

ANX v ANY
[2014] SGHC 248

Case Number : Divorce Transfer No 5662 of 2011
Decision Date : 25 November 2014
Tribunal/Court : High Court
Coram : Tan Siong Thye J
Counsel Name(s) : Andrew Hanam (Andrew LLC) for the plaintiff; Tan Anamah Nee Nagalingam and Faiza Imran (Ann Tan & Associates) for the defendant.
Parties : ANX — ANY

Family law – Matrimonial assets – Division

25 November 2014

Judgment reserved.

Tan Siong Thye J:

Introduction

1 The plaintiff-husband (“the husband”) and the defendant-wife (“the wife”) had a short marriage of about seven years. They have no children from this marriage. In this application, they seek for a just and equitable division of their matrimonial assets.

2 Central to this dispute is the status and scope of a Deed of Separation (“DOS”) entered into between the husband and the wife. The husband argues that the Deed of Separation should not be given effect to under s 112 of the Women’s Charter (Cap 353, 2009 Rev Ed) (“the WC”) as he had not entered into it willingly. [\[note: 1\]](#) However, the wife alleges that the DOS is an amicable settlement between her and her husband without undue influence operating on the latter. Therefore it should be enforced by the courts. [\[note: 2\]](#) Alternatively, if the court is not with her, she seeks an equal division of the matrimonial assets and maintenance for herself and her son from her previous marriage.

The facts

3 The husband is a 63 year old Singaporean. [\[note: 3\]](#) He is a hospitality manager drawing a gross monthly salary of \$14,280.94. He was previously divorced twice and has three daughters from his former marriage. Currently, he has terminal prostate cancer.

4 The wife is 40 years old. She is currently a revenue director at a large company drawing a gross monthly salary of \$6,750. [\[note: 4\]](#) She came from the People’s Republic of China and became a Singapore citizen in October 2012. [\[note: 5\]](#) She was divorced once and has a son from her previous marriage.

5 The husband and wife met through an online dating website. They were married on 25 March 2004. [\[note: 6\]](#)

6 From 2004 to 2007, the parties lived together with the wife’s son in an Ang Mo Kio Housing

Development Board ("HDB") flat. The husband's three daughters would sometimes go over during his access hours with them. The flat was fully paid up and was originally in the husband's sole name. Sometime in 2007 he included the wife as a joint tenant. In 2007, the flat was sold for \$258,000 and the proceeds, *inter alia*, were used to purchase a condominium apartment ("Aston Mansion") for \$450,000. [\[note: 7\]](#)

7 Aston Mansion was registered in the wife's sole name. This was because the husband had promised the wife a property upon marriage. He also did not want his ex-wives to claim against the property.

8 By October 2010, the parties' marriage started to break down. The wife alleged that this was due to major differences between the husband and herself. On the other hand, the husband attributed the breakdown to the wife's adulterous behaviour for which she was unrepentant. [\[note: 8\]](#) The parties decided to part ways amicably and the DOS was signed between them on 13 January 2011.

9 I shall first set out the DOS's terms which are undisputed before setting out the parties' positions on how the DOS was entered into. The material terms of the DOS read as follows: [\[note: 9\]](#)

(4) There is a matrimonial property known as XXXXXX Aston Mansions, Singapore XXXXXX (hereinafter "matrimonial property") where parties have separate bedrooms.

...

1. In pursuance of the said agreement and in consideration of the premises the husband and wife mutually covenant and agree with each other as follows:

...

(ii) During the said separation, the husband shall be entitled to the use of and shall reside in the matrimonial property until such time he is able to buy another property of his own and until the wife has paid the husband \$250,000.00 as his share of the said matrimonial property.

2. In and until 2nd January in the year 2014, the husband or the wife shall be at liberty to file a divorce suit on the ground of three (3) and the Defendant in the divorce suit shall consent to the granting of an interim and a final judgment if the divorce is based on three (3) years separation. The husband and the wife shall bear the costs of the divorce proceedings equally.

3. The wife shall not claim any maintenance from the husband.

The husband alleges that he entered into the DOS unwillingly and therefore the DOS should not be given effect to. The wife, on the other hand, submits that the DOS was amicably entered into and thus should be enforceable. [\[note: 10\]](#) Alternatively, she seeks a 50% share of the matrimonial assets and lump sum maintenance for herself and her son. [\[note: 11\]](#)

The issues

10 It is undisputed that the division of matrimonial assets is governed by s 112 of the WC. The key issue is whether the court should treat the DOS as binding. If it is, does it apply to all matrimonial

assets or just to the Aston Mansion? This has a significant bearing on the quantum of assets that either party will get.

The Deed of Separation

The husband's case

The Court should not give effect to the DOS

11 The husband's position is that the court should give no weight to the DOS and should divide the matrimonial assets according to the well-established principles of asset division under the WC. He relies on Belinda Ang Saw Ean J's judgment in *Wong Kien Keong v Khoo Hoon Eng* [2014] 1 SLR 1342 ("*Wong Kien Keong*") at [18] and [31] that:

... [T]he court has the overriding power to scrutinise the terms of both prenuptial and postnuptial agreements (including deeds of separation) and will do so in accordance with the principles of justice, fairness and equity to both parties ...

...

How much weight the court accords to a marital agreement depends on the division under the agreement as well as the facts of the case, which means that not only the terms but also the parties' conduct surrounding the making and the execution of the agreement would be scrutinised. In addition, the court will look at the marital agreement in light of the other factors set out in section 112(2). ...

12 Furthermore, in *AQS v AQR* [2012] SGCA 3, Chao Hick Tin JA noted at [35] that the parties' agreement made in contemplation of divorce could not be decisive. The husband submits that the DOS should not be given weight because: [\[note: 12\]](#)

(a) The wife had threatened him to find a lawyer to handle the drafting, failing which she would get her own lawyer to draft the DOS to her advantage.

(b) The wife came up with the \$250,000 figure to be paid to the husband.

(c) The first draft of the DOS contained several clauses conferring benefits on the husband which had been removed, showing that he had been manipulated by the wife. The clauses that were removed are as follows:

(i) That the husband be allowed to reside at Aston Mansion indefinitely until it was sold. [\[note: 13\]](#)

(ii) The provision for a refund of the husband's CPF money including accrued interest in the event of a sale. [\[note: 14\]](#)

(iii) That neither the husband nor the wife could bring any person of the opposite gender back to Aston Mansion (this was an attempt by the husband to win back the wife). [\[note: 15\]](#)

Additionally, the husband alleges that the wife had "mentally overpower[ed]" him such that he had to move out of Aston Mansion prematurely in breach of cl 1(ii) of the DOS. [\[note: 16\]](#)

13 The husband also alleges that he was not legally advised as to his rights to a just and equitable division of the matrimonial assets. Therefore he erroneously believed that he had no rights to the matrimonial property. He tried to distinguish this case from *Surindar Singh s/o Jaswant Singh v Sita Jaswant Kaur* [2014] 3 SLR 1284 ("*Surindar*") in which the Court of Appeal upheld the deed of separation of the spouses who separately had independent legal advice and had entered into the settlement agreement pursuant to a mediation session. In this case, the husband alleged that he had not signed the DOS willingly. He signed it as the wife had threatened and pestered him. [\[note: 17\]](#) Therefore the court should not place any weight on the DOS. Instead the court should decide the matter afresh, considering other factors under s 112(2) of the WC. [\[note: 18\]](#)

The court should divide the matrimonial assets with regard to the s 112(2) WC factors

14 Since the husband argues that the DOS should not be given weight, the division of matrimonial assets should take on a broad-brush basis (see *NI v NJ* [2007] 1 SLR(R) 75 ("*NI v NJ*") pursuant to the factors listed in s 112(2) of the WC. This includes taking into consideration the extent of the direct and indirect contributions of the parties. [\[note: 19\]](#) In this analysis, the court should also consider that the marriage was a short one with no children. Since the law typically awards a low quantum of the matrimonial assets to a childless homemaker wife, the wife should only receive: [\[note: 20\]](#)

- (a) 5% of the net proceeds of sale from Aston Mansion; and
- (b) 10% (amounting to \$114,216.91) of the other matrimonial assets.

The husband also wants the wife to repay him \$335,918.96 out of \$490,385.87 worth of the matrimonial assets.

The wife's case

The Court should enforce the DOS

15 The wife submits that the husband had entered into the DOS amicably. He wanted to avoid acrimony as he had already been divorced twice and did not want to waste money on protracted legal proceedings. Therefore they met twice weekly over the past few months to discuss the division of the matrimonial assets. Eventually, they reached a mutual agreement. [\[note: 21\]](#)

16 The DOS was arrived at as the husband had said that he needed money to purchase a HDB flat on his own. Hence, the wife agreed to pay him \$250,000, being his share of the matrimonial flat. [\[note: 22\]](#) This sum also accounted for the amount of maintenance which the husband had to pay the wife and the son. Therefore, they agreed that no maintenance was to be paid by the husband to either the wife or the son.

17 With respect to their other assets, namely about \$200,000 worth of shares purchased by the wife using pooled monies and the husband's accumulated savings since 2008, the parties agreed to keep them in their separate names in the interests of reaching an amicable settlement. [\[note: 23\]](#)

18 The wife submits that the DOS should be enforced as:

- (a) the DOS was drafted by the husband's lawyer, Mr Kang Kim Yang ("Mr Kang"), and while

the wife had no legal representation, she had acted in good faith throughout the process of preparing the DOS and accepted that the DOS was accurate; [\[note: 24\]](#)

(b) it has always been the husband's intention that Aston Mansion belonged to the wife; [\[note: 25\]](#) and

(c) the husband had not been forthcoming with his asset disclosure and three rounds of discovery and interrogatories were needed to reveal information regarding the husband's assets. Therefore an adverse inference should be made against the husband in respect of an unaccounted sum of \$422,000. [\[note: 26\]](#)

In summary, the wife argues that, under the DOS, she would receive only 41% of the total matrimonial assets including her retention of the assets in her sole name plus her claim for lump sum maintenance in lieu of monthly maintenance payments. [\[note: 27\]](#) This is a fair and equitable division under s 112 of the WC.

Alternatively, the court should order an equal division of matrimonial assets with lump sum maintenance paid to the wife

19 Alternatively, the wife submits that the matrimonial assets should be equally divided between the husband and her if the DOS was not upheld. While typically homemaker wives without children in the marriage get 10% or less of the matrimonial assets, she should get more than 10% of the matrimonial assets.

20 With respect to maintenance, the wife submits that because of her care and support to the husband he was able to obtain a higher paying job earning about \$13,000 a month in 2005. He also gave her a monthly allowance of \$2,000 and paid for all her credit card bills.

21 The wife submits that if the court does not uphold the DOS, she should be awarded maintenance of \$2,000 per month. This was her lifestyle before the marriage broke down. She asks for a lump sum maintenance order of \$840,000 [$\$2,000 \times 12 \text{ months} \times 35 \text{ years}$] as the husband has the means to pay for it. This would allow them to have a clean break from each other.

Finding 1: The Deed of Separation is binding

22 The key features in this case are similar to *Surindar*. Although the DOS in this instance was not a mediated agreement, it was an agreement carefully entered into between the parties after a considerable period of negotiation that lasted nearly three months. Both parties entered into the agreement with their eyes wide open. Indeed, that appears to be the touchstone by which the court decides to grant conclusive weight to agreements between the parties. Therefore a review of *Surindar* is helpful.

A review of Surindar

23 In *Surindar*, the parties had been married since 1972 and agreed to resolve the ancillary matters through mediation. They appointed Mr Amolat Singh ("Mr Singh"), a senior lawyer, as the mediator. At the mediation, both parties were represented by counsel (at [6]). Having mediated for an entire day, Mr Singh drafted the settlement agreement which was signed by both parties. The intention was to enforce the settlement agreement through a consent order by the court (at [2]). The wife later refused to comply with her obligations under the settlement agreement and the issue

was whether the settlement agreement bound both parties.

24 First, the Court of Appeal distinguished between two types of postnuptial agreements. The first category is when the husband and wife are still together and they intend to remain together while the second type is when the parties have separated or are intending to separate. The latter would typically carry significant weight (at [52]):

... A separation agreement is made when the marriage has failed and when the parties have either gone their separate ways or are proposing to do so. The separation agreement is meant to cater to the immediate needs and desires of the parties, instead of some future possibility of breakup which the couple neither want nor expect to happen. *Therefore, as a general proposition, where the parties enter into a separation agreement, especially after divorce or separation proceedings have already commenced, such a separation agreement, will, in our view, generally carry significant weight.* ... [emphasis added]

25 Second, the Court of Appeal held that the settlement agreement was to be given binding effect as it was akin to a separation agreement. It was arrived at after a well-considered process and after the parties had been through the process dealing with ancillary matters. The settlement agreement had been (at [59]) arrived at: (a) after a mediation session from 10am to 5pm with many private sessions between the parties and the mediator; (b) after both parties had been represented and advised by counsel; (c) after the parties had the opportunity to make amendments to the agreement; and (d) where the wife's lawyer had confirmed the wife's assent to the concluded agreement. Furthermore, the Court of Appeal noted (at [65]) that:

The Settlement Agreement was, more likely than not, an accurate estimation of what the parties thought was just and equitable in view of their various direct and indirect contributions and the assets which each of them had. In situations such as this where the finances of the parties are intertwined, as they often are in a marriage, the parties are in a better position to decide on what is a just and equitable division of the matrimonial assets, based on facts which in truth only they are really privy to. We note further that there were other assets in each party's sole ownership which were to be kept by him/her and were not affected by the Settlement Agreement. ...

26 It is undisputed that the court retains a general discretion to ensure that the asset division is *ultimately* a fair and equitable one. However where parties have entered into an agreement after a negotiated process which shows that they were aware of what they were getting into, it is my view that it is only fair and just for them to be held to their negotiated bargain. That appears to have been the court's *overriding* consideration in giving conclusive effect to the settlement agreement in *Surindar*. The observations of Ang J in *Wong Kien Keong* at [31] are also trite:

How much weight the court accords to a marital agreement depends on the division under the agreement as well as the facts of the case, which means that not only the terms but also the parties' conduct surrounding the making and the execution of the agreement would be scrutinised. ...

Did the husband sign the DOS willingly?

27 In this case I am satisfied that the DOS entered into between the husband and the wife should be given binding effect. The husband's main contention is that he had entered into the DOS unwillingly and had been coerced by his wife to remove several clauses which he thought were favourable to him. However his interpretation of the facts is not borne out by the documentary

evidence.

28 First, I note that it was the husband who was advised by Mr Kang, his lawyer. It was him who engaged his lawyer to draft the DOS. [\[note: 28\]](#) Despite his access to Mr Kang, it is Mr Kang's evidence that the husband had not sought legal advice in relation to his Aston Mansion entitlement. [\[note: 29\]](#) If it is true that the husband was operating under the impression that he was helpless due to the wife's threats, pestering and sole ownership of Aston Mansion, he should have sought legal advice from Mr Kang whose advice was readily available to him. This was not the case.

29 Second, the husband had sent an email to Mr Kang, specifically telling him the following: [\[note: 30\]](#)

Hi [Mr Kang],

I discussed with my wife ... and agreed on the following terms for the separate deed:

1. She will pay me \$250,000 in cash to purchase my flat
2. She will not claim any alimony or maintenance from me

...

30 On reading the email, there is no hint that the husband was coerced into entering the DOS as he claimed. He could not have entered into the DOS unwillingly as he had discussed the matter with the wife. My finding is also supported by other contemporaneous documents in which the husband referred to discussions with his wife. [\[note: 31\]](#) Thus it is my view that the husband had entered into the DOS willingly after extensive discussions with his wife and after he had access to his lawyer.

31 Third, the deletion of the clauses which were allegedly in the wife's favour was most likely made after discussions with the wife. The circumstantial evidence in which the parties operated seemed to point in that direction as (a) the husband had requested that deletions to the DOS be made against the advice of Mr Kang; and (b) he had stated that the deletions were to be made after discussions with the wife. Mr Kang's email is set out as follows: [\[note: 32\]](#)

See attachment for the revised draft Deed of Separation.

Note that I have considered what you said regarding clause (4) under "Whereas", but I recommend that you stick to it instead of deleting it as it is a relevant and material fact that you paid for the purchase of the matrimonial property. It will also explain why there is a need for her to pay you \$250,000.00.

...

32 The above email was followed by a reply from the husband: [\[note: 33\]](#)

Dear Mr Kang,

My wife and I looked over the new draft and have the following comments:

1. Clause (4) under "whereas"...we want it deleted. I have the trust in her that when she said

she'll pay me the \$250k for me to buy a flat she would. *I know that in a typical divorce, there is a lot of acrimony in the process and each party tries thru (sic) legal means to extract the most from or give the least to the other party. This is not the case for us.*

...

[emphasis added]

Therefore on the evidence it is likely that the deletions were made after the husband had discussed them with the wife.

33 Fourth, I see an imbalance of power in terms of legal knowledge in favour of the husband as he had access to his lawyer. He was the one who gave instructions to his lawyer. There is no evidence to suggest that the wife also engaged or spoke to Mr Kang. In fact, it was the wife who did not have access to legal advice or information when she willingly entered into the DOS.

34 The husband should also be familiar with the division of matrimonial assets under the WC as this was not his first divorce. He had gone through two previous divorces. Thus he was no stranger with the issues that arose from a divorce including the division of matrimonial assets and maintenance. On the other hand the wife had a previous divorce which was presumably in China. Thus she may not be familiar with the WC's division of matrimonial assets. Ironically, the husband is now invoking the court's processes to allow him to retract from a legally binding agreement which he now alleges was entered into unwillingly.

35 Fifth, the negotiations between the husband and wife took place over a considerable period of several weeks. From the husband's email correspondence with his lawyer, it seems that his instructions to his lawyer started in November 2010 and culminated in the signing of the DOS in the lawyer's office on 13 January 2011. Therefore there were ample opportunities for the parties to seriously consider the terms of the DOS. There were several drafts of the DOS as the husband gave instructions to his lawyer to make the changes before the final draft on 13 January 2013.

36 Sixth, the contemporaneous documents, namely the email exchanges between the husband and his lawyer on the drafting of the DOS did not suggest or indicate that the husband might have been under the control, influence or threat of the wife which resulted in him being forced to agree to the DOS.

37 Seventh, the parties regarded the DOS as binding. One of its terms allows the husband to reside at Aston Mansion until he bought his own property and also after the wife paid him \$250,000 as his share of the matrimonial home. However, in March 2011, the parties decided that it was not convenient for them to reside in the same premises. Thus, notwithstanding the above term, the husband agreed to move out of the flat on condition that the wife gave him \$5,000 which was equivalent to two months' rental. The wife paid this sum to the husband.

38 Eighth, in May 2011, the wife acted on the DOS and paid the husband \$250,000. \$50,000 was from her DBS Bank Account. She took a loan of \$200,000 from RHB Bank to pay the husband for him to buy a 3-room HDB flat. If the husband was coerced into entering the DOS, why did he accept those payments under the DOS? Therefore on the evidence that is before me, I find that the parties are bound by the terms of the DOS.

What is the real reason for the husband to void the DOS?

39 In my view, it is probable that the husband wanted to back out from the DOS which he had willingly entered into because of the recent property boom which caused property prices to escalate to dizzying heights. As a result, the Aston Mansion which had been purchased at \$450,000 was eventually sold by the wife in June 2013 for \$1,034,000, *ie*, more than double the original purchase price. On hindsight, the husband probably thought that he had entered into a bad bargain under the DOS's terms. However, this cannot be a good reason for setting aside a legitimate and enforceable agreement that he had willingly entered into.

40 In my view, there is no indication that the DOS was not a fair and equitable agreement at the time when it was entered into. The parties were also happy with the DOS, otherwise they would not have signed it and carried out its terms. It would be unfair and inequitable for the husband to now turn around to void the DOS when he had initially benefited from the DOS. The wife, on the other hand, had acted on the DOS to her detriment as she had to take out a loan of \$200,000 to pay the husband. Hence, it is my view that the DOS must be given binding effect.

Finding 2: The Deed of Separation covered only the Aston Mansion and maintenance

41 The DOS deals primarily with the division of the Aston Mansion and states that the wife will not claim any maintenance from the husband. However, it is silent on issues relating to the other matrimonial assets such as the parties' bank accounts, insurance, *etc*. The wife submits that the parties intended for each party to retain his or her other assets in the spirit of amity (see [15] above). The husband on the other hand argues that the DOS does not deal with the other matrimonial assets as it was not mentioned in the DOS.

42 The DOS is silent on the other matrimonial assets besides Aston Mansion. The negotiations between the parties also failed to reveal that the parties intended to include their other matrimonial assets in the DOS. In fact, the correspondence between Mr Kang and the husband specifically referred solely to the Aston Mansion and the issue of maintenance. The wife had admitted in her own affidavit that the DOS was just limited to the Aston Mansion and maintenance: [\[note: 34\]](#)

We agreed to divorce so as to move on with our lives and not to fight over money. *As such, the parties agreed that the [Aston Mansion] would be divided equally and that I would purchase the [husband's] 50% share of the [Aston Mansion]. The [husband] agreed that I would only pay him the sum of S\$250,000.00.* The difference between the real value of the [husband's] 50% share of the [Aston Mansion] and the cash I would pay him would constitute the maintenance portion that the [husband] would pay me. In return, I agreed not to ask for any maintenance for myself and my son.

[emphasis added]

43 Hence, I am of the view that the DOS does not cover the rest of the matrimonial assets. I turn now to address the division of the other assets.

Finding 3: The wife is entitled to 8% of the rest of the matrimonial assets

44 Since the DOS makes no mention of the other matrimonial assets, s 112 of the WC will apply. The decision of *Surindar* in which the division of the matrimonial asset was fully resolved by the settlement agreement cannot be followed as the deed of separation in that case deals comprehensively with all matrimonial assets of the parties.

Which assets fell within the pool of matrimonial assets?

45 There was some dispute as to which assets came within the pool of assets to be divided. The relevant provision on what constitutes matrimonial assets is s 112(10) of the WC and it reads as follows:

(10) In this section, “matrimonial asset” means —

(a) (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; or

(ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and

(c) (b) any other asset of any nature acquired during the marriage by the other party or by both parties to the marriage,

but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

46 Having considered the evidence, my view is that the asset pool comprises the following:

The assets in the husband's name	Value
Two insurance policies [note: 35]	\$60,758.25
CPF accounts [note: 36]	\$263,157.70
Supplementary Retirement Savings account [note: 37]	\$56,780.00
Cash in bank accounts [note: 38]	\$274,217.40
SGX Security Account [note: 39]	\$619.50
Total assets owned by husband	\$655,232.85
The assets in the wife's name	Value
Two insurance policies [note: 40]	\$14,137.52
CPF accounts [note: 41]	\$85,761.42
Cash in bank accounts [note: 42]	\$23,831.74
Cash in joint bank account with son	\$45,686.00
Shares [note: 43]	\$28,055.19
Total assets owned by wife [note: 44]	\$197,471.87

Total assets of both parties	\$852,704.72
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The insurance policies taken out in the names of the stepchildren

47 The wife submits that the husband did not include six insurance policies worth a total of \$30,715.32. [\[note: 45\]](#) This was a flawed submission. The evidence showed that the six insurance policies were entered into before the parties were married and were for the benefit of the husband's three daughters from his previous marriage. Therefore, they do not fall within the pool of matrimonial assets.

The investment sum of \$200,000

48 Next, the husband submits that the wife did not disclose \$200,000 which he had given her to invest. However he did not provide any documentary evidence to support his allegation. Indeed, the wife's affidavit reads as follows: [\[note: 46\]](#)

108. I do not remember the [husband] giving me S\$200,000.00. If so, I ask for the [husband] to furnish documentary proof to show that he did indeed give me the sum of S\$200,000.00.

109. We did however agree to pool our money together, the sum of which I could not remember, and we decided to invest in shares for better returns. Thus, from 2008 onwards, we had invested in some shares of which he had full knowledge but because of the economic downturn and financial crisis, heavy losses were incurred. The balance was what was declared in my 1st affidavit. However, this was all taken into account when the [husband] and I planned and signed the Deed of Separation.

49 In her affidavit dated 29 January 2014, the wife explained the circumstances behind their collective investment: [\[note: 47\]](#)

12. Sometime in **late 2007 and early 2008**, whilst the [husband] and I were still married and after we had bought Aston Mansion ... the [husband] decided that he would start to save his (sizeable) income for his retirement after paying off his living expenses every month. He also decided to use part of our savings worth about S\$200K for investment purposes in order to improve the family's finances.

13. As I was then starting to work as a part time financial consultant, which saves us on transaction costs, and because I have a background in finance knowledge, I helped my then husband ... to oversee and manage a portfolio of investment using part of his savings (around the beginning of 2008- more than 4 years before our divorce in 2012).

14. Thus, for large parts of our marriage, I not only took care of my son and the [husband], who was then already diagnosed with cancer in 2002, and tended to everything in our household, but also contributed in time and effort in the stock markets in order to improve our matrimonial assets/wealth.

15. I was given free reins to decide what shares or stocks to invest in and the volume to buy and sell and I essentially saw to the daily movements and exchanges of activities in the stock markets. Before making any significant purchase or sale of shares, I would consult the [husband] and the [husband] was always aware of the shares/stocks performances. Both of us were very

open about the investments and we discussed about them regularly.

[emphasis in original]

50 The wife also stated in the same affidavit that under the DOS, the husband had surrendered all his claims to the shares held in her name as they had agreed that she would keep what was remaining of the investment held in her name and he would keep all of his savings and assets held in his name.

[\[note: 48\]](#) I disagree. The DOS makes no mention of the husband or the wife surrendering their claims to the investments held in the wife's name or the savings and assets held in the husband's name. All that was mentioned was the Aston Mansion and the issue of maintenance. If the parties had indeed intended to retain their other respective matrimonial assets this would be reflected in the DOS which had gone through several drafts. They did not, and I find that, on a balance of probabilities, the wife's assertion was unlikely to be true.

51 I also note that the wife said that she could not remember the sum that they had collectively invested. From the evidence, it is more likely that both the husband and the wife *collectively* invested \$200,000 initially. This is borne out by two statements in the wife's affidavits which appear to suggest that was indeed the case. The statements are set out as follows: [\[note: 49\]](#)

From the wife's affidavit dated 8 November 2012

109. We did however agree to pool our money together, the sum of which I could not remember ...

113. When the [husband] and I started to invest the \$200,000 in shares in 2008 ...

From the wife's affidavit dated 29 January 2014

12. ... [The husband] also decided to use part of our savings worth about S\$200K for investment purposes in order to improve the family's finances.

[emphasis added in italics]

52 Finally, what happened to the investments made? It is undisputed that significant losses were made and the husband puts the residual figure at about \$60,000. This appears to tally with the wife's evidence. The wife's first affidavit shows that she owned shares worth \$26,576.71 (as of 10 September 2012). That shareholding had risen to \$28,055.19 as of 27 November 2013. The wife states in another affidavit that besides those shares, she had liquidated another \$32,386.11 worth of shares in or about August 2012 to pay for her legal fees. [\[note: 50\]](#) In total, the sum adds up to about \$60,000, which is the figure provided by the husband. This sum has already been accounted for in the table at [43] above.

The wife's joint bank account with her son

53 Third, the husband submits that the wife has a joint account with her son. That account contains \$45,686 as of February 2011 and the wife has neither denied its existence nor disclosed it – hence she must be presumed to have the joint account with more than \$45,000 in it.

54 In his affidavit, the husband based his claim on a table (presumably created by the wife) listing out all the wife's assets. In that table, there is a column that states "Joint account with [the son] –

\$45,686". [\[note: 51\]](#) However, no evidence was provided by the wife in relation to this asset in her reply affidavits. In the circumstances, I find that it is more probable that the joint account exists and I account for this in the matrimonial asset pool.

The rental income from the Aston Mansion

55 Finally, the husband submits that rental income from the Aston Mansion amounted to \$93,600 and should fall within the pool of matrimonial assets. This sum was for the period between June 2011 to July 2013. I reject his submission as the DOS was signed on 13 January 2011 and he had agreed that the Aston Mansion would belong to the wife fully in return for her paying \$250,000 for his share of the property. [\[note: 52\]](#) The wife paid him \$50,000 on 15 May 2011 and raised another \$200,000 via a bank loan to pay him. [\[note: 53\]](#)

56 Given my ruling that the DOS is binding, the wife is the full legal owner of the Aston Mansion as of June 2011. The rental income from the Aston Mansion thus fully accrued to her henceforth and the sum of \$93,600 did not fall within the pool of matrimonial assets to be divided.

How should the asset pool be divided?

57 Sections 112(1) and (2) of the WC prescribe the just and equitable principle which is foundational to the division of matrimonial assets:

112.—(1) The court shall have power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable.

(2) It shall be the duty of the court in deciding whether to exercise its powers under subsection (1) and, if so, in what manner, to have regard to all the circumstances of the case, including the following matters:

- (a) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the matrimonial assets;
- (b) any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage;
- (c) the needs of the children (if any) of the marriage;
- (d) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party;
- (e) any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce;
- (f) any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;
- (g) the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in

the carrying on of his or her occupation or business; and

(h) the matters referred to in section 114(1) so far as they are relevant.

The broad brush approach

58 It is trite that the court should adopt a broad-brush approach in the division of matrimonial assets. In *NI v NJ*, V K Rajah J held at [18] that:

The division of matrimonial assets is a subject to be approached with a certain latitude; it calls for the application of sound discretion rather than a purely rigid or mathematical formula. All relevant circumstances should be assessed objectively and holistically. Generally speaking, however, when a marriage ends a wife is entitled to an equitable share of the assets she has helped to acquire directly or indirectly.

59 It is pertinent to set out the characteristics of the marriage for the purpose of dividing the other matrimonial asset of the parties. This was a marriage of about seven years. However I disagree with the parties when they characterised the marriage first as one in which the wife was a homemaker and second as a childless one.

60 First, the wife was not a homemaker. In *Matrimonial Asset Division*, it is clear that the author's classification was based on whether the wife was a *full-time homemaker* or was not one. Similarly, the cases which were classified as "Marriage under 10 years – Working couple with children", viz *TV v TW* [2007] SGHC 113, *ALJ v ALK* [2010] SGHC 255 and *YG v YH* [2008] SGHC 166 show that all the wives were working *to some extent*, even if their financial earning power was far less than the husband. Given that the wife was working for four years out of a seven year marriage, it is my view that the wife would be more appropriately treated as a working mother with a child in a short marriage of under 10 years and not a homemaker (see para 94 of *Matrimonial Asset Division*).

61 Second, the parties also made submissions on the common basis that the marriage was a childless one. This is erroneous as the wife has a child from her previous marriage and he stayed with them. The child thus fell within the definition of s 92 of the WC, which sets out the definition of a "child of the marriage" as follows:

"child of the marriage" means any child of the husband and wife, and includes any adopted child and *any other child (whether or not a child of the husband or of the wife) who was a member of the family of the husband and wife at the time when they ceased to live together* or at the time immediately preceding the institution of the proceedings, whichever first occurred; and for the purposes of this definition, the parties to a purported marriage that is void shall be deemed to be husband and wife

[emphasis added]

62 In accordance with s 92, the marriage was not a childless one and when I consider the division of the other matrimonial assets of the parties, I have to be mindful that this was a short marriage involving a working mother with a child. Having said the above, the final analysis is premised upon the *extent* of the parties' direct and indirect contributions and the cases merely serve as guidelines in what is an *intensely* factual analysis.

63 Moving on, *Matrimonial Asset Division* comments at para 94 that:

Marriage under 10 years

The “ordinary” working mother

94. The “markup” for an “ordinary” working mother in a short marriage seems to be very low indeed:

(i) In the case of *TV v TW*, supra, the wife in a 4 year marriage with 3 young children contributed to 50% of the family expenses, working as a music teacher. The husband had a “chequered employment history” (per Woo Bih Li J, at para. 41). The court added up the assets in each party’s name to see by how much the husband’s exceeded the wife’s, and gave the wife a portion of the excess because of her greater non-financial contribution. The wife received 15% of the sale proceeds of one property, when her contribution was 4.3%, and 12% of husband’s CPF monies which were in excess of hers. The low award could be partly because the wife had a share in a property in Australia and also one in Singapore purchased before marriage, which were not up for division.

(ii) In *ALJ v ALK* [2010] SGHC 255, the wife in a 3 year marriage with 2 young children received 8% of the matrimonial assets (consisting of the husband’s savings of US\$45,000 over 3 years of marriage). The wife worked as a property agent during the marriage, but did not contribute anything to the matrimonial assets. ...

(iii) In *YG v YH*, supra, the wife in an 8 year marriage was awarded 55% of the pool of matrimonial assets. The court found the wife’s direct financial contributions to be 54%, her indirect financial contributions to be 25%, and her indirect non-financial contributions to be 65%. It appears that the court more or less followed the parties’ direct financial contributions in making the award.

64 Having reviewed the authorities, the author concludes at para 102 that “it appears that the key purpose for the division of matrimonial assets is to reward parties for their contributions during the marriage and to ensure that indirect contributions are appropriately recognised”. This is in-line with the position of *In the marriage of Shewring* (1987) 12 Fam LR 139 at 141 (see Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2nd Ed, 2013) at pp 626–629).

The parties’ submissions

65 The wife submits that the matrimonial assets should be equally divided between the husband and her if the DOS is not upheld. [\[note: 54\]](#) This is because their background circumstances support such a ruling:

(a) She had left China for Singapore once before but her husband, told her he was not ready to marry her. That caused her great humiliation and difficulty. It was only in 2003 that the husband begged her for a second chance that she eventually married him in 2004. [\[note: 55\]](#)

(b) She had married the husband knowing that he had cancer and this would mean having to care for him as his condition deteriorated. She dutifully cared for the husband, managed the household and cared for his three daughters from his previous marriages whenever they came to visit him. [\[note: 56\]](#)

(c) She had been very supportive of his career and helped him whenever he dealt with the

Chinese counterparts. In particular, she had helped him prepare for his job interview such that his salary at his new job was double that of his previous job. [\[note: 57\]](#)

(d) Both parties had been through divorces prior to the current one and understood the importance of settling things amicably when they entered into the DOS. Therefore they had worked out what was fair and equitable and the case does not fall within the typical case of short marriages with a homemaker wife and no children. [\[note: 58\]](#)

66 The husband's position is easy to set out. He submits that the wife should be entitled to just 10% of the rest of the matrimonial assets and 5% of the Aston Mansion (see [12(b)] above). This was reduced to 5% of the total matrimonial assets in his further submissions. [\[note: 59\]](#)

My decision

67 Having heard the submissions, I am of the view that the wife should be entitled to 8% of the remaining pool of matrimonial assets.

68 First, I reject the wife's submission that she should get more than 10% of the rest of the matrimonial assets as the husband had hurt her badly when she initially came to Singapore to marry him and he was not prepared to (see [62(a)] above). The incident happened before and not during the marriage. This was also neither a direct financial contribution nor an indirect contribution that went towards benefitting the family unit.

69 Second, the wife also submits that she gave up a promising future in China to marry the husband. Again, I reject that submission. The wife might have made a decision to leave China and marry the husband, thus she gave up her job, left her parents and relocated her son. However, those were not indirect contributions to the household during the marriage. In any event, I find that her situation was not as dire as she had made it out to be. In the wife's affidavit, it appears that she was studying for a university degree from 2004 to 2006 on the advice of the husband. [\[note: 60\]](#) The relevant portion reads as follows: [\[note: 61\]](#)

91. The reason why I went for my university education was because the [husband] and I had discussed about our future and we agreed that for the security of our future, it was important to upgrade myself and obtain a degree qualification in which event I could come out to work and earn a living to support the family.

...

93. As I was a housewife serving the [husband], it was obvious that I did not have any money to pay for the education. *I had paid for the university education using the money I liquidated from the NTUC Income insurance accounts which the [husband] assigned to me in 2004. ...*

...

95. When I subsequently won a scholarship from Workforce Development Agency (WDA) through my own enterprise and labour, I paid for part of my own tuition fees for my Masters Degree. The tuition fee for my Masters degree was paid over 5 terms and the tuition fee for each term was \$2,400. 79% of the fees were sponsored by WDA. Of the remaining 21%, *which amounts to S[\$]12,000.00, the [husband] paid 3 out of the 5 instalments and I had paid the rest by myself.*

[emphasis added]

70 The wife did well enough to eventually earn a good salary. However, it was the husband that paid for her undergraduate degree (with NTUC insurance policies worth a total of \$46,130.15) and also part of her master's degree (\$7,200). It also appears that the wife's affidavit was very self-serving and did not account for the fact that she herself was interested in upgrading herself and finding new jobs. This is borne out from an excerpt from the husband's diary which reads: [\[note: 62\]](#)

Anyway I had already build (*sic*) up a plan to [bring] u back & marry u. I knew u value [education] & from ur job-searching experience in [Shanghai], u know how impt a degree was. I knew u felt very insecure in [Shanghai] & I promised myself that I'll give build up ur security for u, DD & ur mom.

1. Job Security

- U need that. Don't depend on a man no matter how rich he's. It's better to learn to fish than has someone feed u.
- If u have the qualification, experience & ability, u can get a job anytime, anywhere.

71 After her graduation, the wife started working. In her *curriculum vitae*, the wife stated that as of February 2007, she was an MAS Certified Financial Adviser Representative at a financial advisory firm. [\[note: 63\]](#) Currently, she works as a revenue director earning \$6,750 per month (see [3] above). In my view, she might have given up her prospects in China, left with her elderly husband and brought her young son to Singapore but she certainly did not lose her career or future prospects, which seemed to me to be brighter than if she had not left.

72 The husband and the wife disagree on the extent to which the wife made indirect contributions to the household. On the evidence, it seems more likely that the wife was the party responsible for maintaining the household, especially since there was no maid to assist. It is likely that she had provided *some* degree of support to the husband when he was in the process of getting his new job, managed the household and was the primary caregiver of her son as evidenced from an email dated 24 January 2011 which she sent prior to the marriage breaking down: [\[note: 64\]](#)

...

I am seriously looking for specialist to advise on marriage although I am not really want to divorce.

...

What happened is that the kid's problem affected our relationship. I understand how difficult a second marriage is. I understand the complexity and physiological factors among the marriage. However, I believe, Love could solve all the problems. That's why I come here.

What I did is I ask my 7 yrs old son to give way to his 13 yrs daughter. Share his thing with others but not to touch anything belongs to her. I've seen how frustrated he is just because his daughter cried. The other two daughters quite get along with my son. They are all adopted before the youngest was born. They are used to give way to the youngest one and endure her bad temper at mummy's [the husband's ex-wife's] house.

What confused me is whatever I tried to improve our relationship, he presents kind of offend, he can be very unreasonable angry for very small little things on me. He could ignore my son calling "daddy, daddy, daddy", no response. He could not talk to us during whole weekdays, but he show very much concern to his daughters during weekends. He still tell stories to the youngest ones. What he told me is that my son has a good mother, that's enough.

Can you believe that even he comes back before 8pm, but still I couldn't get the chance to talk to him?

Of cause, he brings us out and sometimes cooks for us while he has a good mood. I do remember how much good time we had before.

Sure, he never physically abuses us. But what he has done is very much hurt to us. I suggested him that we had some problem in communication which caused misunderstanding. I try to express that I am longing for a happy family life. However, it doesn't work.

...

His unusual behaviour raises up my worries. Can we still save our marriage? How to make him happy about marriage? What if he wants to devorce me? Does he have the responsible for rising up my son? If he moves out what legal response can I do to protect us? What if he sell his house (It's under his name) without inform me, what can I do? How will the court divide his wealth? I sold my house before come here and left the money for my mom. I don't have anything here. Do I have right to get any share of his wealth? Frankly, I am so tired to think about all of these questions. But I have to prepare for anything would happen to protect my son.

...

73 The tone of the email suggests that the wife was still clinging on to the hope of saving her marriage as of 24 January 2011. In that light, while the husband and the wife disagree on the extent to which the wife accommodated his three children from his ex-marriage and the role she played in getting his new job, I also find that the wife's case is more probable and it is likely that she had provided *some* degree of support to the husband when he was in the process of getting his new job, managed the household and was the primary caregiver of her son. Recognition should be given to those efforts.

74 In dividing the assets, I also bear in mind the large sums received by the wife from the husband during the course of their marriage and the fact that the husband's direct contribution to the matrimonial assets was far greater than the wife's direct contribution. I also note that she had obtained a sizeable chunk of the matrimonial assets as a result of the DOS. In this regard, *ACU v ACR* [2011] 1 SLR 1235 ("*ACU*") is helpful as it contains very similar facts to the case at hand.

75 That case concerned a marriage of seven years between a Singaporean male and a Chinese wife. Where matrimonial asset division was concerned, the wife's case was that she had been a housewife studying part-time while the husband worked full-time. The husband's case was that he had transferred significant sums of money to the wife's family in China and paid substantial amounts to finance her education. As there was cogent evidence from the husband evidencing the money transfers (at [67]), *Woo Bih Li J* held that the wife had received substantial monetary benefit from the marriage and spent a substantial amount of her time studying. She was not making a full-time contribution to the household and neither had she sacrificed her career for the household. In the circumstances, *Woo J* rejected her claim for 40% of the matrimonial flat. Instead, the flat was ordered

to be sold and she was awarded \$14,000 from the sale proceeds (at [70]).

76 The facts are similar here. Like the wife in *ACU*, it is apparent that the wife here had received significant amounts of assistance from the husband with respect to her education. For about three years of their marriage, the wife had spent significant time studying for her degree as a full-time student. Hence it is my view that while the wife might have made *some* indirect contributions to the household by caring for the husband, taking care of the household and being the primary caregiver for her son, it was not so substantial that she should be awarded half of the rest of the matrimonial assets as she had prayed for.

77 The wife in her submissions also urged the court to draw an adverse inference against the husband as he was not forthcoming in the discovery and interrogatories. She based it primarily on the cash balance that he should have had in his bank accounts and the income he earned. [\[note: 65\]](#) However as I find that (a) the husband had fully declared the balance in his bank accounts and (b) the wife's reliance on the husband's income level was only an "exemplary calculation to show to the Court that the [husband] has unaccounted monies", [\[note: 66\]](#) there is insufficient evidence to warrant the drawing of an adverse inference against the husband.

78 In the circumstances, I award the wife 8% of the rest of the matrimonial assets, which amounts to \$68,216.38. The sum is just and equitable in light of the substantial amount she had already obtained from the Aston Mansion sale and the financing of her tertiary education by the husband.

Conclusion

79 For the above reasons, I find that the husband had entered into the DOS willingly. He was certainly not coerced by the wife to sign the DOS in the presence of his lawyer and it is just and equitable to uphold the DOS. However, the DOS did not cover all their matrimonial assets and in granting the wife 8% of the rest of the matrimonial assets, I had regard to the binding DOS and the items it considered as one of the factors in determining what would be a just and equitable division.

[\[note: 1\]](#) NE 8/10/2014 at p 2.

[\[note: 2\]](#) NE 8/10/2014 at p 3.

[\[note: 3\]](#) Pf's bundle of affidavits for ancillary hearing (Part 1) ("PBOAH1") at Tab 1, p 1.

[\[note: 4\]](#) Pf's submission at para 2.

[\[note: 5\]](#) PBOAH1 at Tab 2, pp 1–2.

[\[note: 6\]](#) PBOAH1 at Tab 5, p 2.

[\[note: 7\]](#) PBOAH1 at Tab 5, p 10.

[\[note: 8\]](#) PBOAH1 at Tab 3, paras 10–11.

[\[note: 9\]](#) PBOAH1 at Tab 2, pp 35–36.

[\[note: 10\]](#) Df's written submissions at para 7.

[\[note: 11\]](#) Df's written submissions at para 8.

[\[note: 12\]](#) Pf's written submissions at para 22.

[\[note: 13\]](#) PBOAH1 at Tab 2, p 9.

[\[note: 14\]](#) PBOAH1 at Tab 2, p 10.

[\[note: 15\]](#) PBOAH1 at Tab 2, p 11.

[\[note: 16\]](#) Pf's written submissions at para 23.

[\[note: 17\]](#) Pf's written submissions at para 24.

[\[note: 18\]](#) Pf's written submissions at para 26.

[\[note: 19\]](#) Pf's written submissions at p 5.

[\[note: 20\]](#) Pf's written submissions at para 92.

[\[note: 21\]](#) Df's written submissions at para 12.

[\[note: 22\]](#) Df's written submissions at para 12.

[\[note: 23\]](#) Df's written submissions at para 12.

[\[note: 24\]](#) Df's written submissions at para 35b.

[\[note: 25\]](#) Df's written submissions at para 20.

[\[note: 26\]](#) Df's written submissions at para 35c.

[\[note: 27\]](#) Df's written submissions at para 33.

[\[note: 28\]](#) PBOAH1 at Tab 2, p 1, para 2.

[\[note: 29\]](#) PBOAH1 at Tab 2, p 2, para 5.

[\[note: 30\]](#) PBOAH1 at Tab 2, p 4.

[\[note: 31\]](#) PBOAH1 at Tab 2, p 23.

[\[note: 32\]](#) PBOAH1 at Tab 2, p 24.

[\[note: 33\]](#) PBOAH1 at Tab 2, p 23.

[\[note: 34\]](#) PBOAH1 at Tab 5, p 11.

[\[note: 35\]](#) Df's written submissions at p 14; pf's written submissions at p 30.

[\[note: 36\]](#) Df's written submissions at p 14; pf's written submissions at p 30.

[\[note: 37\]](#) Df's written submissions at p 15; pf's written submissions at p 30.

[\[note: 38\]](#) Pf's affidavit filed 4/6/2013 at pp 68 & 95; pf's affidavit filed 20/1/2014 at p 7; pf's affidavit filed 2/12/2013 at pp 73 & 114.

[\[note: 39\]](#) BOD at Tab 8 at p 4.

[\[note: 40\]](#) Df's written submissions at p 15; pf's written submissions at p 30.

[\[note: 41\]](#) BOD at Tab 10 at p 5.

[\[note: 42\]](#) BOD at Tab 10 at p 6.

[\[note: 43\]](#) Df's written submissions at p 15; pf's written submissions at p 30.

[\[note: 44\]](#) BOD at Tab 10 at p 6.

[\[note: 45\]](#) Df's written submissions at pp 17–18.

[\[note: 46\]](#) Defendant's Bundle of Affidavits ("Df's BOA") at Tab 5, paras 108–109.

[\[note: 47\]](#) BOD at Tab 7, p 4.

[\[note: 48\]](#) BOD at Tab 7, p 6.

[\[note: 49\]](#) Df's BOA at pp 331–332; BOD at Tab 7, p 4.

[\[note: 50\]](#) Df's BOA at p 331.

[\[note: 51\]](#) Df's BOA at p 242.

[\[note: 52\]](#) PBOAH1 at Tab 2, pp 4 and 36.

[\[note: 53\]](#) Df's BOA at pp 168 and 195.

[\[note: 54\]](#) Df's written submissions at para 42.

[\[note: 55\]](#) Df's further written submissions at para 5.

[\[note: 56\]](#) Df's further written submissions at para 7.

[\[note: 57\]](#) Df's further written submissions at para 8.

[\[note: 58\]](#) Df's further written submissions at para 10.

[\[note: 59\]](#) Pf's further written submissions at para 8.

[\[note: 60\]](#) PBOAH1 at Tab 3, p 60.

[\[note: 61\]](#) PBOAH2 at Tab 7, pp 22–24.

[\[note: 62\]](#) PBOAH2 at Tab 7, p 46.

[\[note: 63\]](#) PBOAH1 at Tab 3, p 59.

[\[note: 64\]](#) PBOAH1 at Tab 3, p 85.

[\[note: 65\]](#) Df's BOA at pp 312–313 and 384–387.

[\[note: 66\]](#) Df's BOA at p 388.

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