Lee Bee Kim Jennifer v Lim Yew Khang Cecil
[2005] SGHC 209

Case Number : D 2620/1997, RA 720026/2005, 720027/2005

Decision Date : 09 November 2005

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Randolph Khoo and Veronica Joseph (Drew and Napier LLC) for the petitioner; Engelin Teh SC and Linda Ong (Engelin Teh Practice LLC) for the respondent

Parties : Lee Bee Kim Jennifer — Lim Yew Khang Cecil

Family Law – Maintenance – Wife – Quantum of maintenance for wife

Family Law – Matrimonial assets – Division – Gifts – Matrimonial Home – Unexplained movements in bank account – Whether division just and equitable

9 November 2005 *Judgment reserved.*

Andrew Ang J:

1 The petitioner and the respondent were married on 8 September 1981. Immediately after they were married, the couple went to England where the respondent pursued further studies. Upon their return in 1983, they stayed with the respondent's parents at 16 Leedon Park for about three months before moving into 63 Bin Tong Park. Until sometime in December 2000, when the petitioner left the matrimonial home, they lived together at this address. This property, together with the respondent's parents' residence and several other properties, were owned by SP Lim & Co Pte Ltd ("SP Lim & Co") which was an investment company started by the respondent's father (S P Lim) and owned by the latter, his wife and their three sons of whom the respondent is the second. The petitioner and respondent have four sons currently aged 23, 21, 18 and 16.

2 The petitioner filed for divorce on 18 August 1997 on the ground that the marriage had irretrievably broken down by reason of the fact that the respondent had behaved in such a way that she could not reasonably be expected to live with him. The respondent filed an Answer and Cross Petition and the petitioner filed a Reply and Answer to Cross Petition. Eventually, however, those subsequent pleadings were withdrawn and a decree *nisi* was granted on 5 January 1999 based on the wife's Amended Divorce Petition.

3 The ancillary matters on custody, care and control of the children, maintenance for the petitioner and children, and division of matrimonial assets were adjourned to be heard in chambers.

4 A Consent Order dated 5 June 2001 gave them joint custody while care and control of the children was given to each of the parties (with liberal access to the other) whenever the children were with such party. The remaining ancillary matters, together with a claim by the petitioner for reimbursement of certain expenses, were heard by the learned district judge, Tan Peck Cheng. The hearings in chambers took place on 14 April 2003, 19 December 2003, 14 March 2004, 6 May 2004 and finally on 28 March 2005 when the following orders were made:

1. The Respondent do pay the Petitioner lumpsum maintenance fixed at $1,400,000.00.

2. In addition, pursuant to Summons-in-Chambers No 651979 of 2002, the Respondent is to

reimburse the Petitioner the sums of:-

(a) $61,573.22 being rental expenses incurred from December 2000 to August 2002; and

(b) RM$24,009.00 being the children's travel expenses.

3. The Respondent shall pay to the Petitioner $500,000.00 being the Petitioner's share of the matrimonial assets.

4. The Respondent shall pay the Petitioner costs to be agreed or taxed.

5. There be liberty to apply.

The respondent appealed against the whole of the decision while the petitioner appealed against orders 1 and 3.

Respondent's appeal on maintenance (Registrar's Appeal from the Subordinate Courts No 720026 of 2005)

5 The lump sum maintenance of $1,400,000 ordered by the district judge was based on a monthly maintenance of $7,000 (*ie*, $8,000 less $1,000 which the petitioner was found to be capable of earning) for 17 years. The respondent made the following contentions as regards maintenance:

(a) $8,000 adjudged as the petitioner's maintenance was too high;

(b) the petitioner was capable of earning more than $1,000 per month;

(c) the respondent could not afford to pay $7,000 net maintenance per month; and

(d) the order for a lump sum payment was inappropriate.

Is $8,000 per month excessive?

6 The respondent contended that:

(a) the interim monthly maintenance of $4,000 previously ordered should have been followed and the district judge did not give reasons for departing from the figure; and

(b) the only issue the court should have considered was whether to include the petitioner's rental claim of $1,800. The respondent also said that various specific expenses claimed by the petitioner as part of her maintenance were excessive.

As pointed out by counsel for the petitioner, by suggesting a figure of $4,000 out of his admitted average monthly income (inclusive of bonuses) of $28,982.41, the respondent was in effect asking for a reduction of 20% from the interim monthly maintenance which the petitioner had hitherto been receiving.

7 I agree with the petitioner's counsel that the interim maintenance awarded *pendente lite* is usually less than the final award: see *Prasenjit K Basu v Viniti Vaish* [2003] SGDC 303. At the interim stage, the court does not have the full means to make a thorough investigation of the parties' financial matters or their lifestyles (among other factors) which it will have to examine thoroughly at

the ancillaries stage. For this reason, it will usually err on the side of conservatism, ordering less than what the applicant can ultimately expect at the ancillaries stage. There was no reason in law for the district judge to be bound by the interim maintenance order. (Incidentally, the interim maintenance order was for $5,000 and not $4,000, the additional $1,000 being for transport allowance.) Besides, the petitioner moved out of the matrimonial home after the interim maintenance order and would therefore require more maintenance by reason of having to rent accommodation and to pay for all the incidentals that keeping an apartment entailed.

8 It follows from the above that it is incorrect to say that the only issue the district judge should have considered was whether to increase the interim maintenance by $1,800. The district judge was correct to consider other expenses consequent upon the petitioner moving out. In submitting that $8,000 maintenance was too high, the respondent also contended that certain *specific expenses* were too high. However, the respondent adduced no evidence to show what the petitioner's expenses ought to be. He merely made bald assertions as to what the figures ought to be. In contrast, the petitioner had receipts and invoices and tabulated her expenses based thereon. Although she offered in her ninth affidavit to make available the documentary proof of her expenses, this was never taken up.

9 Overall, the impression I had was that the respondent's approach was to seek to cut down what had been allowed by the district judge notwithstanding that the sums might be reasonable. A case in point is the $1,800 rental for the Hilltops apartment at Cairnhill. Notwithstanding that the rental of $1,800 was already a low figure, the respondent sought to attack the expenses on the ground that the petitioner should have rented a smaller apartment. The respondent ignored the disparity between the matrimonial home in Bin Tong Park and the modest Hilltops apartment. His complaint was that the petitioner did not need 2,300 sq ft. Would he have been happier if she had rented a smaller but newer apartment at a higher rental? Was it unreasonable to make provision for the children to stay overnight if they chose to do so, bearing in mind that he did not have exclusive care and control?

Inability to pay

10 The respondent claimed to be unable to afford to pay the petitioner maintenance of $7,000 a month. He claimed that the lavish lifestyle the parties enjoyed was a thing of the past which had been supported in part by loans from his parents. The district judge disbelieved those claims. I see no reason to disagree.

11 The respondent is an executive director of Chemical Industries (Far East) Ltd ("CIL"), a listed company controlled by the Lim family. The respondent contended that his average net monthly income was $22,921.08 but failed to factor in his bonuses. The district judge had found that since the respondent claimed that his monthly expenses were $26,282 (which included payment of the petitioner's interim maintenance), the respondent had sufficient means to pay the monthly maintenance of $7,000 (which was just an increase of $2,000 over the interim maintenance). I accept the petitioner's contention that this did not take into account the respondent's income from his investment activities. (To be fair, I should add the obvious, that the investment activities could suffer losses as well.)

12 In support of his contention that he was unable to provide the maintenance ordered, the respondent claimed to have various liabilities. These had been disregarded by the district judge for various reasons. The respondent's liabilities will be considered in detail later on in the judgement. For the moment, suffice it to say that on the evidence available to her, it was certainly open to the district judge to disregard those liabilities.

The petitioner capable of earning more than $1,000 per month?

13 The district judge found that after the petitioner married at the age of 20, she was a full-time housewife, except for two periods.

(a) The first period (1985–1992)

The petitioner started a playgroup in or about 1984. When she passed a Montessori course, the playgroup became a recognised Montessori playgroup. The group consisted mainly of friends' children and functioned for the benefit of her own children. According to the petitioner, after paying for expenses, there was no profit. It should be noted that this was despite the free use of her home for running the playgroup. When her husband asked her to stop in 1991, she went to help her former assistant at the latter's playgroup but stopped when the respondent asked her to help out at Direct Store Holdings Pte Ltd ("Direct Store"), a retail store set up by the respondent and some friends.

(b) The second period (1993–1996)

The petitioner helped out at Direct Store at the request of the husband after the store sacked the manager for mismanagement. For this she received $2,500 a month. Whilst the respondent argued that the petitioner was capable of earning $2,000 to $3,000 a month, the petitioner stated that she was only earning $1,000 a month giving tuition to young children and helping out at a kindergarten. She further stated that as time went by it would be difficult for her to work in a kindergarten due to her varicose veins and to her back problem caused by an assault on her by the respondent in 1997.

14 The district judge considered all the above and ruled that she did not expect the petitioner to earn more than $1,000 a month. She disregarded the $2,500 earned by the petitioner at Direct Store on the basis that the store belonged to the respondent and two friends and that it had since closed. The respondent produced no other evidence to substantiate his claim. I do not think the district judge's finding was perverse or against the weight of the evidence. Before me, the respondent failed to discharge the burden on appeal to rebut the "presumption … that the decision appealed against is right", *Tay Ivy v Tay Joyce* [1992] 1 SLR 893 at 898, [12].

Lump sum maintenance

15 The principal ground raised by the respondent was that his shares in SP Lim & Co ("SP Lim shares") were not easily realisable and that, having only other realisable assets of $311,075.69, he was unable to meet the lump sum payment. When the district judge decided to order lump sum maintenance, she stated that he had substantial personal wealth, citing his 200,000 shares in SP Lim & Co as an example. The district judge did not express any concern over whether the SP Lim shares were realisable. I believe it was for a good reason.

16 Although SP Lim & Co is a private company, I do not believe that the respondent would not be able to realise the value of his shares if the need so to do arose. Firstly, on the respondent's evidence of the generosity of his parents in supporting his lifestyle, it is not difficult to envisage that the family members would agree to some arrangement whereby he would be able to obtain the necessary funds. For example, they could buy some of his SP Lim shares or cause SP Lim & Co to sell one or more of its properties and then declare a dividend. The family members would do so in their own interest if not out of a desire to help. This is because, assuming the submission made by the respondent's counsel before me to be correct, any enforcement proceedings against the respondent,

who is one of the joint and several guarantors of banking facilities made available to CIL, may well trigger a demand for repayment of CIL's outstandings to its bankers. In turn, the respondent's co-guarantors, *viz*, his father and brothers, would also be faced with calls on the joint and several guarantee.

17 Another point raised by the respondent in regard to the lump sum was that in any event a multiplier of 17 years was excessive. However, the respondent appeared unable to suggest any alternative figure. I am of the view that the 17 years arrived at by the court was reasonable in all the circumstances and should not be disturbed. (It should be noted that this was lower than the 24.5 years which would have been obtained by applying the method referred to in *Ong Chen Leng v Tan Sau Poo* [1993] 3 SLR 137.) A lump sum order is pre-eminently a matter of discretion for the judge and an appellate court will not interfere with an order made unless it is clear that the judge exercised his discretion on a wrong principle or, in exercising his discretion, has made a decision which is improper, unjust or wrong: *Lee Puey Hwa v Tay Cheow Seng* [1991] SLR 198 at 202, [10].

Petitioner's appeal on maintenance (Registrar's Appeal from the Subordinate Courts No 720027 of 2005)

18 The petitioner also appealed against the maintenance order, contending that the district judge:

(a) failed to award sufficient maintenance for certain of her claims; and

(b) omitted to award maintenance for certain other essential items altogether.

19 I allow the appeal in respect of the following which had not been included in the district judge's award:

(a)	Land-based telephone line	$175
(b)	Utilities	$300
(c)	Starhub Cable Vision	$140

The three items had not been included in closing submissions, but there was evidence in the petitioner's affidavit of 23 March 2002 as to those expenses. The omission arose probably because of reliance on an earlier affidavit of the petitioner filed when she was still staying at the matrimonial home. Counsel for the respondent did not challenge the quantum of the three items additionally claimed by the petitioner. Her contention was that it was improper to make an assertion that the district judge had omitted to provide for the items when the petitioner's own closing submissions omitted them.

20 I would also allow the appeal in regard to provision for a club subscription. Even though the value of the clubs were taken into account in the division of matrimonial assets and it could therefore be said that the petitioner had in effect been given a share in the clubs, subscription is a different matter. The district judge was wrong to say that as the petitioner had no club she did not need to pay a subscription. It was in keeping with her lifestyle during the marriage that she should be able to enjoy the facilities of a club. The district judge was also wrong to say that the subscription in any event could be subsumed under food and entertainment. What the petitioner was asking for was not for food consumption in the club but for the monthly subscription. Although I would allow a figure for a club subscription, $180 seems high. A figure of $140 should suffice.

21 Regarding clothing, shoes, bags, *etc*, the district judge was of the view that $500 per month was reasonable. There was evidence given by the petitioner of her expenses for ten months in 1996 where the average per month was $4,350. The evidence was not disputed. The district judge apparently disregarded this evidence possibly because she thought the expenses had been incurred with a view to claiming a higher maintenance. It should be noted, however, that the petitioner did not claim that amount but instead asked for $2,000 per month. It is not clear how the district judge arrived at the conclusion that $500 per month was reasonable. It appears to be unsupported by any evidence.

22 During the ten months of 1996 in question, the petitioner's expenditure ranged from a low of $677 in October to $14,938 in July. Taking the average expenditure during the five months in which the lowest expenditures were incurred, one arrives at $1,159 as the monthly expenditure. This would seem to be an eminently reasonable figure considering that the average monthly expenditure for the other five months was $7,541. I therefore allow $1,159 in lieu of the $500 awarded by the district judge.

23 In the result, the total increase in monthly maintenance is as follows:

(a)	Land-based telephone line	$ 175
(b)	Utilities	$ 300
(c)	Starhub Cable Vision	$ 140
(d)	Club subscription	$ 140
(e)	Increase for clothing, shoes, bags, *etc* (from $500 to $1,159)	$ 659
Total:		$1,414

The lump sum maintenance award therefore works out to be $1,716,456 derived as shown below:

($8,000 + $1,414 less $1,000) per month x 17 years.

Reimbursements

24 The items in respect of which the petitioner was allowed reimbursement were:

(a) the rental and removal expenses incurred by her from December 2000 to August 2002; and

(b) the holiday expenses of the children incurred by her after the June 2000 interim maintenance order.

The district judge accepted the petitioner's reason for moving out and held that the rental she paid was not extravagant. She further held that the respondent had to pay for the holiday expenses as he had done in the past and that, contrary to the assertions of the respondent, the expenses were by no means excessive. I see no valid ground for disturbing the district judge's order on reimbursement.

Division of matrimonial assets

25 The petitioner's appeal is against the decision of the district judge declining to include certain assets in the pool of divisible matrimonial assets. In particular, it was contended that the district judge failed to include the following assets:

(a) the moneys in the parties' Central Provident Fund ("CPF") Special and Medisave accounts, of $124,207.23;

(b) shares held by the respondent in his own name to the value of $182,895.20;

(c) the parties' matrimonial home at 63 Bin Tong Park (a bungalow held in the name of SP Lim & Co and worth between $6.5m and $7m);

(d) unaccounted moneys going in and out of the respondent's bank accounts (revealed from extensive discovery against the respondent) of $7,460,774.69;

(e) 4,408,000 shares in CIL worth $995,400; and

(f) dividends in the amount of $1,097,350 paid to the respondent in 1999 to 2000 following the liquidation of Public Finance Co Ltd in which the respondent held shares.

I allow the appeal in respect of item (a) as the authorities are clear that the Central Provident Fund Special account and Medisave account are to be included. (See *Cheng Kwee Eng v Hoong Khai Soon* [1991] SGHC 77 and *Lam Chih Kian v Ong Chin Ngoh* [1993] 2 SLR 253, where the Court of Appeal held that the Central Provident Fund moneys of a spouse are matrimonial assets.)

26 In respect of item (b), the petitioner contended that the district judge had erroneously found that the respondent no longer held certain identified public company shares when in truth, by his own admission, the respondent still held shares in Cerebos PAC, Trek 2001 International Ltd, SHC Capital Ltd and Guocoland with a total value of $182,895.20. The respondent, however, explained that the shares were held under the OCBC CPF Investment Account which the district judge had already included among the matrimonial assets. On this basis, I disallow item (b).

27 I dismiss the appeal in respect of item (c), *viz*, 63 Bin Tong Park. Before me, the petitioner chose to concentrate on the contention that by reason of proprietary estoppel, the petitioner and respondent could have been held to have a licence coupled with an equity in the property on the facts. The district judge found no evidence whatsoever to support either this contention or the contention that there was a constructive trust of the property in favour of the petitioner or respondent. I am unable to see any basis for disturbing that finding. It seems clear to me that the appeal in respect of this item was made more in the hope than in the expectation of a favourable outcome.

28 In regard to item (d), *viz*, unexplained fund transfers ($7,460,774.69), I agree with the district judge that one cannot just add the unexplained deposits ($2,608,278.28) and withdrawals ($4,852,496.41) and regard the total as matrimonial assets. This was also conceded by the petitioner's counsel at the appeal. A substantial part of those fund movements were in connection with the purchase and resale of shares in a company, PCI Ltd ("PCI shares"). Whereas the respondent claimed that he had suffered a loss on those transactions, the petitioner contended that the respondent had in fact made a profit. Before the district judge, the parties disputed whether the said fund transfers had been adequately explained and accounted for. The petitioner maintained that the

respondent had not done so and therefore failed to provide a full and frank disclosure of his assets. She contended that many of the respondent's answers were either inadequate or proved to be incorrect in cross-examination. In particular, the petitioner referred to the conflicting reports of the accountants appointed by the respective parties.

29 The petitioner had engaged JK Medora & Co ("Medora") while the respondent engaged MGI Jason Mah & Associates ("Jason Mah"). Medora's report contained a summary report of three pages accompanied by eleven lengthy exhibits. Jason Mah's report, which was also three pages long, contained no analysis of the respondent's financial transactions. The petitioner submitted that the district judge did not properly appreciate Medora's report. The district judge made the following observations ([2005] SGDC 164 at [93]):

> Having considered the 2 accountants' reports, I was of the view that there was no evidence of any undisclosed assets.

Medora was provided with a set of documents the petitioner obtained in discovery. Medora set out in its report, an exhaustive list of bank accounts it had examined as well as the period in respect of which the bank accounts were examined. Medora also examined the respondent's Vickers Ballas and OCBC Securities Pte Ltd accounts. A thorough exercise of checking and cross-checking moneys obtained from the sale of the respondent's shares or moneys for the purchase of shares against the respondent's bank accounts disclosed that some of those funds simply could not be traced to the respondent's disclosed bank accounts. That could be seen at Sched I of Medora's report where, at the top of some of the pages, there was a note, "None of the below transactions can be traced to the relevant bank statements." One part of Medora's conclusions is set out below:

> We are unable to trace a considerable number of transactions listed in the statements from Vickers Ballas and OCBC Securities Pte Ltd into the above mentioned bank statements … which leads us to believe that Mr Lim Yew Khang may have some other financial arrangements, including fixed deposits of which we are not aware.

30 The respondent's firm of accountants, Jason Mah, was engaged to give an opinion as to the respondent's financial worth and to comment on Medora's report. Jason Mah had the opportunity to review Medora's report and rebut Medora's analysis. However, the respondent's accountant produced a report which shed no light on the transactions that Medora was unable to trace. At para 4(2), p 2, of Jason Mah's report dated 24 May 2002, he cryptically stated:

> Mr Medora was unable to trace a considerable number of transactions listed in statements from Vickers Ballas and OCBC Securities Pte Ltd mainly because they were "*out-of-scope*" from the list of bank statements which he examined and tabulated in page one of his letter dated 1st March 2002 to Drew & Napier LCC [*sic*] (hereinafter "his letter"). [emphasis added]

31 Jason Mah did not go on to demonstrate with actual documents where the unexplained transactions could be traced. The petitioner contended that if Jason Mah had examined the transactions and had managed to trace them, it would not have been so difficult to identify the document to which the transactions were traced. Alternatively, the petitioner contended that Jason Mah was shown documents and/or provided information which were not disclosed during the proceedings before the district judge.

32 Although the respondent was cross-examined on what "out-of-scope" documents were given to Jason Mah that were not given to Medora, he was unable, in the petitioner's view, to provide a satisfactory explanation. In fact, the respondent referred to Jason Mah's report in which the latter

stated:

> We interviewed the Respondent and obtained relevant explanations from him on his financial position and transactions ...

and said that Jason Mah's information was derived from the alleged interview. What transpired at that interview was not made known to the district judge.

33 The petitioner contended before me that the district judge ought not to have accepted the respondent's accountant's bare allegation that the "out-of-scope" documents contained the relevant information, without any proof of what the "out-of-scope" documents were.

34 The petitioner submitted that the process of discovery took a very long time as the petitioner was forced to make enquiry after enquiry of the respondent as to the numerous fund transfers into and out of the respondent's bank accounts. It was alleged that the petitioner was ultimately compelled by the evasive disclosure of the respondent to take out an application for discovery. This resulted in an Order of Court dated 23 June 2000. The Order set out a detailed range of queries the respondent was obliged to respond to in a schedule to the Order, 15 pages in length.

35 The petitioner further contended that, despite the Order, the respondent delayed and obstructed discovery under the discovery orders obtained in June 2000 for an appallingly long time. A compilation of letters tracing the history of discovery from April 1999 to January 2002 was set out in the petitioner's 14th affidavit. A narrative dealing with those letters was set out in the petitioner's Bundle of Relevant Documents tendered during the proceedings in December 2003. They documented the history of alleged evasive discovery by the respondent that had, in no small part, delayed the proceedings for so long as well.

36 It is true, of course, that answering the numerous questions by the petitioner was both arduous and time-consuming. For this reason, perhaps, the district judge was sympathetic to the respondent's difficulties. The fact remains, however, that although, as the district judge found, a substantial part of the transactions had been explained, many questions still remained extant. As between the parties, all relevant information being peculiarly within the knowledge of the respondent, it was for the respondent to provide the answers to the petitioner's questions.

37 Against this background, the district judge's conclusion that there was no evidence of any undisclosed assets was an error of fact and law. It was an error of fact because she failed to find, as she ought to have, that many fund transfers remained unexplained.

38 It is noted that even in the respondent's Reply Submissions below, there was an implicit admission that certain fund movements had *not* been explained. Paragraph 132 of the said Submissions stated as follows:

> In Tab 1 herein, is a table of the Respondent's explanations with reference to supporting evidence to the Petitioner's claims of unexplained transactions and it includes the various supporting evidence such as cheques made in favour of Phua. It is submitted that at least these amounts from the explanations therein ought to be accepted as satisfactorily explained and be deducted from the Petitioner's tabulations in Tab 6 of the PBRD.

It was an error of law because on the basis of the respondent's failure to produce before the court documents and explanations which the respondent appeared to have furnished to his accountant, an adverse inference ought to have been drawn against him.

39 The petitioner contended that, at the least, the net sum of $2,244,218.13 should be regarded as part of the matrimonial assets, this figure being arrived at by deducting the amount of unexplained deposits ($2,608,278.28) from the aggregate unexplained withdrawals ($4,852,496.41). However, accepting, as the district judge appeared to do, the aforesaid explanations provided by the respondent in Tab 1 referred to in the respondent's closing submissions in the court below, the unexplained deposits and withdrawals would be reduced as shown below:

Unexplained deposits:

$1,220,038.29 (being $2,608,278.28 less $1,388,240 which had been explained).

Unexplained withdrawals:

$2,435,120.10 (being $4,852,496.41 less $2,417,376.30 which had been explained).

40 The excess of unexplained withdrawals over unexplained deposits thus is $1,215,081.90 (being $2,435,120.10 less $1,220,028.21). Given the unexplained net withdrawal of this amount, it is not unreasonable to regard this as part of the matrimonial asset. Admittedly, this method of arriving at a figure is "rough-and-ready". Counsel for the respondent went so far as to castigate it in strong terms. Consider, however, the more logical alternative, *ie*, to regard as part of the matrimonial assets all withdrawals from the bank accounts for which the respondent was unable to provide an explanation. That would have meant that the whole of the $2,435,121.10 would have to be included as part of the matrimonial assets. Allowing the unexplained deposits to be set off against the unexplained withdrawals benefited the respondent as it treated such deposits as though they were a return of part of the unexplained withdrawals. In arriving at this finding in preference over the district judge's, reliance is placed on *Lau Loon Seng v Sia Peck Eng* [1999] 4 SLR 408 at [30], where it was said:

> When a court draws such an adverse inference, it should make a finding of the value of the undisclosed assets, because the drawing of the inference is not an end in itself, but a basis for not accepting the value of the declared assets as conclusive, and for employing a higher sum instead … the court should do it on available facts, and it is for the party which is dissatisfied with it to show that it is unreasonable.

41 Given the above finding, it becomes unnecessary to determine whether the respondent made a profit or suffered a loss on the transactions in PCI shares. This is just as well since, with inadequate information, it is impossible to arrive at a conclusive answer to that question.

42 As regards item (e), the petitioner submitted in the court below that in addition to the 14,000 CIL shares held in his own name, another 3,520,000 CIL shares held by ECA Investment Pte Ltd ("ECA") ought to be treated as matrimonial assets. This was, of course, untenable as the respondent's shareholding in ECA was only 40%. Before me, the petitioner asked for only 40% of ECA's holdings of CIL shares to be included. However, the respondent countered that the liabilities of ECA could not be disregarded and that, taking them into account, the ECA shares had a negative value. Rather than to remain in contention over the true value of the ECA shares, the parties accepted the court's suggestion that the respondent's ECA shares be divided between the parties in accordance with the percentage division of matrimonial assets.

43 I now consider item (f). It is, I think, indisputable that the respondent's shares in Public Finance Ltd ("Public Finance") are not part of the matrimonial assets. In the court below, the petitioner admitted as much. Before me, the petitioner made an about-turn, submitting that the

liquidation proceeds should be included as part of the matrimonial assets. In my view, this is untenable. The shares in Public Finance were a gift from the respondent's father prior to the marriage. Under s 112(10) of the Women's Charter (Cap 353, 1997 Rev Ed), if the petitioner, either alone or with the respondent, did not improve it substantially, it cannot be considered a matrimonial asset. There was no evidence of any such improvement.

44 Finally, the district judge found that RM150,000 in a Malaysian bank account in the petitioner's name formed part of the matrimonial assets. Although the petitioner gave oral evidence that there was no money left in the account, she gave no documentary evidence of withdrawals therefrom. In those circumstances, it was clearly open to the district judge to disregard her oral evidence. I endorse the district judge's decision. Such treatment is also consistent with the approach I have taken with respect to the unexplained fund transfers.

45 The respondent's appeal in regard to the division of matrimonial assets was on the grounds:

(a) that the district judge had erred in excluding the respondent's various liabilities when determining the respondent's available assets; and

(b) that the petitioner was not entitled to 50% of the matrimonial assets.

The respondent's liabilities

46 The respondent claimed to have the following liabilities:

(a) loans from his father totalling $2,035,000;

(b) loans from his mother amounting to $600,000;

(c) personal guarantee to Oversea-Chinese Banking Corporation Limited ("OCBC Bank") in the amount of $3,061,287 with respect to ECA;

(d) overdraft facilities from Citibank Ready Credit overdrawn up to $40,316.07;

(e) overdraft facilities from ABN AMRO Bank NV overdrawn up to $38,733.66; and

(f) personal guarantees to The Hongkong and Shanghai Banking Corporation, Moscow Narodny Bank Limited, OCBC Bank and KBC Bank NV to meet CIL liabilities estimated at £14m or $41,851,871.98.

Loans from parents – $2,635,000

47 The respondent claimed to have borrowed a total of $2,635,000 from his parents, which he alleged had to be repaid to his parents. Inconsistent with this claim was the respondent's contention that his parents had provided for the parties' comfortable lifestyle and were willing to continue so to do. The respondent had submitted as follows:

> The Wife was well aware that her father-in-law provided some of the comforts she enjoyed as her husband was unable to do so e.g. the house, cars …[note: 1]
>
> At the same time, she led a more than comfortable life as the daughter-in-law of a wealthy man and with a lifestyle which her father-in-law was prepared to provide so long as she was a part of the family.[note: 2]

The respondent's contentions above certainly conveyed no notion of the respondents' parents having "provided" a comfortable lifestyle to the parties unwillingly, or on the expectation of repayment of the moneys for the "provision" of such lifestyle. In any event, both the respondent's parents gave evidence on the alleged loans.

48 The district judge found as a fact that any moneys "lent" to the respondent were "written off" or gifts to him. During cross-examination, the respondent's father admitted he did not have any written record of moneys "borrowed" by the respondent or even the exact amount borrowed, saying that he carried the amounts owing "in his head" only. The evidence also showed that neither of the respondent's parents made any demands for the respondent to pay back the alleged moneys he had "borrowed" from them.

49 The evidence showed that the respondent made considerable profits of more than $400,000 in CPF stocks in 1999, yet no attempt was made by the respondent to repay the loans he allegedly took from his parents. The father testified that he had no idea of such earnings and that the respondent never told him about them. This clearly undermined the respondent's father's claim that "knowing my son, he would tell me and give back to me".

50 The alleged loan of $1,245,000 the respondent took from his father in 1994 is more than ten years old. Even if the respondent's father wished to recover the moneys from the respondent, such an action would be time-barred. In any event, the respondent's father claimed to have made payment of those moneys to one Mr Ho Seng Hock ("Mr Ho") of OCBC Securities Private Limited in order to settle the respondent's "contra" losses. No evidence was given by Mr Ho whether he received those moneys. During cross-examination, the respondent's father could not recall exactly when he made the payment to Mr Ho or how he made the payment. For a "loan" of this magnitude, if, as the respondent's father claimed, he had every intention of claiming the money back from the respondent, he ought to have been able to give more convincing evidence as to the "loan".

51 With regard to the "loans" of $700,000 and $30,000 allegedly to settle overdrafts, bank loans, Direct Store losses, household expenses and the respondent's 1999 income tax, no evidence was adduced by the respondent of those payments. The respondent did not even provide a date as to when the $700,000 was allegedly borrowed from his father. In view of the totality of the evidence, the loans totalling $2,035,000 were correctly disregarded by the district judge in assessing the respondent's liabilities.

52 As for the loans totalling $600,000 from the respondent's mother, he claimed to have borrowed $150,000 from his mother "a long time ago". No other evidence was produced by the respondent of this loan. Even the respondent's mother did not give evidence specifically on that amount but claimed to have extended to the respondent loans of various amounts over the years. The respondent did not make specific mention of that loan amount in his affidavits. In the absence of any concrete evidence from the respondent, it was right to disregard the "loan" of $150,000.

53 The respondent also claimed to have borrowed $450,000 from his mother. The money was taken from a joint account that the respondent had with his mother. The petitioner submitted that the sum of $450,000 was for the respondent's beneficial use and that the respondent's mother had no intention of recovering moneys from the respondent. This was clearly demonstrated when the respondent's mother was cross-examined. When questioned on whether she could accept it if the respondent could not repay her, she replied, "If he says he can't pay, I accept it because he's my son".

54 The respondent's mother also admitted that the respondent never approached her or spoke to her about paying back the loan. When questioned whether she intended that the respondent would one day enjoy the money in the joint bank account, she replied, "I suppose so". The respondent did not dispute this exchange. In the circumstances, the court below was right in concluding that any moneys from the respondent's parents ought to be treated as gifts or written off.

Personal guarantee of $3,061,287.20 with respect to ECA

55 The respondent claimed to be liable under a personal guarantee for $3,061,287.20 with respect to ECA's liabilities to OCBC Bank. It appears from the documents relied upon by the respondent that the personal guarantee was provided by both directors of ECA, namely, he and his brother, and was also secured by a "deposit of a related party". The respondent's father also claimed to have given a personal guarantee in respect of the bank loan for ECA.

56 The court below found that the respondent had not produced any evidence that any such alleged personal guarantee had crystallised or was likely to crystallise in the future. In my view, the district judge was on firm ground to disregard the respondent's alleged liabilities of $3,061,287.20 with respect to ECA.

Overdraft facilities – $79,049.73

57 The respondent claimed to have overdraft drawings of $79,049.73 but produced no evidence as to what they were used for. In view of this, the court below found that the respondent "had not explained when and the purpose for which [the overdraft facilities] were taken" ([29] *supra* at [90]) and did not take the said overdraft facilities into account in the division of matrimonial assets. In the absence of any explanation, it was open to the lower court to do so.

Personal guarantees of $41,851,871 with respect to CIL

58 During two rounds of written submissions and several rounds of oral submissions to the court below at the conclusion of the trial, the respondent did not mention at all his liabilities under this alleged personal guarantee of $41,851,871. It was only brought up at the appeal before me. The petitioner objected to the respondent's effort to introduce any fresh evidence relating to the alleged liability of $41,851,871 at this appeal. Without prejudice to the objection, the petitioner said that the documents relied upon by the respondent disclosed that the respondent's guarantee liabilities were shared with his brother and their father, up to an aggregate of only £6,000,000 or $17,942,696. The petitioner further maintained that the respondent had not proved that there was a crystallised liability of $41,851,871 or at all.

59 The respondent submitted that if the petitioner forced payment from him, it would "trigger a default call on his personal guarantees in which event he [was] likely to be made insolvent". The respondent even threatened that it was likely that he would then be made a bankrupt, in which case he would be unable to maintain the petitioner and their children. There was no evidence that any of the banks had called on any of the guarantees, nor was there any evidence that the banks were likely to do so anytime in the near future. Besides, it emerged from the very documents which the respondent's counsel sought to tender that the banks were in fact already secured for the facilities.

60 Accordingly, even if the evidence of the personal guarantee was to be admitted, I would disregard the alleged liability for the purposes of determining the value of the matrimonial assets.

Percentage awarded to the petitioner

61 Section 112(1) of the Women's Charter confers on the court power to order the division of matrimonial assets in such proportions as the court thinks just and equitable. In the exercise of this discretionary power (including the decision whether or not to do so), the court is required to take into account *all the circumstances of the case* including the matters set out in ss 112(2) and 114(1) so far as they are relevant. In the view of Judith Prakash J expressed in *Yow Mee Lan v Chen Kai Buan* [2000] 4 SLR 466 at [32] and [33]:

> The court's task in each case now is to consider the marriage before it as a whole and particularly the role played by each of the parties in the physical and emotional care of the family and in their financial dealings, in order to arrive, to the best of its ability, at a fair division of the assets. In doing this, the court will of course have regard to the various factors laid down both in s 112(2) and in s 114 but will not be bound to give pre-eminence to any of those factors in the way it used to have to do under s 106(4). Thus, a party's financial contributions to the acquisition of any particular matrimonial asset can no longer be principally determinative of how it is divided and the court is free to give as much weight or more to other, non-financial, factors.
>
> …
>
> In my view, the correct approach would be to first determine the facts of any particular case, consider which of the factors set out in s 112(2) are applicable on those facts and thereafter decide what on that basis would amount to an equitable division.

62 On the parties' financial contributions to the acquisition of any particular matrimonial asset, Prakash J in the same case at [43] said:

> [M]arriage is not a business where, generally, parties receive an economic reward commensurate with their economic input. It is a union in which the husband and wife work together for their common good and the good of their children. Each of them uses (or should use) his or her abilities and efforts for the welfare of the family and contributes whatever he or she is able to. The partners often have unequal abilities whether as parents or as income earners but, as between them, this disparity of roles and talent should not result in unequal rewards where the contributions are made consistently and over a long period of time.

The approach adopted by Judith Prakash J was approved by the Court of Appeal in *Lim Choon Lai v Chew Kim Heng* [2001] 3 SLR 225. L P Thean JA, after endorsing the approach, went on to say at [14]:

> In determining a 'just and equitable' division of matrimonial assets under s 112(1) of the Women's Charter, the court must, as directed by s 112(2), have regard to all the relevant circumstances of the case at hand, and in particular the matters enumerated in that subsection, in so far as they are applicable, and on that basis determine what a 'just and equitable', division should be. The matters enumerated there comprise both financial and non-financial contributions made by the parties. Where financial contributions are concerned, the court must, of course, take into account the sums contributed by each party; these are the matters specifically mentioned in paras (a) and (b) of s 112(2). However, this does not mean that the court should engage in a meticulous investigation and take an account of every minute sum each party has paid or incurred in the acquisition of the matrimonial assets and/or discharge of any obligation for the benefit of any member of the family, and then make exact calculations of each party's contributions. The court must necessarily take a broader view than that. As for the non-financial contributions, they also play an important role, and depending on the circumstances of the case, they can be just as important. At the end of the day, taking into account both the financial and

non-financial contributions, the court would adopt a broad-brush approach to the issue and make a determination on the basis of what the court considers as a 'just and equitable' division.

63 The respondent's main argument was that the court below made an incorrect finding that the petitioner had made substantial indirect or non-financial contributions since she did not devote all her time towards caring for the family and running the household during the marriage. The respondent therefore contended that the petitioner was entitled to less than 35% of the matrimonial assets.

64 It is noteworthy that the district judge found that the petitioner, rather than the respondent, was the primary care-giver for the children and that, contrary to the respondent's allegations, she did not compromise the children and the family's well-being while she was having the Montessori playgroup. Evidence given below also showed that she worked very hard for Direct Store of which the respondent was part owner. Notwithstanding that, through no fault of hers, Direct Store was not a success, the fact remains that she contributed to the enterprise. Such contribution is not necessarily measured by the amount of money it brought into the family coffers. The evidence is clear that the petitioner was fully stretched when she was working at Direct Store, dividing her time between work and home. There was no evidence that she had whiled away her time indulging herself rather than caring for the family. Therefore, the respondent's contention that the petitioner did not devote all her time towards caring for the family was without merit.

65 The respondent cited two cases in support of his contention that, despite her 18 years of marriage, the most that the petitioner was entitled to was 35% of the matrimonial assets. In the first case, *Ong Chen Leng v Tan Sau Poo* ([17] *supra)*, the parties divorced after a marriage of 23 years. The couple had three children. The wife's financial contributions were minimal but she did housework and looked after the children. The Court of Appeal was of the view that her contribution to the acquisition of the assets entitled her to only 35%. The second case cited was *Chan Yeong Keay v Yeo Mei Ling* [1994] 2 SLR 541. In that case, the parties were again married for about 23 years before the husband petitioned for divorce. The husband looked after the children and did the housework. The wife was the sole breadwinner who paid for almost all the assets acquired by the couple. K S Rajah JC awarded the husband one third of the assets.

66 In her endeavour to distinguish the two cases, the petitioner went to some lengths in pointing out salient differences between the facts in those two cases and those in the present case. In this respect, I did not find the petitioner's arguments compelling although, in part, they were persuasive. What the petitioner failed to point out, and this really is the critical distinction, is that the two cases cited by the respondent were decided under the old s 106 of the Women's Charter (Cap 353, 1985 Rev Ed) before the enactment of s 112.

67 The difference is explained in Prakash J's judgment in *Yow Mee Lan v Chen Kai Buan* ([61] *supra*) where she said at [30]:

> The enactment of s 112 in 1996 removed the dichotomy which the previous legislation had contained: the difference in approach to the division of assets that had been acquired by the joint efforts of the parties from the approach taken to the division of those that had been acquired by the sole efforts of one of them. In the context of the famous and often analysed s 106, the efforts that resulted in any particular asset falling into one category or the other were financial efforts only and when it was established that only one party had financed an acquisition, the court had to give that party a greater share in that asset. On the other hand, when assets had been acquired by joint efforts, the court had a freer hand in dividing them though there was a suggestion that the court should divide them equally.

The district judge's decision to apportion the matrimonial assets equally was an exercise of her discretion taking into account all the circumstances. It is clear that she was sympathetic to the plight of the petitioner in the latter's failure to obtain a share of the matrimonial home which she had lived in for more than 16 years and, if not for the divorce, would have continued to reside in. However, she did not allow her sympathy to run ahead of the merits of the case. No compelling reason was given by the respondent why that exercise of the district judge's discretion was not just and equitable. I therefore dismiss the respondent's appeal on the division of matrimonial assets.

Costs

68 The respondent contended that since the Divorce Petition proceeded on an uncontested basis and since the respondent had already paid the petitioner's costs for the Petition in the amount of $2,500, the costs of the ancillaries hearing should be determined on:

(a) the outcome of the ancillaries; and

(b) whether the positions taken by the parties were reasonable in the context of the orders made on the ancillaries.

69 The respondent sought to rely on the case of *Tan Bee Bee v Lim Kim Chin* [2004] SGHC 242 in support of his contention that since the decree *nisi* was granted on the basis of the petitioner's amended petition, the first instance judge in that case did not make any costs orders in relation to the ancillary matters. In response, the petitioner pointed out that there was a critical reason in relation to the cost orders made in that case, *viz*, that the petitioner had amended the grounds of her petition from unreasonable behaviour to four years' separation and that it was the settled practice that divorces granted on grounds of separation did not usually attract costs orders while divorces granted on a fault basis, such as desertion, adultery and/or unreasonable behaviour, would.

70 As pointed out by counsel for the petitioner, the respondent's contention flies against settled law that the ancillary matters are a continuation or part of the hearing of the Divorce Petition and, as such, the costs of the ancillaries should follow the costs order made on the Petition.

71 In *Tham Khai Meng v Nam Wen Jet Bernadette* [1997] 2 SLR 27, the divorce proceedings were contested between the parties. On the day of the hearing, the husband agreed not to contest the Supplemental Petition and withdrew his Cross Petition. A decree *nisi* was accordingly granted on the Supplemental Petition based on the husband's admitted adultery and with costs awarded to the wife. However, the wife was not awarded the costs of the ancillary matters. The Court of Appeal reversed the lower court's decision on the issue of costs and stated (at [49]–[50]) as follows:

> We now come to the question of costs. The wife was granted the decree nisi on the ground that the marriage had irretrievably broken down owing to adultery committed by the husband. In granting the decree nisi the court below awarded to the wife the costs of hearing of the petition. The court, however, at the conclusion of the hearing of the ancillary matters made no order as to costs. With respect, we can find no reason why the wife should not be allowed the costs of such hearing. As the hearing of the ancillary matters was a continuation or part of the hearing of the divorce petition, the wife should be entitled to the costs of such hearing also. … Her costs should follow the same event. In our judgment, she should be entitled to the costs of the hearing of the ancillaries below, and we so order and set aside the order below as regards such costs.
>
> In our experience, quite often the High Court considers the hearing of ancillary matters in isolation from the hearing of the petition in dealing with the question of costs. In our opinion, this

is not correct. As we have said, the hearing of the ancillaries is part of or a continuation of *the hearing of the petition. It therefore follows that where a party, whether petitioner or respondent is awarded costs at the hearing of the petition, the same order as to costs should follow at the hearing of the ancillaries*, unless the party to whom the costs were awarded at the hearing of the petition has acted unreasonably at the hearing of the ancillaries or for other good reasons.

[emphasis added]

72 Clearly, the district judge did not find that the petitioner had acted unreasonably. I see no reason why the district judge's costs order should not be upheld. Accordingly, I dismiss the respondent's appeal.

73 In conclusion, I summarise the outcome of the appeals as follows:

(a) On maintenance, I dismiss the respondent's appeal *in toto* and allow the petitioner's appeal by increasing the lump sum maintenance award to $1,716,456.

(b) I dismiss the respondent's appeal on the reimbursements.

(c) I dismiss the respondent's appeal in regard to the division of matrimonial assets but I allow the petitioner's appeal thereon in part by ordering:

(i) that in addition to the $500,000 previously ordered by the district judge, the petitioner is entitled to a half share of the parties' CPF Special and Medisave accounts totalling $124,207.23, of the sum of $1,215,081.90 deemed to be part of the matrimonial assets and of the petitioner's 40% holding of ECA shares; and

(ii) that the respondent pay to the petitioner the half share of the said sums and transfer and cause to be registered in her name half of his 40% holding of ECA shares.

(d) I dismiss the respondent's appeal on costs ordered by the district judge.

74 I will hear the parties on the costs of the appeals.

[note: 1]RC para 31, p 23.

[note: 2]RC para 82(2) p 62.