

AQT v AQU
[2011] SGHC 138

Case Number : Divorce Suit No DT 5783 of 2007/H
Decision Date : 27 May 2011
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Deborah Barker SC and Ang Keng Ling (Khattar Wong) for the plaintiff; Foo Siew Fong and Cheong Yen Lin Adriene (Harry Elias Partnership LLP) for the defendant.
Parties : AQT — AQU

Family Law – Divorce – Matrimonial Assets

27 May 2011

Judgment reserved.

Lai Siu Chiu J:

Introduction

1 In this case pertaining to ancillary matters, there are three outstanding issues to be resolved between the parties: (i) division of matrimonial assets, (ii) maintenance for the wife and (iii) maintenance for the children of the marriage.

2 [AQT] ("the Husband") and [AQU] ("the Wife") were married on 5 June 1992. The Husband filed for divorce on 22 December 2007. The divorce was contested. An interim judgment of divorce was eventually granted on 20 January 2009 to the Wife based on her counterclaim. The marriage lasted 17 years. The Husband is aged 50 and is currently the Head of e-FX Sales, South East Asia, at a foreign bank, [A] Bank, in Singapore. The Wife is 48 years old and is a home-maker. There are three children of the marriage *viz* 2 daughters aged 15 and 9 and a son aged 13.

3 The Wife and the children are currently residing in the United Kingdom ("UK") at a house in Chesham ("the Matrimonial Home"). The Court granted leave on 18 July 2008 for the Wife and the children to return to the UK. The Husband had to facilitate the Wife's relocation and pay for all of the children's living and school expenses in the UK. A further court order was made on 11 May 2009 for additional reimbursement to the Wife of relocation expenses and for the Husband to pay £2,100 per month (£700 for each child) for the children's living expenses, exclusive of the children's school fees which were to be paid in addition to their living expenses. The Court also ordered that the Husband provide a 7-seater car for the children which the Wife purchased second hand a Vauxhall model, at £10,800.

4 On 24 March 2010, the parties entered into a consent order for the custody, care and control of the children. The parties would have joint custody of the children with care and control to the Wife and specific terms of access for the Husband. Between July and September 2010, parties exchanged Offers to Settle but were unable to reach any agreement on the outstanding ancillary issues. Both parties have since filed several affidavits relating to the ancillaries – six by the Husband and five by the Wife.

Should the Bemali Trust be treated as a matrimonial asset?

5 The Bemali Trust was established by the Husband and was valued at £465,791.93 as at 17 May 2010. From the trust documents, it was noted that the Husband had irrevocably transferred the beneficial ownership of the Bemali Trust to his three children. The Wife argued that the Bemali Trust should be treated as a matrimonial asset because the Husband had unilaterally set it up using a substantial portion of their savings (£480,000), which was meant for the family. The Bemali Trust was established within the same week that the Husband said he wanted a divorce and mere months before the Husband filed for divorce.

6 The Husband contended that the funds used to set up the Bemali Trust were wholly acquired and earned by him with no monetary contribution from the Wife. However, the funds used to set it up were acquired during the marriage. Therefore, while it is clear from the trust document that the beneficial ownership of the Bemali Trust belongs neither to the Husband nor to the Wife, technically the £480,000 used to set up the Bemali Trust was a matrimonial asset.

7 However, I will not notionally place the £480,000 used in setting up the Bemali Trust into the pool of matrimonial assets to be divided. It is within the Court's just and equitable discretion under s 112 of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Charter") to decide not to exercise its discretion to order division of assets that are technically matrimonial assets. In *Lim Ngeok Yuen v Lim Soon Heng Victor* [2006] SGHC 83 at [45], the Court held that while the wife's interest in the Arcadia property was technically a matrimonial asset, it would exercise its discretion to exempt it from division as she had bought the property sometime after the parties separated and the husband had ceased to make contributions to the family. In this case, it is just and equitable to exempt the Bemali Trust from the pool of matrimonial assets since the terms of the Bemali Trust showed that it was intended for the children's benefit, which is consistent with the aims of the matrimonial partnership. This is also consonant with s 122(2)(c) of the Charter, which states that one of the main considerations for division under s 122(2) is "the needs of the children (if any) of the marriage". The Bemali Trust also has the benefit of ringfencing the funds from inheritance tax in the UK, which the Husband alleged would decrease the funds by £200,000.

8 I note that the Wife was not against the Bemali Trust *per se* but was concerned that the Husband would in the future renege on his intention that the children would be the beneficiaries under the trust. I am satisfied from the Memorandum of Settlor's wishes that the Wife's fears were unfounded. The Bemali Trust is meant to safeguard the assets for the children and is not available to the Husband or the Wife or their future spouses. The Bemali Trust will pay for the schooling expenses of the three children until the completion of their first degree. The Bemali Trust is also meant to provide both daughters with a capital sum on their attaining 25 years of age. The Husband also foresaw that the son (who has special needs as he suffers from Williams syndrome) will remain a dependant of the Bemali Trust for much of his life (or possibly, his entire lifetime) until he can support himself independently. The son's capital sum will remain in the trust and the Bemali Trust will continue to provide for him. The wife, as the primary caretaker of the children, will benefit from the Bemali Trust which provides certainty for the children's long-term financial needs.

9 If the Husband had (just before the divorce) set up a trust for someone completely unrelated to his marriage, *eg*, his brother, it may then be just and equitable for the Court to notionally place the £480,000 back into the pool of matrimonial assets. In fact, s 132 of the Charter can be used to "claw-back" this asset if the Husband had disposed of it with the object of reducing his means to pay maintenance or depriving the Wife of any rights in relation to the property (see *NI v NJ* [2007] 1 SLR(R) 75). However, the facts clearly do not fall within s 132 of the Charter because the Husband

did not have such a motive in setting up the Bemali Trust for his children. Therefore, as I had informed the parties at the hearing, the Bemali Trust will not be treated as part of the pool of matrimonial assets to be divided.

Did the Husband make full and frank disclosure of his Assets?

10 The Wife did not accept that the Husband had disclosed all of his assets. The Wife made several allegations against the Husband as the bases for drawing an adverse inference against the Husband. I will consider each allegation in turn.

(i) Missing Documents in the Husband's Discovery Affidavit

11 The Wife alleged that the Husband did not provide certain documents in his discovery affidavit that he indicated he would provide:

(a) The Husband was supposed to provide his monthly bank statements showing salary deposits, all other income commissions and bonuses from January 2007 to date. However, he only provided documents from May 2009 onwards.

(b) The Husband was supposed to provide his P60sUK document (evidencing amount of income tax paid in UK) from 2008 to date. He only provided that for 2009.

(c) The Husband was supposed to provide his bank statements for DBS account no. 1 [xxx] from January 2007 to date. His statements for June and July 2008 were missing.

(d) The Husband was supposed to provide his bank statements for DBS account no. 2 [xxx] from January 2007 to date. He only provided statements from May 2008 onwards.

The Wife also alleged that the Husband did not provide the April 2000 credit card statement for Amex account no [xxx] but this was not true.

12 The Husband disagreed that he failed to provide the documents required for breach (a). He stated that he provided all his monthly bank statements showing salary deposits, all other income commissions and bonuses from January 2007 as requested. The Husband admitted he did not provide the monthly payslips for the years 2007 and 2008, but the Wife was wrong to state he provided documents only from May 2009 onwards because he provided the payslips for January to April 2009 (both months inclusive). Furthermore, the Husband had already provided his Notice of Assessment for the year 2007 and his income tax return for the year ended 31 December 2008 to show his total income for those years. Therefore, I am satisfied that the Husband was not hiding his income for the years 2007 to 2008.

13 Regarding breach (b), I accept the Husband's explanation that he had already disclosed an email from his accountants in the UK, Morgan Hamilton Inghams, dated 7 September 2009, in response to his request for his P60sUK document for the year 2008. The response was self-explanatory: "You would not have received a P60 as you left during the year". There is accordingly no breach of (b).

14 The Husband explained that for breach (c), there were no statements for the months of June and July 2008 because another DBS credit card account no. [xxx] was closed on 21 May 2008 and a new credit card was issued under the DBS account no. 1 [xxx], which he only started using in August 2008. Regarding breach (d), the Husband explained that he had already disclosed all the bank statements in his possession. It is fair to state that the credit card and bank statements already

disclosed in the Husband's discovery affidavit were voluminous. I am satisfied that breaches (c) and (d), if they can even be considered breaches, were minor and not intentional on the Husband's part to hide his assets.

15 The Wife also submitted that the Husband only disclosed the trust documents for the Bemali Trust in his second affidavit. While this is true, I will not draw an adverse inference against the Husband solely because of this since (i) the Husband disclosed the existence of the Bemali Trust and its value in his first affidavit, (ii) he also disclosed the trust documents when the Wife took out a discovery application for it and (iii) he had a legitimate reason for not filing the documents the first time – he did not think the Bemali Trust was a matrimonial asset.

(ii) Inconsistencies in the Husband's Letter of Employment dated 16 March 2009

16 The Wife alleged that the Letter of Employment with [B] Pte Ltd first produced in the Husband's first affidavit left out a statement relating to a potential commission of S\$320,000 if the sales target was met ("Commission clause"). This Commission clause was present in a *second* version of the Letter of Employment produced in the Husband's second affidavit. On the face of the documents, it did suggest that the Husband was less than honest in his first affidavit, but I note that this omission was readily rectified in his second affidavit and it related to his income in his previous job in 2009. The Husband also explained that the two versions were genuine and he did not doctor the Letter of Employment in his first affidavit. The first employment contract did not include the Commission clause which was verbally agreed and he requested for a fresh employment contract with the clause. The use of the first employment contract in his first affidavit was an error.

17 Although the Wife requested the Husband to account for the S\$320,000 commission, I note that the commission was not guaranteed to the Husband and would only be given if he had met the sales target. The Husband submitted that he did not earn this commission and his actual earnings in 2009 were evidenced from the pay slips issued by [B] Pte Ltd which he had already disclosed in his first affidavit. Therefore, unless there were other clear instances of the Husband being dishonest, I would not draw an adverse inference against the Husband that he hid the commission of S\$320,000. The evidence supports the fact that the Husband had made full and frank disclosure of the income he gained from [B] Pte Ltd.

(iii) Husband estimating his assets to be worth S\$6 million in an insurance policy questionnaire in 2008

18 The Wife believed that the Husband has other assets he did not disclose because the Husband had in a Financial Questionnaire for his Great Eastern insurance policy in 2008 estimated his assets to be worth S\$6m. I find the Husband's explanation of this estimate reasonable – he explained that the estimation was rough, was based on an exchange rate of £1 = S\$3 and did not take into account his liabilities. Furthermore, his income for 2006 and 2007 was supplemented by large bonus payments for those years and those large bonuses have since ceased. I do not find the estimate to be strong enough evidence to support the adverse inference the Wife wanted the Court to draw.

(iv) Undisclosed rental income from Phuket Condominium and lack of supporting documents to support the liability outstanding on Phuket Condominium

19 The Husband had two condominium units in Phuket ("the Phuket Condominiums"). The Husband stated in his sixth affidavit filed on 25 November 2010, that he recently sold his Phuket Condominium, Unit No. A[X], Kata Noi Road, Kata Karon ("A[X]"), The Height and bought a smaller unit, Unit No. B[X] ("B[X]"), in the same development. He sold A[X] for THB34,900,000 and used the proceeds of

A[X] to purchase B[X] and make part payment of the outstanding loan. The Husband alleged that B[X] is worth THB20,000,000 and has an outstanding liability of £191,000. The Wife submitted during the ancillary hearing that there was no document to support the Husband's assertion that there was an outstanding liability of £191,000.

20 It is true that the Husband failed to provide direct documentary evidence of the outstanding liability of £191,000. However, in his first and sixth affidavit, the Husband provided documentary evidence that:

- (a) his outstanding mortgage for A[X] was THB22,597,269.04;
- (b) he sold A[X] for THB34,900,000; and
- (c) the Sale and Purchase Agreement Statement (dated 22 November 2010) stated that the Husband received THB12,975,000 (after purchasing B[X] for THB20,000,000 and deducting the Agent's and Lawyer's fees).

Therefore, based on the documentary evidence, the Husband explained that he used the proceeds of A[X] (THB 34,900,000) to purchase B[X] (THB 20,000,000) and was left with THB 12,975,000 (after deducting the Agent and Lawyer's fees). The Husband then explained at the hearing that he used the remaining proceeds of THB 12,975,000 to pay off the outstanding mortgage on A[X] (THB 22,597,269.04), which would leave a remaining outstanding mortgage of THB 9,622,269.04 (S\$ 449,034.43). This amount is larger than the £ 191,000 (S\$ 391,500) the Husband claims to be now outstanding, although the discrepancy differs according to the currency conversion rate of the pound sterling against the Singapore dollar. I noted that the currency of the outstanding liability changed from Thai baht to pound sterling and the Husband did not produce any documents to show the link between the outstanding mortgage of A[X] and B[X]. The Husband explained in his sixth affidavit that he could not provide the documents, because the documents were not available at that time. On the whole, I am satisfied from the Husband's disclosure of all his bank statements that the remaining outstanding mortgage of THB 9,622,269.04 had not been paid off and it was unlikely he could have paid off such a large and substantial amount of debt since A[X] was sold and B[X] purchased in November 2010. I was satisfied that regardless of whether the outstanding mortgage stems from A[X] or B[X], the outstanding liability of £ 191,000 the Husband alleges does exist. The Wife also made no objections to the Husband's claim of the outstanding liability, even in her reply affidavit filed in January 2011 after the Husband filed his sixth affidavit regarding the purchase of B[X]; she only raised such objections at the hearing itself. I will not draw the adverse inference that the Wife seemed to implicitly alleged which was that the Husband had secretly paid off the outstanding mortgage of his Phuket Condominiums and is trying to reduce the pool of matrimonial assets.

21 I also accept the Husband's explanation that there was no rental income left undisclosed because the tenancy agreement was for A[X], which has been sold.

(v) New overdrafts in new credit card accounts opened with unknown purposes

22 The Wife alleged during the ancillary hearing that the new overdrafts in the new credit card accounts as tabulated below were opened for unknown purposes.

Credit Card Account	Overdraft Amount as at 25 October 2010
UOB Cashplus [xxx]	S\$24,166.96

UOB Visa Signature [xxx]	S\$6,883.82
UOB Balance Transfer	S\$13,212.63

23 I accept the Husband's explanation that the new overdrafts were opened simply because he switched credit cards. The Husband's AMEX and DBS accounts were not used and he used his UOB accounts instead. An example of a previous overdraft in evidence was his DBS Black Amex credit card [xxx] which had no overdraft as at 25 October 2010.

(vi) Instances of large and suspicious activities in Husband's bank accounts

24 The Wife alleged at the hearing that there were large flows of money in and out of the Husband's bank accounts that were "suspicious". These "suspicious" transactions are tabulated below:

	Bank Account	Wife's Allegations of Suspicious Transactions
A	SG Private Banking Call Deposit Account a/c No. 1 [xxx] (Account closed as of 12 August 2009)	Wife alleged S\$133,350 was transferred out on 28 May 2008.
B	SG Hambros Call Deposit Account a/c No. 1 [xxx] (Account closed as of 12 August 2009)	Wife noted there was a balance of £194,616.36 as at October 2007, but it was transferred out.
C	SG Private Banking Account No. 2 [xxx] (Owned jointly by Husband and Wife)	Presently, nil value. Wife alleged funds removed following parties' separation.
D	Siam Commercial Bank Public Company Limited No [xxx] ("Thai Bank Account")	The Wife alleged that the Thai Bank Account had large suspicious withdrawals of cash.
E	DBS Account No. 3 [xxx]	Wife alleged instances of suspicious and large activity in the bank account.
F	UOB I Account No. 1 [xxx]	Wife alleged instances of suspicious and large activity in the bank account.

25 I am not satisfied that the transactions were suspicious. I find the Husband's explanations for all the withdrawals reasonable. Regarding transaction (a), it is clear from the bank statement that the Husband was making foreign exchange transactions ("forex transactions") based on the exchange rate of the pound. While there was a debit of S\$133,350.00 on 28 May 2008 (referred to as FX GBP 50,000.00 @ 2.6670 in the bank statement), there was also a credit of S\$138,015.00 on 28 May 2008 (referred to as FX GBP 50,000.00 @ 2.7603 in the bank statement). Therefore, the Husband submitted the transfer was not a withdrawal but a forex transaction with S\$5,000 profit made.

26 Regarding transaction (b), the Husband said there was nothing suspicious about the transfer of £194,616.36, which was made to his QROPS pension fund. As for transaction (c), the bank statements from January 2007 to March 2009 (when it became nil value) showed series of debts and

credits into this account even before the parties separated on November 2007. There was no evidence that the Husband deliberately removed funds from this account. For a year and a half after the parties separated, the bank statements showed a constant stream of withdrawals and credits which seemed to be consistent with the Husband's testimony that he used his forex trading skills to increase the family's assets. *Prima facie*, there is insufficient evidence to support the Wife's contention that the Husband was deliberately removing funds from this bank account. Transactions (e) and (f) were similar to transaction (c).

27 Regarding transaction (d), the Thai Bank Account was only disclosed in the Husband's third affidavit. The Husband explained that he had made full disclosure of the Thai Bank Account. He had misplaced the passbook and obtained copies of the same from the bank. The Husband explained that there was nothing suspicious about the withdrawals which were used in connection with the Thai property. All one can infer from the passbook was that there was a continuous stream of withdrawals. *Prima facie*, it is difficult without more substantiating evidence from the Wife, to say that those transactions were suspicious.

(vii) Conclusion

28 I accept that the Husband made full and frank disclosure of his assets and I decline to draw any adverse inference against him. In *O'Connor Rosamund Monica v Potter Derek John* [2011] SGHC 53 at [36]–[37], I had already set out the relevant principles on the drawing of adverse inferences. I cite again the Court of Appeal in *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 at [50] which held:

The drawing of an adverse inference, at least in civil cases, should not be used as a mechanism to shore up glaring deficiencies in the opposite party's case, which on its own is unable to meet up to the requisite burden of proof. Rather, the procedure exists in order to render the case of the party against whom the inference is drawn weaker and thus less credible of belief.

[emphasis added]

In order to draw an adverse inference, there must at least be a *prima facie* case against the Husband.

29 It is noted that allegations (iv) to (vi) were only made by the Wife at the hearing itself. A critical gap in the Wife's submissions is that while she asked the Court to draw an adverse inference, she failed to state *what kind* of adverse inference she wanted the Court to draw based on the evidence she drew the Court's attention to. The Wife merely argued that the transactions were suspicious. This is unhelpful – what kind of suspicions arose from the bank statements that showed a series of withdrawals over a long period of time? The Wife did not actually argue that the Husband was *actively dissipating* his assets by diverting his funds to other bank accounts that he did not disclose. Was the Court supposed to draw an adverse inference that the Husband was dishonest and hiding his assets from *mere suspicions*? The series of withdrawals in the Husband's bank statements also did not *prima facie* look suspicious. The Husband gave a reasonable explanation that he has expertise in forex transactions and used his own funds and bank accounts to engage in forex trading. The Court cannot and should not fill in the gaps of the Wife's case.

30 It is a fact that funds in bank accounts are special matrimonial assets in the sense that they are *highly liquid*. The Court would be sensitive to this fact and would claw back funds in which it is clear that one party was actively transferring out funds for the purpose of dissipating the matrimonial assets. However, this was not a case where the Wife argued that the funds in the Bank account

should be *put back* or frozen *as of a certain date* because large withdrawals were made that largely diminished the funds in the Bank account. The Wife only asked the Court to look at bank statements which presented a constant pattern of debits and credits among the various bank accounts. The Court cannot fill in the gaps of the Wife's evidence and the bank statements *per se* do not lead to an adverse inference that the Husband was dissipating his funds.

The Pool of Matrimonial Assets

Disputed Matrimonial Assets

31 I accept the Husband's evidence that the Great Eastern insurance policy No. [xxx] should not be included in the pool of matrimonial assets. The Husband explained that this insurance policy was funded by his employer at that time and ceased with his employment. There was no surrender value to include in the pool of matrimonial assets. Similarly, I accept the Wife's evidence that her insurance policy Zurich Assurance Life Policy No. [xxx] has no surrender value to be included in the pool of matrimonial assets. I also accept the Husband's evidence that the Royal Skandia Account (unknown value), SGAVC Equitable Life (£9,750) and SGAVC Norwich Union (£56,395) fell within the QROPS Pension Fund and I will not include them in the pool of matrimonial assets so as to avoid double-counting.

Matrimonial Assets Exempted from Division

32 As in [7] above for the Bemali Trust, I exercise my discretion not to include the Husband's Phuket Furniture (£25,000), Singapore Furniture (£10,000) and Central Provident Fund ("CPF") (S\$67,817.72). For the Wife, she can retain her jewellery (£2,845) and the furniture in the Matrimonial Home (£60,000). In my opinion, it would be fair for the Husband to retain his CPF savings (totalling S\$67,817.67 as of 25 October 2010) and for the Wife, correspondingly, to retain her jewellery. There is little point dividing the furniture in the parties' respective homes since the furniture would lose value on re-sale. Further, neither the Husband's CPF savings nor the Wife's jewellery were so substantial as to warrant putting them into the pool of matrimonial assets for division. I note too that the furniture in the Matrimonial Home was worth more than the Husband's Phuket furniture (£25,000).

The Currency Conversion Rates

33 The currency conversion rates are chosen either based on parties' agreement or consistent with the exchange rate at the time of the hearing: (i) £1 = S\$2.05, (ii) 1€ = S\$1.76, (iii) THB21.4288 = S\$1, (iv) A\$1 = S\$1.27 and (v) US\$1 = S\$1.59.

(A) The Matrimonial Home

34 The Matrimonial Home was held in the parties' joint names.

Matrimonial Home	Net Value
A 5 bedroom house in Chesham, UK	Total value: £860,000 (as at 29 July 2010) Liability: £209,803.64 (as at May 2009) Net Value = £650,196.36 (S\$1,332,902.54)

(B) The Other Matrimonial Assets

35 I note that the hearing took place 2 years after the interim judgment of divorce was given on 20 January 2009. In some cases, a long delay before ancillaries are determined will give rise to an issue of whether an asset acquired after the interim judgment should still be considered as being acquired "within the marriage", ie, as a matrimonial asset. The Court of Appeal in *Yeo Chong Lin v Nancy Tay Ang Choo* [2011] SGCA 8 ("*Yeo Chong Lin*") held that the operative date could be (i) the date the writ of divorce is filed, (ii) the date the parties separated, (iii) the date of interim judgment and (iv) the date of the hearing. The operative date depends on what is just and equitable on the facts of the case and differing assets may have different operative dates.

36 I note that two assets were acquired after the interim judgment: (i) the Phuket Condominium, B[X], acquired in November 2010 and (ii) the Husband's BMW acquired in March 2010. However, both parties were in agreement before me that the Phuket Condominium, B[X], and the BMW are matrimonial assets to be included in the pool of matrimonial assets to be decided. Therefore, implicitly both parties applied the date of hearing as the operative date. I accept that the date of hearing is the just and equitable operative date in the circumstances of this case since the assets acquired after the interim judgment were funded from the sale of undisputed matrimonial assets

37 Although the parties did not dispute that the Wife's legal fees to Charles Russell (£4,029.7 as at 2 July 2009) and Harry Elias Partnership (S\$29,000 as at 1 July 2009) were liabilities that can be deducted, I do not accept that the legal fees for Harry Elias Partnership can be deducted from the pool of matrimonial assets. The bill from Charles Russell provided in the Wife's affidavit did not state the purpose for which the legal fees were incurred. As the Husband did not dispute this, I will accept that the legal fees were not incurred for the purpose of these matrimonial proceedings and it can be deducted as part of the Wife's liabilities. However, there were no documents provided in the Wife's affidavits regarding Harry Elias' fees at all. I accept that it is likely the fees were incurred in the course of Harry Elias Partnership representing the Wife in these proceedings. It was highly unusual for the legal fees for *these very matrimonial proceedings* to be deducted from the pool of matrimonial assets. It would be an unwise precedent to allow parties to deduct their hefty legal costs from the pool of matrimonial assets. Whatever liability parties owe their solicitors for the matrimonial proceedings should be settled from *their own share* of the matrimonial assets after division. To deduct the legal fees from the *joint* pool of matrimonial assets during the proceedings would be to render any cost order the Court made in the judgment largely nugatory.

38 The Husband stated he paid for 3 paintings: (i) Mother/Child by Kelyne, (ii) Miao Bride I by Xue Dai and (iii) The Alure of Illumination by Tain Xu Tong ("the Paintings") currently held by the Wife and would like the Wife to return the Paintings to him. Although the Wife stated that she was the owner of the paintings, she provided no evidence in support. The Husband adduced an insurance policy on the Paintings taken out in his name. On the evidence, I am satisfied that the Husband paid for the Paintings and therefore order the Paintings to be returned to him as part of his share of matrimonial assets. The Husband stated the value of the Paintings to be S\$44,000 while the Wife stated their values as S\$37,200. Based on the Husband's insurance policy on the Paintings, I accept their values to be S\$40,000. Any cost incurred in returning the paintings to the Husband will come out of the Husband's share of the total matrimonial assets.

39 The Other Matrimonial Assets are as tabulated below:

No	Assets owned jointly by the Husband and Wife	Net Value
1	SG Private Banking Account No. 2 [xxx]	Nil. Closed 23 June 2009.

2	DBS Bank Account No. 4 [xxx]	Nil as at 31 May 2009.
---	------------------------------	------------------------

No	Assets owned by the Husband	Net Value (rounded up to 2 decimal places)
1	Phuket Condominium, B[X]	Total Value: THB20,000,000 (S\$ 933,323.38) Liability: £191,000 (S\$391,550) Net Value = S\$541,773.38.
2	BMW Registration No. [XXX]	S\$130,000 Liability: S\$143,568.00 (including interest as at 30 June 2010) Net Value = S\$ 13,568.00
3	7 Seater Vauxhall Zafira (in Wife's possession)	£10,000 (S\$20,500)
4	QROPS Pension Fund (GS Wealth)	£354,553.70 (S\$726,835.09) as at 30 June 2010
5	Societe General Shares (25 shares at €43.47 as at 25 October 2010)	€1086.75 (S\$1,912.68) as at 25 October 2010
6	Friends Provident Shares (660 shares at £0.816)	£545.90 (S\$1,119.10) as at 22 October 2010
7	SGH V (GP) Limited Partners' Capital Account	€2,626.49 (S\$4,622.62) as at 30 June 2010
8	DBS Account No. 3 [xxx]	S\$708.08 as at 25 October 2010
9	UOB I-Account No. 1 [xxx] (changed to UOB I-Account No. 2 [xxx])	S\$14,909.19 as at 25 October 2010
10	Thai Bank Account	THB1,126.60 (S\$52.57) as at 1 July 2010
11	Australian Wine Index	S\$3,840 as at 22 November 2010
12	Australian Portfolio Wines	A\$41,134.54 (S\$52,240.87) as at 22 November 2010
13	Paintings (currently held by the Wife)	S\$40,000
	Total Net Value of Assets	S\$1,394,945.58
	Liabilities of the Husband to be deducted:	
1	UK Inland Revenue	£34,615.21 (S\$70,961.18) as at 31 July 2010

2	UK Invicta Tax Liability No. 4 and No. 6	£98,104.00 (S\$201,113.20) as at November 2010
3	IRAS Income Tax	S\$40,826.43 as at 3 June 2010
4	SG Private Banking Account No 3 [xxx]	S\$11,128.33 as at 24 October 2010
5	SG Private Banking Account No 4 [xxx]	£5,365 (S\$10,998.25) as at 24 October 2010
6	SG Private Banking Call Deposit Account No. 5 [xxx]	£0.02 (S\$0.041) as at 30 June 2009
7	SG Private Banking Call Deposit Account No. 6 [xxx]	US\$0.32 (S\$0.51) as at 30 June 2009
8	SG Private Banking Call Deposit Account No. 7 [xxx]	NIL as at 23 June 2009.
9	UOB Cashplus [xxx]	S\$24,166.96 as at 25 October 2010
10	UOB Visa Signature [xxx]	S\$6,883.82 as at 25 October 2010
11	UOB Balance Transfer	S\$13,212.63 as at 25 October 2010
12	Black Amex credit card [xxx]	NIL
13	DBS Account No. 5 [xxx] (Visa Platinum credit card account)	NIL
14	Crown Relocations	NIL
	Total Liabilities	S\$379,291.35
	Final Net Value of Husband's Assets (Total Value – Total Liabilities)	S\$1,015,654.23

No	Assets owned by the Wife	Net Value (rounded up to 2 decimal places)
1	Zurich Assurance Joint Life Policy No. [xxx]	£1,017 (S\$ 2,084.85) as at 1 May 2009
2	AEGON Pension Policy No. [xxx]	£8,209.16 (S\$16,828.78) as at 1 May 2009
3	Norwich Union Pension Policy No. [xxx]	£8,764.3 (S\$17,966.82) as at 1 May 2009
4	Shares – Fidelity American Special Situations Funds ISA 2002 and ISA 2001	£6,852.43 (S\$14,047.48) as at 30 April 2009
5	Unit Trust – Equisar Global Thematic	£4,048.07 (S\$8,298.54) as at 2 June 2009
6	Barclays Current Bank Account No. [xxx]	£2,980.19 (S\$6,109.39) as at 14 July 2009
7	Barclays Savings Account No. [xxx]	Account closed as at June 2009.

8	MoreforMore Savings Account No. [xxx]	£3,619.63 (S\$7,420.24) as at 1 April 2010
9	Tanglin Club Membership	NIL
	Total Net Value of Assets	£35,490.78 (S\$72,756.10)
	Liabilities of the Wife to be deducted:	
1	Halifax Credit Card	£1,520 (S\$3,116.62)
2	M&S Credit Card	£1,107.32 (S\$2,270.01)
3	Debt to Mrs [D1]	£13,500 (S\$27,675)
4	Debt to Mr [D2]	£3,000 (S\$6,150)
5	Debt to Mrs [D3]	£1,000 (S\$2,050)
6	Debt to Mr [D4]	£2500 (S\$5,125)
7	Charles Russell Legal Fees	£4,029.70 (S\$8,260.89) as at 2 July 2009
	Total Liabilities	£26,657.22 (S\$54,647.52)
	Final Net Value of Wife's Assets (Total Value – Total Liabilities)	£8,833.56 (S\$18,108.80)

40 The final net value of the Other Matrimonial Assets is **S\$1,033,763.13** (S\$ 1,015,654.23 + S\$18,108.90).

Division of Matrimonial Assets

The Parties' Contributions

41 It is not disputed that the Husband was the sole breadwinner of the family and solely contributed to the acquisition of the Matrimonial Home. The Wife admitted her claim is only based on her indirect contributions to the marriage over the past 17 years. The Husband admitted that the Wife was an excellent caregiver and homemaker. Similarly, the Wife should not seek to diminish the Husband's indirect contributions to the household. While the Husband's indirect contributions were not as extensive as the Wife's, the Husband was also a good and caring father.

42 The Wife asked for the full ownership of the Matrimonial Home (50% as her rightful share of the Matrimonial Home and the other 50% in lieu of her claim for maintenance). The Wife also asked for 50% of the Other Matrimonial Assets. The Wife wanted full ownership of the Matrimonial Home and was not agreeable to the Husband's proposal to sell the Matrimonial Home because she believed: (i) it is a good neighbourhood for a single mother with 3 children, (ii) there was an existing support network of friends and neighbours, (iii) it was important to provide continuity for the children, (iv) the home is near the children's schools, and (v) the Wife was not in a financial position to purchase another property in the same area. The Husband submitted that a just and equitable division of the total pool of matrimonial assets would be to give 65% to the Husband and 35% to the Wife.

43 The Court of Appeal in *NK v NL* [2007] 3 SLR(R) 743 held that both direct and indirect

contributions are equally important factors. Section 112(2) of the Charter provides a non-exhaustive list of factors for the Court to consider in determining how the matrimonial assets are to be divided. The Court is conferred a wide discretion to apportion the matrimonial assets in a just and equitable manner. I am satisfied that the Husband and Wife's division of roles was very much that of a traditional family – the Husband was the breadwinner and the Wife was the homemaker. In such long marriages, where the wife is a full time homemaker, the Courts have awarded normally 35% to 40% of the matrimonial assets (see *Yeo Chong Lin and Lock Yeng Fun (mw) v. Chua Hock Chye* [2007] 3 SLR(R) 520).

44 However, what the Wife is asking for is not a just and equitable share of the total pool of matrimonial assets. While I agree with the Wife that an important consideration in division would be the needs of the children and their requirement of a home, it is not practical for the Wife to retain the Matrimonial Home. It is expensive to maintain such a large house and the Matrimonial Home has a substantial outstanding mortgage which the Wife can no longer depend on the Husband to continue paying. It is more practical for the Wife to purchase a comparable 4-5 bedroom property, fully paid up without a mortgage, with her proceeds of the matrimonial assets. I accept the Husband's documentary evidence that comparable 4-5 bedroom properties in Chesham, UK, will cost between £450,000 and £550,000.

45 Therefore, I am of the view that it would be just and equitable to give 35% of the Other Matrimonial Assets *viz* S\$361,817.10 ($\text{S\$1,033,763.13} \times 35\%$) and 45% of the Matrimonial Home (S\$599,806.14) to the Wife. I give the Wife a larger proportion of the Matrimonial Home, which will be supplemented by her lump sum maintenance, to enable her to purchase a comparable 4-5 bedroom property for herself and the children (see further below at [\[51\]](#)). I will allow the Wife seven months up to 31 December 2011 to sell the house so as not to disrupt the children's schooling.

Maintenance for the Wife

46 Both parties did not dispute the suitability of having a lump sum order of maintenance for the Wife but disputed only on the multiplicand and the multiplier. The Husband submitted that he was willing to give the Wife lump sum maintenance of £1,200 monthly for a period of 5 years (£72,000). The Wife asked for £2,666.67 monthly for 10 years (backdated from August 2008 when they relocated), which totals £320,000.40. The Wife stated her monthly expenses to be £5,183.38, but she included expenses for the children (which would be double-counting) and a number of household expenses that would be unnecessary once the Matrimonial Home is sold and replaced by a smaller and more practical house.

47 Under s 114 of the Charter, consideration must be given to the earning capacity and financial resources of the Husband in the foreseeable future as well. The Husband had done exceedingly well without a university qualification and is currently earning S\$28,333.34 per month. However, I accept his submission that at 50 years of age in his industry, he is past his peak earning power and his earning capacity is finite. In 2004, the family moved to Singapore because the Husband's ex-employer, [C] Bank, offered him a choice of either taking up a new position in Asia or be demoted in London because his job position in the UK had become redundant. The Husband was retrenched in the year 2007 and is no longer employed in investment trading which is considerably more lucrative than his current position in sales.

48 The Wife had maintained that she would be unable to take up employment after being out of the workforce for so many years. The Wife submitted that even part-time work would not be possible because of her inability to get a caretaker for her children and the son's requirement of special attention. However, I am not satisfied that the Wife would be unable to take up part-time work as

her children get older and require less of her time. I am satisfied that the Wife has the adequate skills to return to the workforce – she used to work as a secretary, had worked for a period of the marriage in [E] and in [F], and the Husband had also submitted that he had funded the Wife's enrolment in an interior design course in 2006 and a nail technician's course in 2008.

49 It is important to keep in mind that the underlying goal of s 114 of the Charter is financial preservation so far as practicable and reasonable in the circumstances. The principles of s 114 were also succinctly cited by the Court of Appeal in *BG v BF* [2007] 3 SLR(R) 233 at [74]:

The High Court in *Wong Amy v Chua Seng Chuan* [1992] 2 SLR(R) 142 made some crucial observations in relation to these powers: (a) adequate provision must be made to ensure the support and accommodation of the children of the marriage; (b) provision must be made to meet the needs of each spouse; and (c) at the end of the day, it is the court's sense of justice which demands and obtains a just solution to many a difficult issue: see also *Quek Lee Tiam v Ho Kim Swee* [1995] SGHC 23.

It is recognised that the Wife had been deprived of working capacity during the marriage and maintenance is needed to ease her back into the workforce and even out any economic prejudice she might have suffered during the marriage. However, the Wife was expected to regain as much self-sufficiency as possible (see *Quek Lee Tiam v Ho Kim Swee (alias Ho Kian Guan)* [1995] SGHC 23).

50 The Husband also submitted that the Wife would receive a State Pension when she turns 65, which is presently £500 but is index-linked. I am of the view that it would be fair and reasonable to give the Wife £1,000 monthly for 17 years, which would total up to a lump sum maintenance of £204,000 (or S\$418,200).

Final Division between Husband and Wife

51 In total, the Wife would receive 35% of the Other Matrimonial Assets (S\$361,817.10), 45% of the Matrimonial Home (S\$599,806.14) and a lump sum maintenance of £204,000 (S\$418,200), which totals up to S\$**1,379,823.24** (£673,084.51). This would be sufficient for the Wife to purchase a comparable 4-5 bedroom property in Chesham (£450,000-£550,000) with a substantial amount remaining for her future expenses. The Wife would receive her share of the total matrimonial assets from the proceeds from the Matrimonial Home. Whatever remains outstanding to the Wife (after deducting the proceeds when the Matrimonial Home is sold and the value of her own assets) will be paid by the Husband directly to her in cash.

52 The Husband will receive 65% of the Other Matrimonial Assets (S\$671,946.03) and 55% of the Matrimonial Home (S\$733,096.40). After deducting the lump sum maintenance he must give the Wife, the Husband's share of the total matrimonial assets is **S\$986,842.43**.

Maintenance for the Children

53 The Wife wanted reimbursement of S\$4,914.06 for the children's expenses and requested that it be paid to her directly from the Husband's share of the assets. I am not satisfied, after looking at the Wife's receipts which were filed after the Wife's final substantive affidavit, that the Wife should be so reimbursed; there is no basis, outside of the children's maintenance and the Bemali Trust, for the Husband to reimburse the Wife for such expenses. Therefore, I will not make such an order.

54 The Husband submitted that the Wife receives Child Benefit, Disability Living Allowance (for the son) and Child Tax Credit from the UK Government totalling £1,239.60 monthly. From the Wife's

evidence, it appeared she received £9,931.65 worth of Child Tax Credit for the period 6 April 2009 to 5 April 2010. The Wife also adduced a letter dated 15 April 2009, from the UK Disability and Carers Service, stating she will receive Disability Living Allowance (for the son) of £65.75 weekly (£263 monthly) from 8 April 2009 onwards. According to a letter dated 4 February 2009 from the UK HM Revenue & Customs, the Wife will be entitled to Child Benefit for all three children at £46.40 weekly (£185.60 monthly) from 5 January 2009 onwards.

55 The interim maintenance for the children was £700 each (a total of £2,100), not including the children's school fees and education-related expenses. The Husband is agreeable to continue paying such an amount. I find the Wife's claim of £1,500 for each child (a total of £4,500) excessive. I am of the view that a fair and reasonable sum of maintenance for each child will be £800 each (a total of £2,400). This takes into consideration that the Wife receives UK subsidies for the children and the £800 is not inclusive of the children's school fees and education-related expenses which are paid from the Bemali Trust. Although the Husband is earning a reasonably high monthly salary, consideration must also be given to his own expenses and liabilities.

Costs

56 Both parties wanted costs of the ancillary proceedings. At the interim judgment stage, the Husband was ordered to pay the Wife costs fixed at \$1,800.00. The Wife argued costs of the ancillaries proceedings should be awarded to the party awarded costs below unless the party had acted unreasonably or for other good reasons, following the case of *Tham Khai Meng v Nam Wen Jet Bernadette* [1997] 1 SLR(R) 336 at [50] ("*Bernadette*").

57 I am of the view that this is an appropriate case with "good reasons" to differ from the norm in *Bernadette*. *Bernadette* cited *Shi Fang v Koh Pee Huat* [1996] 1 SLR(R) 906 at [56] ("*Shi Fang*") for the proposition that the hearing of the ancillary matters was a continuation of the hearing of the petition. However, I note that the Court in *Shi Fang* at [56] held that "[i]mplicit in the grant of such decree to the wife was the finding of the fault on the part of the husband as a cause for the divorce". The Court in ordering costs must be sensitive that the cost order does not run contrary to the no-fault basis that underlies our jurisprudence on divorce. In this case, the Husband actually filed the divorce petition first but he submitted that he consented to interim judgment based on the wife's counterclaim to avoid unnecessarily protracting legal proceedings. I also note that the Husband made several offers of maintenance to the Wife but the Wife rather unreasonably repeatedly failed to give the Husband any figure. The Husband also attempted unsuccessfully to discuss the Wife's allegations of non-disclosure and resolve the ancillary issues through discussions with the Wife but she refused to negotiate. Therefore in the light of the facts of this case, I order that each party bear his or her own costs for the ancillary matters.

Copyright © Government of Singapore.