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TLB

v

TLC

[2016] SGHCF 3

High Court — District Court Appeal from the Family Courts No 54 of 2015
Foo Tuat Yien JC
14, 21 August; 21 September; 19 November 2015

Family law — Matrimonial assets — Division

4 March 2016

Foo Tuat Yien JC:

Introduction

1 The present appeal arose out of a decision of a District Judge on ancillary matters wherein the District Judge had made the following orders: (a) the wife would receive 20% of the net value of the matrimonial flat; (b) the parties were to retain all other assets in his or her own name; and (c) the husband shall pay to the wife \$800 per month as reasonable maintenance for the only child of the marriage and the husband shall pay, directly to the tuition centre, for the child's Chinese tuition as part of the child's maintenance.

2 The wife appealed against that decision and, on 21 August 2015, I allowed the wife's appeal in part, varying the order for division of the matrimonial flat such that the wife would receive 45% of the net sale proceeds.

I also ordered that with respect to maintenance for the child, the Chinese tuition lessons to be paid by the husband should be increased from six sessions a month to two sessions per week. I upheld the District Judge's decision to allow the parties to retain their assets in their own respective names.

3 The husband subsequently filed a summons for leave to appeal against my decision (*ie*, Summons No 411 of 2015) – the only point which he appealed against was the division of the matrimonial flat. I granted leave for that purpose on 19 November 2015 so that the Court of Appeal would have occasion to decide whether the approach applied in the present case was in line with the recent decision of *ANJ v ANK* [2015] 4 SLR 1043. I therefore set out my detailed grounds of decision with respect to the division of the matrimonial flat.

Background facts

The parties

4 The parties married in Singapore on 30 March 2002 and they have a 9 year old daughter. On 5 October 2011, the wife, with the daughter, left the matrimonial flat. The husband initiated divorce on 15 May 2013. Interim judgment (“IJ”) for divorce was granted on 17 December 2013 on the ground of each party's unreasonable behaviour. Up to the date of IJ, this was a marriage of over 11 years. As at the time of the hearing in 2015, the marriage would have lasted for approximately 13 years.

5 The husband, 43 years old, was working as a trainer at a well-known training company. He declared earnings comprising a fixed monthly salary of \$500 with income from commissions and allowances based on training hours.

In 2013, he earned \$59,648.19 or about \$6,000 per month.¹ The wife alleged that this was a great reduction compared to his earnings in previous years from 2007 to 2011.

6 The wife, 42 years old, is sole shareholder and director of her own interior design business. She is an Indonesian citizen and Singapore permanent resident.² She declared income of \$5,000 per month with a monthly take home amount of about \$4,000. The husband contended that the wife earned more than she had declared as she had also received the business profits.

Division of matrimonial assets ordered by the District Judge

7 The parties owned only one joint asset, which is the matrimonial flat. The District Judge's approach, after considering all relevant factors and the case in totality, was to divide only the matrimonial flat and not to include assets in each party's own name in the pool for division.³

8 On 4 February 2015, the learned District Judge ordered that parties were: a) each to retain assets in their own names; and b) upon sale of the matrimonial flat within six months of final judgment, to divide the net sales proceeds (less mortgage redemption and costs and expenses of sale) for the husband to receive

¹ RA 281 Vol 2(I) – Form IRA 8A submitted by Husband. RA 37 to 39 Vol 2(I) – Husband's Notices of Assessment of Income Tax for Years of Assessment 2011 to 2013 show declared income from employment as \$74,776, \$102,634 and \$70,018 respectively.

² RA 16 Vol 1 – The marriage certificate shows that she was a permanent resident at the time of marriage.

³ Paragraph 23 of District Judge's Grounds of Decision dated 25 May 2015.

80% and for the wife to receive 20%, with each party to refund therefrom all monies due to the Central Provident Fund Board (CPF Board).

9 In arriving at her decision, the District Judge had considered the following: a) that the husband's depletion of a sum of \$150,000 from the net sales proceeds of the parties' previous matrimonial home to a sum of \$14,624.38 was a "mystery" as he had not accounted satisfactorily for this;⁴ and b) that there was difficulty in determining the value of the wife's assets, which included a house in Indonesia and income from the wife's business clients in Indonesia.

10 The husband was represented at the divorce ancillary matters hearing. On 11 February 2015, he obtained final judgment. The wife acted in person both at the hearing and when filing her Notice of Appeal (*ie*, 7 April 2015). She did not apply to stay execution of the 4 February 2015 order. She subsequently engaged counsel to represent her on appeal and notice of this appointment was given on 24 June 2015. The husband was, on appeal, represented by counsel from a different law firm as his previous counsel had left practice.

11 On 21 August 2015, when I gave my decision, counsel informed me that the matrimonial flat had already been sold with the net sales proceeds distributed as per the 4 February 2015 order. I was later informed that completion of the matrimonial flat had been effected on 28 May 2015 pursuant to an option for purchase granted on 17 March 2015.

⁴ Paragraphs 9 and 17 of Grounds of Decision.

My decision

12 I left undisturbed the District Judge's order for each party to retain assets in their own names. As noted above (at [2]), I varied the order for the net sales proceeds of the matrimonial flat to be divided in the ratio of 55:45 in favour of the husband. As the net sales proceeds had already been distributed in the ratio of 80:20 in favour of the husband, I directed him to pay an additional 25% of the net sales proceeds to the wife.

13 As was done by the District Judge, I did not ascribe a value to the wife's house in Indonesia to be added to the matrimonial pool. I adopted the same approach when dealing with the net sales proceeds of the previous matrimonial flat. As detailed later, these, as well as other factors, were considered in the round such that I did not deem it necessary to make any additions to the matrimonial pool for division.

14 The husband, by a subsequent letter of 1 September 2015 from his counsel, argued that the 21 August 2015 order was not workable as he did not have cash to pay the additional 25% of the net sales proceeds to the wife as he only had \$71,712.80 left (after buying a 3-room HDB flat, spending on a holiday to Thailand, paying car accident excess, repaying \$15,000 loan to his parents, etc) with anticipated further expenses of \$25,000 on renovation and furnishings for his new flat. I found no merit in this submission. The husband knew of the wife's appeal filed on 7 April 2015 before completion of the sale of the matrimonial flat on 28 May 2015.

15 I proceed now to detail the methodology which I utilised in arriving at my computation. In the light of the recent authority of *ANJ v ANK*, I will explain my methodology with reference to the framework that was expounded in that decision. In *ANJ v ANK*, the Court of Appeal elaborated upon a three-step

process which should be utilised. First, the court should ascribe a ratio representing each party's respective direct contributions towards the acquisition and/or improvement of the matrimonial assets. Secondly, the court will ascribe a second ratio to represent each party's respective indirect contribution to the well-being of the family. An average will then be reached based on both these ratios. Thirdly, if there are compelling reasons to do so, further adjustments may need to be made to the parties' average percentage contributions (see *ANJ v ANK* at [22] and [36]).

Step 1: Ascertaining the direct contributions of the parties

16 I first computed the value of all the assets which formed part of the matrimonial pool.

Value of the matrimonial flat

17 The parties' only joint asset was the matrimonial flat. I adopted the District Judge's findings that: a) the net equity of the matrimonial flat was \$505,591.65; b) the husband's direct financial contribution towards the matrimonial flat (through use of his CPF funds) was \$224,055; c) the wife's contribution (through use of her CPF funds) was \$7,000; and d) the husband's alleged \$39,000 cash contribution was not to be counted as this could have come from the sales proceeds of the parties' previous matrimonial flat in Depot Road. The ratio of parties' direct financial contribution to the matrimonial flat was therefore 97:3.

Assets in the parties' sole names

18 The assets in each of their sole names were as follows:

(a) **The husband's assets** were valued at \$221,941. This figure included the amount of \$148,362.25 in the husband's CPF account. Although the District Judge had used a different figure of \$18,234.48 for his CPF funds, I was of the view that this figure was not correct.⁵ The figure of \$221,941, which I took into account, did not include the value of some shares as the husband did not give the value of these shares.

(b) **The wife's assets** were valued at \$2,666. Her declared assets consist of: (i) combined balance of \$666 in her two bank accounts; (ii) CPF funds of over \$2,000 (not including withdrawal for the matrimonial flat); and (iii) debts of over \$20,000. Her CPF statement for 2013, dated 11 March 2014, showed no recent CPF contributions into her CPF account. The wife averred that she expended her assets during the period after October 2011, when she left the matrimonial flat. I would add that the issue of whether the wife's business was a matrimonial asset was not raised by either party and there is no evidence on valuation.

19 In summary, the total value of the parties' assets is as depicted in the following table:

Description of Asset	Value
Matrimonial Flat (Net Equity)	\$505,591.65
Assets in husband's sole name	\$221, 941
Assets in wife's sole name	\$2,666

⁵ Husband had declared the following: Shares valued at \$15,579.50, excluding the Sunray shares (value not provided), CPF funds of \$148,362.25, bank account balances of about \$21,089.74, surrender value of insurance policies of \$38,887.62. H's declared debts of \$15,000 due to his parents were not taken into account.

Total	\$730,198.65
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20 The parties' respective direct financial contribution is reflected in the table below:

Description of Asset	Husband's contribution	Wife's contribution
Matrimonial Flat	\$244,055	\$7,000
Husband's Assets	\$221,941	Nil
Wife's Assets	Nil	\$2,666
Total Value	\$465,996	\$9,666
Overall Ratio	98%	2%

21 As I was minded to only divide the matrimonial flat and have the parties hold the other assets in their own names, I utilised the ratio of the direct financial contributions to the matrimonial flat at this stage of the analysis, which was that of 97:3 (see above at [17]). This is not to say that I did not take into account the value of the other assets in arriving at my eventual decision. It did not escape my attention that the relative values of the assets in each party's name still had to be taken into account and should not be excluded from the computation as that might prejudice the fair and equitable division (see *NK v NL* [2007] 3 SLR(R) 743 at [38]–[40]). As will be elaborated upon below, I took into account the value of the other assets at Step 3 of the analysis (see below at [40]).

Undeclared assets

22 Before I proceed to detail the parties' indirect contributions, it would be apposite for me to comment on the unsatisfactory manner in which both parties declared their respective assets. As will be elaborated upon below, their inadequacies in this respect had a bearing on how I eventually chose to apportion the assets.

Husband's accounting for the \$197,490 of the net sales proceeds of the previous matrimonial flat

23 The District Judge had voiced her misgivings on the husband's inability to account for the "mystery of the remaining leftover funds from the sales proceeds of the parties' previous matrimonial flat"⁶ amounting to some \$150,000 as he had managed the \$197,493.87 net sales proceeds. This mystery remained unsolved at the hearing before me. Although I accepted that some monies could have been used for the purchase of the matrimonial flat and for parties' rental expenses and utilities before they moved into the matrimonial flat, this did not account for the entirety of the "missing" sales proceeds.

24 The husband's case was that he had set aside \$150,000 for investment, which he deposited in May 2008, into his Philips Futures Account. He arranged for a Taiwanese trader (whom he did not name) to manage and trade the funds on a profit sharing basis. The \$150,000 was increased to \$200,000 on 17 September 2008, when the husband deposited another \$50,000 which was attributed to initial profits. The husband's explanation that all these monies (less \$14,624.83) were lost through trades was unsatisfactory and not substantiated.

⁶ Paragraph 17 of Grounds of Decision.

25 Although the husband tendered a table which supposedly evidenced transactions that were made between him and the trader,⁷ I doubted the veracity of the account given in this table. According to the husband, the table showed transaction amounts deposited into his personal POSB bank account, from which he made withdrawals to pay the trader's profit share and administrative charges. However, in one case in August/September 2008, the amount allegedly paid to the trader was disproportionately high relative to the amount deposited into the husband's account. Similarly, in October 2008, the amount allegedly transferred for the trader's share of the profits and administrative expenses was more than the amount deposited into the husband's POSB bank account.

26 The husband sought to further corroborate his account of events by producing an email dated 10 April 2014 for his Philips Futures account (sent 4.5 years after the last 2009 deposit into his bank account). However, this email gave information only on amounts withdrawn and topped up and with no information on account movements, balances and position statements at relevant times. The email also mentioned a last trade on 21 May 2009, for which the husband did not account.⁸ The husband had therefore simply asserted, without more, that losses from October 2008 reduced the \$200,000 balance to only \$14,624.83, which was then depleted through another withdrawal on his part and by his payment of the wife's credit card expenses. The husband did not tender any other evidence of dealings with or transfer of funds to the trader.

27 The husband's account was not credible. Even acknowledging that there was, in late 2008, uncertain and difficult financial times, he had failed to account

⁷ RA 206 Vol 2(I).

⁸ RA 238 to 247 Vol 2(I).

for the \$200,000. He is an informed investor who was described in his employer's advertisements as a self-directed investor with over ten years of experience in value investing in local and overseas markets. As a trainer at an established training company, he had mentored over a thousand individuals in personal financial management, fundamental analysis and building a solid foundation in investment and was the key trainer of investing programmes for aspiring investors.⁹ His Central Depository Payment (Pte) Ltd statements, as at end December 2013, showed that he had eight securities trading accounts (with internet access since June 2006) with four different security firms.¹⁰

28 I noted that the District Judge attributed the \$14,624.83 balance as part of the husband's assets in his sole name thus showing that she similarly did not accept his evidence that part of this balance was used to pay the wife's credit card debts.

Husband's declared income and other assets

29 Although the husband stated that in November 2012, he was diagnosed with spinal degeneration of the spinal bone rendering him unable to stand or work for long hours and hence his income had fallen since 2013¹¹, I noted from his POSB account statements in 2013 (for March to July 2013) that there were movements of fairly substantial funds in relation to shares ranging from deposits of over \$9,000 each and \$16,000, and withdrawals of over \$12,000 each.¹² This suggested that the husband could have had assets or income from shares trades.

⁹ RA 74 and RA 138 Vol 2(II) – Wife's 3rd affidavit of assets and means.

¹⁰ RA 58 Vol 2(I) – Husband's 1st affidavit of assets and means.

¹¹ RA 10 and 75 Vol 2(I) – Husband's 1st affidavit of assets and means.

¹² RA 79 to 84 Vol 2(I) – Husband's 1st affidavit of assets and means.

Wife's property in Jakarta, Indonesia

30 The District Judge found that it was not clear if the wife owns a property in Jakarta and if so, the value.¹³ I found that the wife is the beneficial owner of a property in Jakarta, where her family stays. Her account was that she initially wanted to buy a house from a personal friend, pegged at a friendly price of \$100,000, towards which she had paid \$9,000. There was no proper paper work. She did minor renovations (about \$20,000) before the daughter was born in 2006. As her \$9,000 payment was less than the rental income that her friend could have made in the last 8 years, her share of the house would have been very small. As she was now struggling with money, she intended to return the house to her friend, once she returned to Jakarta and after finding rental accommodation.¹⁴ The wife had, in effect, admitted that she owns the house beneficially (albeit without legal title). Information on the value of the house was not provided. This house, acquired during the marriage, was therefore a matrimonial asset.

Wife's business and income

31 The husband alleged that the wife rendered high end interior design services to rich Indonesian clients and that she had undisclosed funds in Indonesia. The wife's UOB bank account statements sent to the matrimonial flat, before she left in October 2011, showed cheque payments, fund transfers and cash deposits of more than \$76,604.41 from 31 July 2011 to 31 Oct 2011.¹⁵

¹³ Paragraph 18 of Grounds of Decision.

¹⁴ RA 58 Vol 2(II) – Wife's 2nd affidavit of assets and means.

¹⁵ RA 274 and 301 to 317 Vol 2(I) – Husband's 3rd affidavit of assets and means.

32 The District Judge found that it was clear that the wife ran a viable business that included services rendered to overseas clients. The wife admitted that most of her clients were overseas. She explained that out of the \$76,604.41 deposit in her personal account (referred to in the previous paragraph), the actual total revenue was only \$69,428. Out of that amount, \$3,600 was spent on company expenses whilst contractor and supplier payments accounted for \$38,038. This left her with approximately \$27,700 as profit. In her line of work, she would, on request by clients, agree to act as middleman and distribute payments for them to save them costs from multiple international wire transfers to contractors and fabricators. Her clients felt safer dealing with her as they did not have a personal relationship with these tradespeople.¹⁶ This explanation seemed reasonable and valid.

33 Apart from exhibiting the Report and Financial Statements as at November 2007, the profit and loss statements as at November 2008, 2009 and 2010 (the latter, which showed jobs in Singapore), the wife did not provide information on her projects in Indonesia.¹⁷ The wife's explanation in this aspect was not satisfactory and had to be viewed with some circumspection. I accepted that there could be some under-declaration of income. It is likely that the wife would have had bank accounts in Indonesia or possibly other bank accounts in Singapore other than her declared bank accounts. She had only shown evidence, without more, of a US dollar account, that was closed on 17 January 2014.¹⁸

¹⁶ RA 8 to 10 Vol 2(II) – Wife's 3rd affidavit of assets and means.

¹⁷ RA 100 to 119 Vol 2(II) – Wife's 3rd affidavit of assets and means.

¹⁸ RA 53 Vol 2(II) – Wife's 2nd affidavit of assets and means.

34 In the wife's 1st affidavit of assets and means of 12 March 2014, she had said that in the long run, she would prefer to move to Jakarta with the daughter, for whom she had been able to secure a place at the ACS International School. This option suggested that her business in Indonesia was sufficiently established to support the move.

Other miscellaneous assets of the parties

35 The husband has a car in Singapore and the wife has a car in Indonesia. The residual value of the Singapore car is about \$10,000. No value was given for the car in Indonesia. I did not take the car values into account as they could offset each other.

36 In the light of the above, I found that the husband had not been forthright in accounting for the use of the \$200,000 and in disclosing his income and assets. The wife had also not been forthright in disclosing her assets, including her house in Indonesia, and her income. These findings affected my eventual decision on the apportionment of the matrimonial flat, as will be seen below.

Step 2: Ascertaining the indirect contribution of the parties and averaging the two ratios

37 Both parties contributed indirectly to the marriage in their own way. I agreed with the District Judge that it is likely that the husband had contributed more in indirect financial contribution towards upkeep of the family and the matrimonial flat. The wife's greater flexibility in working from home on her business (set up in 2002), albeit that she would also go to Indonesia, would mean greater contribution on her part in the non-financial areas on the home front and in the care and development of their daughter, more so after October 2011, when

parties lived separately. I noted the finding of the District Judge on each party's indirect contribution in paragraphs 14 to 16 of her Grounds of Decision.

38 I attributed a ratio of 25:75 as between the husband and wife respectively for their indirect contributions to the matrimonial flat. I reached the above ratio on the basis of several facts. The wife was the main caregiver for their daughter and carried out her business from home albeit with some overseas travel to Indonesia. Whatever the reason for the wife's departure from the matrimonial home in October 2011, there was no denying that she continued then with the care of their daughter, for whom she has care and control. This was consistent with the District Judge's finding that the bulk of the direct and indirect financial contribution to the marriage came from the husband. The District Judge found the wife to be a dedicated mother, who took good care of the daughter and was clearly the main caregiver. For the daughter's sake, the wife had attended Montessori classes and had even tried to learn Chinese to coach her daughter; she taught the daughter to read and write; she accompanied the daughter for her classes; and she designed and built the daughter's giant play pen with the list going on. After she left the matrimonial home in October 2011, she became the daughter's main emotional support. The District Judge also found that in other aspects, the wife had contributed towards the aesthetics and comforts of the home, turning the home into a place more comfortable than a "5-star hotel."

39 On the basis of equal weight being attached to the direct and indirect contributions to the matrimonial flat (the direct contribution to the matrimonial flat being in the ratio of 97:3 as noted above at [17]), this yielded an overall ratio of 61:39 with respect to the matrimonial flat.

Step 3: Adjustment to percentage contributions

40 As alluded to earlier, at this stage of the analysis, I took into account the fact that the parties were to hold their respective assets in their own names and that the husband had a far greater amount of assets being held in his name as compared to the wife. I also took into consideration the relative strength of the adverse inferences to be drawn against both the husband and wife for their respective under-declaration of assets. I also considered that the husband had enjoyed a period of rent-free occupation of the matrimonial flat since October 2011 (*ie*, after the wife's departure) and that he had received rental income of \$16,000 for the matrimonial flat during the period of February to November 2013.¹⁹ In the circumstances, I saw fit to round up the wife's share in the matrimonial flat such that she would receive 45% of the net sale proceeds.

41 As is evident from the above analysis, I took into account only the direct and indirect contributions to the matrimonial flat at Step 1 and 2 of the computation process before considering the rest of the assets to make the necessary adjustment at Step 3. For the sake of clarity, I would add that if I had considered the rest of the assets with the matrimonial flat at the first two steps of the analysis instead of at the final step, I would have arrived at the same ratio for the division of the matrimonial flat (*ie*, 55:45 in favour of the husband).

42 If I had considered the matrimonial pool as a whole, I would have attributed an indirect contribution ratio of 60:40 in favour of the wife. Based on the direct contribution ratio of 98:2, in favour of the husband, to the entirety of the matrimonial pool (see above at [20]), this would have yielded an overall split of 69:31 for the matrimonial pool. That would mean that the wife would

¹⁹ Paragraph 21 of Grounds of Decision

have been entitled to \$226,361 (*ie*, 31% of the total assets valued at \$730,198). Since I was minded to allow parties to retain the assets in their respective names, I would have deducted the sum of \$2,666 (*ie*, the value of the wife's declared assets) to reach a figure of \$223,695. This figure would amount to 44% of the matrimonial flat which was valued at \$505,591. In those circumstances, I would have had no qualms rounding up the wife's share in the matrimonial flat to 45% as I was of the view that this percentage reflected a just and equitable division of the matrimonial flat.

Conclusion

43 Based on the above reasoning, I made the following orders:

- (a) the division of the net sale proceeds of the matrimonial flat should be varied from 80:20 to 55:45; and
- (b) the District Judge's order for each party to retain assets in their own name should be upheld.

44 I gave no order as to costs since, as noted above at [2], I had only allowed the appeal against the District Judge's decision in part.

Foo Tuat Yien
Judicial Commissioner

D Rani (instructed) and Alagappan S/O Arunasalam
(A Alagappan Law Corporation) for the appellant/wife;

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Aye Cheng Shone (M/s A C Shone & Co) for the respondent/
husband