

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2017] SGHCF 8

Divorce Transfer No 4187 of 2011

Between

TYU

... Plaintiff

And

TYV

... Defendant

GROUND OF DECISION

[Family law] — [Matrimonial assets] — [Division]
[Civil procedure] — [Costs] — [Principles] — [Matrimonial cases]

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TYU

v

TYV

[2017] SGHCF 8

High Court — Divorce Transfer No 4187 of 2011
Valerie Thean JC
8, 30 November 2016; 13 December 2016

21 March 2017

Valerie Thean JC:

Introduction

1 The plaintiff (“the Husband”) and the defendant (“the Wife”) were married on 18 July 1997. This was the third marriage for the Husband, who is 66 years old, and the second marriage for the Wife, who is 54 years old. They have a daughter, who is aged 16 (“the Daughter”).

2 At the time of the parties’ marriage, the Wife was working as a publisher in the hospitality industry. The Husband was retrenched sometime in 1998. Shortly after, the parties started [A] Pte Ltd together, which the Wife invested in and transferred her contacts and know-how into. In 2000, the Husband started the [B] group of companies, also in the hospitality industry, with a business partner. The Wife became a homemaker in or around November 2000, which was shortly after she was pregnant with their Daughter. Thereafter, the Husband became the main fee-earner of the family.

His business in [B] Ltd has since grown from strength to strength. At present, he remains Co-Chairman of [B] Ltd, an umbrella company of a group of companies which he holds a 50% share in.

3 The Husband commenced divorce proceedings on 1 September 2011. Interim judgment (“IJ”) for divorce was granted, uncontested, on 2 February 2012, on the ground that the parties have lived apart for a continuous period of at least four years immediately preceding the filing of the writ. Up to the time of the filing of the IJ, the parties had been married for almost 15 years.

4 The Husband’s monthly income in 2012 was about S\$60,000 a month. Under an interim maintenance order dated 31 October 2012, the Husband was ordered to pay S\$8,500 per month for the Wife and Daughter. In addition, he was ordered to pay various third party vendors for the Daughter’s school fees, co-curricular classes, transport, medical and dental care and other expenses capped at specified amounts.

5 I dealt with the parties’ ancillary matters on 30 November 2016. These grounds of decision explain my orders made on the division of matrimonial assets and costs, from which the Husband later appealed. My orders regarding custody, care and control, access and maintenance of the Wife and Daughter are not under appeal.

Division of Assets

Delineation of the asset pool

6 The parties had various issues in dispute. I will deal with these in turn, before setting out the pool of assets.

7 Before addressing the issues proper, I first note that the operative date that the parties took for the delineation of the asset pool and the valuation of the assets was that of the IJ. In view of the guidance provided by the Court of Appeal in *ARY v ARX and another appeal* [2016] 2 SLR 686 (“*ARY v ARX*”) and the parties’ separation prior to the ancillary matters hearings, I found no reason to depart from this operative date. The only issue in dispute regarding this was in respect of the Husband’s company, [B] Ltd, which I deal with in greater detail below.

The parties’ various properties

8 The parties had purchased various homes before and throughout their marriage, and the proceeds of various properties featured in their dispute. The Wife first purchased a property at Jervois Close (“the Jervois Close Property”) in 1992, where she was living when the parties met. At the commencement of their marriage in 1997, the parties lived in the Jervois Close Property together. The parties then purchased a home at Kew Crescent (“the Kew Crescent Property”) in December 1998 in their joint names, and moved in sometime in February 1999. The Jervois Close Property was sold in 2004. In January 2007, the Husband purchased a property in Marine Parade (“the Marine Parade Property”). In early 2007, when the Kew Crescent Property was being renovated, the Wife and Daughter lived at the Marine Parade Property on the weekends because it was near where the Daughter’s dance classes were held. In July 2007, the Husband moved out of the Kew Crescent Property into his Marine Parade Property. The Wife and Daughter stayed at the Kew Crescent Property until August 2008, when they moved into a property in Montview that the Wife had purchased in 2005 (“the Montview Property”). The Kew Crescent Property was then sold in June 2009.

Net sale proceeds for the Jervois Close Property

9 The Wife contended that the S\$920,000 proceeds of the Jervois Close Property was spent on the following: (a) the down payment and stamp duty for the Montview Property; (b) her BMW 335i (“the BMW”); (c) equity-linked notes; and (d) savings, some of which was used to pay for renovations to, and furniture in, the Montview Property. The Husband also contended that the Wife’s shares in City Development Limited (“City Development Shares”) were purchased out of the proceeds of the Jervois Close Property.

10 Initially, counsel for the Wife contended that the Husband had no share in the onward purchases such as the BMW and City Development Shares. However, she later accepted that these were acquired in the course of the marriage. Thus, the purchases remained in the pool to be divided. Regarding the rest of the proceeds, these proceeds would have gone into the Wife’s accounts prior to the parties’ separation. I accepted that these various sums had been translated into other assets that were in the asset pool, and hence did not make any further addition back to the pool in respect of the proceeds of the sale of the Jervois Close Property.

Net sale proceeds for the Kew Crescent Property

11 The Kew Crescent Property, as mentioned above at [8], was purchased in December 1998 in the parties’ joint names, and sold in June 2009. Out of the net sale proceeds of S\$726,323.12, S\$500,000 was used to pay for the mortgage secured on the Montview Property. This gave rise to a balance of S\$226,323.12.

12 The Husband enquired about the balance of the sale proceeds. The Wife stated that the balance was used to supplement the Wife and Daughter’s

maintenance from March 2009 to October 2012, when interim maintenance was ordered. The Wife submitted that she had the Husband's permission to use the proceeds, and that this supplement was needed because the Husband had unilaterally cancelled the Wife's supplementary credit card and thereafter reduced the maintenance for the Wife and Daughter to only S\$6,500 per month sometime around March 2009. The balance sum taken over the period from March 2009 to October 2012 when the interim order for maintenance was obtained worked out to approximately S\$5,657.83 per month. In view of the much larger interim maintenance order where the Husband bore a large range of expenses, I excluded the balance S\$226,323.12 of the sale proceeds from the matrimonial pool.

Excess for repayment of the Montview Property mortgage loans

13 The Montview Property was secured on a mortgage loan. As mentioned above at [11], S\$500,000 of the Kew Crescent Property sale proceeds went into this account. Unknown to the Husband, the Wife used this to pay down the original UOB Housing Loan. She then took out another term loan, which she used for daily expenses. Once again, she contended that this was because the Husband had not provided sufficiently for her and their Daughter.

14 The Husband contended that the liability for the term loan should not be borne by him. He was not aware that the Wife had paid down the original loan and taken out a new term loan, in order to finance her on-going expenses. Further, he paid an excess amount of S\$105,463.60 towards this term loan which he had not sanctioned, for the period from August 2009 to October 2012. The Wife contended that the Husband had given her the S\$500,000 for her use, howsoever she chose to use it, and that he had promised to pay for the

Montview Property. She maintained this argument despite her having restructured the mortgage loan to add an additional term loan.

15 In my view, the Wife's addition of a term loan to the property for her own expenses was not expressly discussed with the Husband, even though it was at a time when she knew that the Husband had sought to limit her expenses. The Husband ought not to be responsible for the term loan. I thus excluded the loan as a liability from the asset pool. The Wife would thus have to be responsible for the liability, as the asset is in her name. As for the excess paid by the Husband, I declined to add this amount back into the pool. On his part, the Husband chose not to query the Wife's use of the money he paid to her, even though he would have been aware, if he had put his mind to it, that the repayment liability could well have fallen with the injection of the Kew Crescent Property funds. In this respect, I took into account the fact that the interim maintenance order made in October 2012 was much higher than the maintenance package that the Husband had earlier attempted to unilaterally put in place in 2009.

Laguna Club membership

16 The Wife sought to exclude the value of a golf membership at Laguna National Golf and Country Club ("Laguna Club"), which she had acquired prior to the marriage in 1995. It was clear, however, from s 112(10)(a)(i) of the Women's Charter (Cap 353, 2009 Rev Ed) ("WC") that assets acquired prior to marriage that were ordinarily enjoyed by the family came within the asset pool. Although the Husband did not play golf, the Daughter used Laguna Club for various social purposes. The membership thus came within the asset pool.

Valuation of the Husband's interest in the [B] group of companies

17 The main component of the asset pool in dispute was the value of the Husband's 50% interest in [B] Ltd. [B] Ltd is a British Virgin Island-incorporated umbrella company that deals with investments companies, business units and properties.

18 Initially, both the Husband and the Wife submitted valuation reports prepared by their respective appointed companies, with RHL Appraisal Ltd ("RHL") appointed by the Husband, and BDO Advisory Pte Ltd ("BDO") appointed by the Wife. Both reports were premised on the same Discounted Cash Flow approach. RHL's valuation related to one company within the group under the umbrella of [B] Ltd, and valued the Husband's share at S\$6.05m as at 29 February 2012 ("RHL Report"). BDO, on the other hand, valued the entire [B] group of companies as at 31 December 2011 and put the Husband's share at S\$22.5m ("BDO Report").

19 The Husband then filed an application to submit a further expert's report, to make a valuation for the entire group of companies. On 28 August 2015, the Deputy Registrar ordered that PriceWaterhouseCoopers ("PWC") be appointed to give an independent report ("PWC Report"), with the date of the valuation to be the date chosen by PWC. Neither party appealed from this order. A report dated 15 August 2016 put the value of the Husband's share as at 30 April 2016 at S\$21.7m. This report used management accounts profit and loss analysis for 2015. After the court-appointed valuation was submitted on 15 August 2016, the Husband contended that there were new documents which could show that there was a large dividend declaration of HK\$142m in December 2015 which would significantly reduce the valuations. He also furnished the audited statutory accounts for the year ending 31 December 2015, signed on 15 August 2016. An assistant registrar allowed an updated

valuation, despite the Wife's objection. Neither party appealed from this order. A supplemental report was submitted by PWC on 3 October 2016. This took into account the 15 August 2016 audited statutory accounts for the year ending 31 December 2015, which revealed that the company had declared a dividend in 2016, which it then backdated to December 2015. PWC explained that the actual performance of the company was not materially different from that shown by the management accounts it had earlier used in the earlier report. Regarding the dividend, PWC formed the view that the dividend ought not to be backdated, but in the event that it was legal under Hong Kong law to do so, the value of the Husband's share would be S\$15.7m. On the alternate basis that the dividend ought not to have been backdated, and should be recognised within the 2015 accounts, PWC's valuation of the Husband's 50% share, with a 10% discount, was S\$23.9m.

20 The date for the PWC valuations, arising from the order of the Deputy Registrar, was as at 30 April 2016. This posed an issue at the hearing of the ancillary matters, where it became clear that the IJ was clearly a better operative date because the parties were already living separate lives by that date: *ARY v ARX* at [31]–[36]. While the Husband had not previously sought to appeal from the Deputy Registrar's order, he submitted that the IJ date ought to be used for the valuation, and, despite the Husband's earlier wish to revisit the RHL valuation, he sought to use the RHL valuation. In the alternative, he contended that the value of his interest should be an average of the valuation reports secured in 2012 by both RHL and BDO, set at S\$14.5m for his half share.¹ The Wife, on the other hand, suggested, with a view to saving costs, that the court use the 2016 valuation report by PWC, which, ignoring the dividend, set the figure at S\$23.9m. In the alternative, counsel for

¹ Defendant's Submissions dated 13 October 2016 at para 101.

the Wife submitted that the BDO Report valuation of S\$22.5m ought to be used as evidence of the value of [B] Ltd as at the IJ date.

21 Multiple dates are possible when the court chooses the operative date for assets: see *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 (“*Yeo Chong Lin*”) at [36]. Thus, I could have considered using the date at which the independent report was prepared. On the facts of this case, however, a 2016 valuation was clearly not appropriate because the Husband had moved out since July 2007 and the divorce was premised on their four years’ separation commencing in 2008. I thus decided to use the IJ date as suggested by counsel for the Husband.

22 Nevertheless, I rejected Mr Cheong’s suggestion to use the mid-point of the valuation reports issued by RHL and BDO. In the first place, the premises for both reports were entirely different: whereas RHL’s related only to one company owned by [B] Ltd, BDO’s related to the whole group. Additionally, RHL’s analysis was suspect, as it assumed that [B] Ltd’s main contract with Starwood would be terminated when it was not. Indeed, the Husband himself recognised the difficulty with the RHL Report, which explained why he sought leave for an additional expert report to be adduced in 2015. Accordingly, I found that the correct approach was to value the entire [B] group of companies as at the IJ date.

23 The issue then was whether the BDO valuation of S\$22.5m was credible. In this respect, it was useful to refer to the PWC valuation of S\$23.9m. In asking the Court to rely on the RHL Report, the Husband himself stated in his submissions that the company structure as at January 2012 (as opposed to August 2016) would not change the value significantly. [B] Loyalty, the main revenue earner of [B] Ltd, had been largely set up by then,

he said. Counsel for the Wife showed that, as at the time of the PWC Report, [B] Ltd covered almost the same companies as at the time of the BDO Report, save for the ones in Dubai and the United Arab Emirates that were set up subsequent to the BDO valuation. The properties held by [B] Ltd at the time of the PWC Report were also the same as those listed in the BDO Report, save that the Kowloon property was sold in 2013. In fact, with the sale of the Kowloon property, the PWC Report did not carry a lower valuation than the BDO Report even though it ought to have done so. It followed then that the BDO valuation was a conservative one.

24 Regarding the dividend declared in 2015, my decision to select the IJ date as the operative date made that item irrelevant. At the hearing, counsel for the Husband raised an issue of a deduction for amounts owing by the Husband. Based on the BDO Report, the amount due by the Husband as at 31 December 2011 was HK\$6,996,006.48, which translates to approximately S\$1.7m. Ordinarily, the sum of money which is owed by the directors of a company would be seen as an *asset* of the company as they are deemed to be payable by the directors to the company. However, in this case, the Husband represented to PWC and RHL that these amounts would not be repaid to the company. In my view, the Husband suffered a credibility issue in, on the one hand, raising an asset to the company, and on the other, asking for it to be a *deduction* from the value of the company. The latter premise assumed he was inflating the accounts to the extent that any loan was reflected. In any event, as I sought to make a conservative finding, I made an adjustment downwards and set the value of the Husband's share of the company at S\$21m.

Sum taken from the OCBC Easisave Account

25 Another issue raised in the determination of the asset pool was that the Husband transferred a sum of S\$248,020 out from his OCBC Easisave

Account via telegraphic transfer. Although he contended that the said sum was used as an investment in Vietnam that he had lost, there was no documentary evidence as to where the \$248,020 was transferred to. He exhibited a letter from one Mr Ta Tu Tai stating that the investment was lost. The letter, however, did not specify the sum invested by the Husband or state that \$248,020 was lost. Further, no affidavit was filed by Mr Ta. As the sum was not accounted for, I added the S\$248,020 back into the matrimonial pool.

Excluded items

26 I excluded the following two smaller items: a watch, which was a third party gift, and an engagement ring, which had no resale value.

Adverse inference

27 Finally, the Wife argued that an adverse inference ought to be drawn against the Husband for his failure to make full and frank disclosure of the full extent of his means, assets and financial resources, given that the Wife was unable to have access to all relevant information even after taking out extensive discovery action. In relation to [B] Ltd, the Wife asserted that the Husband did not provide a full list of all companies, business entities, interests, investments and assets that he had an interest in. The Wife further contended that the Husband failed to provide any documentary evidence to substantiate his claim that another property located in Australia, which the Wife claimed he had an interest in, belonged to his ex-wife. The Wife's final contention was that the Husband failed to provide any evidence for shares, which the Wife claimed he owned, in two other companies.

28 In this regard, there are two requirements which must be established by the party seeking to draw an adverse inference against the other in relation to,

inter alia, undisclosed assets (see *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 at [28]; *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 at [62]): (a) there must be a substratum of evidence that establishes a *prima facie* case against the person against whom the inference is to be drawn; and (b) it must be shown that that person must have had some particular access to the information he is said to be hiding.

29 In this case, although ascertaining the value of [B] Ltd was a long-drawn-out process, I was able to identify its value with some certainty, and arrived at a value quite close to that sought by the wife. Thus, there was no need to add any particular sum to the asset or the pool on the ground of uncertainty with respect to this asset. In addition, I also ordered that the Husband bear the costs of the PWC Report: see [46]-[48]. Regarding his other assets, while he may or may not have fully disclosed all his assets, such as shares in some other companies or an Australian property which he averred was held by his former wife, there was no evidence that any of these were referable to their marriage up to the time of the operative date. I further took into account that the Wife herself was not meticulous in accounting for the proceeds of the Kew Crescent Property, and in that respect, I had only made her responsible for the term loan liability, omitting to add sums that had been spent by her out of the Kew Crescent Property proceeds back into the pool. I concluded that no adverse inference needed to be drawn against the Husband, and did not make him responsible for any notional sum to be added back into the pool.

Net matrimonial assets

30 Pursuant to the foregoing analysis and the documents before me, I arrived at the following list of the parties' matrimonial assets:

S/N	Asset Description	Court's value (S\$)	Remarks
Assets in sole name of the Husband			
1.	Marine Parade Property (as at April 2012)	1,650,000	Agreed
2.	CPF monies (as at 31 December 2011)	65,392.38	Agreed
3.	Honda CRV	60,000	Agreed
4.	Two watches	28,000	Agreed
5.	AMP Life Insurance Policy No xxxxxx0045 (as at 30 Jun 2011)	363.24	Agreed
6.	AMP (Australia) Account No xxxxxx1045 (as at 30 June 2012)	4,834.06	Agreed
7.	DBS Account No xxxxxx0963 (as at 31 January 2012)	11,667.55	Agreed
8.	OCBC Easisave Account No xxxxxxxx9001 (as at 31 Jan 2012)	15,537.64	Agreed
9.	50% Ownership in [B] Ltd	21,000,000	Set by the Court
10.	NAB (Australia) Savings Account No xx-xxx-2309 (as at 22 February 2012)	980.37	Agreed
11.	NAB (Australia) Savings Account No xx-xxx-0031 (as at 31 January	147,015	Agreed

S/N	Asset Description	Court's value (S\$)	Remarks
	2012)		
12.	HBC (HK) Savings Account No xxx-xxxxx5-833 (as at 31 January 2012)	313,322.77	Agreed
13.	S\$248,020 withdrawn from the Husband's personal OCBC Easisave Account No xxxxxxxx9001	248,020	No evidence linking to failed Vietnam investment
<u>Husband's Agreed Liabilities</u>			
14.	Outstanding Mortgage on Marine Parade Property (as at 31 December 2011)	(297,997.28)	Deducted
Sub Total		(297,997.28)	
Total for Husband's Sole Name Assets		23,247,135.73	
Assets in sole name of the Wife			
15.	Montview Property (as at April 2012)	1,950,000	Agreed
16.	DBS Savings Plus Account No xxx-x-xx1946 (as at 19 March 2012)	754.34	Agreed
17.	UOB High Yield Account No xxx-xxx-353-1 (as at 23 March 2012)	227,241.89	Agreed
18.	CPF monies (as at 22 March 2012)	437,024.84	Agreed
19.	Singtel shares (as at 5 April 2012)	1,922	Agreed
20.	Miscellaneous jewellery (pearl necklace and bracelet set, and	2,000	Agreed

S/N	Asset Description	Court's value (S\$)	Remarks
	earrings)		
21.	Kew Crescent Property proceeds	0	Spent on the Montview Property
22.	City Development Shares (as at 16 May 2012)	41,000	From Jervois Close Property proceeds
23.	BMW (as at 13 March 2012)	79,701	From Jervois Close Property proceeds
24.	Rolex watch (as at 2 September 2013)	0	Third party gift
25.	Diamond engagement ring	0	No resale value
26.	Laguna Club Membership	45,000	Matrimonial asset
<u>Wife's Agreed Liabilities</u>			
27.	Outstanding Mortgage on Montview Property – UOB Loan Account No xxxxxx2093 (as at 16 February 2012)	(261,958.79)	Deducted

S/N	Asset Description	Court's value (S\$)	Remarks
Sub Total		(261,958.79)	
<u>Wife's Disputed Liabilities</u>			
28.	UOB term loan (Account No xxxxxx5610) secured on Montview Property (as at 1 December 2011)	0	Wife should bear liability as part of her allocation
Sub Total		0	
Total for Wife's Sole Name Assets		2,522,685.28	
Total Asset Pool		<u>25,769,821</u>	

Just and equitable division

31 The Court of Appeal in *ANJ v ANK* [2015] 4 SLR 1043 (“*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 "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 WC.

Step 1: Direct contribution ratio

32 The Husband submitted that the Wife's contribution was 7.2%, while his contribution was 92.8%. The Husband took into account the fact that the Wife was only working from July 1997 to November 2000 at a monthly income of S\$7,000 to S\$8,000, such that she could not have contributed to the acquisition of matrimonial assets as she had no income beyond November 2000. The Husband acknowledged that the Wife had contributed S\$21,500 as part of down payment on the Kew Crescent Property, and S\$211,522 as down payment for the Montview Property. As for the Wife, she submitted that her contribution was 6%, while the Husband's was 94%. The Wife derived this computation by considering the agreed and disputed assets, as well as the liabilities in the Wife's sole name which amounted to S\$1,875,806.33.

33 While each party contended that the other's calculations were amiss, both parties' final estimates did not differ by much. The Husband's was 92.8:7.2 in his favour, while the Wife's was 94:6 in his favour. The Husband's estimate of the Wife's contribution was higher than the Wife's. In *ANJ v ANK*, the Court of Appeal recognised (at [23]) that it is not uncommon for the situation to be less than clear even in respect of direct financial contributions of the parties, and that in such circumstances, the court must make a "rough

and ready approximation” of the figures. Applying the broad-brush approach as articulated in *ANJ v ANK*, I found it just and equitable to set the ratio for direct contributions at 93:7 in favour of the Husband.

Step 2: Indirect contribution ratio

34 The Wife proposed an indirect contribution ratio of 70:30 in her favour. She asserted that she had contributed to paying for the family’s expenses early on in the marriage before the Husband’s business had taken off. She also asserted that she gave up her career in November 2000 to start a family with the Husband and to care for their Daughter. The Wife further asserted that she was instrumental in the Husband’s business. She was working in the hospitality industry, and had transferred all her contacts into [A] Pte Ltd, which was a company set up by both parties. She contended that it was only after [A] Pte Ltd had secured its first contract that the Husband took over the business, which subsequently grew into the [B] group of companies. She also asserted that the Husband travelled overseas frequently, and that she cared for their Daughter with little help from him.

35 The Husband, on the other hand, proposed an indirect contribution ratio of 50:50. The Husband asserted that his indirect contribution lay in his substantial financial contribution and non-financial contribution in growing the value of the matrimonial assets, as well as in spending time with the Daughter and the family. The Husband further asserted that although his job required him to travel, he would always try to reduce his time abroad so as to spend time with the family.

36 It was not disputed that the Husband was the sole breadwinner from November 2000, and that he maintained the family well. His estimate of the Wife’s indirect contribution at 50%, however, was too low for the following

reasons. First, it was not disputed that the Wife contributed household expenses to the family at the beginning of the marriage, and especially while the Husband was retrenched. At that time, the parties notably first lived in a property acquired by the Wife prior to the marriage. Secondly, in 1999, the Wife had started [A] Pte Ltd together with the Husband before his related business became successful. While he contended that his success stemmed from his own skill and talent, due credit should also be given to the Wife's initial support and encouragement. Thirdly, it was not disputed that the Wife was the primary caregiver to their Daughter. The Husband contended that he made an effort to take care of their Daughter as well. No doubt as a loving father he would have done so; however, given that he spent most of his time working and travelled very extensively and frequently, the Wife must have been the main person maintaining the household and caring for their Daughter. I thus found it just and equitable to set the indirect contribution ratio at 65:35 in favour of the Wife.

Step 3: Adjustment of the average ratio

37 In this case, if the ratios carried equal weightage, the average ratio would have been 64:36 in favour of the Husband.

38 In *ANJ v ANK*, the Court of Appeal advised (at [27]) that adjustments could be made between the financial and non-financial ratios, having regard to three considerations: (a) the length of the marriage, (b) the size of the assets and its constituents, and (c) the extent and nature of the indirect contributions made. Counsel for the Husband submitted that I should accord greater weight to the direct contribution ratio than to the indirect contribution ratio. In my view, such an adjustment should not be a large one in the light of the following considerations. First, the considerations that featured in cases where large adjustments have been made were not present in this case. For example,

while the pool of assets was fairly large, it was not of the same stature as in *Yeo Chong Lin*, where S\$69m was at stake. Second, [B] Ltd, which was responsible for most of the asset enhancement, was started during their marriage. Notably, the anchor contract that [B] Ltd had with Starwood was obtained in 2005, which was prior to the parties living apart. While [B] Loyalty expanded greatly between 2007 and 2011, the period prior to separation would have been crucial in cementing the growth and long term health of the group. In any event, given that the operative date used in this case was 2012, the Wife's continued attention on their Daughter up to that time should be regarded as a significant factor contributing to the Husband's success. A third consideration, which the court in *ANJ v ANK* highlighted (at [28]), was the need for the final allocation to make appropriate provision for the needs of the family. In this respect, it was relevant that the Daughter lived with the Wife. A fourth consideration tipped the balance in favour of making some adjustment in the Husband's favour: [B] Ltd was the Husband's main business asset that was generating his on-going income. The Husband would have to raise funds against his business assets to pay the allocation. While he would be well able to do so, given the strength of his financial position, some credit should be given in this respect. Considering all the circumstances, I accorded a 55% weightage to the parties' direct contributions and a 45% weightage to the parties' indirect contributions.

39 Whereas counsel for the Husband submitted for a 75% weightage in favour of the parties' direct contributions on the basis that [B] Ltd was the Husband's source of income, I disagreed. This would not be fair because [B] Ltd was a valuable business generating large revenues that was built up during the marriage. The purpose of the exercise of asset division was to ascertain and recognise the Wife's contribution and support. Hence, while a conservative figure could be justified for her share, to calibrate it at 75% in the

Husband's favour would unduly belittle the Wife's contribution. In my view, the crucial issue in this regard was whether the Husband would be able to raise the sums required of him. Given his portfolio and the standing of [B] Ltd, it was clear that he was able to do so. Applying the weightage, the Wife's share would have been 33.1%. In view of the various considerations enumerated above, I adjusted the final figure downwards to 32% as a conservative final ratio to be used.

40 In coming to my decision, I considered various precedents cited by counsel. Counsel cited both *AQS v AQR* [2012] SGCA 3 ("*AQS v AQR*") and *Twiss* in submissions. Neither of these cases was exactly on point. In *AQS*, the wife had no financial contribution and was purely a homemaker. *Twiss* concerned a much longer marriage where the wife had a large financial contribution. Finally, I also considered *ARY v ARX*. There, the wife was a homemaker to two children for six of the 15 years of marriage. The wife's financial contribution in *ARY v ARX* was higher in percentage terms. The direct financial ratio was 60:40 in favour of the husband, and the indirect financial ratio was 40:60 in favour of the wife, such that the final ratio there was 50:50 between the husband and the wife. Conversely, the Wife's direct and indirect contributions were lower in this case. Accordingly, I was of the view that allocating 32% of the matrimonial assets in favour of the Wife in this case was in line with the various precedents.

41 Following my decision in this case, the Court of Appeal has since provided guidance in respect of single-income marriages in *TNL v TNK and another appeal and another matter* [2017] SGCA 15 ("*TNL v TNK*"). Specifically, the court held (at [43]–[46]) that the *ANJ v ANK* approach ought not to apply to single-income marriages. In my view, the tendency towards an equal division of matrimonial assets for the long single-income marriage cases

canvassed in *TNL v TNK* (at [48]–[51]) does not apply in this case. Here, the Wife worked for the first three years, and had financial contribution. The duration of her status as a home-maker, and of the marriage as a whole, was not comparable to those in the cases mentioned by the Court of Appeal in *TNL v TNK* at [48]–[51].

Implementation of division

42 The total value of the matrimonial assets came up to S\$25,769,821. Accordingly, the Wife's 32% share of the matrimonial assets would translate to S\$8,246,343 (32% of S\$25,769,821). After deducting the assets held in the Wife's name (S\$2,522,685), S\$5,723,658 remained payable to the Wife. I set a timeframe of six months for the Husband to make the necessary transfers, in order to give him sufficient time to arrange his financial affairs. While counsel for the Husband asked for a longer time, I decided that six months was sufficient time for the Husband to raise financing. Given that the parties still have to cooperate to co-parent their Daughter, I considered it best for parties to settle all outstanding matters between them as soon as practicable, and endeavour to resolve most of the thorny issues remaining between them within a six-month time frame.

43 Each party retained the assets held in his or her own name. For the avoidance of doubt, this order, coupled with the maintenance order, meant that the Wife would necessarily have to take over the payment of all liabilities in her own name, including the mortgage of the Montview Property, which the Husband had borne prior to the hearing of the ancillary matters. Further, the monies in the parties' joint account, which was not included into the asset pool because the Husband paid maintenance into this account post-IJ date (the interim maintenance order was after the IJ date), was to be retained by the Wife.

Maintenance for the Wife

44 The Wife is 54 and worked as a publisher before 2000. The family's longer term security was a consideration I bore in mind in ordering the asset division (at [42] above). While the Wife asked for a significant sum to be ordered for her maintenance, in my view, the asset division of S\$8,246,343 was sufficient to secure her future. A lump sum of S\$50,000 was thus ordered to help her weather any transitional issues. Although the Husband has not appealed against this order, I mention this for completeness because the court's power to order maintenance has been recognised to be supplementary to the court's power to divide matrimonial assets (see *ATE v ATD and another appeal* [2016] SGCA 2 at [31]–[33]).

Costs

45 In general, costs are not ordered in matrimonial cases; nevertheless, the court can exercise its discretion to do so in appropriate cases: see *Cheung Kam Yi Betty v Liu Tsun Kie* [2012] SGHC 213 at [79]; Rules 854(b) and 856 of the Family Justice Rules 2014 (S 813/2014). In my judgment, costs still play a crucial role in regulating the process of litigation and incentivising good litigation conduct.

46 I made no order on costs of the ancillaries, save in one respect. Of relevance here was the Husband's failure to provide a proper valuation of [B] Ltd from RHL. This stemmed from his instruction to RHL to value only one of the companies instead of taking into consideration the entire group of companies, thereby rendering the RHL Report unreliable. When he sought leave to prepare a second valuation, the Deputy Registrar ordered a joint expert. After the valuation report was prepared by PWC, the Husband proceeded to request for an updated report. He provided PWC with new

documents that he argued could show that there was a large dividend declaration of HK\$142m in December 2015, with the object, in turn, of significantly reducing the valuation. While counsel for the Husband in hindsight contended he was not satisfied with the Deputy Registrar's order for the PWC Report, he did not appeal from it. In the end, the PWC Report showed that the BDO Report was largely reliable.

47 Paradoxical though it may be, while the PWC Report proved useful in showing the credibility of the BDO Report, it was ordered only because the Husband applied for an additional valuation report. The Wife had already paid for one report by BDO. The BDO Report, when referenced with the PWC Report, was found to be reliable. Parties' circumstances were also relevant. The Husband was the fee earner whose conduct occasioned the Report. The Wife, on the other hand, was a homemaker whose source of funds was the interim maintenance order. Such orders, typically, are designed to cover expected living expenses and suchlike. The Wife's litigation expenses, then, would necessarily come out of her share of the assets being divided. It was therefore fair, in the circumstances, for the additional cost of the PWC Report, then, to be borne by the Husband. I so ordered.

48 The Husband had paid half of the costs of the PWC Report earlier. The Wife's half share was subsequently clarified on 13 December 2016 to be S\$156,277.45.

Conclusion

49 The orders made on 30 November and 13 December 2016 were the following:

- (a) By consent, joint custody shall be awarded to the Husband and the Wife, with care and control to the Wife.
- (b) Reasonable access shall be given to the Husband, as follows:
 - (i) The Husband is to give the Daughter at least 14 days' advance notice of when he would be in Singapore to have access to the Daughter.
 - (ii) During the school holidays, the Plaintiff is to have access as follows:
 - (A) For the Easter break, the 2nd half;
 - (B) For the summer holidays, the 1st half;
 - (C) For the fall break, the 1st half; and
 - (D) For the Christmas break, the 2nd half.
 - (iii) The Husband is at liberty to bring the Daughter out of jurisdiction during his school holiday access with the Wife's written consent, upon provision of details of itinerary, travel, accommodation and contact details at least 14 days before travel.
 - (iv) The Husband shall keep the Wife copied when corresponding with the Daughter as regards access.
 - (v) Where the Husband is unable to take his designated holiday access, he is to give six weeks' advance notice to the Daughter.

- (c) The Husband is to pay the Wife the sum of S\$6,000 per month for the Daughter's maintenance with effect from 1 December 2016 and thereafter on the first day of each calendar month.
- (d) In addition, the Husband is to make the following payments directly to the relevant vendors:
 - (i) The Daughter's school fees;
 - (ii) The Daughter's co-curricular classes, tuition and dance classes; and
 - (iii) The Daughter's school transport.
- (e) The Husband is to pay the Wife the sum of S\$5,723,658 within six months of the order.
- (f) The DBS joint account shall be closed and the amount standing to the credit of the same shall be paid to the Wife.
- (g) Save for the above, each party is to retain all other assets in his or her sole name.
- (h) The Husband is to reimburse the Wife the sum of S\$3,328 by 15 December 2016.
- (i) The Husband is to pay the Wife a lump sum of S\$50,000 for the Wife's maintenance, in the following manner:
 - (i) S\$10,000 by 15 December 2016;
 - (ii) S\$10,000 by 1 January 2017;
 - (iii) S\$10,000 by 1 February 2017;

- (iv) S\$10,000 by 1 March 2017; and
- (v) S\$10,000 by 1 April 2017.
- (j) Liberty to apply.
- (k) No order as to costs, save that the Husband is to reimburse the Wife the following sums for the costs of the PWC valuation: (1) S\$117,000 to be paid by 1 January 2017, and (2) S\$39,277.45 to be paid by 14 January 2017.

Valerie Thean
Judicial Commissioner

Cheong Zhihui Ivan and Shaun Ho (Harry Elias Partnership LLP) for
the plaintiff;
Loo Ming Nee Bernice and Sarah-Anne Khoo (Allen & Gledhill
LLP) for the defendant.
