

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2017] SGHCF 4

Divorce (Transferred) No 191 of 2012/C

Between

TXW

... Plaintiff

And

TXX

... Defendant

GROUND OF DECISION

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

[Family law] — [Maintenance] — [Wife]

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TXW

v

TXX

[2017] SGHCF 4

High Court — Divorce (Transferred) No 191 of 2012/C

Debbie Ong JC

20 May 2016, 29 August 2016; 9, 15 and 22 November 2016

24 February 2017

Debbie Ong JC:

Background facts

1 The plaintiff husband (“the Husband”) and the defendant wife (“the Wife”) were married on 1 June 1992. The Husband commenced divorce proceedings on 15 January 2012 and the Wife filed for divorce on 17 January 2012. These divorce suits were consolidated on 17 May 2012. The interim judgment of divorce (“interim judgment”) was granted on 6 May 2014.

2 The Wife is 52 years old while the Husband is 71 years of age. The Husband was a lawyer and had retired from legal practice in 2005. The Wife

was a homemaker throughout the marriage. Prior to that, she worked in the banking industry. They do not have any children.

3 On 15 November 2016, I delivered my oral decision on the ancillary matters relating to the division of matrimonial assets and maintenance for the Wife. The issue of costs was heard on 22 November 2016. Both parties have appealed against my decision and I now give the grounds of my decision.

Division of matrimonial assets

Fundamental legal principles underlying s 112 of the Women’s Charter

4 Section 112 of the Women’s Charter (Cap 353, 2009 Rev Ed) (“WC”) confers upon the court the power to order the division of the parties’ matrimonial assets. The power to divide matrimonial assets is to be exercised in broad strokes, with the court determining what is just and equitable in the circumstances of each case: *ANJ v ANK* [2015] 4 SLR 1043 (“*ANJ v ANK*”) at [17]. The Court of Appeal held in *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 (“*Yeo Chong Lin*”) (at [81]) that:

At the end of the day, we wish to underscore the point that the broad brush approach ... is all about feel and the court’s sense of justice.

The division of assets is founded on the ideology of marriage as an “equal co-operative partnership of efforts”, an ideology which accords equal recognition to spousal contributions whether in the economic or homemaking spheres: *NK v NL* [2007] 3 SLR(R) 743 at [20]. The Court of Appeal emphasized in *ANJ v ANK* that (at [17]):

The philosophy underlying what is known as the “broad-brush approach” is that mutual respect must be accorded for spousal contributions, whether in the economic or

homemaking spheres, *as both roles are equally fundamental* to the well-being of a marital partnership ...

[emphasis in original]

5 To accord due and adequate recognition to each party's contributions towards the marriage, the Court of Appeal has laid down a structured approach for the exercise of the power to divide matrimonial assets. In applying the structured approach, the court will first ascribe a ratio that represents each party's direct financial contributions towards the acquisition of the matrimonial assets, relative to that of the other party. Next, the court will ascribe a second ratio to represent each party's indirect contribution to the well-being of the family, relative to that of the other party. The court then derives each party's average percentage contribution to the marriage, which then forms the basis upon which to divide the matrimonial assets. Further adjustments to this average ratio that take into account the other factors enumerated in s 112(2) of the WC and all relevant circumstances, may be made to achieve a just and equitable division of the matrimonial assets (see *ANJ v ANK* at [22]).

Operative dates for identification and valuation of the matrimonial assets

6 The Court of Appeal in *Yeo Chong Lin* ([4] *supra*) was of the view (at [39]) that Parliament did not intend to prescribe a definite cut-off date for *identifying* the pool of matrimonial assets, but once an asset is regarded as a matrimonial asset to be divided, its *value* should be assessed at the date of the hearing of ancillary matters. This should be understood in the light of *ARY v ARX and another appeal* [2016] 2 SLR 686, where the Court of Appeal held that the date of the interim judgment of divorce ought to be taken as a starting point, but not a fixed operative date, for identifying the pool of matrimonial assets and further, that "the court has not only the discretion to select the

operative date to *determine* the pool of matrimonial assets, it also has the discretion to determine the date at which those assets should be *valued*” (at [36]) (emphasis in original). In the present case, I adopt the date of the ancillary matters hearing as the operative date for the purposes of determining the *value* of the matrimonial assets. I accept the last values adduced by both parties just before the date of the ancillary hearing, which in this case was 29 August 2016.

Identifying the matrimonial assets and their values

7 Pursuant to my directions, the parties submitted a “Table of Parties’ Assets” containing their submitted values of the assets. The assets were categorised into three groups—Group A consists of immovable properties disputed to be matrimonial assets, Group B consists of other assets agreed by parties to be matrimonial assets (with agreed values) and Group C consists of other assets disputed to be matrimonial assets or have values which are disputed. As for outstanding liabilities, the parties confirmed that the only sums not accounted for in the tables below were two loans amounting to \$1,126,009.03.

Group A—Immovable properties disputed to be matrimonial assets

8 The parties submitted the following table of assets, with alleged values in “Group A”. The assets in this group are disputed by the Husband to be matrimonial assets.

Property	Held by	H’s Value		W’s Value	
		Gross	Net	Gross	Net
1C Mayfield	H	\$11,500,000.00	\$10,000,598.97	\$14,500,000.00	\$13,000,598.97

Avenue					
20 Chapel Road	H	\$3,300,000.00	\$3,099,864.48	\$3,300,000.00	\$3,099,864.48
Taman Midah	W – 50%	\$284,812.71	-	\$167,536.89	-
Sale proceeds of 3 Mayfield Avenue and Country Heights	H	NIL	-	\$4,171,498.74	-

9 The respective net values of 1C Mayfield Avenue (“1C Mayfield”) are the values obtained by deducting the outstanding liability in UOB Housing Loan No. XXX-XXX-219-4 from the respective gross values submitted by the parties. The net value of 20 Chapel Road (“Chapel Road”) is obtained by deducting the outstanding liability in Standard Chartered Bank Housing Loan No. XXXXX663 from the agreed gross value. The Husband has stated the value of the sale proceeds of 3 Mayfield Avenue and Country Heights as “NIL” because he submits that they have been spent and were accounted for in his explanations.

1C Mayfield

10 1C Mayfield was acquired in or around 1989 before the parties’ marriage in 1992. The Husband submitted that he never intended to treat 1C Mayfield as a matrimonial home and asserted that the parties’ matrimonial home was the Casuarina Cove Apartment (“Casuarina Cove”). In contrast, the Wife submitted that 1C Mayfield was the parties’ matrimonial home and that

they lived in Casuarina Cove only on a temporary basis while 1C Mayfield was undergoing renovations. Between their residence in 1C Mayfield and Casuarina Cove, they lived in 3 Mayfield Avenue. The Wife's position is that they had initially intended to combine 1C with 3 Mayfield Avenue into one big house, but later abandoned the idea. The Wife further submitted that in any event, as the mortgage repayments for 1C Mayfield were made during the marriage, the property was acquired during the marriage and is thus a matrimonial asset.

11 The objective circumstances of the present case point towards 1C Mayfield being used as the parties' matrimonial home for the greater part of their married lives—they lived in that property for 12 years between 1992 and 2004. The Husband did not adduce any evidence that showed the contrary; his argument was that it was not intended to be their matrimonial home. It should be noted that a party's unilateral subjective intentions alone do not determine whether an asset is a matrimonial asset within the definition of s 112(10) of the WC. As the parties resided in 1C Mayfield for about 12 years during their marriage, this property would fall within s 112(10)(a)(i) of the WC as an asset acquired before marriage which was ordinarily used or enjoyed by the parties residing together for shelter. Section 112(10)(a)(i) of the WC reads:

... "matrimonial asset" means — (a) any asset acquired before the marriage by one party or both parties to the marriage — (i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes

12 Thus, even if I accept the Husband's submission that 1C Mayfield was not substantially improved by the Wife or by their joint efforts, this asset which was bought before the marriage would be transformed into a matrimonial asset by virtue of s 112(10)(a)(i) of the WC. I did not find that the

asset was substantially improved during the marriage and hence did not find s 112(2)(a)(ii) of the WC applicable to the present facts. Amongst other things, there was insufficient proof of substantial improvement arising from their joint efforts or that of the Wife.

13 The Husband submitted that even if 1C Mayfield was a matrimonial asset at some point, it did not retain its character as a matrimonial asset for the purposes of s 112 of the WC as the parties moved out of 1C Mayfield in 2004. He submitted that they lived in Casuarina Cove as their matrimonial home, and highlighted that Casuarina Cove was their intended matrimonial home. The Husband relied on *BGT v BGU* [2013] SGHC 50 (“*BGT v BGU*”), which (at [28]) offered a negative answer to the question of whether a property transformed into a matrimonial asset under s 112(10)(a)(i) “retained that character” after the family moved out and used the property as an investment.

14 First, I should say that this argument is only relevant if 1C Mayfield was not acquired during marriage. I explain below (at [17]) why I have found that it was, at least partially and substantially, acquired during marriage. If it was partially acquired during the marriage, the Husband’s argument may be relevant to the question of whether the entire asset, including the portion attributed to any payments prior to the marriage, ought to be in the pool. Second, assuming that a part of this property was acquired before the marriage, I did not think it just and equitable to disregard its transformation into a matrimonial asset by s 112(10)(a)(i) of the WC on the basis of the Husband’s argument that it has lost its character as a matrimonial asset.

15 The present facts are distinguishable from those in *BGT v BGU* ([13] *supra*). In this case, the property in question was purchased before the marriage and substantial repayments towards the mortgage were made during

the marriage using the husband's CPF monies. Upon the sale of the property, the sale proceeds went towards refunding the husband's CPF account. The High Court held that if the husband had not used the funds for the property during the marriage, the amount of CPF monies would have remained in the CPF account and be liable to division at the end of the marriage. As such, the CPF monies, save for the amount subsisting before the marriage, were held to be liable to division under s 112 of the WC. The court also opined that if an asset would only constitute a matrimonial asset by virtue of s 112(10)(a)(i) of the WC, and if such use ceases during the period when the parties are residing together for a reason that has nothing to do with the end of the marriage, that asset would fail to retain its character as a matrimonial asset. However, this issue was not argued before the court, for the Judge stated that "[n]either party addressed me on this" (at [28]). Further, as the property in *BGT v BGU* had already been sold and its proceeds used to reimburse the husband's CPF account, the court dealt with the issue by excluding from the pool the CPF monies earned before marriage and included into the pool the remaining CPF monies. It did not decide the issue on facts similar to the present.

16 Each case ought to be determined on its own facts. Without expressing a final view on the issue raised in *BGT v BGU*, I employ a hypothetical situation to illustrate the difficulties with a rule that a property transformed under s 112(10)(a)(i) automatically ceases to be a matrimonial asset upon the loss of residence. Suppose the parties live for 25 years in a property acquired before their marriage, using it as their matrimonial home. After their grown children leave the nest, they move into a small apartment which was also acquired before the marriage. Two years later, the marriage breaks down and they subsequently divorce. I find difficulty in construing Parliament's intention in s 112(10)(a)(i) of the WC to be to treat only the parties' last place

of residence for two years as a matrimonial asset while the property used as the cradle of the family for 25 years does not retain its character as a matrimonial asset because of the parties' cessation of residence. Indeed, why should a pre-marriage property in which the parties resided for the last two years of marriage be included in the pool of matrimonial assets while the property in which they had lived and raised a family over 25 years cease to be considered as the cradle of the marriage? The treatment must be decided on the precise facts and circumstances of the case before the court. I had in my decision in *TNC v TND* [2016] 3 SLR 1172 ("*TNC v TND*"), treated a pre-marriage property in which the parties resided for at least 15 months as a matrimonial asset under s 112(10)(a)(i) of the WC, but I treated it differently from the quintessential matrimonial assets when it came to deciding on the proportions of division. The facts of the present case neither warrant a distinct treatment of 1C Mayfield as was done in *TNC v TND* nor justify the loss of character as a matrimonial asset just because they were living in Casuarina Cove in the last years of their marriage. In the present case, 1C Mayfield was the cradle of the marriage, the matrimonial home in the most substantial years of their married lives. Moreover, I find the Wife's version of events more probable—that the parties only moved out of 1C Mayfield to allow renovations to be made and their move to Casuarina Cove was meant to be temporary. I find that 1C Mayfield is a matrimonial asset.

17 I add a further observation: 1C Mayfield cannot be said to have been fully acquired before the marriage since payments towards the property were also made during the marriage. The Husband accepted that he continued to pay for the mortgage on 1C Mayfield during the marriage and conceded that the monies used towards repayment of the mortgage during the marriage should be taken into account in the pool of matrimonial assets. It follows that,

on the Husband's highest case, even if it is accepted that this was an asset bought before the marriage, at least a substantial part of it was acquired during the marriage by way of mortgage repayments during the marriage.

18 Thus, even if a property can cease to be a matrimonial asset under certain circumstances, 1C Mayfield cannot be wholly excluded from the pool of matrimonial assets in any case. I am of the view that even if 1C Mayfield was not a matrimonial home or was not transformed by virtue of s 112(10)(a)(i) of the WC, at least a substantial part of it remains a matrimonial asset under s 112(10)(b) of the WC. Some payment towards its acquisition was made before the marriage but it was not shown by documentary evidence how much was paid prior to the marriage. This is not significant as I have found that on the facts, 1C Mayfield was the parties' matrimonial home in which they resided for about 12 years; it was in fact the cradle of this marriage. Thus it is a matrimonial asset also by virtue of s 112(10)(a)(i) of the WC and is to be included in the pool of matrimonial assets.

19 I asked both counsel if a valuation could be obtained for 1C Mayfield, which is the most substantial alleged matrimonial asset of the parties. The court was told that the parties were not agreeable to obtaining a valuation report at the time of the hearing. Counsel asked the court to determine the valuation based on the available evidence and respective submissions made.

20 I have taken the value of \$11.5m as the gross value of 1C Mayfield. This is the value stated on the valuation report by ECG dated 18 July 2014. In the current property market conditions, it is unlikely for property prices to have increased so much that this valuation should be considered unreliable on the date of the hearing. The URA records of other properties submitted by the Wife can at best, only give a very rough ballpark indication of the values and

confirm that the valuation in 2014 is not so far off the mark that a further valuation ought to be made today. Further, the property is not a unit in a condominium where transacted sale prices of other similar units in the same condominium may be used as a more accurate indicative reflection of its value; it is a house where comparisons as close as those in the condominium context are not available. Taking into account the outstanding housing loans against 1C Mayfield, I accept the net value of 1C Mayfield to be \$10,000,598.97.

Chapel Road

21 The Husband claimed that the property at 20 Chapel Road, referred to as “Chapel Road” here, was fully acquired before the marriage and that he subsequently took out a mortgage on the property to fund his investments. He submitted that Chapel Road was obtained through a settlement agreement in which a property he had acquired at “49K 3rd storey Nassim Road” (“Nassim property”) was exchanged for Chapel Road in 1987. He explained that he had fully paid for the Nassim property but the property developer ran into financial difficulties, necessitating the settlement. Although he produced a letter by the property developer in relation to the Nassim property, no reference is made to Chapel Road in that letter. On the other hand, there was evidence that the Husband was servicing a housing loan with a mortgage on Chapel Road during the marriage.

22 I accept that if Chapel Road was indeed fully acquired before the marriage, it would not be a matrimonial asset unless transformed by s 112(10)(a)(i) of the WC. Using a pre-marriage property as security to obtain a loan, without more, does not necessarily transform it into a matrimonial asset. However, any investments resulting from the use of the monies

borrowed against the mortgage during the marriage, will form the gains of the marriage and become liable to division under s 112(10)(b) of the WC.

23 On the evidence placed before me, I find that Chapel Road is an asset that was at least partially acquired during the marriage. On 9 November 2016, I sought further clarification from parties on whether there was other evidence available, besides the letter from the property developer referred to above, which showed that Chapel Road was fully acquired before the marriage. The Husband was unable to provide any such evidence or to refute the evidence showing that mortgage repayments were still being made during marriage. The available evidence appears to me insufficient to support a finding that Chapel Road was fully acquired before the marriage. However, I accept the Husband's submission that Chapel Road was in the picture before the marriage in 1987. Due to the lack of specific evidence relating to the repayment of the housing loan over the property, I adopt a broad brush approach to add a sum of \$2,510,889 into the pool of matrimonial assets. I arrived at this figure by taking 22/27 or 81% of the net value of \$3,099,864, with 22 being the number of years between the marriage and date of interim judgment and 27 being the number of years from the acquisition of Chapel Road to the date of the interim judgment.

Taman Midah

24 The Wife admitted that the mortgage of the Taman Midah property was only fully redeemed in 2012 and that payments towards the acquisition of the property were made during the marriage. No evidence was presented to the court on how much was paid before the marriage. The value of this asset is rather small, relative to some of the other assets and to the total pool. This is particularly as the Wife only owned a half share in the property. It is thus not

surprising that the Wife did not push the argument that it was a pre-marriage asset to be excluded from the pool. For these reasons, I included Taman Midah into the pool of assets and used the value of \$280,000 after considering the parties' submissions on its value.

3 Mayfield and Country Heights

25 The Husband does not dispute that 3 Mayfield Avenue and Country Heights were matrimonial assets but submitted that the proceeds from the sale of these properties have already been accounted for. He submitted that the sale proceeds were deposited into his UOB account, which balance is already included in the pool of matrimonial assets. I accept the Husband's argument that if the sale proceeds can be satisfactorily accounted for, such as having been used for family expenses or used to pay towards another matrimonial asset, then the properties should not be added into the pool as standalone matrimonial assets. As I accepted the Husband's explanation that the sale proceeds from the sale of these properties have been deposited into his bank account, I did not include the sale proceeds of these properties as separate items in Group A, for to do so would be double-counting the assets. I address the issue of whether the sale proceeds have been accounted for below.

Group B—Other assets agreed to be matrimonial assets and with agreed values

26 The parties submitted the following table which sets out the list of undisputed matrimonial assets with agreed values:

Asset	Held by	Gross Value	Net Value
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Casuarina Cove Apartment	Joint (50% tenants-in-common)	\$1,750,000.00	-
Tuscany Apartment	Joint	\$217,955.30 \$268,260.22	-
RHB Bank Accounts	Joint	\$80,549.17	-
Various Bank Accounts	H	\$1,551,936.70	-\$363,848.61 (After deduction of UOB Current (Overdraft) Account No. XXX-XXX-427-5 in the sum of \$1,915,785.31)
Various Bank Accounts	W	\$35,353.92	-
Shareholdings	H	\$90,524.40	-
Shareholdings	W	\$39,640.97	-
50% holding in Ringgit Astana Sdn Bhd	W (investment by H and W)	-	-
CPF Monies	H	\$22,530.14	-
CPF Monies	W	\$49,129.71	-
Mercedes Benz (2010)	W	\$140,000.00	\$120,000 (After deducting outstanding hire purchase of \$20,000)

Singapore Swimming Club Membership	H	\$12,000.00 \$24,000.00	-
Tanglin Club Membership	H	\$50,000.00	-

27 The parties agreed that the assets in Group B are matrimonial assets. They have also agreed on the valuation of each asset in this category. I accept the parties' submissions on both the nature of these assets as matrimonial assets and their respective valuations.

Group C—Disputed assets with regard to status as matrimonial assets and values.

28 The parties submitted the following table setting out assets disputed to be matrimonial assets or have disputed values, or both:

Asset	Held by	H's Value		W's Value	
		Gross	Net	Gross	Net
Aston Martin (2011)	H	\$172,149.00	-	\$350,000.00 – \$400,000.00	-
Range Rover Evoque (2013)	H	\$59,188.00	- \$67,529.60 (After deducting outstanding hire purchase of \$126,717.60)	\$210,000.00	\$83,282.40
773,994 shares in Rajas Investment Pte Ltd – approximately 81% share of the company's total shareholding	H	NIL	-	\$773,994.00 (at nominal value of \$1 per share)	-
Total:		\$231,337.00	\$104,619.40	\$1,333,994.00	\$1,207,276.40

			– \$1,383,994.00	– \$1,257,276.40
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29 I did not think it appropriate to use the Open Market Value figures for the two cars. The Aston Martin may have a somewhat niche market, but short of a more specific valuation of this particular car, I adopt a broad brush approach and attributed a reasonable value to it, bearing in mind the value of depreciation for a car of this nature. Similarly, a reasonable value is attributed to the Range Rover after taking into account the value of depreciation over the years.

30 I do not accept the Husband's contention that the Rajas Investment shares (the "Shares") have no value. In the Husband's first Affidavit of Assets and Means, he stated that the Shares have "NIL" value and in his seventh Affidavit of Assets and Means, he claimed that no accounts have been prepared by this limited exempt private company and that he did not receive any remuneration from the company. The Husband also argued that the company was incorporated in 1982, long before the marriage. It thus appears that the Husband is not denying the existence of these Shares but disputes that any value should be ascribed to them. However, the Husband did not offer a fuller explanation or any evidence on why the Shares should be given a "NIL" value. The fact that the Husband does not receive dividends from these shares does not necessarily mean that they do not have any value. With little evidence on a reflective value, I accept the Wife's submission of a par value of \$1 per share. Accepting the Husband's submission that the Shares were acquired before marriage in 1982, I include only a proportion of their value into the pool using the broad brush approach. I have added \$532,120 by taking 22/32 or 68.75% of the net value of the shares (\$773,994), with 22 being the number of years from the time of the marriage to date of the interim judgment and 32

being the number of years from the date the shares were acquired to the date of the interim judgment.

Finding on the total pool of matrimonial assets

31 The total net value of the assets in Groups A, B and C which I have determined to be in the pool of matrimonial assets is \$15,528,767. The net value of the pool of matrimonial assets, after deduction of all liabilities, is \$14,402,758. The following tables set this out:

Table of Group A assets (Court's determination):

S/N	Asset	Held By	Value	
			Gross	Net
1.	1C Mayfield Avenue	H	\$11,500,000.00	\$10,000,598.97
2.	20 Chapel Road	H	\$3,300,000.00	\$2,510,889 (81% of \$3,099,864.48)
3.	Taman Midah	W (50%)	\$280,000.00	\$140,000.00 (50%)

Total for Group A (Net)	\$12,651,487.97
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Table of Group B assets (Court's determination):

S/N	Asset	Held By	Value
1.	Casuarina Cove Apartment	Joint (50% tenants-in-common)	\$1,750,000
2.	Tuscany Apartment	Joint	\$240,000
3.	RHB Bank Accounts	Joint	\$80,549
4.	Various Bank Accounts	H	(-\$363,848)
5.	Various Bank Accounts	W	\$35,353
6.	Shareholdings	H	\$90,524
7.	Shareholdings	W	\$39,640
8.	CPF Monies	H	\$22,530
9.	CPF Monies	W	\$49,129
10.	Mercedes Benz	W	\$120,000

	(2010)		
11.	Singapore Swimming Club Membership	H	\$18,000
12.	Tanglin Club Membership	H	\$50,000
Total for Group B (Net):			\$2,131,877

Table of Group C assets (Court's determination):

S/N	Asset	Held By	Value
1.	Aston Martin (2011)	H	\$220,000
2.	Range Rover Evoque (2013)	H	\$ 120,000 (-\$126,717.60) = (-\$6717.60)
3.	773,994 shares in Rajas Investment Pte Ltd – approximately 81% share of the company's total	H	\$532,120 (68.75% of \$773,994).

	shareholding		
Total for Group C (Net):			\$745,402.40

The total net value of assets in Groups A, B and C is \$15,528,767 (dropping the cents). The total sum of the liabilities not taken into account within the individual asset values in Groups A, B and C is \$1,126,009. Taking into account the agreed value of liabilities, the total net value of matrimonial assets is \$14,402,758.

Parties' contributions

Direct contributions

32 The parties agreed that it was the Husband who was the sole breadwinner and he provided the funds for the acquisition of the matrimonial assets. This is not surprising as it was clear that in this marriage, the Husband took on the role of breadwinner and the Wife took on the role of homemaker. The ratio of direct contributions by the Wife and the Husband is 0:100 in favour of the Husband.

Indirect contributions

33 Both parties disputed the extent of indirect contributions made by the other during the course of the marriage. The Wife submitted that her indirect contributions were substantial and came largely from her support for her Husband in his career in various ways, such as hosting parties for his clients and colleagues. She also supervised the domestic helpers in the running of the household and drove the Husband to work. She claimed that her role as a supportive wife and hostess was one that her Husband wanted her to take on.

Given that she contributed as much as she could in this role, she submitted that she should not be penalised in this aspect for not having had the opportunity to raise children in the marriage.

34 The Wife raised the matter of the Husband’s conduct which was found by the District Judge in the divorce proceedings to constitute unreasonable behaviour within the meaning of s 95(3)(b) of the WC. Section 95 of the WC provides for a “neutral” ground of divorce: the irretrievable breakdown of the marriage. However, this ground must be proved by one of the five facts in s 95(3) of the WC, three of which are fault-based facts, i.e. ss 95(3)(a), 95(3)(b) and 95(3)(c). The current law is thus a compromise between the “fault theory” and the modern “irretrievable breakdown of marriage” theory (see Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2nd Ed, 2013) at p 156). In *JBB v JBA* [2015] 5 SLR 153, I observed (at [15] and [18]):

The notion of “no-fault” divorce was first introduced with the amendment to the Women’s Charter in 1980, and has since been repeatedly affirmed by our courts. ... Given this regime, neither party is treated as being the one at fault in the breakdown of the marriage ...

...

The “no-fault” divorce regime recognises that the breakdown of a marriage is a complicated matter and may be attributed to far more reasons than what can be set out in court documents. It is also undesirable to attribute fault to a party, as it can increase acrimony and resentment in the post-divorce family which requires cooperative parenting for the children of the marriage ...

35 While evidence of unreasonable behaviour may go towards assisting the court in obtaining a perspective on how each party might have contributed or not contributed to the marriage, a caution is pertinent here: the old fault-based regime ought not to find its way back into the law when the court

considers the parties' indirect contribution within the structured approach in *ANJ v ANK* ([4] *supra*). While, as noted above, the current divorce regime is not completely free from fault-related proceedings, amplifying fault and misconduct in substantive ancillary matters does not sit well with the intention of Parliament to adopt the "no fault" regime to minimise acrimony and support the harmonious resolution of family disputes. Having said this, I take into account all relevant circumstances for a holistic view of what each party's indirect contributions are.

36 On the facts of the present case, the non-financial contributions of the Wife in supporting the Husband both at home and in his career over the course of this marriage ought to be sufficiently recognised. The Husband also contributed financially in providing for the parties' expenses and needs. His financial provision of very comfortable lifestyles enjoyed by both parties ought to be sufficiently recognised as his indirect contribution to the marriage. These parties were once in an intact, functioning relationship; they chose to marry each other, for better or for worse. They did not have children, but they had each other in their lives. The mutual emotional support each gave the other in the marriage cannot be measured in monetary terms. Section 112(2)(g) of the WC reminds the court and the lawyers that the assistance and support one party gives the other is very relevant. I determine the ratio for indirect contributions to be 65% to the Wife and 35% to the Husband.

Just and equitable division

37 Applying the structured approach in *ANJ v ANK* ([4] *supra*), I derived an average ratio of 32.5:67.5 in favour of the Husband, as shown in this table:

	Wife	Husband
A. Direct Contributions	0%	100%
B. Indirect Contributions	65%	35%
C. Average Ratio	32.5%	67.5%

38 I then adjusted the average ratio to a final one of 35:65 in favour of the Husband. I explain the reason for this adjustment at [44] to [47] below.

Adverse inferences

39 Both parties submitted that an adverse inference should be drawn against the other. The law imposes on parties a duty of full and frank disclosure of their assets, the breach of which entitles the court to draw inferences adverse to the party in breach. Upon drawing an adverse inference, the court may ascribe a value to what it considers to be “undisclosed assets” or to give a higher percentage of the disclosed assets to the other party. In order for an adverse inference to be drawn, it must be demonstrated that there is a substratum of evidence that establishes a *prima facie* case against the person against whom the inference is to be drawn, and that person must have had some particular access to the information he is said to be hiding: see *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 at [28] and *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 at [62]. In *AZZ v BAA* [2016] SGHC 44 it was further held that a *prima facie* case of concealment ought to be shown (at [107]).

40 The Wife relied on various reasons why the court should draw an adverse inference against the Husband. These reasons include, among other things, that the Husband failed to account for the change in his financial position and diminution of matrimonial assets between 2011 and 2015, that the Husband failed to account for the proceeds from the sale of 3 Mayfield and Country Heights, that the Husband failed to account for his business interests in Indonesia, that the Husband was obstructive during the discovery process and that the Husband misrepresented his true current financial position.

41 I note from the outset that the Husband did not deny that there was a change in his financial position and diminution of matrimonial assets between 2010 and 2015. He also did not deny that the proceeds from the sale of two matrimonial assets, namely, 3 Mayfield Avenue and Country Heights, were deposited into his bank account. In fact, he explained that the \$3.37m from the sale of 3 Mayfield Avenue had been deposited into his bank account by way of three cheques on 22 November 2010 and also admitted that the sum of \$790,579.36 paid into the same bank account on 11 October 2010 “could very well represent the relevant sale proceeds” from the sale of Country Heights. The issue thus turns on whether the Husband could account for the depletion of the assets, including the sale proceeds, between 2010 and 2015.

42 On the whole, I find that the Husband did not actively withhold information from the court or wilfully conceal his assets. The Husband submitted details on the expenses incurred during the relevant time period. These include significant monthly personal expenses, hefty renovation costs, the purchase of an Aston Martin car, and various bank loans and payments. The Wife accepted that a portion of the assets depleted could indeed be explained by the costs of renovating 1C Mayfield, the purchase of the Aston Martin car, the payment towards discharging an earlier bank loan as well as

payment of interest for an overdraft bank account. The Husband also responded to the Wife's requests for information and exhibited, among other things, monthly bank statements from various banks for the period between 2010 to 2015, statements for loans, account statements for his SGX account and even statements for transactions made in Malaysia in support of his statement of expenditure. I therefore decline to draw an adverse inference against the Husband.

43 The Husband has also submitted that an adverse inference ought to be drawn against the Wife. I find that there is insufficient evidence to justify the drawing of an adverse inference against the Wife.

Adjustment to the average ratio

44 I did however think that it was just and equitable to adjust the average ratio in favour of the wife. To explain why, I make two observations. First, I note that the Husband's claimed monthly expenses of \$52,684.85 is relatively high. I appreciate that the Husband may incur higher medical expenses given his prevailing medical conditions that may worsen with age. Nevertheless, given the large amount, it is more likely than not that some of his estimates were exaggerated. It is also true that the Husband did not adduce documentary proof of all sums making up his expenses between 2010 and 2015. I accept though, that it is quite a mammoth task to produce every receipt over the years.

45 Second, the Husband submitted that an additional \$1.5m loss resulted from a depreciation of his investments over the years. Other than a table at Annex 4 of his Written Submissions on Adverse Inference for Ancillary Hearing Matters exhibiting the change in investment amounts over the

relevant period, the Husband did not offer any other evidence to support this claim. There are a number of factors which can lead to an increase or decrease in the value of investments, and the Husband failed to prove that the decrease in the overall investment amount in his accounts was due to a depreciation of its value and not for other reasons. Moreover, the funds referred to in the Husband's evidence included bank deposit balances which increased and decreased over time without any indication of where they were moved to or how they were used up. As such, I do not accept that the whole \$1.5m was lost through a depreciation of the Husband's assets over six years.

46 While it is true that the Husband was not able to adduce documentary proof of every transaction between 2010 and 2015, I accept that the parties to a functioning marriage do not keep records of their transactions with a view to building a case should a divorce occur. It is thus reasonable to expect gaps in the evidence, especially in the case of a long marriage, given that not every document will be archived.

47 Nevertheless, I find it just and equitable to adjust the average ratio in favour of the Wife to reflect the fact not every sum relating to the Husband's expenditure has been explained, due to exaggerated expenses or poor memory. I do so in exercise of my discretion under the structured approach to shift the average ratio in favour of one party to achieve a just result based on the specific facts: *ANJ v ANK* ([4] *supra*) at [27] to [28]. I also bear in mind the controlling principle that the court must approach the division exercise with broad strokes based on its feel of what is just and equitable on the facts of the case: *ANJ v ANK* at [30]. As I am unable to put a specific number to the amounts that may not have been fully accounted for, I adopt a broad brush approach to round up the average ratio of the wife's share of the assets from 32.5% to 35% to reflect my considerations here. I also considered the ratio

arrived at in the case of *Chen Siew Hwee v Low Kee Guan (Wong Yong Yee, co-respondent)* [2006] 4 SLR(R) 605 as a ballpark indication of the ultimate division proportions for a marriage of this length and where parties had no children to the marriage.

Maintenance

48 In the present case, a crucial factor is the Wife's financial position after receiving her share of the matrimonial assets under the division order above. With her 35% share of the matrimonial assets amounting to \$5m, she should be able to purchase a home for herself and still have substantial assets remaining. If she manages the remaining assets well, they should also generate reasonable yields for her future maintenance. Furthermore, I have also considered the circumstances of the Husband under s 113 of the WC. It is pertinent that the Husband is over 71 years old and has health issues.

49 As such, I ordered that there shall be no maintenance for the Wife.

Conclusion

50 For the above reasons, I made the following orders:

- (a) The pool of matrimonial assets comprises the assets set out at para 31 and is assessed at a net value of \$14,402,758.
- (b) The matrimonial assets shall be divided in the proportion of 65% to the Husband and 35% to the Wife.
- (c) There shall be no maintenance awarded to the Wife.

- (d) The parties shall bear their own costs in respect of the Ancillary Matters proceedings.
- (e) Costs in respect of the divorce proceedings shall be heard and determined by the District Judge who presided over the divorce proceedings.

Debbie Ong
Judicial Commissioner

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Singapore LLP) for the plaintiff;
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