

Lynn Foo Yoke Lin (formerly known as Foo Yook Lin) v Tan Fung Chuan (formerly known as  
Tan Fung Chyuan)  
[2014] SGHC 201

**Case Number** : Divorce Transferred No 2242 of 2011  
**Decision Date** : 17 October 2014  
**Tribunal/Court** : High Court  
**Coram** : Quentin Loh J  
**Counsel Name(s)** : The plaintiff in person; Lazarus Nicholas Philip (Justicius Law Corporation) for the defendant  
**Parties** : Lynn Foo Yoke Lin (formerly known as Foo Yook Lin) — Tan Fung Chuan (formerly known as Tan Fung Chyuan)

*Family Law – Maintenance – Wife*

*Family Law – Ancillary powers of court*

17 October 2014

**Quentin Loh J:**

### **Introduction**

1 These matrimonial ancillary proceedings involved maintenance, division of matrimonial assets, recovery of maintenance and costs in arrears and, of course, costs of these proceedings. I gave oral judgment on 15 August 2014 and the defendant-husband (“the husband”) has filed an appeal against my decision. I now give my grounds.

2 The plaintiff-wife (“the wife”) appeared in person as she could no longer afford legal representation. [\[note: 1\]](#) The husband was represented by Mr Nicholas Lazarus (“Mr Lazarus”). The husband has been rather adept at timing his appearance when necessary to protect his position, but disappearing otherwise. There is currently a warrant for his arrest, issued on 10 December 2012, but it appears our police have been either unable to locate him all this one year and eight months or he is a master of evasion. Yet, he appears able to run his business, affirm and file affidavits, and give his lawyer instructions, including instructions to appeal. I hasten to add that no aspersions are cast on Mr Lazarus, who strikes me as a sincere and fair person, who unhesitatingly informed me that he has advised his client as to the consequences of continued disobedience of court orders.

### **Background**

3 The parties were married in Singapore on 24 December 1987. The wife filed for divorce on 11 May 2011, and interim judgment was granted on 13 August 2012. The husband was about 54 years old and the wife was 52 years old. The husband is a Singapore citizen, but the wife, who was previously a Singapore citizen, is now a New Zealand citizen. There are two children to the marriage, both of whom are above 21 years of age, and no issues arose in this respect. In 2000, the family moved out of Singapore and relocated, first to Australia, and subsequently to New Zealand, where the wife and children continue to reside. [\[note: 2\]](#) When the family moved out of Singapore, the

husband continued to travel frequently for business, spending most of his time in Singapore. Due to his frequent travels, he failed to qualify for New Zealand citizenship. [\[note: 3\]](#) The matrimonial home, which is located in New Zealand, is subject to a trust. Both parties agreed that it was not subject to division in these proceedings.

### **Husband**

4 The husband is a director of several companies. The companies owned several properties, and the revenue of the companies was derived from the rental incomes from leasing out the properties. [\[note: 4\]](#) The husband was also a beneficiary of his late mother's estate. His mother passed away on 30 December 2001. [\[note: 5\]](#) The relevant portions of her will, dated 19 December 2001, read as follows: [\[note: 6\]](#)

9. I give devise and bequeath the following real properties to my son, Tan Fung Chuan:

Properties:

- (a) 3A Glasgow Road, Singapore 549293;
- (b) 1 Kaki Bukit Road 2, #02-08, Eunos Warehouse Complex, Singapore 417835;
- (c) No. 64, Jalan Lengkok Sembawang, Singapore 759245;
- (d) 101 Beach Road #03-06, Singapore;
- (e) A-25-F Blok A Mutiara Villa, Tingkat Tong Shin, 50200 Kuala Lumpur; and
- (f) 304 Orchard Road, #02-74, Lucky Plaza, Singapore 238863

...

16. All my gifts and disposition, realty and personalty, I give to my son, Tan Fung Chuan, only when he gives a written undertaking to my trustee that he will not during his lifetime transfer by way of gift to his wife, Foo Yoke Lin (NRIC No. 1384648/J) as beneficiary, any of my gift(s) or disposition of realty to Tan Fung Chuan.

5 Aside from the properties listed in para 9 of her will, the husband's mother also bequeathed other assets, such as the shares she held in various companies, to the husband. However, those assets were not relevant to these proceedings.

### **Wife**

6 While in Singapore, the wife worked in a bank and as an insurance agent with AIA. She then gave up her career to assist the husband in his business. She was a director in a few of the husband's companies. After moving overseas, she focused mainly on taking care of the home and the children, although she continued to assist the husband in his businesses. [\[note: 7\]](#)

### **Breakdown**

7 According to the wife, the husband was involved in a relationship with his administrative

assistant while the marriage was subsisting. The divorce was filed on the basis of the husband's unreasonable behaviour. The husband, however, was "not comfortable with the facts stated in [the] Statement of Particulars". [\[note: 8\]](#) He was also of the opinion that the divorce proceedings should have been commenced in New Zealand.

### **History of proceedings**

8 Divorce proceedings were commenced by the wife on 11 May 2011. The wife's solicitors managed to serve the documents on the husband on 8 June 2011. The wife explained the delay by alleging that the husband had been avoiding service. The matter was set down to be heard on an uncontested basis on 5 August 2011. However, the husband failed to enter an appearance by the due date. Nevertheless, he turned up at the hearing to request further time to consider if he wanted to contest the divorce. The matter was adjourned for a pre-trial conference ("PTC") on 6 September 2011.

9 At the PTC, the husband requested a further month to consult a lawyer. The judge gave directions for the husband to enter appearance and file his defence by 4 October 2011, if he wished to contest the divorce. On 4 October 2011, the husband, through his solicitor, filed an application to stay the divorce proceedings based on *forum non conveniens*. The application was heard on 27 December 2011. His application was dismissed on 17 January 2012.

10 After further delays and a change in solicitors, the husband filed a defence on 3 April 2012, claiming he had never committed adultery. This was in the face of a private investigator's report from the wife, as well as a child (born on 9 November 2011) from the adulterous relationship. [\[note: 9\]](#) The husband eventually withdrew his defence and agreed not to contest the divorce. Interim judgment was granted on 13 August 2012 on the basis of the husband's unreasonable behaviour.

11 The wife was awarded costs for several of these proceedings, including reimbursement of the private investigator's costs. The husband has yet to pay these costs. Furthermore, upon being served with the divorce documents, the husband stopped providing financially for the wife and the children. In fact, he terminated the wife's supplementary credit cards in Singapore and New Zealand, one of which was used to pay the household expenses.

12 The wife duly applied for interim maintenance in Maintenance Summons No 3894 of 2011. The husband applied to stay the wife's application, but his stay application was dismissed on 26 September 2011. The wife's application was heard on 11 November 2011, and a consent order was recorded (Maintenance Order No 1055 of 2011). [\[note: 10\]](#) The husband subsequently defaulted on payment. The wife then commenced enforcement proceedings against him in Maintenance Summons No 169 of 2012, but was unable to effect service on the husband. Eventually, she was granted leave to serve on the husband at his registered business address. This was done on 12 June 2012. The mention was fixed for 27 June 2012. The husband failed to appear at the mention and a warrant of arrest was issued against him.

13 The husband avoided service of this warrant for more than a month before he turned himself in. When he did, an enforcement order was made on 9 November 2012 (Enforcement Order No 1980 of 2012). [\[note: 11\]](#) However, he failed to comply with this, and the Family Court issued a second warrant of arrest against him on 10 December 2012. This second warrant has remained extant since then.

14 More pertinently, the husband stopped paying the mortgage fees on the matrimonial home, in which the wife was currently residing. When she appeared before me, she produced letters from the

bank and the Auckland Council, calling for overdue payments.

### **The issues**

15 Against this backdrop, the wife came to the High Court seeking a resolution of the ancillary matters. She prayed for the following:

- (a) an order that the husband pay the sums owing thus far, *viz*, NZ\$60,717.88 and costs orders amounting to S\$14,650;
- (b) approximately 50% of the matrimonial assets;
- (c) lump sum maintenance of S\$672,000; and
- (d) costs for the ancillary proceedings.

16 I deal with each of these in turn.

### **Maintenance and costs in arrears**

17 There is a standing enforcement order dated 9 November 2012 (see [13] above) that required the husband to pay the wife arrears in maintenance of NZ\$29,974.88 as at 30 September 2012. As at 15 August 2014, this order had not been complied with. Furthermore, between November 2012 and the commencement of these proceedings, the husband continued to default in his obligations to pay maintenance. The wife submitted, and I accept, that as at 10 June 2014, the arrears in maintenance owing to her amounted to NZ\$60,717.88. Also, the costs orders in these proceedings in favour of the wife amounting to S\$14,850 remain unpaid. To avoid any double-counting and doubt, I confirmed the order dated 9 November 2012 and varied the same to include in that order that the husband was to pay the wife both:

- (a) the maintenance arrears in accordance with Enforcement Order No 1980 of 2012 and up to 10 June 2014, amounting to NZ\$60,717.88; and
- (b) the outstanding costs orders, amounting to S\$14,850.

### **Division of assets**

18 The wife argued that the net value of the matrimonial assets was S\$2,801,691.84.

19 The husband argued it was "NIL" and, it appears from his submissions that as an alternative argument, the wife should only be entitled to 20% of the matrimonial assets.

20 A main area of dispute was whether the husband's properties at 101 Beach Road, #04-05 and #04-06 should be included in the pool of matrimonial assets.

21 The husband argued that the two properties should not be included as they were purchased using proceeds from the sale of gifts he had inherited from his deceased mother. However, he was unable to furnish any objective evidence other than a bare allegation. He stated, "[w]hen I sold my mother's gifts to buy other properties, I did not keep proper records to show the flows of monies".

[\[note: 12\]](#)

22 On the contrary, the wife stated that she had loaned the husband S\$174,000 in 2006, and that he subsequently used this sum to fund the purchase of three apartments at 130 Cantonment Road. Those apartments had since been sold for a profit.

23 The husband claimed that he had repaid the loan. He relied on a transfer of funds, denominated in New Zealand Dollars, to the wife. [\[note: 13\]](#) However, the wife disputed that the transfer was meant as repayment for the loan. [\[note: 14\]](#) There was therefore some uncertainty, as far as objective evidence went, as to whether the loan had indeed been repaid.

24 As there was doubt as to which pool of money the husband's funding for the #04-05 and #04-06 Beach Road units could be traced to, bearing in mind that the onus is on the owner of the gifted asset to prove the source of funds (see *Chen Siew Hwee v Low Kee Guan (Wong Yong Yee, co-respondent)* [2006] 4 SLR(R) 605 at [57]–[58]) and having considered all the evidence before me, I found that the #04-05 and #04-06 units should be included in the pool of matrimonial assets.

25 In summary, I agreed with the wife's identification of the assets in the pool and I found that the following constituted assets in the matrimonial pool:

- (a) 101 Beach Road #04-05;
- (b) 101 Beach Road #04-06;
- (c) total assets in Beach City Serviced Residences Pte Ltd;
- (d) total assets in Beach City Singapore Pte Ltd;
- (e) total assets in Beach City Asia Pte Ltd;
- (f) 60% of assets in Beach City Serviced Suites Pte Ltd;
- (g) total assets in Beach City Serviced Accommodation Pte Ltd;
- (h) total assets in Beach City International Pte Ltd;
- (i) total assets in Beach City Auckland Pte Ltd;
- (j) total assets in Beach City Manpower Pte Ltd;
- (k) 85% of assets in 102 Singapore Pte Ltd;
- (l) the monies in the husband's Central Provident Fund Board accounts; and
- (m) the monies in the husband's bank accounts.

26 The husband's main contention was with the quantification of items (c)–(k). There was no reliable or up-to-date evidence of the value of the companies. It was impractical, given the wife's lack of funds and the husband's ability to evade the police, to order a valuation of the companies. I therefore dealt with the assets as a whole and in the round.

27 The marriage lasted about 23 years. Although the children were both above the age of 21, the wife had taken care of the family since around 2000, when they emigrated from Singapore, as the

husband travelled and focused on the business. The wife was also a director in a few of the companies, and helped administratively in the husband's businesses from January 2008 to 2010. Her active involvement was telling from her knowledge of the businesses, and her ability to describe the same to the court both orally and through her affidavits. During her submissions, she readily conceded what she was not entitled to. I noted, also, the uncooperative nature of the husband as evinced by the two warrants of arrest thus far, and his history of failing to pay maintenance or comply with the costs orders made against him.

28 The wife also produced a notice from the mortgagee bank that the instalments on the matrimonial home in New Zealand (which was the subject of a trust, by which the husband, the wife and the two children of the marriage are beneficiaries) have not been paid. The mortgagee bank has threatened to take action if those instalments remained outstanding (see [14] above). I note, further, that the wife has been subsisting by taking out loans from her two children and against her insurance policies. [\[note: 15\]](#)

29 I ordered that the wife should be entitled to 40% of the matrimonial pool. For clarification, each party was to retain any assets held in each of their sole names.

### **Maintenance**

30 The wife sought a lump sum maintenance of S\$672,000 (S\$3,500 per month x 16 years). She arrived at the figure of 16 years by first calculating a multiplier of 21. This was based on the test cited in *Wan Lai Cheng v Quek Seow Kee and another appeal and another matter* [2012] 4 SLR 405 at [89].

31 The test could be mathematically represented as follows: (average life expectancy of a woman + usual retirement age of a Singapore male worker) / 2 – wife's present age. In applying the test, the wife used the average life expectancy of 85 and the average retirement age of 65. Her age was 54. This gave rise to a figure of 21. She further discounted this figure to 16. [\[note: 16\]](#)

32 The husband argued that the maintenance should be S\$500 per month.

33 Taking into account the interim maintenance order (NZ\$2,800 per month excluding household expenses and mortgage on the matrimonial home), as well as the circumstances of the case, I found that a monthly sum of NZ\$3,500 was fair. One important circumstance was that the husband had been contributing around NZ\$17,000 to the family's monthly expenses from December 2009 to May 2011. [\[note: 17\]](#) The husband accepted this figure as accurate, save as to clarify that the figure was high because the children were still undergoing their tertiary education at that point in time. [\[note: 18\]](#)

34 Given the husband's history of defaulting on maintenance payments, I ordered that a lump sum payment of NZ\$504,000 be made, based on a multiplier of 12 years. I arrived at the figure of 12 years after taking into account the possibility that the wife would receive modest pay-outs from the New Zealand government.

### **Costs**

35 In the light of the husband's conduct throughout these proceedings and the proceedings below, I awarded costs to the wife for expenses reasonably incurred and I fixed this amount at S\$2,000, all in.

36 There shall be liberty to apply and generally in relation to consequential orders that might arise.

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[\[note: 1\]](#) Wife's Written Submissions dated 29 July 2014 at para 23.

[\[note: 2\]](#) Husband's 1st Affidavit for Summons Hearing dated 4 October 2011 at para 5 and Wife's Written Submissions dated 29 July 2014 at para 18.

[\[note: 3\]](#) Wife's Written Submissions dated 29 July 2014 at para 19.

[\[note: 4\]](#) Husband's 3rd Affidavit for Divorce Hearing dated 7 August 2012 at para 1.

[\[note: 5\]](#) Husband's 1st Affidavit for Summons Hearing dated 4 October 2011 at para 9.

[\[note: 6\]](#) Husband's 1st Affidavit for Summons Hearing dated 4 October 2011 at pp 33–38.

[\[note: 7\]](#) Wife's Written Submissions dated 29 July 2014 at para 21 and Wife's 8th Affidavit for Summons Hearing dated 27 September 2013 at para 3.

[\[note: 8\]](#) Husband's 1st Affidavit for Summons Hearing dated 4 October 2011 at para 12.

[\[note: 9\]](#) Wife's Written Submissions dated 29 July 2014 at para 6.

[\[note: 10\]](#) Wife's Written Submissions dated 29 July 2014 at Annex A.

[\[note: 11\]](#) Wife's Written Submissions dated 29 July 2014 at Annex C.

[\[note: 12\]](#) Husband's 2nd Affidavit for Ancillary Matters Hearing dated 26 December 2012 at para 31.

[\[note: 13\]](#) Husband's 2nd Affidavit for Ancillary Matters Hearing dated 26 December 2012 at para 45.

[\[note: 14\]](#) Wife's Written Submissions dated 29 July 2014 at para 72.

[\[note: 15\]](#) Wife's Written Submissions dated 29 July 2014 at para 23.

[\[note: 16\]](#) Wife's Written Submissions dated 29 July 2014 at para 195.

[\[note: 17\]](#) Wife's Written Submissions dated 29 July 2014 at para 22.

[\[note: 18\]](#) Husband's 3rd Affidavit for Ancillary Matters Hearing dated 23 January 2013 at para 21.