

Tan Yen Chuan (m.w.) v Lim Theam Siew
[2014] SGHC 110

Case Number : Divorce Transferred No 5475 of 2012
Decision Date : 04 June 2014
Tribunal/Court : High Court
Coram : Lee Kim Shin JC
Counsel Name(s) : Wong Chai Kin (Wong Chai Kin) for the Plaintiff; Anuradha Sharma (Winchester LLC) for the Defendant.
Parties : Tan Yen Chuan (m.w.) — Lim Theam Siew

Family law – matrimonial assets – division

Family law – maintenance – wife

4 June 2014

Lee Kim Shin JC:

Introduction

1 This was a long marriage of 28 years. The Plaintiff (“the Wife”) and the Defendant (“the Husband”) were married on 29 July 1985. They have two daughters, aged 28 and 24 years old.

2 The Wife filed for divorce on the ground of unreasonable behaviour in 2013. Interim judgment for divorce was granted on 9 April 2013 and made final on 15 April 2014.

3 The issues in the proceedings before me concerned the division of the parties’ matrimonial assets and maintenance for the Wife.

4 The main dispute in the division of the matrimonial assets was the veracity of an allegation by the Wife that the Husband had dissipated his assets. The Wife alleged that the Husband had dissipated his assets to the tune of \$1.5m. I shall refer to this \$1.5m as the “Alleged Dissipated Sum” and the amount of the dissipated sum based on my findings as the “Assessed Dissipated Sum”.

5 While I was satisfied that some of the Husband’s assets were indeed unaccounted for, I was not convinced by the Wife’s allegation that there was dissipation to the extent of the Alleged Dissipated Sum. After adding \$320,233 to the matrimonial pool, being my finding as to the Assessed Dissipated Sum, I awarded 40% of the matrimonial assets to the Wife, and 60% of the matrimonial assets to the Husband.

6 As regards maintenance for the Wife, I found the expenses that she claimed at \$5,000 per month to be unreasonably high. I assessed her claimable monthly expenses at \$2,205. Applying the formula used by the courts to calculate the number of years of maintenance to be awarded produced a figure of 16 years. However, I was minded to award lump sum maintenance which would give the Wife the benefit of the time value of money as well as the opportunity to invest the sum judiciously. I therefore decided that 14 years would be a reasonable period. The final lump sum maintenance came up to \$370,440.

7 The Husband has appealed against my decision on the division of the matrimonial assets and maintenance for the Wife.

Facts

8 As the proceedings before me only concerned the two issues set out in [7] above, I shall set out those facts which I consider to be salient to these issues.

9 The Husband, who is 61 years old, was unemployed at the time of divorce, having retired from his job in October 2012. Before his retirement, the Husband was a senior civil servant with the National Library Board, drawing a monthly salary of \$15,670. The Wife, aged 59, was at that time employed as the business development manager of a furniture company. Her monthly salary was \$5,500. The Wife lost her job on 24 June 2013 (after interim judgment for divorce was granted). She found a new position on 8 July 2013 as a sales manager with a home furnishings company at a lower monthly salary of \$3,000 plus monthly transport allowance of \$800.

10 The bulk of the parties' matrimonial assets lie in the matrimonial home which they own as joint tenants, a condominium along Pasir Panjang Road ("the Property") which was fully paid up by the time of the hearing. The parties, their daughters and a helper resided in the Property.

11 Bought in 2006 at \$1.3m, the Property was funded by both parties through a combination of cash, their respective Central Provident Fund (CPF) monies, and a housing loan. It was not disputed that both parties contributed towards the purchase of the Property, although the Husband's contribution was higher. At the time of the hearing, the Husband claimed that the Property was worth between \$1.6m and \$2m. [\[note: 1\]](#)

12 The remaining matrimonial assets were held in the parties' sole names.

Parties' submissions

13 Both parties agreed that the Property should be sold, but that they would each retain the other matrimonial assets held in their own names. Therefore, the only contention between them was the division of the proceeds from the sale of the Property. The Wife sought 70% of the net sale proceeds while the Husband proposed that the Wife's share should only be 30%.

14 The basis for the Husband's proposal was his significantly higher financial contribution to the purchase of the Property which he calculated to be at least 70% of the overall cost of the Property. The Husband also said that he needed sufficient money from the sale to buy another property that is large enough to accommodate him and their two daughters. The daughters expressed a preference to stay with him, even though one of them now resides overseas with her husband. The Husband also relied on his higher financial contributions to the daily outgoings of the family.

15 The Husband submitted that his proposal of 30% of the net sale proceeds for the Wife also includes her maintenance. [\[note: 2\]](#)

16 The Wife submitted that she should be awarded 70% of the net sale proceeds on three grounds:

- (a) First, she had contributed \$425,000 of her CPF monies to the purchase of the Property. [\[note: 3\]](#) This works out to approximately 33% of the purchase price of the Property.

(b) Second, she had looked after their two daughters throughout the duration of their marriage.

(c) The third ground, which was the principal point of contention, is that the Husband's assets are actually greater than what he had declared. Specifically, she alleged that the Husband had transferred more than \$1.5m out of his bank accounts, being the Alleged Dissipated Sum. The total matrimonial pool should therefore be enlarged and her share of the Alleged Dissipated Sum should be taken from the net sale proceeds of the Property.

17 As for maintenance, the Wife claimed monthly expenses of \$5,000 for a period of 16 years, given the average life expectancy of 85 years for women in Singapore. This works out to \$960,000, which she wanted paid as a lump sum.

18 Using the midpoint of the Husband's valuation of the Property at \$1.8m, the Wife's proposal would see her receiving \$1.26m from the net sale proceeds. With maintenance, the Wife was effectively seeking a total sum of \$2.22m from the Husband. On the other hand, applying the same valuation assumption to the Husband's proposal would result in the Wife receiving a total sum of \$540,000, inclusive of maintenance.

The grounds of my decision

19 It was patently clear to me that both parties' proposals were on opposite ends of the spectrum. Both were equally unreasonable. In the end, after applying the general principles which govern the division of matrimonial assets and the award of maintenance, my decision (see [3]–[6] above) produced a final aggregate sum of approximately \$1.37m to the Wife.

Division of matrimonial assets

20 I begin by explaining why I did not adopt the parties' proposal for them to retain the assets held in their respective sole names and for the court to decide solely on the division of the Property.

21 The difference between the parties' proposal for the division of the net proceeds from the sale of the Property was 40% – the Husband only offered the Wife 30% whereas the Wife wanted 70%. Had I awarded them their rightful share of the *entire* pool of matrimonial assets in the form of a *percentage of the Property*, the final figure that each might obtain may be different at the point of distribution of the net sale proceeds than at the time of judgment. Given the valuation of the Property and the current fluctuations in prices (in both directions), the difference could conceivably be fairly substantial. I did not think that it would be fair to either party to have to bear such market risk.

22 In my view, the alternative approach of calculating each party's interest as a *percentage of the entire pool of matrimonial assets* provided a more equitable distribution. A neat and practical division of their individual assets could still be achieved after the parties' respective percentage entitlements have been established. I proceeded on that basis.

Pool of matrimonial assets

23 The matrimonial assets can be split into four categories:

(a) assets held under the Husband's sole name;

(b) assets held under the Wife's sole name;

(c) the Property; and

(d) the Assessed Dissipated Sum.

24 At the hearing before me, counsel for the parties – Ms Wong Chai Kin for the Wife (“Ms Wong”) and Ms Anuradha Sharma for the Husband (“Ms Sharma”) – both agreed that the main contention over the value of the total pool of the matrimonial assets was the Alleged Dissipated Sum.

25 To my mind, this issue was the most challenging aspect of this case. The nature of the challenge was succinctly summarised by Chao Hick Tin JA in the Court of Appeal decision of *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 (“*Yeo Chong Lin*”) at [66]:

In this connection, we would like to emphasise one aspect where a party is regarded as not having made full and frank disclosure of his or her assets. In the nature of things, whichever approach the court adopts in such a situation, it is undoubtedly to a large extent speculative; whether it decides to give a value to what it considers to be “undisclosed assets” or to give a higher percentage of the disclosed assets to the other party. Either approach would translate to giving something more to the other spouse by way of a specific sum. The very fact that the court is confronted with the problem of “undisclosed assets” means that the position is unclear and far from certain. In the final analysis, it is for the court to decide, in the light of the fact-situation of each case, which approach would in its view best achieve an equitable and just result. What must be clearly recognised is that when the court makes such a determination it is not undertaking an exercise based on arithmetic but a judgmental exercise based, in part at least, on feel.

The Alleged Dissipated Sum

26 In a nutshell, Ms Wong asked the court to recognise the Alleged Dissipated Sum as forming part of the Husband's assets on the ground that the Husband had systematically withdrawn the Alleged Dissipated Sum from his bank accounts to artificially depress his financial position. Ms Sharma's response was that the Husband had done no such thing; the Alleged Dissipated Sum was dreamt up by the Wife. Those monies either did not belong to the Husband or had been spent – whether wisely or foolishly – and not dissipated by the Husband.

27 According to the Wife, the Alleged Dissipated Sum totalling \$1,557,202.11 comprised the following:

(a) \$644,000 – cash withdrawals from the Husband's bank accounts;

(b) \$250,000 – cash gift to one Ms Kempnet, a Thai masseur whom the Husband admitted having an affair with;

(c) \$441,397.58 – proceeds from the Husband's sale of his shares that were unaccounted for; and

(d) \$221,804.53 – monies which the Husband had “parked” into their daughters’ respective bank accounts.

28 Notably, what is evident in the Wife’s calculations is double-counting. For example, the \$250,000 cash gift to Ms Kempnet would have come from the cash withdrawn from the Husband’s bank accounts. Another flaw in the Wife’s calculations is her reference to the daughters’ *consolidated* bank statements as evidence that the Husband had deliberately siphoned large sums of monies away to the daughters. As the very description suggests, those bank statements were the aggregate withdrawals from, and deposits made into, the accounts over several years.

29 The Wife referred to the elder daughter’s bank statement to claim that the Husband had parked \$186,789.57 with the elder daughter. Having reviewed this claim, I found that there were no suspicious deposits of large sums of monies between 2010 and 2013. I am therefore satisfied that the Wife’s assertions on this claim had no merit. Likewise, I am prepared to accept the Husband’s explanation that the remaining \$35,014.96 which he had allegedly parked with the younger daughter was simply monies he had given her for her living expenses.

30 I also did not accept Ms Wong’s submission that some \$287,668.72 representing proceeds from the Husband’s sale of his shares were unaccounted for. She derived this figure by deducting the credits of the sale proceeds which she saw in the Husband’s bank accounts (\$153,728.86) from the value of the shares which the Husband had sold (\$441,397.58). The shortfall, she claimed, must therefore have been dissipated by the Husband.

31 I did not accept this submission because the Husband could not have directed that the net share sale proceeds be paid to him directly instead of the same bank account that was registered with the Central Depository System (CDP). As the shares which the Husband sold were listed on the Singapore Stock Exchange, the monies from the sale would ordinarily have been credited into the bank account that was registered with the CDP. I was not shown nor did I see any evidence to suggest otherwise. Hence, the Husband could not have diverted, or dissipated, the apparent shortfall. That amount would have been deposited into his bank accounts, and any dissipation could only have taken place thereafter in the form of withdrawals.

32 Accordingly, a more forensic approach, that is, to track the actual movement of large sums of monies out of the Husband’s bank accounts, would be a more reliable means of uncovering any dissipation.

33 I ignored the movement of smaller sums of monies – anywhere between several hundreds of dollars to a couple of thousands – as I thought that these could legitimately be explained as personal expenditure. The focus should be on the movement of sums which were large enough to invite the inference of dissipation.

34 Using that approach, on the Wife’s case, the net withdrawals from the Husband’s four bank accounts – DBS Account No xxxx0900; OCBC Account No xxxx0001; POSB Account No xxxx3325; and UOB Account No xxxx9390 – was only \$415,633.47.

35 Of this sum, I further deducted the following amounts from the Alleged Dissipated Sum as I found the Husband’s explanations to be somewhat plausible:

(a) \$45,000 – for the elder daughter’s expenses;

(b) \$9,300 – for the younger daughter’s expenses; and

(c) \$115,000 – to pay off Ms Kempfet’s gambling debts.

36 I only deducted \$9,300 instead of the \$20,000 that Ms Sharma submitted ought to be deducted for the younger daughter’s expenses. This was because I noticed that there was another item in the accounts which showed a \$10,700 transfer to the younger daughter which I assume was also for her expenses. As I had already factored this \$10,700 earlier in arriving at the unaccounted sum of \$415,633.47, I deducted a further \$9,300 instead of \$20,000.

37 The \$115,000 that I deducted was approximately half of the amount (\$232,000) that the Husband said he had withdrawn to pay Ms Kempfet’s gambling debts. [\[note: 4\]](#) I did not deduct the full amount as it appeared too convenient an explanation for me. It was a nice, round figure. Something was amiss and I was not prepared to give the Husband the benefit of the doubt to the detriment of the Wife. There was also no explanation as to how the gambling debt came up to this amount.

38 It did not help that the original purpose of those funds was the purchase of a property in Thailand with Ms Kempfet which the Husband said was aborted because the money was suddenly needed to settle Ms Kempfet’s “urgent debts” which she had incurred from visits to the casino. [\[note: 5\]](#) No reason was given as to why the debts had to be urgently repaid; no evidence as to the alleged Thai property purchase was provided; and it was also unclear whether the Husband sought repayment of the amount from Ms Kempfet. In the light of these ambiguities, deducting about half of the amount claimed to have been expended was, in my assessment, a fair outcome.

39 After factoring in the above withdrawals, only \$246,333.47 remained unaccounted for. This was far lower than the Alleged Dissipated Sum that the Wife claimed. Nevertheless, after considering the evidence in its totality, I could not be certain that the Husband had been entirely truthful and forthcoming both in terms of evidence of his assets and movement of some of those missing funds, and explanations for the payments to Ms Kempfet. Although I had already given some allowance for the latter, I felt that the Husband’s evasiveness and less than convincing evidence merited the drawing of a general adverse inference against him.

40 In my judgment, the evidence which he relied on in substantiating his assertion that he had been swindled was all too convenient. It also did not help that the Husband’s cash assets, as I found them, only came up to \$38,263.05. He was, after all, a senior civil servant whose last drawn monthly salary before retirement was \$15,670.

The Assessed Dissipated Sum

41 For those reasons, I added a further 30% to the unaccounted sum of \$246,333.47 (that is, \$73,900.04). Although I could have applied the adverse inference at the end by awarding the Wife a larger proportion of the remaining matrimonial assets than I would otherwise have had, bearing in mind what the Court of Appeal had said in *Yeo Chong Lin* (see [25] above), I thought it fairer (to the parties, especially the Husband) to infer that the Alleged Dissipated Sum was 30% more than the balance that remained unaccounted for. Since the Wife’s complaint was that the Husband’s cash assets were greater than that suggested by the disclosed evidence, a direct remedy would be to recognise a larger amount. That brought the Assessed Dissipated Sum to \$320,233.51.

The other assets excluding the Property

42 The other assets comprised the assets held in the parties' respective sole names. As mentioned above, this was hardly contested; the main dispute in the parties' submissions was the amount of the Assessed Dissipated Sum.

43 In any case, I found that the Husband's assets, inclusive of the Assessed Dissipated Sum, comprised the following:

Item	Value
CPF	\$171,112.10
Insurance	\$45,665.00
Car (less loan)	\$68,315.00
Country club	\$20,000
Bank balances	\$38,263.05
Shares	\$231,695.15
Assessed Dissipated Sum	\$320,233.51
Total	\$895,283.81

44 The assets in the Wife's name comprised the following:

Item	Value
Bank balances	\$2,926.07
CPF	\$117,867.04
Car (less loan)	\$233
Total	\$121,026.11

45 Hence, on the basis of my calculations, the total value of the matrimonial assets (excluding the Property) comprising the Assessed Dissipated Sum, the Husband's assets and the Wife's assets was \$1,016,309.92. Assuming that the net proceeds from the sale of the Property is \$1.8m, the total value of the matrimonial assets available for division would be \$2,816,309.92.

Assessing the Wife's share of the total matrimonial assets

Direct financial contribution

46 As indicated above, it was undisputed that the Wife's financial contribution to the Property paled in comparison with the Husband's. Taking her case at its highest, her CPF contribution was only 33% of the purchase price of the Property. After factoring in the interest paid on the mortgage, the Wife's contribution would be considerably lesser in proportion than that of the Husband's. Likewise, the Wife had not denied the Husband's assertions that the daily outgoings were largely borne by him.

47 Thus, as far as direct financial contributions are concerned, the Wife could not justify having more than even a 30% share of the Property, much less 30% of the matrimonial assets.

Non-financial contribution

48 The Wife was, however, on firmer territory with her claim of non-financial contributions in the form of investment of effort and time in looking after the children throughout the duration of their marriage.

49 In her submissions, Ms Sharma did not dispute that the Wife had looked after the children. I would have been surprised had she taken that stance. As a senior and high-ranking civil servant (given his last drawn monthly salary of \$15,670) before retirement, it is reasonable to assume that the Husband had invested considerable time into his career in the course of the marriage. Accordingly, it is also reasonable to assume that the Wife was being truthful when she claimed to have taken care of the children and the household. In the absence of any evidence to the contrary, I find any other conclusion difficult to accept.

50 I did, however, note that the parties' two daughters had made a joint statement which described the state of their relationship with their mother. [\[note: 6\]](#) The daughters claimed in their joint statement that their relationship with their mother had broken down as a result of the latter's abusive, irresponsible and unreasonable behaviour. [\[note: 7\]](#) From their accounts, as well as that of the Husband's, I accepted that the Wife was, unfortunately, somewhat paranoid, controlling and possessive. The atmosphere at home may not have been the most familial.

51 Yet, the daughters' recollection of various incidents over the years showed that notwithstanding her behaviour, the Wife was present in their lives and was actively involved in bringing them up. As far as I could tell, the daughters were unhappy with the way they were brought up; but that is not quite the same as saying that the Wife did not take care of the family.

52 I was unable to conclude that the Wife did not play her part in the family structure. She might not have been the mother her children wished her to be but that is not the test; it would be dangerous if that were the test. If I were to rely solely (or even heavily) on the daughters' joint statement, children with delinquent tendencies would have the power to convict their parents who are trying to instil discipline as bad parents. That cannot be right. There are many different parenting styles and philosophies, and the court – at least in this type of proceedings – does not sit as an arbiter of what is good parenting and what is not.

53 The test instead should be on the Wife's efforts and contributions towards the family in her capacity as wife and mother. From the various accounts, I was satisfied that the Wife took care of the daughters from birth and had attempted, in their later years, to build a fruitful relationship with her daughters despite their different personalities and the Wife's parenting philosophy. The fact that the Wife was around and tried to involve herself in the daughters' affairs – whether rightly or wrongly – shows that she had invested time and effort in her role as their mother, and to a broader extent, in her role as the wife.

54 The Husband's own evidence was that their marriage truly broke down only "a couple of years" ago in 2011. [\[note: 8\]](#) Although he gave evidence that there were quarrels since the early years of the marriage, there is nothing to suggest that such quarrels were so antagonistic that the Wife could be said to have ceased carrying out her role as a wife to the Husband. Indeed, the Husband did not go as far as to suggest that. Every couple will have their fights and arguments; such quarrels cannot be

used as evidence that either party thus contributed less to the marriage.

55 I noted also that the Wife had also tried, throughout the years, albeit in vain, to salvage her increasingly fractured relationship with the Husband. It would be unfair to her to discount these efforts. Divorces rarely happen overnight or as a result of a single event. The quarrels and differences couples have over the years and in the course of their marriage should not be turned around easily by either side in subsequent divorce proceedings as evidence that the marriage had broken down a long time ago.

56 Overall, I accepted that the Husband, the Wife and their daughters might not have been the happiest family around. However, up until the commencement of the proceedings, they were still a family which had meals together and even went on holidays together. [\[note: 9\]](#) I therefore found that the Wife had contributed to the family in her capacity as mother and wife over a substantial part of the long 28-year marriage, while the Husband spent time building up what turned out to be a successful career.

57 While non-financial contributions are, by their very nature, not easy to ascertain and value, they are no less important and cannot be gainsaid or undervalued: *Pang Rosaline v Chan Kong Chin* [2009] 4 SLR(R) 935 ("*Pang Rosaline*") at [21]. Obviously, there is no mathematical formula that can claim to accurately weigh the parties' respective financial and non-financial contributions.

58 Nevertheless, having regard to the fact that the Wife did contribute more than a minimal sum towards the Property, and had contributed indirectly in non-financial ways for the most part of the marriage in her capacity as a wife and mother, I felt that awarding her a 40% share of the matrimonial assets was just and equitable. I had consulted the precedents and was satisfied that 40% was in line with the percentage awarded in similar cases.

59 In *Foo Tee Sey v Loy Hui Eng* [2001] 3 SLR(R) 178, the High Court affirmed a District Court's decision to award the wife 60% of the matrimonial assets even though her financial contribution was less than the husband, in view of the long marriage of 18 years and the wife's non-financial contributions in bringing up their two children and the maintenance of the house and home.

60 In *Pang Rosaline*, a case involving a 32-year marriage, the Court of Appeal increased the wife's share of two matrimonial properties from 20% to 40% on the ground that the wife's non-financial contributions were substantial and ought not to have been ignored by the first instance court. Although the wife had no direct financial contribution to one property and only 39% in relation to the other, her role in bringing up the children and managing the household were held to be sufficient to justify a 40% share of both properties. Specifically, the Court of Appeal noted (at [20]) that generally, a marriage of such length militates against a finding that either party did not contribute towards the well-being of the family.

61 In *AWX v AWY* [2012] SGHC 4, another case involving a 32-year marriage, the High Court awarded the wife 45% of the matrimonial assets, even though the husband was found to be the sole breadwinner and fully responsible for all the household expenses. The court placed great emphasis on the wife's consistent non-financial contributions throughout the marriage. The husband, the court found, needed the help of the wife in taking care of the household, and the wife did so.

62 There are numerous other cases in which a wife who had made some financial contribution and had supported the family and maintained the home was awarded at least 40% of the matrimonial assets. However, the division of matrimonial assets is not an exercise in finding precedents. What is just and equitable is a matter that turns on the facts of each case. The cases highlighted above

show that 40% to the Wife is not a percentage that is out of line with what the courts have considered just and equitable in similar circumstances.

63 Ms Sharma cited two precedents which she said supported the Husband's proposal. The first is *Teo Siew Ngoh v Ng Hock Huat* [2013] SGHC 82 ("*Teo Siew Ngoh*"), where the wife was awarded 35% of the matrimonial property (as well as other matrimonial assets) even though her share of the financial contribution towards the matrimonial property was a minimal 4%. Frankly, I failed to see how this decision supports the Husband's case. I read the decision as affirming the importance of giving effect to a wife's non-financial contributions in a long marriage. The parties there were married for 30 years and it was undisputed that the wife had performed household chores and looked after the two children during the subsistence of the marriage. 40% in the present case is, in my view, consistent with *Teo Siew Ngoh* given that the Wife's financial contribution towards the Property was far in excess of 4%.

64 The second precedent cited by Ms Sharma is *Ng Hwee Keng (m w) v Chia Soon Hin, William and Another* [1995] SGCA 26. Ms Sharma submitted that the Court of Appeal there only awarded the wife 20% of the matrimonial assets for her non-financial contributions. That is incorrect on two counts. First, the Court of Appeal awarded the wife 40% of the net proceeds from the sale of one of the matrimonial properties, and 20% of the remaining matrimonial assets. The wife's non-financial contribution was therefore apportioned across both categories of assets. Second, it is clear from the judgment that the wife's non-financial contribution figured prominently in the Court of Appeal's calculus. Her role in looking after the family, her husband's parents and enhancing the family's quality of life was recognised as substantial.

65 On a final note, I would have awarded the Wife a higher proportion of the matrimonial assets if not for the daughters and the Husband's portrayal of her as someone who caused tension in the house. In other words, I had already factored in the quality – or more accurately, the deficiency of quality in this case – of the Wife's non-financial contribution. A proportion lower than 40% would, in my view, be an unjust and inequitable indictment of the Wife's labours over a substantial part of the long marriage.

Actual division of assets

66 The division of the net proceeds from the sale of the Property was straightforward. The Wife shall receive 40% of the net sale proceeds.

67 As for the division of the other matrimonial assets, for convenience, I ordered that both sides shall retain their respective assets. At 40% of the remaining matrimonial assets of \$1,016,309.92, the Wife's share was \$406,523. After deducting the value of the assets held in her own name (which value was agreed), the Wife's share to be given to her by the Husband was, after rounding up to the nearest hundred, \$285,500.

Maintenance

Quantum of monthly maintenance

68 I should begin by saying that I found Ms Sharma's submissions on the Husband's proposal on maintenance unpalatable. First, despite conceding that the Wife is entitled to be maintained by the Husband, Ms Sharma did not specify how much of the 30% of the net sale proceeds would be attributable as the Wife's lump sum maintenance. Perhaps the concession was an attempt to appear reasonable but there is nothing reasonable in saying that the Wife deserved maintenance without

giving a figure.

69 Ms Sharma's submission that "[i]f maintenance is payable, if at all, it should be lumped in the division of the matrimonial home" [\[note: 10\]](#) probably reflected the true intentions of the Husband, that is, he should not have to pay any maintenance at all. Should he have to pay, it would have to come out from the Wife's 30% share of the net proceeds from the sale of the Property. I was unable to agree with that.

70 Ms Sharma also portrayed the Wife as someone who had a high earning capacity, and the Husband as someone who was retired with no income and whose savings and investments were depleting rapidly. [\[note: 11\]](#) I gathered that this contrasting portrayal was designed to invite me to find that the Wife was fully able to support herself, and more important, that the Husband was financially incapable of maintaining the Wife.

71 I could not – and did not – make such a finding for two reasons. First, there was no evidence that the Husband could not afford *any* maintenance. His liquid assets – CPF monies, shares and cash – alone came up to more than \$400,000. He would of course need to retain some of those assets for his personal daily expenses, but the point is that he was not impecunious, at least not to the point that he could not even afford to pay the Wife any maintenance.

72 Secondly, I did not accept that the Husband could not continue working. There was no evidence that the Husband could not work – for medical or some other supervening reason – and therefore only had his savings to survive on. Ms Sharma's constant reference to the Wife's ability to find work that paid well in fact begged the question: if the Wife, who is only two years younger than the Husband, could find gainful employment at her age, why was the Husband, a former senior civil servant, unable to find any employment for his skills and experience which previously justified a monthly salary of more than \$15,000?

73 The Husband's attempt to elicit sympathy was, in these circumstances, ironic to say the least. If he has to survive solely on his savings, it was his own doing. I did not think that the Wife should be prejudiced by the Husband's refusal or reluctance to find gainful employment.

74 The Husband's own evidence painted the Wife as someone who depended heavily on the Husband. She had been depending on the Husband to pay for her shopping, dental and medical treatments, [\[note: 12\]](#) and even business debts. [\[note: 13\]](#) These were all in Ms Sharma's submissions. The Husband cannot in one and the same breath allege that the Wife had always depended on his earnings while they remained married, but now that they are divorced, that she, in actual fact, need not depend on him to support her lifestyle. He cannot have it both ways. In my view, the Wife here was nowhere close to the archetypical financially independent woman who may find it more difficult to justify a claim for maintenance.

75 While I was unsympathetic to the Husband's position, I had at the same time rejected the Wife's claim for \$960,000 in maintenance. Instead, I found that she was only entitled to \$370,440, or \$2,205 per month over a period of 14 years. In my view, the \$5,000 that she had sought to cover her food, groceries, transportation, dental and medical bills, toiletries and hire-purchase repayments, was extravagant. I was of the view that \$3,150 was more than adequate to cover those expenses.

76 Although s 114(1)(c) of the Women's Charter (Cap 353, 2009 Rev Ed) provides that the standard of living enjoyed by the family before the breakdown of the marriage is a relevant consideration, the court must be mindful of the other factors, including the age of each party to the

marriage (s 114(1)(d)) and the financial obligations and responsibilities which *each party* has or is likely to have in the foreseeable future (s 114(1)(b)).

77 Looking at both parties and their circumstances in the round, I found the Wife's decision to work heartening. Wives who are able to work and support themselves should not allow the breakdown of their marriage to hamper those desires of independence. That said, a wife's decision to work must not be counted against her. Any salary that a wife draws is relevant not so much as evidence that she *is* able to support herself and therefore does not *deserve* maintenance, but more so as a factor to consider in determining how much *more* might be necessary to place her in the financial position that is just in the circumstances (see s 114(2) of the Women's Charter).

78 In the main, the important considerations for me were that the Wife had been used to a particular lifestyle, and was taking concrete steps at her end to sustain that lifestyle. Although she was drawing a decent basic salary of \$3,000, I did not think it was just to count that entire sum against her. She had actively sought employment; the same could not be said of the Husband. Although currently unemployed, the Husband was capable of finding employment. His financial position now or in the foreseeable future was far from bleak.

79 Taking all these factors into consideration, I felt that it was appropriate to apply a further discount of 30% to the \$3,150 that I had found was the Wife's reasonable monthly expenses. I therefore fixed her final monthly maintenance sum at \$2,205.

Number of years of monthly maintenance

80 In calculating the number of years that maintenance ought to be paid for the purposes of deciding the quantum for lump sum maintenance, I adopted the formula set out in *Ong Chen Leng v Tan Sau Poo* [1993] 2 SLR(R) 545, which has since been applied by the High Court and affirmed by the Court of Appeal: see *BJZ v BKA* [2013] SGHC 149 ("*BJZ*") and *Wan Lai Cheng v Quek Seow Kee and another appeal and another matter* [2012] 4 SLR 405.

81 The formula first divides in two the sum of the average life expectancy of a Singapore woman, which is currently 85 years, and the usual retirement age of a Singapore male worker, which is 65 years. The wife's present age is then deducted from the figure obtained after the division. Applied to the present facts, the equation would be $[(85 + 65) / 2] - 59$, which works out to 16 years.

82 A further two years' discount was reasonable, in my view, as the lump sum payment was sizeable which, if invested judiciously, can generate decent returns. The benefit of time value of money is also too significant to ignore. This has been routinely acknowledged by the courts and is consistent with the overriding principle which Ms Sharma also adverted to, namely, that the "exercise of assessing maintenance must be taken flexibly, with 'a commonsense dose of realities'" (see *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506 at [19]).

83 In *BJZ*, Judith Prakash J awarded 16 years of maintenance, a discount of 9 years from the 25 years produced by the formula. She did so because she was of the view that the wife there was a medical professional in private practice and was capable of working until she was 65 or 70 years of age. The same judge also awarded 16 years in *Ng Ngah Len @ Datin Sandra Kauh v Kuah Tian Nam @ Dato Peter Kuah* [2003] SGHC 109 ("*Ng Ngah Len*") when the formula produced 21.5 years, as she was of the view that the early receipt of funds with careful stewardship would provide adequate maintenance for the wife.

84 The point of referring to these precedents is not to show that 16 years is a baseline figure.

Rather, it is to show that the courts are entitled to and do take into account the benefits of lump sum maintenance and the wife's ability to provide for herself in fixing the number of years of maintenance that should be awarded. An important consideration, in my view, was the parties' respective ages as that has a direct correlation on their potential earning capacity. The wife's age has particular importance. All things being equal, a wife who is young can be expected to find gainful employment more easily than one who is advanced in years. A larger discount would therefore be justified in the case of the former.

85 In the present case, the Wife was 59 years old. By comparison, the wife in *BJZ* was 50 years old while the wife in *Ng Ngah Len* was 46 years old. Although the Wife was employed, the fact is that age was not on her side. Her ability to remain employed in the same position can diminish quite quickly; after all, the formula applied above uses 65 years as the age of retirement for a male. In the circumstances, I considered that a discount larger than two years would not be fair to her.

86 Although I have been focusing on the Wife's circumstances, I was also mindful, in calculating the sum of maintenance payable by the Husband, of his ability to pay. I did not think that he could complain that \$370,440 was beyond his means. As mentioned above, without even taking into account the monies which he would receive from the sale of the Property, or any income which he can earn if he tried to seek employment, the Husband's liquid assets alone would cover this amount (see [43] above).

87 Even if the \$1.08m from the sale of the Property was all that he had (which was plainly not the case), that sum would cover the lump sum maintenance and the Wife's share of the matrimonial assets excluding the Property. In fact, there would remain a substantial surplus of more than \$400,000. I was careful not to drive the Husband into poverty and I did not think that my decision had that effect.

88 Last but not least, I am compelled to mention that at the same time that the Husband was complaining of the Wife's high expenditure and his alleged impoverishment, he had claimed monthly expenses of \$13,000 to \$14,000 in his affidavit of assets and means. [\[note: 14\]](#) These included food, groceries, household items and the like (\$2,000); golfing and other expenses at Raffles Country Club (\$500); personal expenses including holidays, computer equipment, spas and massages (\$3,000) and domestic helper levy and salary (\$725). Clearly, quite a number of the expenses claimed were not necessities or necessary.

Conclusion

89 In summary, I ordered the Husband to pay the Wife \$285,500 representing her share of the matrimonial assets other than the Property, and \$370,440 representing lump sum maintenance. These were in addition to another 40% of the net sale proceeds of the Property when it is sold.

90 Ms Wong informed the court that the Wife was facing some financial difficulties. In view of that, I ordered the Husband to pay \$50,000 of the total sum payable to the Wife within one month of my decision. The balance amounting to \$605,940 shall be paid together with the Wife's 40% share of the net sale proceeds of the Property. The parties shall arrange for the Property to be sold within six months of my decision.

91 I awarded costs of \$1,000 to the Wife.

[\[note: 1\]](#) Df's Submissions dated 11 Feb 2014 at p 7.

[\[note: 2\]](#) Df's Submissions dated 11 Feb 2014 at pp 3–4.

[\[note: 3\]](#) Pf's Submissions dated 13 Feb 14 at p 4.

[\[note: 4\]](#) Df's 4th Affidavit of Assets and Means dated 6 Nov 2013 at p 6.

[\[note: 5\]](#) Df's 2nd Affidavit of Assets and Means dated 7 Aug 2013 at p 7.

[\[note: 6\]](#) Affidavit filed in support of Df dated 19 Sep 2013.

[\[note: 7\]](#) Affidavit filed in support of Df dated 19 Sep 2013 at para 10.

[\[note: 8\]](#) Df's 2nd Affidavit of Assets and Means dated 7 Aug 2013 at p 118.

[\[note: 9\]](#) Affidavit filed in support of Df dated 19 Sep 2013 at paras 56–59.

[\[note: 10\]](#) Df's Submissions dated 11 Feb 14 at p 20.

[\[note: 11\]](#) Df's Submissions dated 11 Feb 14 at p 21.

[\[note: 12\]](#) Df's Submissions dated 11 Feb 2014 at p 12.

[\[note: 13\]](#) Df's Submissions dated 11 Feb 2014 at p 15.

[\[note: 14\]](#) Df's 1st Affidavit of Assets and Means dated 4 Jun 2013 at p 8.