Property used as the matrimonial home, or rather the proceeds, since it had been sold by the time of the divorce proceedings, as well as other properties purchased before marriage, but for which payments continued to be made during the marriage, as well properties purchased after the commencement of the marriage (see [10]–[12] above). I also included as matrimonial assets the Businesses, the CPF moneys and Bank Accounts as declared because I was satisfied that both parties gave substantial contributions to these assets during the marriage. The Vehicles and the Shares were also considered as matrimonial properties. However, I excluded a number of properties that were purchased and sold before the marriage. These were not part of the pool as they were not matrimonial assets within the meaning of s 112.

81 In my earlier decision on the matrimonial pool, I noted the properties listed at [15] were not part of the pool. For these properties (with the exception of 8@Woodleigh, #02), they were excluded because they were not acquired during the marriage and were also neither a matrimonial home nor a property that was substantially improved during the course of the marriage. As for 8@Woodleigh, #02, this was excluded because I was not satisfied that this was a property acquired by one of the parties within the marriage.

82 In determining the matrimonial home and property used for matrimonial purposes, considering the language of the statute and its broad objective, which in Part X is concerned with marriage and dissolution, I did not consider it appropriate for me to take into account any use by the parties before the marriage. There may be a difference had such property been used or enjoyed shortly before a marriage with the view that it is to be so employed for the

purpose of the marriage, but I did not find that that was the situation here. The parties cohabitated together for many years.

83 As for the matrimonial home, the Husband claimed that the Park Villas Property was the matrimonial home. I accepted this evidence on this score, which was not significantly challenged by the Wife, and was satisfied that the Park Villas Property fell within the definition of s 112(10)(a)(i) of the Women's Charter. In comparison, I was not persuaded that P1 and P2 were used as the matrimonial home, but there I accepted that there was some evidence of contribution to acquisition by the Husband during the marriage, and that these properties should be determined as matrimonial assets.

84 In respect of the properties listed above at [11], I was satisfied that both parties gave substantial contributions during the marriage. The Vehicles were all matrimonial properties. While some of them were bought close to the interim judgment date, and after the breakdown of the marriage, it was appropriate to so treat these vehicles as matrimonial property, given the probability that funds were still commingled at the time, though the actual shares and distribution should be determined later.

85 There was a claim in respect of the rental income received by the parties from the various properties; this would have to be taken into account in the question of contribution to the acquisition of the other assets.

86 The Wife also sought account for the Husband's rent-free use of P2 from December 2012 to the present. The Husband retorts that this claim is not backed up by any rental agreement or invoice and that there was an agreement between him and the Wife for the Husband to occupy P2 rent free. In my judgment, the Wife's claim is anathema to the process of division of matrimonial property.

The use of property by one or the other is to be accounted for in the division rather than through the payment of rentals: see s 112(2)(f) of the Women's Charter. If the property is part of the matrimonial pool, there will be some interest that belongs to the other party in occupation and no rental right can properly arise against that other party within the context of matrimonial division. This is so even if there was any agreement or contract between them. The Husband for his part claims rental collected by the Wife in respect of P2; whatever may have been received in the past is not part of the matrimonial property, and in the absence of any other evidence must be taken to either have been spent or used in the purchase of the other properties. If spent, there is nothing left to divide; if used in the purchase of the property, it will be taken in as part of the determination of the contributions by either party. In the present case, such determination has, in the absence of evidence, to be on a rough and ready basis. Lastly, I also do not consider as proven the Husband's claim for unpaid salaries.

Direct contributions

87 What this case starkly brings into consideration is how direct contributions are to be attributed, given the parties' pre-marriage sources and interwoven ownership claims arising outside the marriage. However, this has to be taken in the context that the Civil Claim has been largely withdrawn and the assessment of the contributions must be on the basis of what is asserted and can be determined from the evidence adduced in the matrimonial proceedings.

88 The Wife refers to some possible transfers of funds by the Husband as gifts, which are to be counted as the Wife's direct contributions towards the acquisition of the properties. But so long as they occur within the context of the

marriage, these would count as contributions by the Husband, except within the limited circumstances contemplated in s 112(10) of the Women's Charter.

89 Evidence of direct contributions is lacking on both sides. On the Wife's side, there is little put forward to support her contention that her savings were significant. The Wife claims that she had \$300,000 in savings at the time of her first meeting of the Husband in 1996. Given what she had indicated of her work at the relevant time, I find this to be very unlikely. A rough and ready approach had to be taken as per *ANJ v ANK*, and her claim that she contributed significantly from resources other than from the Funds Pool could not be given full weight. Nonetheless, I am unable to find that she would not have had *any* savings whatsoever.

90 One would have to weigh her background, and the inherent probabilities of the situation, in the absence of any objective evidence. These point to the Wife possibly having some savings, but not to the extent that she claims. The difficulty is what figure should be ascribed to the Wife's contributions. But any difficulty in relation to ascribing a value to the savings of the Wife, and hence to her contributions to the acquisition or improvement of the matrimonial property, is counterbalanced by the absence of evidence from the Husband's side as well. The Husband relies on the income from the Businesses. What is not significantly substantiated however is how much could be determined to be his income from the Businesses. But it is likely that given the Businesses were ongoing and seemingly at least not tottering on the verge of collapse that the cash flow at least was sufficient to return a profit.

91 The Wife traces her direct contributions ultimately to her savings, and to her investments from those savings over the years, as well as what was

derived legitimately by her from the Businesses. First, the Wife avers that she had saved some \$300,000 by the time the couple met – she argues that this was possible because she started working at a young age of nine in various occupations including as a cleaner, a factory worker, a seamstress, a babysitter, a waitress, and a cashier. In 1995, she held a few jobs concurrently and was able to earn between \$3000 and \$4000 a month. In 1996, she worked as a beautician during the day, and worked at a KTV lounge in the evenings, and became a beer promoter; by that time it was said that she could earn about \$6000 monthly. The Wife accordingly claims that by 1996, she had fixed deposits with four banks amounting to \$270,000. However, the Wife is unable to provide the supporting documents because of the passage of time.⁶³ The Husband disputes that the Wife’s savings existed to the extent claimed by her, or that it enabled her to make the purchases on her own, asserting that the Wife was in “dire financial straits” when they first met.⁶⁴

92 I find that the Wife did not sufficiently prove that she had funds to the extent claimed. While it was not impossible for her to accumulate such funds, to the degree claimed, this was not likely: her day-to-day expenses, given her jobs in factories and in the service industry, made it difficult to accept her contention, without any further supporting evidence. Given that the Wife was supposed to have worked since young because of presumed poverty,⁶⁵ it is highly unlikely that she would have been able to accumulate such a large pool of savings by this time. Whilst it is certainly not impossible, I find that her

⁶³ Wife’s Written Submissions dated 4 March 2016 at paras 98–99; Wife’s AEIC at paras 7–15.

⁶⁴ Husband’s Written Submissions dated 5 March 2016 at paras 18–20.

⁶⁵ Wife’s AEIC at para 8.

evidence is against the probabilities of the case in the absence of contemporaneous documentary evidence.

93 Post 1996, the Wife relies on the following as evidence of her income:⁶⁶

- (a) funds from the various businesses she set up; and
 - (i) 24hrs City Florist, from which she earned between \$3,000 to \$4,000 monthly between 2002 and 2004, and after she sold off the business in 2004, she collected rent of \$4,000 per month from the new owner who continued to operate from P1;
 - (ii) B4, earning \$5,000 to \$6,000 monthly from 2005 onwards; and
 - (iii) Park Villa Florist, earning about \$5,000 per month from 2007, which she sold for \$30,000 in April 2010, and thereafter continued to collect monthly rent of \$5,000;
- (b) lottery winnings of about \$347,973.

94 While I accept that the Wife must have shown some business acumen and would have been able to derive income from her various businesses, I cannot conclude that all the income came directly solely from her actions and assets.

95 The Wife also relies on her contributions towards the Husband's work, citing *TDT v TDS and another appeal and another matter* [2016] 4 SLR 145 at [61].⁶⁷ She points to his admission on the stand that she took personal charge of

⁶⁶ Wife's Written Submissions dated 4 March 2016 at para 100; Wife's AEIC at paras 196–205.

the accounts at B2, that he had transferred a lease to her as he was going into prison, and that she had helped him in the work.⁶⁸ In claiming direct contributions, the Wife additionally relies on the \$686,416 coming out of the Non-Matrimonial properties⁶⁹ as well as her meticulousness in recording the funds taken out by her from the Businesses from December 2009. The Husband also failed to produce the relevant bank statements and management accounts of B1 and B3.⁷⁰

96 The Husband for his part argues that all the funds for the acquisition of properties came from the Funds Pool and that this pool represents largely funds from his Businesses and are thus his assets. The Husband gave evidence that the Businesses had provided a stable cash collection of at least \$25,000 per month.⁷¹ This figure is derived from cash record books and envelope records indicating that the amount taken out from the Businesses from November 2009 to December 2012 was about \$1,873,500, which according to the Husband over 37 months gives an average of \$53,635.14 per month, though based on an accurate calculation this should be \$50,635.14. Taking \$50,635.14 would give an income of \$25,000 per month, if the expenses are taken as about half of the revenue generated.⁷² The Husband also seeks to argue, based on income tax statements and sales revenue, that the actual income generated per month from the Businesses was about \$108,333–\$145,000.⁷³ The Husband argues that the

⁶⁷ Wife's Further Submissions dated 19 August 2016 at para 56.

⁶⁸ NE, Day 3, pp 26–27.

⁶⁹ Wife's Written Submissions for Division dated 3 May 2017 at paras 13–17.

⁷⁰ Wife's Written Submissions for Division dated 3 May 2017 at para 40.

⁷¹ Husband's Written Submissions dated 5 March 2016 at para 49.

⁷² Husband's Written Submissions dated 5 March 2016 at para 49, Defendant's AEIC at paras 179–181; Defendant's 2nd Affidavit of Means at paras 40–41 and 81–82.

source of funds used to purchase the properties came from the cash collection from the Businesses. There is little direct evidence of this, however. There are no financial records showing the transfer from bank accounts or other sources.

97 I accept that the evidence disclosed does show that the Husband had a substantial income during the time of the marriage, though the figure of \$25,000 per month from the Businesses may be optimistic given that there is no clear indication of the expenses per month. Nonetheless, the income tax documents showing a substantial and sustainable income indicates that as between the Husband and Wife, the Husband would have likely been able to contribute much more in terms of direct contributions.

98 At the point of the start of the marriage, the assets and contributions of the parties were to my mind largely to be ascribed to the Husband. I accept that the Businesses were started by the Husband and that he was the primary person responsible for the same. The Husband sought to downplay the Wife's involvement in the Businesses, and the Wife for her part sought to claim the greater share of the Businesses. I find on the evidence before me that it is most likely the result of the joint contribution of both parties, although the Husband certainly contributed more in the Businesses, which weighed in his favour for direct financial contributions.

99 Similarly, as regards the rental from the Husband that the Wife refers to in respect of the property at P2, the Husband argues that the rental income was claimed by the Wife only to allow her to boost her credit profile. As discussed above at [85], any rental previously paid or is presently owed is immaterial to

⁷³ Husband's Written Submissions dated 5 March 2016 at paras 51–52.

the division of property. I do not also give it any weight in respect of the financial position of the Wife since the funds would have come from the Husband, even if she treated it as rental.

100 As regards acquisition, I accept that acquisition could be taken to include payment of mortgage or other financing. However, there has to be some evidence of this. The difficulty again, as I mention in this case, is that there is largely a dearth of clear records. Despite the absence of clear evidence, given the financial position of the parties and the fact that some of these properties were worth millions, I find on balance that it was more likely than not that some contributions to the acquisition of assets were made during the period of the marriage.

101 The Wife argues that the mortgage repayments for the various properties came solely from her, pointing to payments from her account. The Husband however contends that the funds in the account must be traced back to the Funds Pool, which were his. While the Wife has some documents showing at least the initial or some of the mortgage payments, the question of the ultimate source of the funds still had to be determined. Since I found that the Wife probably had some savings of her own (but not to the extent claimed), there was likely to have been some intermingling of funds.

102 The Wife raises the point that the Husband did not know of some of the property purchases previously. However, to my mind, any ignorance on his part would not affect the Husband's direct contributions if, as a matter of fact, funds attributable to him were indeed used to purchase these properties.

103 In the circumstances, I have come to the conclusion that the Wife's contributions were not as great as she indicates, and that the Wife's assertions about her fount of means being her savings of \$300,000 cannot be accepted.

104 On the other side, I do note that the Husband relies on the Businesses generating the funds, which is alleged to have been available for the Wife to use "carte blanc[e]".⁷⁴ Again, there is not much by way of documentary evidence showing that the funds used to purchase the properties came directly from the Businesses. As the Husband himself acknowledges, the flow of funds was dealt with largely informally and there was "little distinction" between the expenses of the Businesses and their non-businesses expenditure (paid for by the Businesses).⁷⁵

105 In my determination, given the absence of substantive evidence of contributions from either side, but bearing in mind that the Businesses were started by the Husband, and there was some evidence of his income, and in the absence of cogent evidence that showed a more significant contribution by the Wife, I come to the rough and ready conclusion that 70% of the direct proceeds would have come from the Husband, and 30% from the Wife. There is little evidence from either side that to my mind should sway the figure further in either direction.

106 To summarise, the conclusion is that the direct contributions is in the ratio 70:30 in favour of the Husband, or at least that this represents a reasonable figure inherent in the probabilities of the case, and taking a broad brush approach as espoused in *ANJ v ANK* (at [23]).

⁷⁴ Husband's Written Submissions dated 5 March 2016 at para 48 and 52.

⁷⁵ Husband's Written Submissions dated 5 March 2016 at para 46.

107 Much of what I have determined thus far was foreshadowed by my decision in respect of what constituted the matrimonial pool. As I noted in my decision on the matrimonial pool, while there was a substantial amount of documentation brought in by affidavit, the nature and force of these documents was perhaps less than in a usual divorce case, especially as regards the source of funds. Although both parties appear to be entrepreneurs focused on making a success of their respective business and investment activities, the maintaining of records and tracking of inflow and outflow seems to have been less of a priority. Matters were also complicated by the long period of cohabitation, while the period of formal marriage was relatively short. This meant that there was significant entanglement between matters relevant to the determination of direct contribution to the marriage, and the transactions and interactions between the parties during the period of cohabitation.

Indirect contributions

108 As for the indirect contributions, the Husband concedes that the Wife contributed more indirectly through the marriage.⁷⁶ The Wife says that the property investment decisions were hers primarily, though the Husband can be given credit for acting as guarantor.

109 Other than allowing the Wife access to the Funds Pool and being a guarantor, there is to my mind little evidence of the Husband's direct participation in the investment decisions. The parties' arrangement was such that these were primarily the responsibility of the Wife. The Husband acknowledges that he "did not know the full details of the investment".⁷⁷ The

⁷⁶ Husband's Reply & Supplementary Submissions dated 19 August 2016 at paras 290–291 and 293.

choice of what properties to purchase, how long to hold for, and how much of the funds should be used were decisions made by the Wife. The exercise of these skills on a general basis throughout the marriage is to my mind sufficient to qualify as “indirect financial contributions” (see *ANJ v ANK* at [24]). I am not aware of any case law that would point against this. Recognising such decision-making as a form of indirect contribution, captures the effort and skill exercised by the spouse in question, which contributes to the welfare and prosperity of the family just as much as other efforts. But it should be borne in mind that not all such decisions would necessarily be recognised; much will depend on facts, including the number of occasions of the decision making or deliberation, and the amount involved each time. One-off decisions, or a few decisions done over a long period of time, is unlikely to qualify for recognition.

110 The work done by the Wife in respect of the Businesses would also go towards her indirect financial contributions. The Husband does not dispute that the Wife managed the funds and other administrative matters for the Businesses.⁷⁸ During a period of time within the marriage when the Husband was imprisoned for three months, the Wife was essentially running the Businesses without the Husband’s assistance. This was therefore a significant financial contribution, and would have to be taken into account.

111 With respect to the non-financial indirect contributions, there is not much by way of evidence to suggest that either of the parties had played a more important role. I accept that both the Husband and the Wife played a part in taking care of each other as well as the Wife’s son.

⁷⁷ Husband’s Final Reply Submissions dated 24 May 2017 at para 56.

⁷⁸ Husband’s Reply & Supplementary Submissions dated 19 August 2016 at para 290.

112 Bearing these factors in mind, I find that the appropriate share of the indirect contributions would be 70% to the Wife and 30% to the Husband.

Ratio adjustment

113 I turn now to how this ratio between the direct and indirect contributions should be adjusted. The appropriate ratio adjustment has been considered in a number of cases. The Court of Appeal in *ANJ v ANK* noted that the length of the marriage, size of the assets, and the extent and nature of indirect contributions would impact on the relative weightage (at [27]). In relation to length of the marriage, greater weightage may be given to indirect contributions especially in long marriages (see [49] above, citing *ANJ v ANK*). For marriages of shorter length, it would be appropriate to adjust the ratio to give greater weight to the direct contributions (*ANJ v ANK* at [27a]).

114 In the circumstances here, I am of the view that given the short duration of the marriage, a far greater weight should be given to the direct contributions as opposed to the indirect contributions. A just and equitable weightage would give greater emphasis to the direct contributions, simply because indirect contributions would generally accumulate and be substantial only with a longer passage of time as compared to direct contributions; there may be situations where the indirect contributions, such as effort for the family life, may be significant, for instance, if substantial amount of care has to be expended in respect of a family member suffering from a disability, but there was nothing of that nature in the present case. Again, it must be emphasised that while the couple was together for a substantial time before marriage, none of this could, under the Women's Charter as it stands, be taken into account, even in determining whether any ratio adjustment should be made – the powers of the

Court under Part XII of the Women's Charter are exercisable only in the context of a marriage.

115 Taking everything into account, a weightage of 75:25 in favour of direct contributions is appropriate. A 60:40 split would seem too low given the duration and circumstances, including the lack of young children, while an 80:20 would give an overly negligible weightage to the Wife's indirect contributions.

The appropriate ratio

116 Applying the approach in *ANJ v ANK*, the following ratios will need to be recalibrated:

- (a) Direct contributions: Wife to Husband: 30:70
- (b) Indirect contributions: Wife to Husband: 70:30
- (c) Ratio adjustment: Direct to indirect: 75:25

117 The weighted average of the Wife's contributions is thus:

$$((30/100) \times 75) + ((70/100) \times 25) = 22.5 + 17.5 = 40.$$

118 The weighted average of the Husband's contributions is thus:

$$((70/100) \times 75) + ((30/100) \times 25) = 52.5 + 7.5 = 60.$$

Value of the matrimonial assets

119 The values of the assets are largely taken from the table of matrimonial assets jointly prepared by the Wife and the Husband ("the Table of Assets") at

the start of the proceedings (though the column in the table on valuation price was based on figures provided by the Husband). There were other valuations belatedly provided by the Wife on 30 April 2017. There was no opportunity to test this, and I did not wish to prolong matters further. Further, such evidence should not be brought in without leave of court, and specific directions. And certainly not at the stage where oral submissions are made. I thus did not consider this piece of evidence in the following analysis. I also do not think it is appropriate to reference the recent valuation – these were not valuation reports sourced from independent property valuers. For similar reasons, I also did not consider the mortgage statements that were tendered late in the day.

120 The Wife points to contributions by her friends in various properties that formed part of the matrimonial pool. However, there is not that much documentary evidence of the respective stakes or contributions, but at the same time the Husband does not show that these purchases did not occur together with the Wife's friends, and does not seriously take issue with the proportions the Wife claims to be the interest of her friends. Given that the Husband was not involved in these investment decisions himself, this is understandable, but it also means that I simply have to go with what little evidence there is. In the circumstances therefore, I find that the properties are held as the Wife claims.

121 The Park Villas Property, the matrimonial home, was purchased in 2005 by the Wife as the sole owner. It was purchased at \$750,000 and was sold at the price of \$2,210,000 in 2015. The matrimonial home accordingly had a \$1,460,000 value increase over the purchase price. As this was the matrimonial home however, the share accruing to the Husband is not merely the improvement, but the whole of the value. In the light of the language of s 112, as noted above at [60], it is the whole of the matrimonial property that is subject

to division. Since the Wife received \$1,836,182.97 in net sale proceeds from the sale of the Park Villas Property, the whole of this sum is to be divided.

122 As regards the Park Villas Property, the Husband claims that this was sold at an undervalue, as he had a desktop valuation of up to \$3.8m, and argues that the property was worth at least \$3.6m. A desktop valuation is only a rough guide, and in the absence of any substantial evidence, which was not adduced earlier, I could not find that there was any undervalue to this transaction based on the evidence before me.

123 For those assets for which acquisition occurred during the marriage, where such acquisition is taken to have wholly occurred during the marriage, the whole of the value of the property is subject to division; but where the acquisition during marriage is part of a transaction dating from before the marriage, only a pro-rata portion should be taken as part of the distributable value (see [60] and [62] above). Since there is no clear evidence on how much exactly was paid during the course of marriage for this latter category of properties, I have just taken the contribution of the parties to be proportional to the increase in value of the assets and, in the absence of any other evidence, used that to determine the respective contributions out of the whole pool. For the pre-marriage assets for which improvement occurred during the marriage, the attribution of the value increase during the marriage is taken to be from 2009 to 2013 (save for instances where the property was sold before 2013), as the interim judgment for divorce was granted on July 2013, while they were married on September 2009. I took this as four years of marriage. I do not think that taking matters on a more granular level, such as calculating by way of the precise date of marriage, to the month, would be helpful.

124 With respect to the methodology, the overall increase in value from purchase is approximated as the value of the property in 2013 (or earlier if sold before 2013) less the purchase price and any outstanding loan at the time of the valuation, which was generally in 2013. The value of contribution during the period of marriage is then ascertained by calculating the average value increase per year on a straight line basis. In the absence of the respective valuations of the properties in 2009 and 2013, this is the closest approximation that can be done. The same is done with respect to properties that has already been sold except that the net sale proceeds is proportionately reduced to reflect only the increase in value during the marriage (sale price less purchase price) – needless to say, there is no need to consider any outstanding mortgage for these properties.

125 In the circumstances, as a result of the methodology adopted, it mattered not whether the assets purchased before marriage fell under s 112(10)(a)(ii) or s 112(10)(b) of the Women’s Charter. However, this is not to be taken as a rule to be applied in future cases; the same approach is adopted for both on a rough and ready basis only because of the dearth of evidence in this case. Accordingly, taking the best evidence available, the value of the pre-marriage assets to be divided is as follows:

S/N	Item	Increase in value during marriage (\$)
1	P2	Valuation: 4.1m
	Not sold	No. of years held: 2013 – 2003 = 10 years
		Increase in value: 4.1m – 800,000 –

		$514,097.58 = 2,785,902.42$ Contribution per year: $2,785,902.42 / 10 = 278,590.24$ Total contribution (pro-rata): $278,590.24 \times 4 = 1,114,360.97$
2	P1 Not sold	Valuation: 3.93m No. of years held: 2013 – 2004 = 9 years Increase in value: $3.93\text{m} - 780,000 - 504,239.67 = 2,645,760.33$ Contribution per year: $2,645,760.33 / 9 = 293,973.37$ Total contribution (pro-rata): $293,973.37 \times 4 = 1,175,893.48$
3	The Sail, #15 Not sold	Valuation: 2.48m No. of years held: 2013 – 2007 = 6 years Increase in value: $2.48\text{m} - 2,304,000 = 176,000$ Wife's share: 1/3

		Value of 1/3 share: $176,000 / 3 = 58,666.67$ Contribution per year: $58,666.67 / 6 = 9,777.78$ Total contribution (pro-rata): $9,777.78 \times 4 = 39,111.11$
4	The Sail, #35 Sold	Increase in value as a % of purchase price: $(1,380,000 - 1,041,840) / 1,041,840 = 32.46\%$ No. of years held: $2013 - 2007 = 6$ years Wife's share: $1/4$ Wife's share of net sale proceeds: $239,339.03$ Contribution per year: $(239,339.03 / 6) \times 32.46\% = 12,948.24$ Total contribution (pro rata) = $12,948.24 \times 4 = 51,792.97$
5	The Sail, #64 Sold	Increase in value as a % of purchase price: $(1,380,000 - 1,103,760) / 1,103,760 = 25.03\%$

		No. of years held: $2012 - 2006 = 6$ years Wife's share: $1/2$ Wife's share of net sale proceeds: 593,371.60 Contribution per year: $(593,371.60 / 6) \times 25.03\% = 24,753.49$ Total contribution (pro-rata): $24,753.49 \times 3 = 74,260.47$
6	Watermark Not sold	Valuation: 870,000 No. of years held: $2013 - 2008 = 5$ years Increase in value: $870,000 - 366,304.97 - 683,000 = 179,304.97$ (loss) (excluded from calculation below)
7	8@Woodleigh, #01 Not sold	Valuation: 1.96m No. of years held = $2013 - 2009 = 4$ years (coincides with period of marriage) Increase in value: $1.96m - 628,999 - 605,966.40 = 725,034.60$

		Total contribution (pro-rata): 725,034.60
8	Yishun St 11 Sold	Increase in value as a % of purchase price: $(1,300,000 - 500,000) / 500,000 = 160\%$ No. of years held: $2012 - 2007 = 5$ years Wife's share of net sale proceeds: 931,782.44 Contribution per year: $(931,782.44 / 5) \times 160\% = 298,170.38$ Total contribution (pro-rata): $298,170.38 \times 3 = 894,511.14$

Total value contributed during the marriage is \$4,074,964.74.

126 As for assets purchased during marriage, the whole of the value of the interest in the property less any mortgages or loans is divisible. As for The Sky, from the indication in the Table of Assets, it would seem to be valued at RM630,000 with no evidence of loans or mortgages; applying a general exchange rate of about 3RM:1SGD, would give a value of \$210,000. The values are as follows:

S/N	Item	Parties' Share	Distributable value (\$)
1	The Sky	Joint	210,000

	Not Sold	ownership by Husband and Wife	
2	The Parc Sold	Wife's share: 1/6	275,000
3	Leedon Heights Sold	Wife's share: 1/2	314,736.74
4	Telok Blangah Sold	Wife as sole owner (100%)	518,003.99
5	The Interlace 188 Sold	Wife's share: 1/2	305,862.18
6	The Interlace 222 Not Sold	Wife's share: 1/2	(2.03m – 303,194.92 ⁷⁹) X 50 % = 863,402.54
7	Eco Sanctuary	Wife's	(1.45m – 671,886 ⁸⁰) X 1%

⁷⁹

Wife's Affidavit of Assets and Means dated 12 December 2013 at para 19.

	Not Sold	share: 1%	= \$7781.14
Total			2,494,786.59

127 As for the Businesses, I have serious doubts as to whether these are worth \$1,500,000. The substantiation for this is seriously lacking. The Husband puts his weight on his past income tax statements and past sales revenue, but those are not necessarily indicative of the value of the Businesses at present; given that a range of factors could affect the value of a business, it would not be sufficient to my mind to exclusively rely on the historical income. The Wife disputes the Husband's valuation but there is no contrary evidence adduced on this aspect before me from her. In the absence of sufficient information, again on a rough and ready basis, I will ascribe a figure of \$750,000.

128 The Vehicles are valued at a total of \$28,979.15 + \$26,666.65 + \$1,000 + \$250,000 + \$135,000 = \$441,645.80.⁸¹ This excludes any vehicles with negligible value and/or negative equity.

129 The Bank Accounts stand at a total of \$425,384.64.⁸²

130 The CPF moneys stand at a total of \$502,709.44, after taking into account the sale of the Park Villas Property.⁸³ There is an absence of evidence

⁸⁰ Wife's Affidavit dated 8 January 2016 at p 113.

⁸¹ Husband's Reply & Supplementary Submissions dated 19 August 2016 at para 298, see also the Table of Assets.

⁸² Husband's Reply & Supplementary Submissions dated 19 August 2016 at para 298, see also the Table of Assets.

⁸³ Husband's Final Submissions dated 3 May 2017 at para 38, see also the Table of Assets.

about how this was accumulated. I am loathe to take a straight line allocation for this period as I do not consider that the evidence on either side justifies this: in particular, there is insufficient evidence on either side of continuous contribution. As such, I have only considered the \$200,000 in the Wife's CPF that would have been refunded as a result of the sale of the Park Villas Property.

131 This gives a total value of \$1,836,182.97 (Park Villas Property) + \$4,074,964.74 (pre-marriage properties) + \$2,494,786.59 (properties acquired during marriage) + \$750,000 (Businesses) + \$441,645.80 (the Vehicles) + \$425,384.64 (the Bank Accounts) + \$1,000,000 (the Shares) + \$200,000 (the CPF moneys) = \$11,222,964.74.

132 Applying the division of 60% to the Husband and 40% to the Wife, this should result in the following values: the Husband receives \$6,733,778.84 and the Wife receives \$4,489,185.90.

133 Any rental received as income during the period of marriage is not a matrimonial asset and in the absence of evidence that it went to the acquisition of assets as well as given the circumstances and uncertainties inherent in this case, it would not be appropriate to trace this contribution separately.

Allocation

134 A number of factors that typically feature in the determination of allocation are absent here – there are no children to the marriage and no specific accommodation needs to be made for any minor child outside the marriage either. In these circumstances, the allocation will need to take into account the present activities and work of the parties. And as far as possible, parties should continue in their habitual homes, and properties they use. But all of these would

be subject to the division of the property as a whole. In the following allocation, I endeavour to allocate mostly in line with the parties' respective wishes.

135 The Husband has asked for B4 and B5 to be transferred to him.⁸⁴ Since I found above at [97] that the Businesses were started by the Husband, who also contributed more to these businesses, it should follow that the businesses presently in the Wife's name (*ie*, B4 and B5) should also be transferred to him. This would then mean that all the Businesses would be in the Husband's name. Following that, the total value of the matrimonial assets in the Husband's name, including his share of The Sky, the Vehicles and the Bank Accounts, would come up to a total of about \$1.038m. The remaining shortfall of about \$5.7m has to be made up through the transfer of some properties by the Wife.

136 The Husband has also specifically asked for P1 and P2 to be transferred to him.⁸⁵ Since these properties are integral to the Businesses, it would make sense for him to own these properties as well. Since these properties are worth a total of \$7,011,662.75 (valuation less the outstanding mortgage as of 2013), he would need to make a transfer of the additional sum of about \$1.31m to the Wife in order for her to transfer these two properties to him without any cash consideration. He may also wish to reduce this figure by transferring his half share in The Sky to the Wife.

137 Whether any right can be asserted in general law on the other properties is not necessarily determined by the discontinuance of the Civil Claim. And the ultimate effect of the discontinuance on other matters is not before me.

⁸⁴ Husband's Reply & Supplementary Submissions dated 19 August 2016 at para 302.

⁸⁵ Husband's Reply & Supplementary Submissions dated 19 August 2016 at para 299.

Maintenance

138 The Wife's claim on maintenance can be dealt with briefly since it is not the mainstay of the Wife's claim. As provided under s 114(2) of the Women's Charter, I have to:

... endeavour so to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

139 Considering several of the factors listed in s 114(1) of the Women's Charter, I am not inclined to grant any maintenance to the Wife. The foremost consideration is that the court's power to order maintenance is "supplementary" to its power to divide matrimonial assets (see *ATE v ATD* [2016] SGCA 2 ("*ATE v ATD*") at [33]). In the present case, the significant pool of matrimonial assets that I have awarded the Wife is a key factor; she can claim rental income from these assets as a substitute for any reasonable maintenance from the Husband. This is not a run-off-the-mill case where the Wife only received a share of one property or merely just one or two properties as a result of the division. The short duration of marriage and the significantly younger age of the Wife as compared to the Husband also militated against the award of any maintenance. Bearing in mind the Court of Appeal's observations in *ATE v ATD* that nominal maintenance should not be ordered "automatically or as a matter of course" (at [28]), I am also not convinced that the present case warranted a preservation of the Wife's right to apply for maintenance in the future.

Orders

140 Directions will be given for a hearing on the specific orders. Time for appeal is extended until those orders are made.

Aedit Abdullah
Judge

Eugene Singarajah Thuraisingam, Suang Wijaya and Teo Sher Min
(Eugene Thuraisingam LLP) for the plaintiff;
Jagjit Singh Gill s/o Harchand Singh (Gurdip & Gill) for the
defendant.
