

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2017] SGHCF 18

Divorce Transfer No 1770 of 2014
MSS 1361, 1410 and 1524 of 2017

Between

TBZ

... Plaintiff

And

TCA

... Defendant

JUDGMENT

[Family law] — [Matrimonial assets] — [Division]
[Family law] — [Maintenance] — [Assessment]

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**TBZ
v
TCA**

[2017] SGHCF 18

High Court — Divorce Transfer No 1770 of 2014
Valerie Thean JC
28 February, 1, 22, 29-30 March, 16 May 2017

28 July 2017

Judgment reserved.

Valerie Thean JC:

Introduction

1 In this judgment I deal with parties' ancillary matters following upon their divorce. The plaintiff (the "Husband") is 55 years old and the defendant (the "Wife") is 54 years old. The parties married on 20 October 1991, and have three children: an elder son aged 25, a daughter aged 24, and a younger son aged 22. The present proceedings relate to a division of their matrimonial assets and maintenance for their adult children.

Background

2 Both the Husband and the Wife are successful doctors. The Husband is a neurosurgeon. The Wife is a general practitioner with her own clinic

(“FHMC”). Since their marriage in 1991, both the Husband and the Wife worked full-time.

3 In 1992, the eldest child was born. In 1993, the Wife started her private practice and in the same year, the daughter was born. In 1994, the Husband was awarded a fellowship to pursue neurosurgery in the UK, and began the 30-month fellowship on 31 August 1994. In 1995, the younger son was born. On or around 3 March 1997, the Husband completed his fellowship, returned to Singapore, and began practice as a neurosurgeon.

4 Husband and Wife were successful in their careers and in property investment. The family lived well. In 2009, the parties sent the elder son, after his ‘O’ Level examination, to the UK for his ‘A’ Level education. In 2010, the parties sent the daughter and younger son to the UK for their ‘A’ Level and ‘O’ Level education respectively. All three children were placed in boarding schools. The elder son and the daughter went on to attend university in Ireland and the UK respectively, while the younger son returned to Singapore in 2013 for National Service. He has recently finished serving his National Service and plans to study Law and Commerce in Sydney.

5 In June 2013, the Wife moved out of the matrimonial home. The children became polarised: the eldest son took the Husband’s side while the two younger children took the Wife’s.

6 In or around July 2013, the Husband began a relationship, with “A”. The Husband and A have a child, “B”, who was born in March 2014. The relationship between the Husband and the Wife continued to deteriorate after their separation, and the Wife was not informed about the Husband’s child. In the context of a contested trial for a personal protection order, the Husband

admitted to B's paternity, upon being confronted in cross-examination with a copy of B's birth certificate. The trial culminated in a personal protection order being issued against the Husband on 24 March 2015.

7 The Husband commenced divorce proceedings against the Wife on 17 April 2014 on grounds of unreasonable behaviour. The Wife filed a counterclaim, also on grounds of unreasonable behaviour. After a contested trial, Interim Judgment ("IJ") was granted on 18 March 2015 (the "IJ Date") on the Wife's counterclaim: *TBZ v TCA* [2015] SGFC 41. The IJ also recorded that parties agreed that sole custody, care, and control of the younger son, who was then aged 20, be granted to the Wife. At the time of the IJ, the Wife confirmed that she did not seek maintenance for herself. The remaining ancillary matters regarding the division of their property and maintenance for the children were adjourned to Chambers and transferred to the High Court.

Division of assets

Overview

8 I start with the operative date for delineating the assets. Here the guidance of the Court of Appeal is to use the IJ Date as a general rule, "unless the particular circumstances or justice of the case warrant it": see *ARY v ARX and another appeal* [2016] 2 SLR 686 ("*ARY v ARX*") at [31]).

9 In this case, the Husband made his submissions expressly on the basis of the IJ Date.¹ The Wife proposed two different dates at different times. In her first submissions, she initially suggested the date of the hearing of the ancillary matters ("AM Date") because of the earnings the Husband would have

¹ Husband's submissions for AM at para 22.

accumulated as a neurosurgeon between the time of the IJ and the AM Date. Later, in the context of asking for an adverse inference against the Husband, the date of June 2013, when the parties started living separate lives, was suggested instead. In the present case, while parties lived separate lives from June 2013, the Husband's divorce writ, which was filed before the Wife's, was only filed later in April 2014, with IJ in March 2015. In my view, between the three positions advanced by parties, the IJ Date in this case is the most appropriate date for the delineation of the asset pool. The AM Date would be too far from the date of separation. The separation, on the other hand, was marked by a series of emotional events: as at June 2013, the divorce, even if contemplated, was not immediately imminent for parties. The 18 March 2015 IJ Date served as a useful juncture for delineating their assets.

10 Premised on the above, counsel were able to come to many agreed items within the pool, which is much appreciated. The parties' disputes centre upon the following:

- (a) The clustering of real property held in joint or sole names, whether some properties ought to be segregated from the division between parties; and in respect of some properties, the net values to be ascribed.
- (b) The calculation of the Husband's earnings; and whether the court should award a sum for enhanced earnings premised upon his earning capacity as a neurosurgeon up to his date of retirement.
- (c) Delineating parties' cash balances, and in this context, each party's allegations against the other as to dissipation of matrimonial assets.

Within these categories, issues in contention include the valuation date to be used. I deal with these arguments in their context below.

Immovable properties

11 Parties have been extremely successful financially, and have, in their joint and sole names, a substantial portfolio of real estate.

12 Regarding the valuation of these assets, the Court of Appeal recently reiterated that generally, once an asset is regarded as a matrimonial asset, it ought to be valued as at the AM Date, unless a departure is warranted by the facts (*TND v TNC and another appeal* [2017] SGCA 34 (“*TND v TNC*”) at [19], commenting on *TDT v TDS and another appeal and another matter* [2016] 4 SLR 145 at [50]). Nevertheless, where parties agree that a particular date should be used as the date of valuation of the matrimonial assets, a court should generally adopt that agreed date unless there is good reason not to do so (*TND v TNC* at [24]). Prior to the hearing of the ancillary matters (“the AM hearing”), parties were able to agree to use valuations of the various properties as close to the AM Date as practicable. For the four local properties in the parties’ joint names (alluded to hereinafter as “Namly”, “Bo Seng”, “AMK” and “Riveria”), valuations were obtained in January 2017. For the two UK properties (alluded to hereinafter as “Boydell” and “Abercorn”), counsel agreed to use the latest available valuations.

13 Several issues arose in the course of hearing in respect of the immovable properties. The first relates to the Wife’s contentions regarding the Husband’s dissipation of his earnings and money held in bank accounts. She contends that because the Husband’s dissipation of assets was so substantial, only properties acquired jointly and held in their joint names (*ie*, Namly, Bo Seng and Boydell)

should be included in the asset pool, while properties which the Wife had acquired in her sole name or, even if in joint names, had solely paid for (*ie*, Riveria, Abercorn and AMK) should be excluded from division.

14 Viewing the facts of the marriage in their entirety, it is not appropriate to segregate Riveria, Abercorn and AMK from the asset pool. First, AMK was purchased in the early years of parties' marriage and held as a joint asset from inception. They invested in it throughout the marriage, during a good part of which both parties were working together for the good of their marriage. The Husband has made indirect and, - as I find below - direct contributions to the Wife's building up of the practice. Throughout their marriage, various dividends and directors' fees were declared in respect of FHMC. These notional fees and dividends were not paid out and instead used to pay for the AMK mortgage. In respect of Riveria and Abercorn, these were purchased in the last period of their marriage, and were related to the Husband's contentions as to the Wife's dissipation of assets. Riveria was purchased in the Wife's name but financed from bank accounts which were matrimonial assets. Abercorn was purchased by the Wife in 2012. She was able to do so, first, because the Husband had been financing the family's expenses in their entirety, and then later, out of funds to which he had contributed. In light of the legislative mandate to "treat all matrimonial assets as community property... to be divided in accordance with s 112 of the [WC]" (see *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) at [40]), it is in my view more appropriate on the facts of this case to consider, in an accumulated pool, all the properties acquired in the context of their long marriage. Any contention as to dissipation should be considered separately, and I do this below.

15 A second issue related to liabilities relevant to the valuation of the properties. Because valuations were obtained at a specific date, the court asked

parties in the course of proceedings to specify liability figures near to the respective valuation dates in order to obtain accurate net values. The Husband supplied net values with liability figures as near to the valuation date as practicable. The Wife is of the view that the liabilities ought to be dealt with as follows:

(a) Namly, Bo Seng and Boydell should be valued by “taking the current market price (as of 2017) and deducting outstanding loans as of April 2017”. These were the only properties towards which both parties had made direct financial contributions. Further, Namly and Bo Seng were or should have been income-producing assets, and the returns therefrom had or should have financed the mortgage repayments in relation to them.²

(b) AMK, Abercorn and Riveria should be valued by “taking the current market price (as of 2017) and deducting the outstanding loans as of ... October 2015”, when the Wife’s first AOM was filed. The Wife had been solely responsible for the mortgage repayments in relation to these properties.³

16 In short, the Wife asks for a later liability date in some cases and an earlier one in others. There is no rationale suggested for the inconsistency. Her contention is that she contributed solely to AMK, Abercorn and Riveria, and that Namly and Bo Seng were investment properties the income from which went towards paying off the liabilities on them. These are, however, more accurately dealt with as questions of the parties’ direct financial contributions to the relevant properties, which I deal with below. To accept the Wife’s

² Wife’s submissions on Operative Date at paras 6(i), 7 and 8.

³ Wife’s submissions on Operative Date at paras 6(ii) and 9–13.

contentions here would effectively be taking into account her contributions to the properties in question twice over: reducing the apparent value of the assets in her name, and also, giving her increased credit in terms of direct financial contributions. Similarly the suggestion of an April 2017 liability date was impracticable and would leave the court at the mercy of parties who vacillate for tactical advantage.

17 In my view, using a date to determine liability which is too far different from the date of market valuation for the purpose of valuing the asset for subsequent division is wrong in principle. The Court of Appeal in *ARY v ARX* at [42] and similarly *TND v TNC* at [23] used the net market values of the matrimonial assets as at the first date of the ancillary matters hearing. A matrimonial asset at any given point of time is the equity of the parties in that asset. This equity is, in turn, the difference between the value that the parties will be able to realise from the asset (the market value) and the outstanding liabilities owed by the parties on the asset at the relevant time. It follows then that *as similar dates as practicable* ought to be used in order to reach a fair result.

18 A related point was the Wife's contention that the Husband ought to have rented out Namly, rather than to have continued to live in the property, which was their matrimonial home before she moved out. She asked for notional rent to be added in accounting for the net value. In my view, the fact that the Husband lived at their former matrimonial home rent-free was a consideration more relevant to Stage 3 of the analysis in *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ v ANK*") (*ie*, adjustment of the ratios after both direct and indirect contributions have been considered), and ought not to be considered for the purposes of the net value.

19 In respect of Riveria, three issues were raised by the Wife. First, there were two term loan liabilities totalling about \$275,000, introduced into the asset schedule for the first time on the second day of the ancillary matters hearing, and which counsel for the Husband submitted ought not to be added to the liability.⁴ For the first term loan, there was no evidence linking this amount to payments made for the purchase of Riveria. The Wife also at one point stated that this loan had been used to pay for Abercorn, but she separately contradicted herself saying that the three insurance policies discovered in interrogatories (dealt with below) had been used for that purpose. At the same time, as at November 2011 when Riveria was purchased, her Citibank account had some \$750,000. The second term loan was maintained, as well, when her Citibank accounts had over \$500,000. In *Thery Patrice Roger v Tan Chye Tee* [2014] SGCA 20 (“*Thery*”), the Court of Appeal gave guidance at [31]–[32] that such loans may be taken as paid up. I agree with the Husband that the term loans ought to be omitted from the asset table. Only the housing loan is factored into the value of Riveria in the table below.

20 Secondly, while it is agreed that the Wife’s late father had given her a gift of \$208,648.63 which had been deposited an account at Bank of Montreal Nesbitt Burns (“BMO Nesbitt”),⁵ the Wife deducts this from the value of Riveria and the Husband does not. The gift was made in 2005⁶ and was not kept separate. It is no longer traceable. By the Wife’s own account, the Husband’s name was added to the account around 2006.⁷ The funds, furthermore, have been commingled with funds injected by the Husband. The funds in the joint account

⁴ Husband’s Reply Submissions (on Specific Issues) paras 1-18.

⁵ 2WBOD at pp 782–789.

⁶ BOA Vol 2 p.785-6.

⁷ Wife’s affidavit of 5 April 2017, para 8.

were used for investment, and then later put into Riveria. In line with the approach in *Chen Siew Hwee v Low Kee Guan (Wong Yong Yee, co-respondent)* [2006] 4 SLR(R) 605 at [57]–[58], no deduction is made for this.

21 Thirdly, mid-way through the AM hearing, counsel for the Wife sought to add a \$350,000 loss for Riveria. Purchased by the Wife at \$2.1m, it was valued around the AM Date at \$1.75m. No rationale was given for adding the loss. I note the loss enables the Wife to have the benefit of a lower valuation of an asset within the pool which she asks to retain. There is no principled reason to additionally factor in the loss again.

22 In summary, all the immoveable properties owned jointly or solely by parties are classed together in a global approach for division. The net values of the various properties are determined by reference to their valuation dates, minus the housing loan liability as near to the valuation date as practicable. No additional notional rent is added for the Husband's occupation of Namly. For Riveria, the two term loans are excluded; and neither the father's earlier cash gift nor the loss in value since purchase are set off against its value.

The Husband's earnings post-IJ

23 It follows from my finding that the assets should be delineated as at the IJ Date, that the account of both parties' earnings ends at that date. This is fair in the circumstances. Relations between parties were highly acrimonious from June 2013, neither was helping the other's career, they were living wholly separate lives, and even the children were polarised. Beyond the IJ Date, they could not be said to have been earning or working for the purposes of a joint family life.

24 Aside from the dissipation arguments which will be dealt with below, counsel for the Wife makes two submissions in relation to the Husband's earnings. The first relates to his earnings up to the AM Date. She submits that \$500,000 should be added back to the matrimonial pool for each year up to 2016. She does not, however, offer to add the Wife's earnings up to the AM Date. I am of the view that a consistent and uniform date should be used as the operative date for the determination of both parties' earnings. I therefore exclude sums earned post-IJ Date.

25 The Wife's second submission in respect of the Husband's earnings relates to a claim for the division of his "enhanced earnings" up to the date of his retirement. She claims that if not for her earnings and support from 1994 to 1997, when the Husband was pursuing his fellowship in the UK, the Husband would not have had the opportunity to specialise in neurosurgery. Accordingly, the "enhanced earnings" of the Husband, by virtue of his specialisation in neurosurgery, is a matrimonial asset liable for division. She relies upon two New York decisions. In *O'Brien v O'Brien* 498 NYS 2d 743 (NY, 1985), the New York Court of Appeals held that a professional licence could constitute a matrimonial asset subject to equitable distribution to the extent that it is acquired during marriage. Similarly in *Chamberlain v Chamberlain* 808 NYS 2d 352 (NY App Div, 2005), the Appellate Division of the Supreme Court upheld a trial court's award to the husband of 30% of the value of the degrees and licence that constituted the enhanced earning capacity achieved by the wife. These cases do not, however, apply in Singapore, which has a wholly different statutory basis from the State of New York. There is no principled premise, either in statute or caselaw, to treat a professional licence as property in such an expansive way or to claim for future earnings in this extended manner. The Wife's support for the Husband's specialisation and career, both direct and

indirect, is considered instead in the analysis leading up to the ratio of distribution of their assets liable for division.

Cash assets

26 In this case, there were contentions of dissipation on both sides in relation to various bank balances. This section deals with the cash assets in the asset table outside of the dissipation issues, which are dealt with in the next section.

27 In respect of the valuation date to be used, while a date near the AM date is used for valuing the real properties, different dates may also be used for different categories of assets: see *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 (“*Yeo Chong Lin*”) at [39]. For the bank accounts, counsel initially agreed to use the time of filing of the parties’ first Affidavits of Assets and Means (“First AOM”), being the date nearest the IJ Date as practicable. The table of assets drawn up for the purposes of the AM hearing was prepared on the basis of values used in parties’ first AOM.

28 Use of the IJ Date was just and equitable in the context of this case. Parties started living separate and independent lives from before the time of the IJ. It was thus a reasonable expectation on their part that they would be free to spend from their bank accounts from the date at which their separation formalised, being the IJ Date, without having to account for or rebut contentions of wrongful dissipation past that date. A distinction may usefully be drawn between bank accounts and other kinds of assets, such as the immovable property dealt with above. For properties, values may fluctuate significantly between the IJ Date and the AM Date. The accommodation needs of the family may require realisation of particular properties: in a falling market, if the

valuation date is much earlier, hardship may arise; conversely, in a rising market, too early a valuation date may result in the allocation carrying an unintended and uneven windfall effect. Funds in bank accounts, in contrast, are by their nature easily moved or spent. Here, the contentions as to dissipation were substantial and increased over time. The later the date chosen, the more complex the exercise. The IJ Date was more practical.

29 In the course of the AM hearing, after the release of the Court of Appeal's decision in *TND v TNC*, counsel for the Wife contended, in view of the depletion of funds between the separation date and the AM Date, that the Husband's bank balances should be valued "as of the last quarter of 2013", when they amounted to approximately \$1,700,000, in contrast to the \$200,000 that they amounted to at around the IJ date.⁸ At the same time, she advanced the position that the Wife's accounts would be valued as at the first AOM date.

30 It would not, however, be fair to do so for several reasons. First, money moved to and from parties' various accounts. To use different dates for the Husband and the Wife would create the possibility of funds being counted more than once, resulting in inaccuracy. Secondly, both parties had paid reasonable expenses for themselves and the children between June 2013 and the IJ date, and some account had to be taken for that. A uniform date for all bank balances would yield the most just result. Arising from the parties' pre-hearing agreement, the bank balances for all accounts were shown as at parties' first AOM, which was as near as practicable to the IJ Date. It would be most practical, therefore, to use this date, rather than an or later date for the Husband's balances.

⁸ Wife's submissions on Operative Date at paras 14–17.

31 I therefore proceed on the basis of the agreed balances as at First AOM, being a date near the IJ Date. In addition, I turn to consider whether I should add any sum to this balance arising from the dissipation arguments made by parties against each other.

Dissipation and adverse inference contentions

32 Each party asked for an adverse inference to be drawn against the other, on the basis that the other had dissipated and hidden away marital assets. I am satisfied on the evidence that both parties have embarked on a mutual hide-and-seek exercise in relation to their wealth. There was, at the same time, a lack of precision in the allegations and calculations, and no small degree of obfuscation on both sides. In this respect, an adverse inference is drawn against both parties. In *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195, the Court of Appeal held at [64] that there were at least two ways in which an adverse inference could be dealt with, either by way of uplifting the other party's proportion of the assets, or adding an amount into the pool. Where the sum of money is known, the better approach would be to add the known sum into the pool: see [66]. In this case, a percentage uplift could well be too arbitrary. At the same time, the nature of the evidence proffered makes it difficult to pinpoint with precision the exact amounts dissipated: any sum perforce must be an estimate. Weighing up the alternatives in the circumstances, I am of the view that in this case, justice would be better served in making a single assessment in the round, as to the appropriate sum to be added to the pool. I detail my reasons below.

The Wife's contentions about the Husband

33 I start first with the Wife's contentions against the Husband. The Wife submitted initially that approximately \$3,237,592.69 has been dissipated by the

Husband since a divorce became imminent in 2013, which sum should be added back to the pool of matrimonial assets.⁹ This comprised \$1,737,592.69 (that is the difference between the \$2,017,956.26 in his bank accounts as at 2013 and the \$280,363.57 in his bank accounts as at the IJ Date) and \$500,000 in earnings for each of the years from 2014 to 2016 that the Husband has not accounted for.

34 The Wife's figures were somewhat inflated. In respect of the \$500,000 in earnings for each of the years, I reiterate my finding that only the earnings up to the IJ Date are to be taken into account. The Husband explained in his response to the Wife's request for interrogatories that he had withdrawn \$600,000 from his bank accounts in May 2014 to repay a loan of that amount taken from his mother in October 2013.¹⁰ She does not dispute the loan from and repayment to the mother (she also deducts the loan in her computation of the sums outstanding).¹¹ The Husband also explained how the RBS Coutts accounts were consolidated into his account and closed, and the money moved to his HSBC account. With the explanation and bank details adduced of the movement between accounts, the Wife's computation of \$2,017,956.26 appears to be erroneous. In 2012, when the RBS Coutts accounts were intact, the Husband had about \$873,800.03 in his accounts. Then, after the repayment to his mother (which was not disputed) and the movement of the funds to HSBC, he had \$693,543.56 in his accounts around end 2013.¹² He also had \$450,363.10 in his accounts around the time of the IJ, and not \$280,363.57.

⁹ Wife's submissions for AM at para 84.

¹⁰ 3WBOD at pp 2003–2004.

¹¹ Annexure 1, Wife's submissions for AM.

¹² Exhibit B.

35 The Wife does not challenge most of this evidence. Instead, she takes issue with the manner in which the Husband withdrew the monies, and suggests that the rather complicated route adopted by the Husband shows that he had “gone to extraordinary lengths to alienate” his assets. In particular, she points to the withdrawal by the Husband of large amounts in cash on almost a daily basis over “practically every other month in 2014 and 2015”, and the sum of over \$200,000 that he paid to his lawyers.¹³ I should add that mid-way through the AM hearing, on 13 March, the Wife filed a summons to ask for the production of statements of all bank accounts held by the elder son from 1 October 2012 to 31 July 2016, and all documents evidencing the expenses incurred for the daughter and younger son from 1 January 2013 to 30 June 2013. In the affidavit filed in support of the summons, she made various contentions based on hearsay, in particular that the elder son told her that the Husband had transferred large sums of money to him. This had no factual basis, and came after parties had worked through multiple rounds of extensive discovery on both sides prior to the AM hearing. The summons was dismissed.

36 While the Wife highlighted the withdrawals, she ignored the deposits that the Husband made, and his explanation as to the treatment of cash within his practice. The Husband’s \$200,000 or so spent in legal fees were detailed by the lawyers in a letter, and the Wife’s submission that “the only conclusion is that he has disingenuously alienated these amounts”¹⁴ was not reasonable. The Husband was also supporting his mother, and deposed that he had spent approximately \$345,000 on the expenses of himself, his mother, and the family. It was not in dispute in this case that parties’ expenses were high. For example, the Husband spent \$75,000 or so on a family holiday with the Wife and children

¹³ Wife’s submissions for AM at paras 73–74.

¹⁴ Wife’s submissions for AM at para 74.

in Italy and the UK in November 2011; he spent some \$47,000 on a Rolex as a gift for the Wife that same month.¹⁵ The eldest child, for example, in his maintenance affidavit deposed that the Husband had between 2013 and the IJ Date paid for all his education and living expenses in the UK, including his return air tickets to the UK. These expenses included, across the relevant period, university fees of over \$100,000, accommodation expenses of approximately \$100,000, flight expenses of approximately \$10,000, and other living expenses of approximately \$60,000.¹⁶ The Husband had also purchased a car for the elder son's use in Dublin. Even counsel for the Wife's estimate of the Husband's monthly expenses was \$50,000 a month.

37 Still, the decrease in the Husband's bank balances between 2011 when the RBS Coutts account had money, and as at the IJ Date (\$423,437) ought to be explained. The Husband was earning in the years in between, and his property portfolio remained the same. Based on the Husband's IRAS returns, and using an average of 3 years, he earned an average of \$76,497 per month after CPF and tax.¹⁷

38 The Husband contends that his expenses in that period were \$69,000 per month. Counsel for the Wife submits that his expenses were at most only \$50,000 per month. In my view, the difference between the figures could be explained by the Husband's support of the daughter and the younger son up until the breakdown in the parties' relationship in June 2013. It is undisputed that the expenses of the daughter, who was studying in the UK in 2012 and 2013, were \$15,000 per month,¹⁸ and the total difference of \$19,000 is consistent

¹⁵ Husband's submissions (Vol 2) dated 7 April at para 14.

¹⁶ Elder son's Affidavit dated 11 May 2017.

¹⁷ Minute 28/2/17 at p 6.

with the (undisputed) fact that the Husband was supporting the younger son as well. That said, the Husband stopped his support of the daughter and younger son from June 2013. Expenditure after June 2013 merits greater scrutiny as that was the time when it became clear that parties would separate. Expenditure on his second family (for which \$80,000 was conceded) would also not have been valid expenditure from the matrimonial pool. Taking the difference between his average pay of \$76,000 over expenses of \$50,000 for the 21 months between July 2013 and the IJ Date, this meant that his excess over the 21-month period would be about \$546,000.

39 Looking at this \$546,000 in another way, the parties' portfolio of assets shows that the assets in the Wife's sole name are more than a million more than the assets in the Husband's sole name. In part, this was because Abercorn and Riveria were acquired solely by her around the time of the marital breakdown, while his funds *continued to be channelled toward jointly owned assets* to which the parties had previously committed. *The sum could be taken as his lower household expenses from June 2013 from which we do not see any additional asset realised.* Out of this sum, \$30,000 or so were spent on the renovations to Bo Seng in 2013, which expenditure the Wife does not dispute, could be taken into account. I also accept that legal expenses are valid expenditure. A last adjustment arises from the Husband's (admitted) disposal of the Wife's Rolex watch and diamond ring. There was a receipt of \$47,000 for the watch, but none for the ring. She claimed \$120,000 for both items. It was not disputed that both items were gifts from the Husband. Although inter-spousal gifts are also matrimonial assets and the Husband is accountable for their disposal, these were items of jewellery that would have a resale value lower than their purchase price. Taking the respective allegations and counter-allegations and various issues into

¹⁸ Minute 28/2/17 at p 6.

account, and bearing in mind the latitude I give to the Wife for her spending detailed below, I put a sum of half a million into the asset table against the Husband for dissipation. This is very much a figure in the round, an estimate premised upon the available evidence.

The Husband's contentions about the Wife

40 The Husband, on his part, made many contentions of dissipation on the part of the Wife. The marriage had been troubled for some time: the Husband surmised from diary entries that the Wife sought legal advice sometime in December 2011. Her purchase of real property in her sole name also started around 2011. In dealing with the Husband's contentions below, I exclude consideration of contentions regarding pre-2011 sums: these are too remote as the sums were spent before there was any contemplation of divorce.

41 Initially in submissions the Husband contended that the Wife withdrew various sums from three other bank accounts in their joint names:¹⁹ \$663,393.07 from the account with BMO Nesbitt in September/October 2012; \$112,988.78 from the account with Citibank Investment in October 2012; and \$75,756.58 from the account with Barclays Bank in August 2013. In the course of the AM hearing, counsel for the Husband conceded that the \$663,393.07 withdrawn by the Wife from the parties' account with BMO Nesbitt went to the purchase of Riveria, that the Citibank Investment account was used to pay the stamp duty for Riveria²⁰ and that the money from the Barclays account went into the HSBC account, in respect of which the Husband made other dissipation contentions which I deal with below.

¹⁹ Husband's submissions for AM at paras 28(2)–28(4).

²⁰ Husband's submissions for AM at para 28(3).

42 After considering arguments, I consider these sums to be of significance:

(a) \$133,627.43 that was paid out in August 2014 by a universal life insurance policy with Transamerica in the name of the Wife, to which the Husband had paid 68% of the annual premiums totalling \$125,716.20.

(b) \$75,000 from the POSB joint account between the Wife and the younger son in 2011, which monies had been deposited by the Husband as proof of funds for the visa application by the younger son to study in the UK and were intended to be retained for visa purposes over the period of his stay. The Wife admitted that she had withdrawn the sum and kept it. There was no evidence as to the date the Wife withdrew the sum, but the younger son returned to Singapore for National Service before the IJ Date in 2015.

(c) \$100,843.93 from the Wife's HSBC account in the UK.

(d) \$72,261 withdrawn by the daughter from her joint account with the Wife and given to the daughter's boyfriend. Although the Wife's contention was that money withdrawn by the daughter should be excluded, it was agreed by parties at the outset that accounts held with their children were still matrimonial assets. As such, the Wife should be taken to have agreed to the daughter's withdrawal of the money from the matrimonial pool.

(e) A Volkswagen for which the Husband paid \$47,610. This car, it appears, has been sold, and a BMW purchased with its proceeds and other funds.

(f) Pay-outs from three insurance policies which were discovered during interrogatories, totalling \$157,788.51. These policies were cashed out shortly before the Wife filed her first AOM on 30 October 2015 and therefore omitted in her first AOM.

43 These various amounts came to \$587,130.87. The Wife's response was that she had to pay for the expenses of the daughter and the younger son after June 2013. The Wife would also have had, over the same period, the benefit of her sizeable salary, although it was a little less than half that of the Husband. While she asked for credit to be given for her legal expenses (in the same way that the Husband's legal bill of \$200,000 was framed as reasonable expenses) she adduced no evidence either of those expenses or of whether they were paid out of the accounts from which money is said to be dissipated, or her other Singapore accounts (such as her Citibank account or her term loans held against Riveria).

44 In respect of this \$587,130.87, a component concerned a Volkswagen that was sold and a BMW that was subsequently purchased. As the elder son's car in Dublin has been taken as part of the Husband's reasonable expenses but not as part of the assets because it was in the son's name, I think it fair that the Volkswagen used by the family in the UK, and the BMW that was subsequently purchased, ought also to be taken as reasonable expenses in light of the family's standard of living. I also note that the Wife had contended in her affidavit that the insurance policies were cashed out to pay for Abercorn. As I had at [19] decided not to attribute the Riveria term loan to Abercorn, I will take the three insurance payouts as spent on an asset within the asset pool instead.

45 Allowing for some \$50,000 for the car expenses, and taking off another \$157,000 or so for the insurance policies, some \$380,000 remains. It was not

disputed that the Wife had paid for the 2013/2014 school fees for the two younger children, and their expenses post-June 2013. Using the annexure to the Wife's submission, the two children's expenses appeared to come to about \$390,000. Over the 21-month period, this would work out to about \$18,000 or so per month. While this could seem a rather inflated amount in light of the fact that the daughter lived rent-free at Boydell, the amount is similar to the latitude of \$19,000 per month that was applied to the Husband's accounts in assessing the movement of money between his accounts from 2011 to June 2013 when he paid for the expenses of the two younger children. Considering all the circumstances, I do not add any sum into the pool in respect of the Wife's spending.

Table of matrimonial assets

46 Following from the above, parties' assets come to \$21,420,544.91. The term loans which I have not included as liabilities within the Riveria asset value are to be borne personally by the Wife:

S/No.	Asset Description	Court's Determination (\$)	Reference and remarks
Assets in joint names			
1	Namly	\$5,451,626.32	Liability as at Jan 2017.
2	Bo Seng	\$6,535,967.86	Liability as at Jan 2017.
3	AMK	\$1,968,566.87	Liability as at Jan 2017.
4	Boydell, UK	\$2,800,000.00	Agreed.
5	Wife's Clinic	\$528,740.00	Agreed.

6	Husband's Clinic	\$0.00	Agreed.
7	BVI Company	-\$42,837.24	Agreed (held in equal shares).
Total (joint names)		\$17,242,063.81	-
Assets in sole name of Husband			
8	Paeon Medical Group Private Limited	\$0.00	Agreed.
9	Company established by Husband	\$2.00	Agreed.
10	POSB (Sole) (a/c no. [xxx])	\$65,099.25	Agreed.
11	HSBC (Sole) (various accounts) Total: \$290,785.79		
	HSBC Current Account [xxx]	\$186,210.91	
	HSBC Savings Account [xxx]	\$104,574.88	
12	HSBC Time Deposits Account [xxx]	\$0.00	
13	HSBC (Joint with elder son) (a/c no. [xxx])	\$94,568.06	
14	RBS Coutts Sole Account ([xxx])	\$0.00	
15	RBS Coutts Cash Reserve Account held with elder son ([xxx])	\$0.00	Court's finding.
15A	Dissipation amount	\$500,000.00	
16	CPF Ordinary Account	\$5,625.00	
17	CPF Special Account	\$163,542.40	

18	CPF Medisave Account	\$48,500.00	
19	NTUC Income (no. 0067770xxx)	\$187,505.16	Agreed.
20	NTUC Income (no. 0067646xxx)	\$0.00	Agreed.
21	NTUC Income (no. 91262xxx)	\$0.00	
22	Porsche	\$168,000.00	Agreed.
Total (Husband's name)		\$1,523,625.66	-
Assets in sole name of Wife			
23	Abercorn, UK	\$272,722.96	Liability as at Jan 17.
24	Riveria	\$779,528.76	Liability as at Jan 17.
25	Standard Chartered Bank (Sole) (a/c no. [xxx])	\$12,529.28	Agreed.
26	POSB (Sole) (a/c no. [xxx])	\$3,419.31	
27	Citibank (Sole) (various accounts)	\$580,175.35	
28	Citibank (Joint with younger son) (a/c no. [xxx])	\$18,501.21	
29	HSBC (Joint with daughter) (a/c no. [xxx])	\$625.46	
30	HSBC (Joint with daughter) (a/c no. [xxx])	\$41,273.58	Agreed.
31	CPF Ordinary Account	\$10,010.79	
32	CPF Special Account	\$164,627.63	
33	CPF Medisave Account	\$48,500.00	

34	NTUC (no. 67425xxx)	\$239,589.03	Agreed.
35	Prudential (no. 27981xxx)	\$14,716.67	Agreed.
36	Prudential (no. 27931xxx)	\$66,554.56	Was present as at IJ Date.
37	TM AL (no. 00131xxx)	\$154,500.00	Agreed.
38	Prudential (no. 49687xxx)	\$0.00	Agreed.
39	Prudential (PrS)		
40	Prudential (PrSe)		
41	NTUC		
42	BMW	\$87,578.85	Agreed.
43	Singapore Island Country Club	\$160,000.00	Agreed.
Total (Wife's name)		\$2,654,853.44	-
Total (all assets)		\$21,420,542.91	-

Ratio of division

47 The Court of Appeal in *ANJ v ANK* set out a structured approach (at [17]–[30]) to determine a just and equitable division of matrimonial assets. This approach may be summarised as follows (see *ANJ v ANK* at [22]–[26], [28]; *Twiss, Christopher James Hans v Twiss, Yvonne Prendergast* [2015] SGCA 52 (“*Twiss*”) at [17]):

- (a) express as a ratio the parties’ direct contributions relative to each other, having regard to the amount of financial contribution each party

made towards the acquisition or improvement of the matrimonial assets;

(b) express as a second ratio the parties' indirect contributions relative to each other, having regard to both financial and non-financial contributions; and

(c) derive the parties' overall contributions relative to each other by taking an average of the two ratios above (the derived ratio shall hereinafter be referred to as the "average ratio"), keeping in mind that, depending on the circumstances of each case, the direct and indirect contributions may not be accorded equal weight, and one of the two ratios may be accorded more significance than the other. Adjustments may also be made taking into consideration other relevant factors under ss 112 or 114(1) of the Women's Charter (Cap 353, 2009 Rev Ed) ("WC").

48 The Husband claims that he should be awarded 55% of the matrimonial assets and that the Wife should be awarded 45%. The Wife, on the other hand, seeks 85% of the matrimonial assets and submits that the Husband should receive 15%.²¹

Direct contributions

49 The Husband submits that he made 54.27% of the direct contributions to the pool, while the wife made 45.73%.²² On the other hand, the Wife submits

²¹ Joint Summary, Part E.

²² Husband's submissions (Vol 2) dated 7 April at para 54.

that she had made approximately 64% of the direct financial contributions to the marriage and the Husband 36%.²³

50 Ascertaining the sum necessitates scrutiny as to parties' various properties. The parties' first matrimonial home was 35D Kovan Road ("Kovan"). The Wife claims that the Husband paid for 59% of Kovan, while the Husband claims that he paid 76%. I agree with the Husband, who gave evidence that his parents paid the 15% deposit on Kovan. This was not disputed by the Wife, who did not include this sum in her calculations. When Kovan was compulsorily acquired in 1996, the \$1,600,000 proceeds ("Kovan Proceeds") from the acquisition went primarily towards the parties' purchases of Namly and AMK in 1996 and of Bo Seng in 1998. In line with *Ang Teng Siong v Lee Su Min* [2000] 1 SLR(R) 908 at [15]–[16], the ratio of direct contributions to the Kovan Proceeds should be traced into the parties' contributions to Namly and AMK, which were financed at least in part by the Kovan Proceeds.

51 Regarding Namly, which subsequently became the parties' matrimonial home, the Husband claims that he paid for 67% of Namly, while the Wife claims that he paid only 56%. The purchase price of Namly was \$2,525,000.²⁴ The Wife submits that she had paid the 10% deposit by herself, as well as the approximately 4% stamp duty of \$96,580 at around the same time when she paid the deposit. The Husband, on the other hand, submits that these monies came from both parties. I prefer the evidence of the Husband. It is difficult to believe that the Wife had accumulated sufficient savings to have made these payments by herself. This is particularly given her contention that she made the entire down payment for Bo Seng as well. While the Husband was on a

²³ Wife's submissions for AM at Annexure 5.

²⁴ YKC's Report at para 5.2.

fellowship in the UK at the material time, he continued to receive his salary from the local hospital where he worked, in addition to an allowance for his living expenses in the UK. His evidence was that his pay was made available to the Wife. On balance, I find that the parties contributed equally to these sums. It is not disputed that Namly was rented out from July 1996 up until December 2008, with the rental income applied to repay a mortgage on the property with a value of 90% of its purchase price.²⁵ In line with *Twiss* at [18], these proceeds should be shared equally between the parties and treated as their direct financial contributions. In addition to that, the Wife's accountant, Yin Kum Choy ("YKC"), and the Husband are in broad agreement that the Husband and the Wife contributed around \$1,113,300 and \$422,007 respectively in cash to the mortgage loan.²⁶ It is also undisputed that the Kovan Proceeds were used towards capital repayments of \$272,000 in September 1996 and towards a first round of renovations of \$560,854.²⁷ In light of the above, I am of the view that the parties' direct contributions to Namly are 67% by the Husband and 33% by the Wife.

52 AMK is the property in which the Wife has her practice; there is also associated rental income. The Husband claims that he paid for 23% of AMK, while the Wife claims that he did not make any direct contributions to AMK. The Husband submits that he is entitled to a half-share of all the rental income from AMK on account that AMK was to be an investment property in his and the Wife's joint names. Even though part of AMK was rented out to FHMC, for which FHMC in fact paid no rent, he should be credited with a half-share of the notional rent that FHMC would have paid.²⁸ The Wife, on the other hand,

²⁵ YKC's Report at para 5.3.

²⁶ Husband's submissions for AM at para 70.

²⁷ YKC's Report at para 4.10.

submits that since the Husband made no payments towards AMK, he should not be credited with having made any direct contributions to it. On balance, the version of events put forth by the Husband is to be preferred. The Wife does not dispute that AMK was meant to be an investment property in the joint names of the parties. Moreover, the Husband paid property tax on the rental income received from AMK.²⁹ Accordingly, I find that the Husband made 23% of the direct contributions to AMK.

53 I should deal with a contention raised belatedly by the Wife, that a loan taken up against Abercorn was for payment of AMK. This was a new contention introduced only in the course of the AM hearing. Her accountant had computed her contribution to AMK based on her representation that the cash was from her savings and insurance policies. This loan is therefore not taken into account for the purpose of calculating her contribution to AMK. Within the asset table, it is deducted against the value of Abercorn as a liability relevant to Abercorn.

54 The Husband claims that the parties made approximately equal direct contributions towards Bo Seng, while the Wife claims that he paid only for 42% of Bo Seng. Bo Seng was purchased for \$2,650,000 in 1998,³⁰ and the parties lived in it as their matrimonial home from 1999 to 2009.³¹ The Wife makes essentially the same arguments in relation to Bo Seng as she does in relation to Namly: that the Husband could not have paid as much as he claims towards Bo Seng because he lacked the means to have done so. For the reasons above (at [51] above), I find on balance that the funds for the purchase of Bo Seng,

²⁸ Husband's submissions for AM at para 91.

²⁹ YKC's Affidavit at G211–G223.

³⁰ YKC's Report at para 6.1.

³¹ Husband's submissions for AM at para 111.

particularly for the down payment and other transactional expenses like legal fees, came from the Husband as well. Moreover, after the parties moved into Namly in 2009, Bo Seng was rented out. As with the renting out of Namly, I attribute the rental proceeds to the Husband and the Wife equally, and treat them as the parties' direct contributions to Bo Seng. Accordingly, I find that the parties made approximately equal direct contributions towards Bo Seng.

55 The Husband claims that he paid for 89% of Boydell, while the Wife claims that he paid only 74%. Boydell was purchased in January 2010 for approximately \$2,300,000.³² This was financed by a \$1,500,000 mortgage on Bo Seng and \$800,000 in cash. It is undisputed that the Wife paid \$193,432 in cash and the Husband paid the remainder of the cash payment.³³ The main point of contention between the parties is their contributions towards the repayment of the \$1,500,000 mortgage on Bo Seng. The Husband submits that he was solely responsible for the mortgage repayments, and should be credited with the full sum of \$1,500,000. The Wife, however, points out that this mortgage was repaid using the rental income from Bo Seng after 2010. This was not disputed by the Husband. Accordingly, I prefer the submission of the Wife that the Husband paid only for 74% of Boydell.

56 In light of the above, I find that the ratio of the parties' direct contributions is approximately 51.4: 49.6 in favour of the Husband, which I further explain as follows:

- (a) To reiterate, the total value of the pool of matrimonial assets is \$21,520,544.91.

³² Husband's submissions for AM at para 143.

³³ Wife's submissions for AM at para 55.

(b) Based on my findings on the ratios of the parties' direct contributions to the assets held in their joint names, the direct contributions of the Husband and the Wife to the assets held in their joint names are \$9,445,343.94 and \$7,796,719.87 respectively. This is achieved by multiplying the percentage of each party's contribution to each asset by the value of the asset, and then adding up the total value of the contributions by each party.

(c) The value of the assets in the sole name of the Husband, including the sum allocated towards dissipation, is \$1,623,627.66. This is allocated as his direct contribution.

(d) The value of the assets in the sole name of the Wife is \$2,654,853.44, all of which are credited as her direct contribution. In this context I should mention that although the Husband's dissipation contentions suggested that sums held in various joint accounts went into Abercorn and Riveria, he did not dispute the Wife's contentions that she was wholly responsible for the direct contribution towards these properties. In any event the total value of Abercorn and Riveria is less than 5% of the asset pool, and his contribution would have been a smaller percentage of that.

(e) Summing up (b), (c) and (d), the total value of the Husband's direct contributions is thus \$11,068,971.60. This is approximately 51.4% of the total asset pool.

Indirect contributions

57 The Husband submitted initially that the indirect contributions should be assessed 60:40 in his favour³⁴ but in later submissions suggested a 70:30 ratio.

The Husband argues that the parties' indirect *non-financial* contributions are relatively similar, but that he made far greater indirect *financial* contributions than the Wife.³⁵ From 1997 (after he returned from his fellowship) to 2013, he shouldered most of the expenses of the household and of the children. On the occasions that the Wife paid for the expenses of the family, she typically asked to be reimbursed, and did in fact receive such reimbursement. It was because he bore the majority of the expenses of the family that the Wife was able to accumulate substantial savings, which she then used to purchase Abercorn and Riveria.

58 The Wife simply submits that her indirect contributions were greater than his. In particular, she helped the Husband to specialise, she single-handedly ran the home from 1994–1997, it was her financial acumen that resulted in their investment in Bo Seng, and she was the higher earner in the first ten years of the marriage, laid the foundation for the family's wealth and took care of the daughter and younger son herself after June 2013.

59 All things considered, I am of the view that the indirect contributions of both parties are equal. While the Husband made the lion's share of the financial indirect contributions over the course of the marriage, the Wife had contributed very significantly in the early years of the marriage, and looked after the family in Singapore while the Husband was away for three years of specialisation. This was a long marriage of 24 years, and both parties worked full-time throughout the course of the marriage. As doctors, they worked long hours, including on weekends and public holidays. The children were sent to childcare at very young ages, and the parties relied heavily on domestic helpers to take care of the

³⁴ Husband's submissions for AM at para 168.

³⁵ Husband's submissions for AM at para 179.

household. All 3 were also sent to boarding schools. Both parents had a good relationship with all three children until the family polarised in June 2013.

Final ratio

60 Assuming equal weightage between the direct and indirect contribution ratios, the final distribution ratio would be very near equal, 50.7: 49.3. While the Husband lived at Namly rent-free, I do not make an adjustment for this purpose to the final ratio. Riveria, in the Wife's sole name, was not rented out either, and in London the Wife and two younger children had the benefit of Boydell.

61 Pertinent to this case is the Court of Appeal's guidance in *ANJ* at [30], that the legislative mandate ought to be exercised in broad strokes, premised upon the Court's feel as to what is just and equitable on the facts of the case. Arising from the length of the marriage and the couple's wide investment portfolio, their finances were highly intertwined. Owing to the passage of years and the complexity of multiple payments and income from various properties, it is best to regard the direct contribution calculations as rather rough and ready, a holistic painting rather than a detailed photograph. It would not be inapposite, in these circumstances, to adjust the figure to a number "in the round". What would this number be? Here, it is clear that for almost two decades, the couple worked together for the good of the family, accumulating a large asset portfolio through strong contribution from husband and wife both on the home and the work fronts. There was, for the most part, community of effort in building up their community of property. An equal division is just, in light of the manner in which they arranged their lives, and taking into account their respective contributions. Although the last five years of their marriage were bitter, that ought not to be taken as representative of the whole course of their marriage; in

any event an equal division would share out equally the burden of their mutually high spending of the last few years. In my judgment, therefore, an equal division gives appropriate dignity to their joint past endeavour, while giving parties a sound platform upon which to build their future. I therefore so order.

Maintenance

62 As I have noted (at [7] above), the Wife is not seeking maintenance for herself. This section deals with the maintenance of the three adult children.

Power to order maintenance of child above 21 years of age

63 I turn first to an objection initially raised by the Husband, which is that the court is unable to order maintenance for adult children in ancillary proceedings.³⁶

64 The power of the court to order the maintenance of a child above 21 years of age is provided in s 69 of the WC, which reads:

Court may order maintenance of wife, incapacitated husband and children

69.— ...

(2) The court may, on due proof that a parent has neglected or refused to provide reasonable maintenance for his child who is unable to maintain himself, order that parent to pay a monthly allowance or a lump sum for the maintenance of that child.

(3) An application for the maintenance of a child under subsection (2) may be made by —

(a) any person who is a guardian or has the actual custody of the child;

³⁶ Husband's submissions for AM at paras 190–193 and reply submissions of 27 March 2017 paras 52–56.

(b) where the child has attained the age of 21 years, by the child himself;

...

...

(5) The court shall not make an order under subsection (2) for the benefit of a child who has attained the age of 21 years or for a period that extends beyond the day on which the child will attain that age unless the court is satisfied that the provision of the maintenance is necessary because —

(a) of a mental or physical disability of the child;

(b) the child is or will be serving full-time national service;

(c) the child is or will be or (if an order were made under subsection (2)) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or

(d) special circumstances, other than those stated in paragraphs (a), (b) and (c), exist which justify the making of the order.

...

65 In ancillary proceedings, the power to order maintenance is provided for in s 127 of the WC. This is situated in Chapter 5 of Part X of the WC, that provides for the powers of the court in relation to the welfare of children subsequent to the granting of a decree of divorce. Section 127 of the WC reads:

Power of court to order maintenance for children

127.—(1) During the pendency of any matrimonial proceedings or when granting or at any time subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, the court may order a parent to pay maintenance for the benefit of his child in such manner as the court thinks fit.

(2) The provisions of Parts VIII and IX shall apply, with the necessary modifications, to an application for maintenance and a maintenance order made under subsection (1).

66 Section 127 of the WC must, however, be read in light of s 122 of the WC, which restricts Part X of the WC to “child” as follows:

Meaning of “child”

122. In this Chapter, wherever the context so requires, “child” means a child of the marriage as defined in section 92 but who is *below the age of 21 years*.

[emphasis added]

Counsel for the Husband thus submitted that the Court did not have power to make maintenance orders for the adult children as part of the ancillary orders.

67 Counsel for the Wife relied upon *Wong Ser Wan v Ng Cheong Ling* [2006] 1 SLR(R) 416 (“*Wong Ser Wan*”) at [93], in which the High Court dealt with the maintenance of adult children.

68 In *Thery* at [50], the Court of Appeal held that a child who has already attained the age of 21 years as of the AM hearing must personally make an application for maintenance under s 69(3)(b) of the WC. A parent is not in a position to apply for maintenance on behalf of the child under s 69(3)(a) of the WC because the parent cannot reasonably be said to be a “guardian” or in “actual custody” of the (adult) child:

... Since the son has already attained 21 years of age, we think that he should have personally made an application for maintenance under s 69(3)(b). We also think that the wife is not in a position to apply for the son’s maintenance on his behalf under s 69(3)(a) because it cannot reasonably be said that she is a “guardian” or in “actual custody” of her 25 year old son. In any case, we are unable to uphold the order of maintenance for the son’s education based on the evidence before us. The son failed to state on affidavit that he was enrolled in a course at the Kaplan Higher Education Institute. Nor did he provide on affidavit details of the expenses incurred in studying at the institute. Under these circumstances, we think that the Judge, with respect, erred in awarding maintenance for the son in the sum of \$50,450.

69 *Thery's* guidance, therefore, is that any adult child who seeks maintenance from a parent ought to file an application under s 69 of the WC, and moreover, accompany the application with an affidavit regarding his expenses. The High Court judge who decided *Wong Ser Wan* was part of the bench for the Court of Appeal in *Thery*. Also, counsel for the Husband pointed out that it was clear from the judgment in *Wong Ser Wan* that a maintenance summons had been filed by the 21-year old daughter. Although the mother had filed a summons on behalf of her 23-year old son, he had a history of mental disorders and had filed a supporting affidavit to state his expenses. In line with the judge-led approach pursuant to Rule 22 of the Family Justice Rules 2014 (GN No S 813/2014), I suggested to parties that, if they wished to pursue relief for the children in the ancillary proceedings, the children ought to file maintenance summonses and affidavits as required by *Thery*, and the complaints should then be transferred to be heard by the High Court, as allowed by s 29 of the Family Justice Act 2014 (No 27 of 2014) and s 2(a) of the WC. This would enable me to deal with all relevant matters together and was, in my view, a more efficacious way of dealing with the issue. Counsel kindly agreed. I therefore deal here with the maintenance of the three children now that Maintenance Summonses Nos 1361, 1410 and 1524 of 2017, and relevant supporting affidavits, have been filed and transferred.

Maintenance in the period between IJ and AM

70 I should mention that each child claims as against the parent from whom he or she is estranged not only maintenance going forward from the AM Date, but also arrears in maintenance since mid-2013 when his or her relationship with the relevant parent broke down and he or she stopped receiving financial support from that parent. I have dealt with the maintenance of the children during the duration of the marriage up until the IJ Date in March 2015 as reasonable

expenditure out of the pool of matrimonial assets above, and it would be duplicitous to consider them again here as maintenance arrears on the part of either parent. Accordingly, I will consider the children's claims for maintenance only on and after the IJ Date, into the future.

Quantum of maintenance

71 The elder son is about to commence his final year in his course in medicine at University College Dublin (graduation July 2018).³⁷ He claims a sum of \$14,377.20 per month in maintenance, comprising the following:

- (a) \$3,319 for school fees, an approximation after deduction of other expenses below from the claimed sum (an average monthly sum based on his various years would be \$4,235.67);³⁸
- (b) \$3,876 for accommodation (€2,550 at current exchange rates);³⁹
- (c) \$480 for return flights to Singapore (three times a year);⁴⁰
- (d) \$6,702.20 for other living expenses (\$3,000 in expenses covered by a supplementary credit card provided and paid for by the Husband, and \$3,702.20 in such expenses as utilities, telephone bills, school books, and a car in Dublin).⁴¹

72 The Wife does not dispute the figure of \$3,319 per month for the elder son's school fees.⁴² She, however, submits that \$4,736 per month would be

³⁷ Elder son's Affidavit at para 25.

³⁸ Elder son's Affidavit at paras 9–10.

³⁹ Elder son's Affidavit at para 15.

⁴⁰ Elder son's Affidavit at para 20.

⁴¹ Elder son's Affidavit at para 23.

sufficient.⁴³ Based on her figures of one return flight to Singapore each year (\$160 per month), and \$400 per month for living expenses other than accommodation, what the Wife is asking for is for the elder son to receive \$857 per month for rent.

73 Some of the disputed expenses are reasonable. I find that the elder son is entitled to \$2,275 per month in rent. He adduced a tenancy agreement showing that his rent is \$3,876 (€2,550) per month from November 2016 to July 2018, and €2,395 per month from October 2014 to October 2016.⁴⁴ The Wife does not dispute the veracity of the agreement, and save for her assertion that this sum is “exorbitant” provides no reason why he should receive a lower sum for rent. Accordingly, I grant him \$2,275 per month for rent, which is the average of his current rent and the cost of accommodation at the school dormitory. The \$3,702.20 per month he claims for his other living expenses including his utilities, telephone bills, books, and car in Dublin, are also valid. The sum is largely borne out in the documentary evidence adduced by the elder son. Neither does the Wife dispute his explanations for the same.

74 On the other hand, I am unable to accept the elder son’s claim of \$3,000 per month in expenses on his supplementary credit card. He exhibited the statements of account for only March 2016, June 2016, July 2016, and September 2016,⁴⁵ but not for the intervening months of April, May and August 2016. More importantly, he provided no evidence as to reasonableness of his expenditure: payments of \$988 and \$905.50 on 23 January 2016, for

⁴² Minute 16/5/17 at p 1.

⁴³ Minute 16/5/17 at p 2.

⁴⁴ Elder son’s Affidavit at p 42.

⁴⁵ Elder son’s Affidavit at Tab 4.

example, were expenses at nightclubs. He should also receive the costs of only one return flight per year (\$160 per month).

75 Accordingly, I find that the elder son is entitled to about \$9,400 per month in maintenance, or about \$347,800 over the 37 months between the IJ Date and his graduation in July 2018.

76 The daughter is about to graduate from a course in medicine at King's College London (final examinations in July 2017). She makes no claim for rent because she lives rent-free in Boyde⁴⁶. She claims a sum of \$7,203 per month in maintenance, including the following:⁴⁷

- (a) \$3,112.50 in school fees;
- (b) \$1,392 in living expenses (groceries, transport, annual return ticket to Singapore, and entertainment);⁴⁸
- (c) \$1,733.33 in other living expenses (such as telephone, utilities, dining out, school books, and car);⁴⁹ and
- (d) \$965.17 in other expenses (including one-off payments such as that for a car).⁵⁰

77 As the Husband does not dispute the figures claimed by the daughter,⁵¹ I round down the estimate slightly to \$7,000 a month. This ensures some parity

⁴⁶ Minute 16/5/17 at p 2.

⁴⁷ Minute 16/5/17 at p 2.

⁴⁸ 2WBOD at p 858.

⁴⁹ Daughter's Affidavit at para 5.

⁵⁰ Daughter's Affidavit at para 7.

with the elder son's \$8,800, as the daughter does not pay rental and London has a higher cost of living than Dublin. This comes to \$196,000 over the 28 months between the IJ Date and the daughter's final examinations in July 2017.

78 The younger son will embark on a five-year course at the University of Sydney pursuing a Bachelor of Commerce and a Bachelor of Law in July 2017.⁵² His maintenance claim is \$2,661.80 per month between the IJ Date and June 2017, and \$9,408.33 per month between July 2017 and June 2022.⁵³ The figure of \$9,408.33 comprises the following:

- (a) \$3,708.33 in school fees; and
- (b) \$5,700 in other expenses, comprising:
 - (i) \$4,000 for rent;
 - (ii) \$450 for return flights to Singapore (four times a year); and
 - (iii) \$1,250 for other expenses such as telephone, utilities, books, and groceries.

79 The younger son was in National Service, and thereafter waiting to go overseas, up until June 2017, and the Husband does not dispute the figure of \$2,661.80 per month between the IJ Date and June 2017. Rounding this down to \$2,600, this would be around \$70,200.

⁵¹ Minute 16/5/17 at p 2.

⁵² Younger son's Affidavit at para 7; Minute 16/5/17 at p 3.

⁵³ Minute 16/5/17 at p 2.

80 The Husband submits that the younger son should receive only \$5,508.33 per month during his tertiary education, and then only for three years (between July 2017 and June 2020). This represents the costs of a three-year Bachelor of Commerce (without a Bachelor of Law) at \$3,208.33 per month and living expenses of \$2,300 per month (including rent).⁵⁴

81 In light of the fact that affordability is not an issue for either parent, it is reasonable for the younger son to be maintained for the duration of his five-year course for both law and commerce at the University of Sydney. As described in the Unconditional Offer of Admission from the University of Sydney, what the younger son is pursuing is a unitary, composite course with a duration of five years.⁵⁵ In respect of his expenses, I find that the younger son should be entitled to only the costs of one return flight a year, similar to his elder brother. The \$4,000 per month in rent claimed by the younger son appears also to be rather high. Based on the exchange rate today, the Australian dollar is almost at par with the Singapore dollar.⁵⁶ The private accommodation that the younger son has identified averages only \$3,500 per month (A\$875 per week), while the University hostel fees average \$2,200 per month (A\$550 per week). Although the younger son is unable to secure University accommodation in his first year because of his late acceptance by the University, which delayed his application for University accommodation, there is no reason why he cannot secure University accommodation in his remaining years of study.

82 Accordingly, I find that the younger son should receive maintenance of about \$7,000 per month between July 2017 and June 2022, or \$420,000 in total.

⁵⁴ Minute 16/5/17 at p 3.

⁵⁵ Younger son's Affidavit at p 2.

⁵⁶ Younger son's Affidavit at para 7.

Adding this to the \$70,200 between the IJ Date and June 2017 gives a total of \$490,200.

Proportion of contribution from each parent

83 The Wife submits that “[i]t was agreed that the Husband would be solely responsible for the children’s tuition fees and living expenses until they complete their degrees in the UK”, and that given his earnings, “he should be solely responsible for [the younger son]’s and [the daughter]’s maintenance until they complete their degrees”.⁵⁷

84 The Husband does not dispute that there was an agreement for him to maintain the children in the UK, and adds that he had in fact been maintaining the younger son and the daughter in the UK until mid-2013, when he discovered that they “had been treating him with utter disrespect to the extent of telling their friends that they had ‘disowned’ him and that they would take his money and walk out on him”. He added in his written submissions that because the relationship between the elder son and the Wife has severely deteriorated from approximately the same time, and that he has continued to maintain the elder son since, an appropriate solution would be “for him to maintain [the elder son] solely and for the [Wife] to maintain [the daughter] and [the younger son] solely”.⁵⁸ In oral submissions, counsel for the Husband submitted that the parties should bear the maintenance of the children equally.⁵⁹

85 In *AUA v ATZ* [2016] 4 SLR 674 (“*AUA*”) at [40], the Court of Appeal made clear that every parent has a duty to maintain or contribute to the

⁵⁷ Wife’s submissions for AM at paras 113 and 116.

⁵⁸ Husband’s submissions for AM at paras 178 and 193.

⁵⁹ Minute 16/5/17 at p 3.

maintenance of his or her children. Section 68 of the WC operates in tandem with s 69(4), which specifically directs the court to have regard to “all the circumstances of the case”, including, among other things, income and earning capacity in deciding what sum to order in maintenance (*AUA* at [41]). While the existence of any marital agreement is not one of the statutorily prescribed factors in s 69(4) of the WC, the expression “all the circumstances of the case” is wide enough to encompass the presence of a marital agreement which relates to the maintenance of children (*AUA* at [42]). Accordingly, marital agreements which relate to the maintenance of children could be relevant in determining the quantum of maintenance to order. Undergirding these provisions is the principle of common but differentiated responsibilities: both parents are equally responsible for providing for their children, but their precise obligations may differ depending on their means and capacities (*AUA* at [41]; *TIT v TIU and another appeal* [2016] 3 SLR 1137 at [61]).

86 In deciding on the weight to be placed on the terms of a marital agreement when deciding on the quantum of maintenance to be ordered for a child, two general principles apply. First, the welfare of the child is the overriding objective. Second, *a parent will not be allowed to abdicate his or her responsibility of parental support*. Where the parties have clearly addressed their minds to the need to provide and care for the child, and the overall provision is just and fair and does not fall short of what was is and expected under the general law, nothing prevents a court from endorsing the substance of the agreement. However, if the agreement would leave the child with inadequate support, or *if the burdens of parenthood thereunder are so unevenly distributed as to be inconsistent with the principle of common but differentiated responsibilities*, the court will step in to ensure a just and fair outcome that served the child’s best interest (*AUA* at [41] and [46]).

87 The Husband has a take-home monthly income upwards of \$61,000⁶⁰, or an average of \$76,000 with reference to historical data. While this is adequate to maintain all the children, ordering the Husband to bear the entire sum of maintenance would, as the Court of Appeal observed in *AUA* at [46], so unevenly distribute the burdens of parenthood as to be inconsistent with the principle of common but differentiated responsibilities. The Wife has a sizeable monthly income, even if it is approximately a little under half of the Husband's.⁶¹ My asset division also gives her substantial assets.

88 The total amount necessary for the children's tertiary education from the IJ Date and into the future, estimated with reference to [75], [77] and [82] above, is as follows:

- (a) the eldest child: \$347,800;
- (b) the daughter: \$196,000; and
- (c) the younger son: \$490,200.

89 It is not disputed that prior to June 2013, the Husband paid for *all* the expenses of the children. This included English public boarding schools for all three children, starting with the eldest for 'A' Level education from 2009. From 2010 the daughter was sent for 'A' Level education, and the younger son was sent for preparation for 'O' Levels. There were thereafter London and Dublin medical degree expenses for the first two children, up to June 2013. Thereafter he continued to support the elder son, while the Wife supported the two younger children. Some of the funds used by the Wife for that purpose were contributed

⁶⁰ Husband's 1st AOM at paras 2–4.

⁶¹ Minute 16/5/17 at p 3.

by him (and taken as reasonable expenses rather than dissipation). The combined sum spent by the Husband prior to IJ Date would amount to far more than the combined sum of (b) and (c). The daughter has just finished her degree this year. In my view, a fair allocation of the maintenance obligations, going forward, would be for the Husband to bear the remaining education expenses of the elder son, who is finishing his medical school in Dublin, while the Wife bears the remaining education expenses of the younger son, who will be pursuing his degree in Sydney. This decision results in the dismissal of the elder son's maintenance summons against his mother and the dismissal of the daughter's and younger son's maintenance summonses against their father. With these last issues behind them, it is hoped that the family will focus on repairing their relationships for the future.

Conclusion

Allocation

90 In this case, each should retain the assets held in his or her sole name. Both parties have agreed to sell Bo Seng and Boydell, and to wind up their company which owns Boydell (parties have agreed to treat this as part of their assets despite the corporate interface, as they are the controlling minds behind the company). In order to distribute market uncertainty in the UK equally, the proceeds of Boydell should be shared equally after the debts of the company and the costs and expenses of sale of the property and winding up the company have been paid.

91 Putting aside Boydell and their BVI company, the asset pool is \$18,663,380.10. The Wife's half-share of these assets (\$9,331,690), after deduction of the assets held in her name, is \$6,676,837 (to the nearest dollar), which is close to the value of Bo Seng. Bo Seng should be sold in the open

market, with the Husband paying the Wife any shortfall if the sum obtained is less than the sum owed to the Wife (if there is an excess sum this should be retained by the Husband, who is servicing the mortgage). The Husband wishes to live at Namly. Upon the payment of her share, the Wife should transfer her interest in the property to the Husband, with any necessary mortgage re-arrangements made.

Orders

92 My orders are therefore as follows:

- (a) Each party to retain any assets held in his or her sole name.
- (b) The Husband is to transfer any right, title or interest in AMK and FHMC to the Wife.
- (c) The Wife is to transfer any right, title or interest in the Husband's Clinic to the Husband.
- (d) Parties to jointly arrange for the BVI company to be wound up and the sale of Boydell in the open market. After discharge of loan and deduction of all costs and expenses of sale and winding up of the company, the Boydell proceeds are to be shared equally between Husband and Wife.
- (e) Bo Seng is to be sold in the open market, with both parties having joint conduct of sale. After discharge of mortgage and payment of all costs and expenses of sale, the proceeds are to be paid to the Husband.
- (f) Upon the Husband's payment of \$6,676,838 to the Wife, the Wife is to transfer any right, title or interest in Namly to the Husband.

93 As requested, I shall see counsel on costs and any necessary
consequential orders.

See Tow Soo Ling and Zara Mok (Colin Ng & Partners LLP) for the
plaintiff;
Suchitra A/P K Ragupathy and Jasmine Yong (Dentons Rodyk &
Davidson LLP) for the defendant.