

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2017] SGHCF 9

Divorce Transfer No 3837 of 2012

Between

TZG

... Plaintiff

And

TZH

... Defendant

GROUND OF DECISION

[Family Law] — [Matrimonial assets] — [Division]

TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND FACTS	9
MY DECISION	11
THE MATRIMONIAL POOL APART FROM THE DENTAL PRACTICE	12
DIRECT CONTRIBUTIONS.....	12
<i>The matrimonial home (Direct Financial Contribution)</i>	15
<i>The Dental Practice (Direct Financial Contribution)</i>	16
<i>The shares in the Wife's name</i>	18
<i>The car</i>	19
<i>Conclusion on direct contributions</i>	19
INDIRECT CONTRIBUTIONS	20
<i>Non-financial contributions</i>	20
<i>Indirect financial contributions</i>	21
<i>Conclusion on indirect contributions</i>	21
THE FINAL RATIO FOR DIVISION OF THE MATRIMONIAL POOL APART FROM THE DENTAL PRACTICE	21
THE DENTAL PRACTICE	21
DIRECT CONTRIBUTION	21
INDIRECT CONTRIBUTION	22
THE FINAL RATIO FOR DIVISION OF DENTAL PRACTICE	22
LOGISTICAL ORDERS IN RELATION TO THE DENTAL PRACTICE	22

CONCLUSION.....	24
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TZG

v

TZH

[2017] SGHCF 9

High Court — Divorce Transfer No 3837 of 2012

Foo Tuat Yien JC

21 December 2015, 11 March, 21 April, 3 August, 28 October 2016; 28

November 2016

24 March 2017

Foo Tuat Yien JC:

Introduction

1 This grounds of decision deals with the division of matrimonial assets under Part X of the Women's Charter (Cap 353, 2009 Rev Ed) ("WC"). The parties have a son aged nine. The Defendant Husband ("the Husband") has appealed against the decision on division.

2 The Plaintiff Wife ("the Wife") and the Husband were dentists who ran their own dental practice through two companies.¹ The Husband and Wife were equal shareholders in Company No 1, of which Company No 2 was a

¹ Husband's 1st Affidavit of Assets and Means filed on 12 June 2013 ("HAM1") at paras 17–28.

wholly owned subsidiary. I will refer to the dental practice (inclusive of both companies) collectively as “the Dental Practice”.

3 I dealt with the Dental Practice for division separately from the other assets in the matrimonial pool as the value of the Dental Practice was not readily ascertainable and would, depending on circumstances, change over time. Although each party had obtained a valuation of the Dental Practice as at end February and end April 2014, the disparity in parties’ valuations was significant, at \$637,000 (the Wife had valued the Dental Practice at \$2,900,000, while the Husband valued it at \$2,263,000)² and also based on different valuation assumptions.

4 On 28 November 2016, I made the following orders for the division of the matrimonial assets:³

(a) The parties’ shares in the matrimonial assets (excluding the Dental Practice) of \$3,472,564, upon division are 55.65% for the Wife and 44.35% for the Husband, as reflected in the following table:

	Wife	Husband
Percentage share of matrimonial assets	55.65%	44.35%
Total (excluding the value of the Dental Practice)	\$1,932,481.87	\$1,540,082.13

² WAM3 at para 200; Husband’s 3rd Ancillary Affidavit filed on 2 December 2015 (“HAM3”) at p 410 (Husband’s valuation report) and 424 (Wife’s valuation report).

³ Minute sheet dated 28 November 2016 at p 6–7.

(b) I considered the possibility that the Wife might want to take over the Husband's estate title and interest in their matrimonial home (net equity of \$2,612,394) in KL Road, held in the parties' joint names. The Wife and son were staying there. I began by deducting the value of the assets in the Wife's sole name (\$647,089) from her share of the matrimonial assets as reflected above to obtain her share of the matrimonial home (\$1,285,392). I then deducted this sum from the net equity of the matrimonial home to obtain the Husband's share of the net equity in the matrimonial home (\$1,327,002). Dividing these sums by the net equity of the matrimonial home, I arrived at parties' percentage share of the matrimonial home: 50.8% for the Husband and 49.2% for the Wife.⁴ Thus, the matrimonial home was to be divided in the ratio of 50.8:49.2 in the Husband's favour. The division is to take place in the following manner:

(i) Should the Wife wish to take over Husband's estate title and interest in the matrimonial home, she is to notify the Husband in writing within one month of the date of this order. Upon such notification, the transfer is to be effected within five months thereof, upon the Wife paying to the Husband 50.8 % of the net equity of the matrimonial home. The costs of the transfer are to be borne by the Wife;

(ii) Should the Wife notify the Husband that she does not wish to take over the Husband's estate title and interest in the matrimonial home, or upon expiry of the one month period, whichever is earlier, the matrimonial home is to be sold in the open market within five months. Parties are to have joint

⁴ Minute sheet dated 28 November 2016 at pp 4–5.

conduct of the sale. The net sale proceeds (less the costs and expenses of sale) are to be divided in the proportion of 50.8:49.2 in favour of the Husband; and

(c) Unless otherwise stated, parties were to retain all assets in his/her sole name.

(d) The Dental Practice was to be divided in the ratio of 55% to the Wife and 45% to the Husband, in the following manner:⁵

(i) Within seven days of the order, the Husband is at liberty to propose in writing to the Wife a buy-out offer price (with terms and conditions) for the Dental Practice. Should the buy-out offer be accepted by the Wife and notified in writing to the Husband within seven (7) days of the offer, the transfer of the Wife's shares in the Dental Practice to the Husband shall be completed within three (3) months of the date of the Wife's acceptance of the offer, upon the Husband paying to the Wife, a sum representing 55% of the accepted buy-out offer price (less salaries owing to parties and costs and expenses of the transfer).

(ii) Should there be no buy-out offer from the Husband or should the Wife not accept the buy-out offer, the Dental Practice shall be put up for sale in the open market within two months of either of these two events, whichever is earlier.

(iii) The parties shall have joint conduct of the sale of the Dental Practice. The parties shall instruct a relevant company to

⁵ Order of Court at paras 14–21.

act for them in the conduct of the sale, including the advertising of the sale for three months in the open market.

(iv) The Husband shall have the first option to buy out the Wife's 55% share of the Dental Practice based on the highest price offered by a third party buyer or at the Husband's higher offered price. If the Husband so wishes to buy out the Wife's share, he shall notify the Wife in writing within seven days after the closing date for submission of third party offers to buy the Dental Practice. The Wife shall have the right not to accept the Husband's buy-out offer. If the Wife does not reply in writing within seven days of the Husband's written offer, the Wife is taken to have rejected his offer. If the Wife accepts the Husband's buy-out offer within the said seven days, the transfer of the Wife's shares in the Dental Practice to the Husband shall be completed within three months of the Wife's acceptance of the Husband's offer, upon the Husband paying to the Wife, a sum representing 55% of the Husband's offer price, less any salaries owing to the parties and less the costs and expenses of the sale.

(v) Should the Wife reject the Husband's offer to buy out her share in the Dental Practice, she may counter-offer to buy out the Husband's 45% share in the Dental Practice based on the highest price offered by third party buyers or at the Wife's higher offered price. If the Wife so wishes to buy out the Husband's share, she shall notify the Husband in writing within seven days after rejecting the Husband's offer to buy out her share in the Dental Practice. The Husband shall have the right not to accept the Wife's buy-out offer. If the Husband does not

reply in writing to the Wife's buy-out offer within seven (7) days of her written offer, the Husband is taken to have rejected her offer. If the Husband accepts the Wife's buy-out offer within the said seven (7) days, the transfer of the Husband's shares in the Dental Practice to the Wife shall be completed within three (3) months of the Husband's acceptance of the Wife's offer, upon the Wife paying to the Husband a sum representing 45% of the Wife's offer price, less any salaries owing to parties and the costs and expenses of sale.

(vi) Should either Party decide not to buy out the other party's share in the Dental Practice or if the offers, if any, whether made by the Husband or the Wife are rejected by the other Party, then the Parties are to notify each other in writing within 14 days after the expiry of the dates in the two preceding clauses above on their individual decision whether to accept any offer made by a third party to buy the Dental Practice. Subject to the parties' agreement on sale of the Dental Practice, the net sales proceeds (after deduction of salaries owing to parties, costs and expenses of sale) shall be divided in the proportion of 45:55 in favour of the Wife. The parties may, if they so wish, negotiate how best they wish to proceed.

(vii) If the Parties cannot agree on a sale to a third party buyer within one month of the expiry of the 14-day period in the preceding paragraph, the parties are to appoint a liquidator within one month to liquidate the Dental Practice. The salaries owing to parties and costs and expenses of the abortive sale and the liquidation are to be paid from the liquidation sales proceeds with the net liquidation proceeds, after deduction of

salaries owing, to be divided between parties in the proportion of 45:55 in the Wife's favour.

5 The Husband has appealed against my orders on the division of matrimonial assets as stated above at [4(a)], [4(b)] and [4(d)]. The appeal is not against my orders on the manner in the which the division was to take place, which were stated above at [4(b)(i)]–[4(b)(ii)] and [4(d)(i)]–[4(d)(vii)].

6 There is no appeal against my order that the following assets were to be excluded from the matrimonial pool:⁶

- (a) a flat in the name of Husband ("Flat H"), which had been acquired before marriage and wholly paid for by the Husband's parents, albeit used as a matrimonial home;
- (b) six Maybank fixed deposits of \$1.2m in the joint names of the Husband, his parents and his sister;
- (c) a UOB account opened in the joint names of the Husband and his father; and
- (d) a flat owned by the Wife's parents ("Flat W"), that had been acquired by them during the parties' marriage.

7 I found that the Husband's legal interest in the assets stated above at (a)–(b) were held in trust for his parents, while his legal interest in the asset in (c) was held on trust for his father. As for the asset in (d), it was purchased by the Wife's parents with her contribution of \$182,818.71.⁷ As the Husband was

⁶ Minute sheet dated 28 November 2016 at p 2.

⁷ Minute sheet dated 10 March 2016 at p 2; See also Husband's core bundle dated 17 December 2015 ("HCB") at p 228, 229, 232 and 236 (statement of accounts evidencing withdrawals).

not taking the position that the net equity of this asset be included in the pool for division, I ordered that the sum of \$182,818.71 be added back to the matrimonial pool of assets to be attributed to her as her direct financial contribution.

8 There is also no appeal against my order for the maintenance of the son and my order that there be no maintenance for the Wife. I dismissed the Wife's claim for maintenance of \$2,000 per month.⁸ According to the Wife, an associate dentist could expect to earn between \$8,000 to \$11,000 per month.⁹ Using these figures as estimates of her earning capacity, should she work as an associate dentist, and in light of her executive capability in running the Dental Practice, I was satisfied that she could earn more than enough for her maintenance.

9 As for the son's maintenance, the Husband was to contribute 60%, and the Wife 40%. This apportionment was made based on my assessment of parties' relative earning capacity,¹⁰ bearing in mind that it had been agreed that care and control would be given to the Wife with parties to share joint custody. Access was to be in accordance with the Consent Order of 19 April 2013. Despite the Husband's submission that the location where he should return the child after access on Saturdays should be varied,¹¹ I saw no satisfactory reason to vary the terms of access.

⁸ Wife's 3rd Ancillary Affidavit filed on December 2015 ("WAM3") at para 45.

⁹ Wife's 2nd Ancillary Affidavit filed on 4 July 2013 ("WAM2") at para 41.

¹⁰ Minute sheet dated 28 November 2016 at p 13.

¹¹ Husband's letter to court dated 28 October 2016, Annex A p 1.

10 I set out my reasons for the three orders on the division of matrimonial assets, that are the subject of the Husband's appeal.

Background facts

11 The Husband is 41 years old and the Wife is 39 years old. As mentioned above, they are both dentists with their own Dental Practice with each owning 50% share. The Husband is the Clinical Director of the Dental Practice while the Wife is the Administrative Director.¹²

12 The parties were classmates at dental school. After graduating in 2000, they worked as dental officers at the National Dental Centre, before working in private practice in 2004.¹³ They married in Singapore on 20 November 2004.¹⁴

13 On 12 August 2007, the son was born. The Wife then stopped work for more than a year to take care of the son.¹⁵

14 In November 2007, Company No 1 in the Dental Practice was incorporated.¹⁶ The clinic started operations in February 2009. At the beginning, the Husband continued working at another clinic in the day, and at the Dental Practice in the evening¹⁷ and then worked full time with the Dental

¹² WAM2 at para 31.

¹³ HAM3 at para 320; Wife's 1st Affidavit of Assets and Means filed on 22 May 2013 ("WAM1") at p 19; Wife's 2nd Ancillary Affidavit dated 10 July 2013 ("WAM2") at para 33.

¹⁴ Interim Judgment ("IJ") at para 1.

¹⁵ WAM1 at para 21(b).

¹⁶ WAM 2 at para 28.

¹⁷ Minute Sheet dated 21 December 2015 at p 4.

Practice from December 2010. Nevertheless, parties eventually built up the Dental Practice to be a successful dental practice, the profits of which paid for a substantial part of the parties' matrimonial home and for an investment commercial strata titled unit registered in the name of Company No 1 valued at over \$700,000.

15 Problems surfaced in the marriage between parties, partly arising from problems in their relationship with their respective parents-in-law. The parties and son were then staying in Flat H (duplex penthouse with living quarters on two levels) with the Husband's parents and also for some time with the Wife's parents. Sometime in July 2012, the Wife moved out of Flat H into the matrimonial home at KL Road, leaving the Husband to stay at Flat H.¹⁸ Although I have referred to the KL Road property as a "matrimonial home", it was, strictly speaking, not a matrimonial home, as parties and their son had not stayed there as a family. It was, at all times, occupied only by the Wife and the son, after they left Flat H in July 2012.

16 On 9 July 2012, the Wife's then counsel sent to the Husband a proposal and a draft Deed of Separation. On 7 August 2012, the Wife initiated divorce on the ground of unreasonable behaviour.¹⁹ The Husband filed a defence and counterclaim on 14 September 2012. The counterclaim also alleged unreasonable behaviour by the Wife.²⁰ Parties subsequently amended the particulars of their claim and counterclaim, on 27 December and 28 December 2012, respectively.²¹ Interim judgment ("IJ") for divorce was

¹⁸ Minute Sheet dated 11 March 2016 at p 2.

¹⁹ Statement of Claim for Divorce dated 7 August 2012 at p 2.

²⁰ Defence and Counterclaim dated 14 September 2012, p 25.

²¹ Statement of Particulars (Divorce) (Amendment No 1) dated 27 December 2012; Counterclaim (Amendment No 2) dated 28 December 2012.

granted on 21 January 2013, based on both parties' unreasonable behaviour, as stated in the amended particulars.²²

17 Up to the date of the IJ, this was a marriage of eight years. At the point of separation in July 2012, this was a marriage of seven and a half years.

My decision

18 At stated above at [5], the Husband has appealed against my three orders on the division of assets. There is no appeal against the other orders.

19 As mentioned in [3], I dealt with the division of the Dental Practice separately from the division of the other the matrimonial assets. After considering parties' submissions and after determining the identity and value of the assets in the matrimonial pool, the direct financial contribution to that pool and the indirect contribution, I ordered that the rest of the matrimonial assets be divided in the ratio of 55.65:44.35 in the Wife's favour. As for the Dental Practice, after taking into account parties' direct financial contributions and indirect contributions towards the Dental Practice, I ordered that the Dental Practice be divided 55:45 in the Wife's favour. I elaborate below, beginning with the other assets in the matrimonial pool.

The matrimonial pool apart from the Dental Practice

20 The matrimonial pool amounted to a total of \$3,472,564,²³ and consisted of the matrimonial home, joint bank accounts, other assets which

²² IJ at para 2(c).

²³ Minute Sheet dated 28 November 2016 at pp 2–3; Husband's letter to court dated 28 October 2016, Annex A. The minute sheet records two different figures, \$3,472,565 on page 2 and \$3,472,564 on page 3. This difference arises from the rounding up of decimals in the calculations when parties' percentage shares are multiplied by the

were held in parties' own names and the sum of monies transferred by the Wife to her parents for the purchase of Flat W (see [6(d)]-[7] above).

Direct contributions

21 Parties disputed their contributions to the matrimonial home, shares held in the Wife's name and a car (which was also in the Wife's name). I begin by setting out my holdings on parties' contributions to the matrimonial home at KL Road, as follows:²⁴

	Wife	Husband
Percentage of contribution to the purchase of the matrimonial home	50%	50%
Share of net equity of \$2,612,394.26 million	\$1,306,197.13	\$1,306,197.13

22 In addition, parties also had three joint bank accounts worth \$7,414.86 in total, which they agreed to attribute in equal proportions.²⁵

23 I also found that shares held in the Wife's name were to be attributed as follows:²⁶

	Wife	Husband
Share of value of	\$36,951	\$174,169

value of assets. The difference is not significant.

²⁴ Minute sheet dated 28 November 2016 at p 3–4 r/w Exh-“W1-28 Oct 2016” at p 3.

²⁵ Minute sheet dated 28 November 2016 at p 4 r/w Exh-“W1-28 Oct 2016” at p 3.

²⁶ Minute sheet dated 28 November 2016 at p 3.

\$211,121		
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24 Additionally, I also held that the car, which was valued at \$115,900 and held in the Wife's sole name, was to be attributed to her alone. The attribution for this car and other assets held in parties' sole names (for which there is no dispute) are reflected in the tables below in this paragraph and at [24]-[25]:

	Assets in the Wife's name		Assets in the Husband's name	
1	CPF	\$106,573.75	CPF	\$116,764.35
2	DBS account	\$761.81	POSB account	\$55,171.57
3	OCBC account	\$4,473.44	OCBC account	\$51.99
4	UOB account	\$1,242.01	Prudential fund	\$17,196.83
5	Insurance	\$17,888.19	Manulife fund	\$13,652.80
6	Club membership	\$6,290	Club membership	\$2,830
	Total	\$137,229.20		\$205,667.54

25 Finally, it will be recalled (as stated above at [7]) that the Wife's contribution of \$182,818 to her parent's purchase of Flat W was to be added back to the matrimonial pool and considered the Wife's contribution.

26 The overall direct contributions of parties may be calculated as follows:²⁷

	Wife	Husband
Matrimonial home	\$1,306,197	\$1,306,197
Monies in joint accounts	\$3,707	\$3,707
Shares in Wife's name	\$36,951	\$174,169
Car	\$115,900	\$0
Other assets held in parties' sole names	\$137,249	\$205,667
Wife's contribution to Flat W	\$182,818	\$0
Total	\$1,782,822	\$1,689,740
Percentage	51.3%	48.7%

27 I will now elaborate on the disputed items, *viz*, the matrimonial home, the shares in the Wife's name and the car.

The matrimonial home (Direct Financial Contribution)

28 The purchase price of the matrimonial home at KL Road consisted of a down payment of about \$520,000 and a loan of \$2,080,000. Of this loan, \$1,942,394.26 has since been repaid using profits from the Dental Practice.²⁸ It was common ground between parties that parties contributed equally to the down payment.²⁹ The Wife had said that after the clinic started operations in

²⁷ The total value of the Wife's direct contribution (\$1,782,822) is two less than the sum stated in page 4 of the Minute sheet of 28 November 2016. This is due to the slightly different methods of calculation and rounding up of decimal points, and is not material as parties' *percentage* of direct contribution remains the same.

²⁸ Husband's letter to court dated 28 October 2016, Annex E.

February 2009, they were able to recoup their capital investment and also use the profits of the business to put a down payment of \$519,354 on the KL Road flat in December 2010.³⁰ This was not disputed by the Husband.

29 The main dispute between parties was how the repayment of the loan using the Dental Practice's profits should be attributed. In line with parties' submissions on their respective direct contributions to the Dental Practice itself,³¹ the Husband argued that attribution for the repayment of the loan for the matrimonial property should be made 70:30 in his favour, as he had put in more clinical working hours than the Wife and had contributed significantly in the clinic setup and its continued operations. It was noted that the Husband claimed credit for a larger proportion of repayment of the loan, as opposed to the down payment (which parties agreed to attribute equally), when both sets of payments originated from the same source, *viz*, the profits of the Dental Practice.

30 The Wife, on the other hand, adopted a consistent position with regards to both sets of payments. She submitted that the ratio for attributing the repayment of the loan should be 50:50,³² in line with their shareholdings in the Dental Practice and their respective contributions as Clinical Director (Husband) and Administrative Director (Wife). It must also be noted that it is not in dispute that parties had chosen to hold the legal title to the matrimonial home as tenants in common in equal shares and not as joint tenants.³³ As this

²⁹ Husband's letter to court dated 28 October 2016, Annex E; See also Exh-"W1-28 Oct 2016" at p 3.

³⁰ WAM2 p 15 para 34.

³¹ Exh-"W1-28 Oct 2016" at p 4.

³² Minute Sheet of 28 October 2016 at p 15.

³³ WAM3 at p 20 para 16 and exhibit at p 269 (Tab 19).

issue of the direct financial contribution towards the matrimonial home is inextricably linked to the issue of the direct financial contribution of the parties towards the Dental Practice, it is therefore necessary for me, at this juncture, to consider parties' direct contributions to the Dental Practice.

The Dental Practice (Direct Financial Contribution)

31 After considering parties' submissions, I accepted the Wife's submissions and found that the direct contribution of parties to the Dental Practice was 50:50. In making this finding, I took into account the following factors. First, parties held an equal number of shares in the Dental Practice.³⁴ Second, it was not disputed that the seed money for the Dental Practice was to be attributed equally to both parties. Thirdly, parties had, throughout the life of the Dental Practice, been consistently drawing the same amount of money from the Dental Practice.³⁵ Even in November 2012 (after commencement of divorce proceedings in August that year), parties entered into a service agreement with the Dental Practice to pay each party an equal monthly salary of \$20,000.³⁶

32 Fourthly, I took into account their lead roles in two key areas, as denoted by the Husband's and the Wife's specific designations of Clinical Director and Administrative Director respectively. This is recognition of the importance of professional dental standards and service coupled with professional administrative and managerial services, which are both integral to a profitable dental practice. Each party contributed in their own ways and in their areas of focus. It is not disputed that Husband had worked more clinical

³⁴ HAM1 at p X-2.

³⁵ HAM3 at para 215 and 321.

³⁶ HAM1 at p X-147–X-149.

hours than the Wife and was less involved in the administrative or financial work. The Wife was in charge of the financial and administrative aspects. Parties both claimed that they were involved in the non-clinical aspects of the work but it was conceded by the Husband that he had left the running of the clinic finances to the Wife, albeit that he claimed that she was making expenditures on items on which he should be consulted but was not.³⁷ It is not disputed that she was designated as the sole signatory for the bank account for Company No 1 dealing with the clinic. The Wife said that she had learnt all the administrative tasks from scratch and the Husband relied on her to do that part of the business, he did not like. It had been her idea to employ dental associates to earn more money.

33 In my view, the four factors stated above were strong evidence of how parties themselves viewed their business relationship and their contributions to the Dental Practice. I found, on the entirety of the evidence before me, that the parties' direct financial contribution to the Dental Practice was 50:50.

34 As the profits from the Dental Practice were used to pay the mortgage loan for the matrimonial home at KL Road, I also found that parties' contributions to the matrimonial home should be attributed in the ratio of 50:50.

35 The Husband had also submitted that a sum of \$4,422 that he had paid towards the renovation of the matrimonial home should be considered part of his direct financial contribution. However, these renovation items were not fixtures or fittings, and I therefore excluded them from the calculation of direct financial contributions to the matrimonial home.³⁸

³⁷ Counterclaim (1) of Husband, para 3.4.

The shares in the Wife's name

36 Early in the proceedings, the Wife had denied that the Husband contributed to the purchase of shares held in the Wife's name. After discovery applications and interrogatories against the Wife, it was clear that the Husband had contributed \$80,000 to the purchase of these shares.³⁹ Parties agree that these shares are now valued at \$211,121.04. The Husband submitted that the value of these shares should be attributed \$177,341.67:\$33,779.37 in his favour, while the Wife submitted that the attribution should be \$170,997.24:\$40,123.80 in the Husband's favour instead.⁴⁰ As the difference was not large and information on the disparity in value was not available, I averaged the figures and attributed the value of the shares \$174,169:\$36,951 in the Husband's favour.⁴¹

The car

37 Parties agreed on the value of the car at \$115,900. The Wife claimed that she paid its entire purchase price, but the Husband claimed credit for \$52,900.⁴² The Wife denied this and said that the Husband did not pay for the purchase of any of the cars and that he had only paid for a special car licence plate number (his birthdate), for which he had paid a bid price of \$4,060. The Husband's submitted that the present car was paid for by trading in the previous car, which in turn was paid for by trading in the car before that, and that he had contributed substantially to the purchase of this earliest car.⁴³ As

³⁸ Minute Sheet of 28 October 2016 at p 16.

³⁹ Husband's submissions dated 17 December 2015 at paras 42–47; Wife's submissions dated 17 December 2015 at paras 84–86.

⁴⁰ Exh-“W1-28 Oct 2016” at p 1.

⁴¹ Minute Sheet of 28 November 2016 at p 3.

⁴² Minute Sheet of 28 October 2016 at p 12.

there was no satisfactory evidence, I attributed the value of the car entirely to the Wife.⁴⁴ I understand that parties have come to an arrangement relating to the special car licence plate that the Husband wants the Wife to transfer back to him.

Conclusion on direct contributions

38 It will be recalled (as indicated above in the table at [26]) that I had found that parties' percentage of direct contributions was 51.3% to 48.7% in the Wife's favour. I now turn to parties' indirect contributions.

Indirect contributions

39 The issue of parties' indirect contributions was also contested by parties. Counsel for the Wife submitted that the ratio should be at least 60:40 in the Wife's favour, while counsel for the Husband did not state a specific ratio.⁴⁵ After careful consideration, I found that the appropriate ratio for parties' indirect contributions was 60:40, and I explain my reasons below.

Non-financial contributions

40 The son is now about nine years old. Care of a child in his infancy and younger formative years often requires more time and intensive attention. Although both parents played their part in the care and nurturing of the son, more was undoubtedly done by the Wife. Among other things, she had stopped work for about a year in 2007 to 2008 to care for the son. As a spouse-

⁴³ Husband's letter to court dated 28 October 2016, Annex E.

⁴⁴ Minute Sheet of 28 October 2016 at p 14.

⁴⁵ Husband's submissions dated 17 December 2015 at paras 62–63; Wife's further submissions dated 10 March 2016 at para 9.

partner of the Dental Practice, she was able to work flexible hours to give her the time to take care of the child's needs, whilst being assisted by her parents. The nature of her duties and work at the Dental Practice enabled her to carry out her duties off-site and after office hours and did not detract from her direct financial contribution towards the Dental Practice. It is to be noted that when the Dental Practice clinic started operations in February 2009, the son would have been less than two years old and the Wife would have had to judiciously balance her role as the primary care-giver and her role in the Dental Practice in its start-up operations. I accordingly gave the Wife more credit for non-financial contribution.

Indirect financial contributions

41 In terms of indirect financial contributions, I accept that the Husband contributed more to the household expenses. He had provided the Wife with five supplementary credit cards so that she could use it for household purchases. These expenses were usually in the range of \$1,000 to \$2,000 per month before the son was born,⁴⁶ and increased to about \$3,000 per month thereafter.⁴⁷

Conclusion on indirect contributions

42 I attributed, in the round, a 60:40 ratio in favour of the Wife for parties' indirect contribution.

⁴⁶ WAM3 at para 45.

⁴⁷ WAM2 at para 53.

The final ratio for division of the matrimonial pool apart from the Dental Practice

43 Averaging the ratios of parties' direct and indirect contributions, I found that the overall ratio was 55.65:44.35 in favour of the Wife. I also saw no need to make any adjustment to the final ratio.

44 I turn now to discuss the division of the Dental Practice.

The Dental Practice

Direct contribution

45 The direct contribution of parties to the Dental Practice has been discussed above at [28]–[33]. I had found that parties directly contributed to Dental Practice in the ratio of 50:50.

Indirect contribution

46 Parties disputed whether the ratio for indirect contribution used for the rest of the matrimonial assets should also be used here. Counsel for the Wife submitted that the same ratio should be used, while counsel for the Husband submitted that a different ratio should be used instead.⁴⁸

47 In my view, there was no reason to treat the Dental Practice differently from the rest of the assets in the matrimonial pool in this regard. My evaluation of parties' indirect contribution to the marriage was based on considerations different from that, which I took into account in evaluating parties' direct financial contribution towards the Dental Practice. Accordingly,

⁴⁸ Minute sheet dated 3 August 2016 at p 7.

I found that the same indirect contribution ratio of 60:40 in favour of the Wife should similarly apply to the division of the Dental Practice.

The final ratio for division of Dental Practice

48 Averaging the direct and indirect contributions, I arrived at an overall ratio of 55:45 in favour of the Wife.

Logistical orders in relation to the Dental Practice

49 I had, early, in the proceedings, raised with counsel the issue of a realistic valuation of the Dental Practice, bearing in mind how that value could be realised and/or divided in a manner beneficial to both parties. It was in parties' interests to cooperate to preserve the value of the Dental Practice to secure the best price, if it was to be sold to a third party. Given their acrimony, there were real concerns that the value of the Dental Practice as a going concern could be progressively reduced, the longer a decision on its future remained in doubt, *eg*, dental associates and staff, knowing of these problems, might leave. Parties were asked if one wanted to buy over the other's share or whether they wanted to sell the Dental Practice as a going concern to a third party.

50 Unfortunately, despite opportunity and time, parties could not propose a solution or narrow their differences. The Husband had expressed an interest to buy over the Wife's share but delayed in doing so. It came to a point where the Wife then claimed that the Husband was acting in a way calculated to lower the value of the Dental Practice, such as working fewer hours. This was denied by the Husband.

51 The Wife's counsel had also submitted that she and not the Husband should have the first option to at least match a third party offer on sale, as the Wife believed that the Husband would arrange for friends to make low offers or he would act in a manner so that only low offers were made.⁴⁹ I had considered but later decided against a joint valuation of the Dental Practice when it became clear that it would only lead to further delay and was impracticable as parties would not be able to agree on a joint or other brief. It was submitted by the Husband's counsel that the Husband was then still open to having an option to buy over the Wife's share in the Dental Practice. It was in this context, that I made the practical orders for the logistics for division of the Dental Practice at [4(d)], after I had decided on the substantive shares for division of this asset.

Conclusion

52 Thus, I ordered that the Dental Practice be divided in the ratio of 55:45 in favour of the Wife, while the rest of the matrimonial assets were to be divided 55.65:44.35 in favour of the Wife. The Dental Practice and the matrimonial home were to be divided according to the steps stated above at [4(b)(i)]–[4(b)(ii)] and [4(d)(i)]–[4(d)(vii)].

53 The Husband has also appealed against my indication that parties are to bear the mortgage payments and other payments relating to the matrimonial home in the same proportion as 50.8:49.4 (H:W) (see above at [4(b)]). I had informed counsel when I gave my decision on 28 November 2016, that as the division of the assets, including the matrimonial home, had been effected upon my decision that day, that thereafter (unless changed on appeal), the

⁴⁹ Minute sheet 28 October 2016 at p 3.

remaining mortgage instalments as well as other outgoings should rightly be borne in proportion to the ratio of 50.8:49.2 (H:W). The actual sorting out of accounts on this score could be effected upon completion of the transfer of the Husband's estate title and interest in the matrimonial home at KL Road to the Wife or upon completion of the sale of the property, if such was the case. My view was that it was not necessary for a specific order to be made in that regard.

54 I also ordered that each party was to bear their own costs. The Wife had not succeeded in her contention that the assets in [6(a)]-[6(c)] be included in the matrimonial pool, that the asset in [6(d)] be excluded from the pool or that the Husband had not contributed to the purchase of the shares in her name. The Husband had not succeeded on the issue of direct financial contribution as well as the issue of the car. The hearings had also been prolonged because of the Husband's delay in following up on his offer relating to the Dental Practice.

Foo Tuat Yien
Judicial Commissioner

Carrie Gill and Shaun Ho Jin Kit (Harry Elias Partnership LLP) for
the plaintiff;
Johnson Loo Teck Lee (Drew & Napier LLC) for the defendant.