

Kwong Ling Yi v Liu Kah Foong
[2014] SGHC 47

Case Number : Divorce Suit No 3018 of 2011 (Registrar's Appeal from Subordinate Courts No 81 of 2013)
Decision Date : 19 March 2014
Tribunal/Court : High Court
Coram : George Wei JC
Counsel Name(s) : Linda Ong (Engelin Teh Practice LLC) for Appellant/Plaintiff;
Respondent/Defendant, in person.
Parties : Kwong Ling Yi — Liu Kah Foong

Family Law – Matrimonial Assets

Family Law – Maintenance

19 March 2014

Judgment reserved.

George Wei JC:

Introduction

1 This is an appeal to the High Court in respect of the ancillary matters in Divorce Suit No 3018 of 2011. The plaintiff wife (“the Plaintiff”) and the defendant husband (“the Defendant”) married on 1 October 1981. Divorce proceedings were commenced by the Plaintiff on 23 June 2011 on the grounds of the Defendant’s unreasonable behaviour. Interim judgment was granted on 19 March 2012. The marriage lasted some 31 years. On 7 June 2013, the learned District Judge Jen Koh (“the learned DJ”) delivered her decision in respect of the ancillary matters. An appeal was filed by the Plaintiff on 20 June 2013 and the appeal was heard by this court on 7 October 2013 and 28 November 2013.

2 After hearing the parties, I am allowing the Plaintiff’s appeal in part with the result that she is to receive 65% of the net value of the matrimonial property. Details of the ancillary order, as varied on appeal, are set out towards the end of the judgment. I now give the reasons for my decision.

The proceedings leading to the appeal

3 To understand the context of the current appeal, a brief summary of the proceedings leading to the appeal will be helpful. I also add that because the Defendant appeared as a litigant-in-person at the hearing of the appeal, I have decided to set out in some detail the arguments and issues that were raised by both parties.

4 Divorce proceedings were commenced by the Plaintiff on 23 June 2011 on the grounds of the Defendant’s unreasonable behaviour. The Defendant did not contest the divorce. Interim judgment was granted on 19 March 2012 with the ancillary proceedings adjourned to be heard in chambers. On 7 June 2013, the learned DJ delivered her decision in respect of the ancillary matters. The costs of the divorce hearing were fixed at S\$2,000, while the costs of the ancillary proceedings were fixed at S\$6,000 plus disbursements. By a letter dated 7 June 2013, the Plaintiff’s solicitors claimed disbursements amounting to S\$2,242.

5 The order of the learned DJ was for the matrimonial property at 4B Marigold Drive, Singapore to be divided equally between the parties. The Plaintiff was also given an option, exercisable within 30 days, to buy over the Defendant's half-share. In the event that the option was exercised, the matrimonial property was to be valued on the basis of a sale in the open market less the outstanding mortgage loan. Costs and expenses of the transfer and sale were to be borne by the Plaintiff. The Defendant, if so required by the CPF Board, was to refund his CPF account monies used for the purchase of the matrimonial property together with the accrued interest. The transfer and sale of the Defendant's half-share to the Plaintiff was to be completed within 4 months of the expiry of the 30-day option period.

6 In the event that the Plaintiff did not exercise the option, the matrimonial property was to be sold in the open market with the parties having joint conduct of the sale. The net proceeds, after deducting the outstanding mortgage loan and other costs and expenses, were to be apportioned equally between the parties. The parties were to refund their respective CPF accounts monies used for the purchase of the matrimonial property together with the accrued interest, if so required by the CPF Board.

7 The order of the learned DJ was such that the Plaintiff's half-share in the matrimonial property was inclusive of her claim for maintenance and that each party was to retain his/her own assets without further division. Both parties also agreed that they would be jointly and equally responsible for the costs and expenses of their son's education and living expenses in the United Kingdom ("UK").
[\[note: 1\]](#)

8 An appeal was filed by the Plaintiff on 20 June 2013 against the whole of the learned DJ's order, save for the order as to costs. Subsequently, the Plaintiff limited her appeal to a claim for the division of the matrimonial property on an 80:20 basis in her favour. In addition, the Plaintiff, in her appeal, also sought maintenance as follows:

- (a) payment of S\$140,585 as arrears of maintenance; and
- (b) payment of S\$163,260 as lump sum maintenance by way of deduction from the sale proceeds arising from the Defendant's half-share in the matrimonial property.

9 On 11 July 2013, new solicitors were appointed to represent the Plaintiff for the appeal that was fixed for hearing on 30 September 2013. On 7 August 2013, the Registrar granted the Plaintiff an extension of time to file both the submissions and the Record of Appeal by 9 September 2013. At that time, the Defendant was still represented by a firm of solicitors.

10 On 13 September 2013, the Defendant applied for an extension of time to file his submissions and for the hearing to be vacated and re-fixed. The application was heard by the learned Assistant Registrar Teo Guan Kee ("the learned AR") on 25 September 2013. He directed that the Defendant's application for the extension of time be heard on 30 September 2013 at the commencement of the appeal. Before the learned AR, counsel for the Defendant indicated that he would also be applying to discharge himself on that date as the Defendant had decided to represent himself and take over the conduct of the appeal.

11 At the commencement of the hearing for the appeal on 30 September 2013, counsel for the Defendant applied for and was granted leave to discharge himself. Under such circumstances, the Defendant, now a litigant-in-person, was granted an extension of time to prepare and file his submissions for the appeal. The hearing date for the appeal was re-fixed for 7 October 2013. The Defendant was ordered to pay costs to the Plaintiff for the 30 September 2013 hearing fixed at

S\$500. For completeness sake, it is noted that at the hearing before the learned DJ, the Defendant had also applied to discharge his counsel at the start of the ancillary proceedings.

12 On the re-fixed date of the appeal on 7 October 2013, the Plaintiff applied by way of Summons No 30072 of 2013 for leave to admit new evidence in the form of a report with accompanying enclosures dated 2 October 2013 from a firm of Hong Kong solicitors. The report and its enclosures concerned information in relation to the Defendant's ownership of a half-share in a flat located in Hong Kong, identified as Flat H, 4th Floor, Cherry Mansion, Nos 17-39, 19A, 23A-35A and 90A Oak Street, Nos 22 and 22A, Cherry Street, Kowloon, Hong Kong ("the HK Property"). This information had not been disclosed previously to the learned DJ and was said to be relevant to the Defendant's assets and means, and also as supporting evidence for the Plaintiff's assertions of the Defendant's failure to make full and frank disclosure. Therefore, leave was granted to the Plaintiff and the hearing was adjourned to enable the Defendant to file an affidavit explaining the circumstances in which he had acquired the HK Property and how it had been subsequently disposed. [\[note: 2\]](#)

13 The appeal was finally heard by this court on 28 November 2013. Judgment was reserved.

The parties' marriage

14 The parties were married in Singapore on 1 October 1981. This was the Defendant's second marriage and the Plaintiff's first marriage.

15 The Defendant has two children from his first marriage (aged 38 and 34 years old). The parties have two children from this union. The first (aged 31 years old) was born on 28 July 1982. The second child of the union (aged 25 years old), the younger son, was born on 29 December 1988. As at the date of the hearing before the learned DJ, the younger son was still studying in the UK. Whilst all 4 children are now *sui juris*, there is no dispute that they had stayed with the parties during the marriage and that the Defendant's children from his first marriage were "treated and considered" as children of the marriage between the Plaintiff and Defendant. [\[note: 3\]](#)

16 The parties were originally from Hong Kong. They appear to have migrated to Singapore at the time of or shortly before their marriage over 30 years ago. For the sake of completeness, it is noted that the Plaintiff has stated in her affidavit that she had migrated to Singapore prior to their marriage in Singapore. [\[note: 4\]](#) Apart from that, there is evidence that the Plaintiff still has familial connections in Hong Kong presently. [\[note: 5\]](#)

17 The matrimonial property is a private townhouse that was purchased in 2004. According to the learned DJ at [8] of the Grounds of Decision ("the GD"), the matrimonial property was valued by the parties at S\$1.6m. There was an outstanding mortgage loan of S\$359,948.93 as at April 2012 and the parties agreed that the net value of the matrimonial property was in the region of S\$1.2m.

18 For the 10 years prior to their moving into the matrimonial property, it appears that the parties had stayed in rented accommodation. [\[note: 6\]](#) The Plaintiff asserts that she paid most of the rental expenses during that period. Where the parties lived prior to that period in Singapore is not immediately clear.

19 With regard to the Defendant's history of employment, the evidence set out in both parties' affidavits establishes that the Defendant had worked for substantial periods of time outside of Singapore during the course of the marriage (mostly it appears, in China). That said, it is noted that there is some dispute as to the duration of the periods when the Defendant was working overseas.

Nonetheless, what is clear is that the Defendant's last employment was as the General Manager of Rigel Technology (S) Pte Ltd ("Rigel") in Luzhou, China. The Defendant also states by way of background information that he works in the field of high technology manufacturing. Whilst it is clear that he has significant experience in that industry, it is noted that the Defendant is now 63 years of age (having turned 60 in 2009). In this regard, the Defendant asserts that it has been hard for him to return to the industry since his resignation from Rigel in March 2012. According to his affidavit, the Defendant worked overseas during the following periods: [\[note: 7\]](#)

- (a) from November 2003 to April 2006, with Celestica Electronics Ltd in Guangdong, China;
- (b) from May 2007 to July 2010, with Flextronics in Shanghai, China; and
- (c) from March 2011 to May 2012, with Rigel in Luzhou, China.

20 The Defendant asserts that he was unemployed and in Singapore for the periods from May 2006 to April 2007 and from August 2010 to February 2011. It is not entirely clear from the Defendant's affidavits as to whether he had worked overseas for other periods of time.

21 Meanwhile, the Plaintiff has stated in her affidavit that the Defendant is highly skilled and sought after in the computer, semiconductor, and electronic manufacturing industry. [\[note: 8\]](#) Prior to taking up the position in Guangdong, China in November 2003, she states that he had held the following positions: [\[note: 9\]](#)

- (a) from 1999 to 2003, as the Senior Vice President of WaveNewWorld International Corporation;
- (b) from 1987 to 1998, as the Director of Product Engineering of Seagate Technology International; and
- (c) from 1979 to 1987, as the Regional Manager (Asia Pacific) of National Semiconductor (Asia Pacific, Regional HQ).

22 In summary, it is clear that during the marriage, the Defendant has worked in the computer and semiconductor industries and that, since 2003, he has worked for substantial periods of time in China.

23 With regard to the Plaintiff's history of employment, it appears that prior to her migration to Singapore, the Plaintiff had worked in Hong Kong, where she was able to accumulate some savings. [\[note: 10\]](#) The Plaintiff asserts that after moving to Singapore, she had used these savings to contribute to the well-being of the family. The Plaintiff also states that she contributed financially thereafter using her earnings from working at C & May Florist, selling property as an estate agent, and through multi-level marketing of products such as health juices (specifically Noni-Juice and Herbal Life). The Plaintiff further elaborates that she has been working as a director in Maylande International Pte Ltd ("Maylande"), a company involved in the beauty treatment business in Singapore and Hong Kong, for the last ten years. C & May Florist appears to be a florist business started by the Defendant at a hotel in Singapore. The Plaintiff explains in her affidavit that she is a trained florist and asserts that when the four children were young, she had to work hard as a florist in Singapore while taking care of the family. [\[note: 11\]](#)

24 Therefore, it is apparent that both parties held jobs during the marriage. During the last ten years, the Defendant mostly worked in China. On the other hand, the Plaintiff appears to have

undertaken a variety of jobs. That said, the Plaintiff has been working at Maylande during the last ten years or so. According to the Plaintiff, she holds some 362,099 shares in Maylande, which is estimated to bear the value of S\$13,040 as at 31 December 2009. [\[note: 12\]](#) The Plaintiff explains that the finance for her various business ventures was provided by a friend, Mr Chay (described as a business financier and adviser), and that her present income is derived solely from Maylande. [\[note: 13\]](#) It also appears that the Plaintiff travels to Hong Kong for work-related purposes as she states that she was provided with accommodation in Hong Kong by the company. [\[note: 14\]](#) The Plaintiff further asserts that Maylande's business in Singapore and Hong Kong are sustaining losses presently. [\[note: 15\]](#)

25 In relation to the evidence that Maylande is involved in the beauty treatment business in Singapore and Hong Kong, the Defendant asserts that the Plaintiff lived an extravagant lifestyle and frequently enjoyed entertaining Hong Kong celebrities and singers. In response, the Plaintiff asserts that her involvement with the celebrities and singers was in connection with her beauty business and that those meetings were arranged or requested by her investor friends in Hong Kong. [\[note: 16\]](#)

26 The Plaintiff sets out in her affidavit a detailed explanation of her involvement in Maylande. [\[note: 17\]](#) It appears that the company was originally known under a different name and was involved in the real estate agency business. The company had belonged to Mr Chay who was also at that time involved in the business of exporting cut-flowers. This appears to be around the time when the Plaintiff had worked as an estate agent. Subsequently, after the Plaintiff was convicted for an offence relating to commissions in 1996, for which she spent some four months in prison from November 1996 to March 1997, the name of the company changed several times and it is now known as "Maylande International Pte Ltd". It appears from the Plaintiff's affidavit that Mr Chay was the party who suggested the name changes. [\[note: 18\]](#) Indeed, it also appears that Mr Chay was the original owner of the company and that the shares and assets had been transferred to the Plaintiff for S\$1. Today, Maylande is involved in the business of beauty products and treatment, and has interests in both Singapore and Hong Kong. The same business and financial adviser, Mr Chay, apparently provided the Plaintiff with financial support in respect of her legal representation when she was charged for the offence in 1996. [\[note: 19\]](#)

27 Whilst there is considerable dispute between the parties over their respective contributions to the marriage, it is noteworthy that the Defendant accepts that his financial contribution or support for the Plaintiff's business ventures was not as significant as what was provided to her by Mr Chay. [\[note: 20\]](#) The precise nature of the beauty treatment business run by Maylande today is unclear. The Defendant has made serious allegations in his affidavit as to the legality of some of the treatments offered and suggests that this may be a reason for Maylande's alleged poor earnings. [\[note: 21\]](#) Unsurprisingly, the Plaintiff has strongly denied these allegations. With regard to the business in Hong Kong, the Plaintiff states that the company had a valid licence since 2004 to conduct the therapy treatments in question but had to re-apply for a new licence some time around 2011. [\[note: 22\]](#) The application was said to be still pending before the Hong Kong health authorities as at the date of filing of her affidavit on 29 October 2012. The Plaintiff has also claimed that the Singapore company possessed a licence issued by the Health Sciences Authority of Singapore and that the company had ceased the therapy treatment using human placenta health tonic in 2009. [\[note: 23\]](#)

28 The acrimony in the breakup of the marriage is evident from the numerous affidavits filed by both parties. Numerous allegations have been made by both the Plaintiff and the Defendant of the poor behaviour and conduct of the other party during the marriage. One area that is stressed by the Defendant is the Plaintiff's alleged extravagant lifestyle, poor business sense and consequent business

losses which had placed a strain on the marriage.

29 For example, the Defendant asserts in his affidavit that the Plaintiff ran a business known as "New Approach Entertainment" after leaving C & May Florist. [\[note: 24\]](#) This business involved bringing in singers to perform in Singapore. To this end, the Defendant exhibited an ACRA report which indicated that the business was registered on 7 May 1990 and seemed to have been terminated some time in 1991. In respect of this business, the Defendant also asserts that he had to provide financial assistance in relation to a repayment plan for some debt. [\[note: 25\]](#) In her affidavit, the Plaintiff responds that New Approach Entertainment was in fact a business set up by the Defendant, who had intended it to be a business vehicle for a karaoke lounge. [\[note: 26\]](#) The business was set up in the Plaintiff's name as the Defendant was under the employment of Seagate and had been bound by the terms of his employment contract which did not allow him to work for another business. According to the Plaintiff, this business never actually started.

30 In summary, this court observes that this is a marriage in which the Defendant spent most of his career in the computer and semiconductor manufacturing industry. During the last ten years or so, his work took him away from Singapore for extended periods of time. The Plaintiff, on the other hand, had been involved in a number of different businesses. The first two businesses, namely C & May Florist and New Approach Entertainment, were said to have belonged to the Defendant. It appears likely that it was around the time when the Plaintiff was working as a florist that she (and possibly the Defendant) became acquainted with Mr Chay, the man described as the Plaintiff's business and financial consultant. Mr Chay was involved in the real estate business as well as that of cut-flower trade. After leaving C & May Florist, the Plaintiff, with the assistance of Mr Chay, worked as an estate agent and subsequently in the beauty treatment business over the past 10 years or so. It appears that the beauty treatment business in Maylande spans across both Hong Kong and Singapore. The extent to which the Defendant had assisted the Plaintiff in her business ventures is unclear.

31 Both parties have made allegations concerning the poor behaviour of the other spouse during the marriage. For example, the Plaintiff complains that the Defendant had a mistress overseas and that he had not been truthful about his job prospects and assets overseas. The Defendant, on the other hand, has made many assertions relating to the Plaintiff's extravagant lifestyle, her incurrence of excessive renovation expenses and the strain on the family caused by her business or employment ventures. Both parties claim to be caring and loving parents. It is particularly sad that both parties have found it necessary to submit affidavits which make references to the children in attempts to make good on their respective assertions. Both parties have alleged that there has been a lack of candour and proper disclosure of material facts relevant to the assessment of the other party's financial assets and resources. Indeed, as mentioned earlier, for the purpose of this appeal, the Plaintiff was granted leave to submit a new affidavit exhibiting a report from a firm of Hong Kong solicitors revealing a previously undisclosed inheritance of the Defendant. More will be said on this later in this judgment.

The findings of the District Court and the views of the High Court

Direct contributions towards the purchase price of the matrimonial property

32 The matrimonial property was valued by the parties at S\$1.6 million. There was an outstanding mortgage of S\$359,948.93 as at April 2012. On this basis, the parties agreed before the learned DJ that the net value of the matrimonial property was in the region of S\$1.2 million.

33 The parties did not dispute the initial cash payments or the CPF payments made towards the purchase of the matrimonial property. The main dispute here concerned the extent to which the Plaintiff had contributed to the mortgage repayments. The Plaintiff asserts that the Defendant stopped making mortgage repayments since October 2007 and that the monthly repayments were paid by the Plaintiff from that time onwards. [\[note: 27\]](#) There is also a dispute as to whether the monies remitted by the Defendant to the Plaintiff whilst he was working in China were meant for the mortgage repayments as opposed to the other household expenses.

34 After reviewing the affidavits and submissions of both parties, the learned DJ preferred the evidence of the Defendant to that of the Plaintiff. At [20] of the GD, the learned DJ accepted that between 2007 and 2010, the Defendant had remitted monies for the payment of the monthly mortgage instalments. The Defendant's claim was found to be supported by a sampling of the bank statements and emails provided by him. On the other hand, the learned DJ found that the Plaintiff was unable to produce any documentary evidence to support her claim of having made some of the mortgage repayments during this period. The learned DJ noted at [10] of the GD that the Plaintiff had accepted that between December 2007 and April 2010, she did receive remittances from the Defendant totalling S\$86,340. However, the Plaintiff claims that these monies were meant for general household expenses as well as for the payment of the Pinetree Club membership fees. Notwithstanding this, the learned DJ found that the monies remitted on a monthly basis were intended for the mortgage repayments and that if the Plaintiff chose to apply those sums for some other purpose, such as to pay the Pinetree Club membership fees, that would be at her own prerogative. In arriving at this conclusion, the learned DJ rightly pointed out that it was telling that the amounts remitted by the Defendant each month during the period from 2007 to 2010 matched the amount required for the monthly mortgage instalment of S\$2,700. That said, the learned DJ accepted that any monies remitted in excess of S\$2,700 each month should not be computed as part of the Defendant's direct contributions to the purchase of the matrimonial property. Instead, these were to be regarded as his contributions towards the general household and family expenses.

35 After reviewing the affidavits and submissions in this appeal, I am of the view that the learned DJ's finding in respect of the mortgage repayments between 2007 and 2010 is correct. I would also add that during this period of time, the Defendant was working in China and it is apparent that any benefit arising from the Pinetree Club membership must have been intended for his family in Singapore. [\[note: 28\]](#)

36 At [23] of the GD, the learned DJ assessed that the Defendant had contributed S\$2,700 a month towards the mortgage repayments for the period from October 2007 to December 2010, giving rise to a total contribution of S\$105,300. The learned DJ also rightly noted that the Plaintiff had paid the mortgage instalments of S\$2,700 a month from January 2011 (when the Defendant had returned to Singapore from China) to April 2013 (when the hearing before the learned DJ commenced), giving rise to a total contribution of S\$75,600. On this basis, taking into account the CPF contributions as well as the initial payments made by the parties, the direct financial contributions towards the purchase price of the matrimonial property were assessed at [25] of the GD and are reproduced as follows:

	Husband/Defendant's Direct Financial Contributions (S\$)	Wife/Plaintiff's Direct Financial Contributions (S\$)
CPF (Principal Sum)	231,513.79	Nil
Initial Payment	66,800	88,120*

Monthly Payments	105,300	75,600
Total Direct Contribution	403,613.79	163,720
Percentage Contribution	71.1%	28.9%

*According to para 16 of PA1, this sum includes stamp fees, legal costs and other incidental charges. The sum was borrowed from Mr Chay, the Plaintiff's business and financial adviser. [\[note: 29\]](#)

Contributions towards renovation and maintenance of the matrimonial property

37 Evidence provided by both parties in their respective affidavits on either party's contributions towards the renovation and maintenance of the matrimonial property were sharply conflicting. According to the Plaintiff, she incurred the sum of S\$129,788.70 in respect of the maintenance and renovation of the matrimonial property. [\[note: 30\]](#) This sum was disputed by the Defendant, who asserted that the Plaintiff's contributions only amounted to some S\$64,645. However, it bears noting that the real basis for the Defendant's persistent objection appears to be that the sums were spent without his consent and were, in his view, largely a waste of money. Some of her claims were also said to relate to a rented apartment. The learned DJ noted that the Defendant's claim to have spent some S\$20,000 on renovation was denied by the Plaintiff and that ultimately, neither party was able to produce any documentary evidence in support of their respective renovation claims.

38 The fact that neither party produced documentary evidence to support their claims for the renovation expenses, whilst important, does not necessarily mean that this court must conclude that the Plaintiff did not make any contributions towards the renovation and maintenance of the matrimonial property or the rented flat. After all, it is accepted that a detailed accounting of financial contributions is difficult, if not impossible, in many cases. This is especially so where the marriage has been a long one and where the sums were incurred over an extended period of time. The Defendant does not, in any case, deny that the Plaintiff did spend monies for the purposes of renovation and maintenance and, whilst he may be of the view that some of the sums were extravagant or unnecessary, the fact remains that the Plaintiff does appear to have made a substantial contribution of at least S\$64,645 or possibly even more. Even if it is accepted that the Defendant paid some S\$20,000 towards the renovation and maintenance of the matrimonial property, it seems clear that the Plaintiff, on the whole, had made larger contributions in this area. This is a factor which the court is entitled to take into account as part of the overall matrix of factors in determining the appropriate division of the matrimonial property. This court agrees with the learned DJ that both parties are likely to have made financial contributions towards the improvement and maintenance of the matrimonial property. That said, whilst it is not feasible to work out the exact figures, it is more likely that the Plaintiff's contributions in this area were higher than that of the Defendant's.

Other financial contributions towards household expenses not directly attributable to the mortgage of the matrimonial property

39 These comprise contributions towards property tax, management fees, home insurance and electricity bills. Unsurprisingly, the evidence and assertions in both parties' affidavits were conflicting. In her written submissions, the Plaintiff makes references to her claim of having spent monies on property tax, insurance and some S\$39,965 towards paying utility bills. In addition, the Plaintiff also claims to have paid all rental expenses of the family's rented accommodation prior to their moving into

the matrimonial property. Whilst no figures or documentary proof has been provided, it is noted that the Defendant does not appear to dispute her claim of having paid the rental expenses. Whilst the learned DJ rightly concluded that both parties are likely to have made financial contributions towards the payment of property tax, insurance and utility bills for the matrimonial property, this court notes that some recognition ought to be given to the fact that the Plaintiff appears to have paid the rental expenses for some time prior to their moving into the matrimonial property.

Non-financial contributions: Care of the family

40 At [35] of the GD, the learned DJ found that the length of marriage was long and that both parties had played their part in terms of non-financial contributions to the marriage. It is noted that both parties have made allegations in respect of the other's conduct and relationship with the children, which is unfortunate and unhelpful. This court does not find it necessary to further comment on how the parties discharged their parental duties or on their relationships with the children. However, it is noted that the Defendant had spent long periods of time away from Singapore, during which the Plaintiff would have been effectively in charge of the day-to-day running of the household. That said, it is clear that the Defendant had travelled overseas for work-related purposes and that he did remit monies back to Singapore while he was based overseas.

The Plaintiff's Assets and Means

41 The Plaintiff is 61 years of age. In her Affidavit of Assets and Means, she describes her occupation as a "business woman", by which she was referring to her employment and interest in Maylande. The Plaintiff discloses her monthly gross income as follows: [\[note: 31\]](#)

- (a) S\$60,970 in 2007;
- (b) S\$9,000 in 2008;
- (c) \$50,000 in 2009;
- (d) No income in 2010; and
- (e) S\$17,000 in 2011.

42 She also declared her ownership of shares in Maylande which had an estimated value of S\$13,040 as at December 2009. With regard to her CPF account, the Plaintiff declared that, as at December 2011, she had: [\[note: 32\]](#)

- (a) S\$1,361.88 in her Ordinary Account;
- (b) S\$72.04 in her Special Account; and
- (c) S\$2,327.04 in her Medisave Account.

43 The Plaintiff also declared two bank accounts which are solely in her name: [\[note: 33\]](#)

- (a) UOB: S\$1,661.52 as at 29 February 2012; and
- (b) POSB: S\$3,969.82 as at 10 March 2012.

44 In addition, the Plaintiff declared her interest in a car under hire purchase with an estimated value of S\$90,000 as at 30 April 2012. [\[note: 34\]](#)

45 Against this, the Plaintiff also disclosed debts owing to Mr Chay, some banks and other individuals. These include: [\[note: 35\]](#)

- (a) S\$137,063 to Mr Chay;
- (b) S\$74,793 to Nassau Pte Ltd; and
- (c) S\$103,800 to Maybank in respect of a car loan.

46 The Plaintiff declared her monthly expenses to be S\$10,685 pre-divorce and S\$12,935 post-divorce. [\[note: 36\]](#) At [41] of the GD, the learned DJ observed that both sets of expenses took into account the costs and expenses of the younger son's education in the UK.

47 On appeal, the Plaintiff asserts that the learned DJ erred in concluding at [39] of the GD that her average gross monthly salary ranged from S\$1,400 to S\$4,166. This is said to be important because the learned DJ went on to state at [50] that the Plaintiff must have had other sources of income given that her declared monthly expenses far exceeded her declared average gross monthly income. Whilst the Plaintiff has stated that Mr Chay had provided her with financial assistance, there was no concrete evidence to support that claim. Indeed, the learned DJ questioned the Plaintiff's ability to meet the monthly mortgage instalments of S\$2,700 from January 2011 to April 2013. In her written submissions, the Plaintiff asserts that the learned DJ's finding that the Plaintiff had under-declared her income was incorrect since the figure of S\$1,416.66 was only for the year of 2011. In other years, her declared income was relatively higher.

48 After reviewing the affidavits and submissions of both parties, this court agrees with the general thrust of the learned DJ's decision on the Plaintiff's declared gross monthly income as compared to her asserted monthly expenses. Even if her actual gross monthly income was higher, and working on the basis of the average figure of S\$3,142 per month as suggested by the Plaintiff's counsel, there is still a significant gap between the Plaintiff's monthly income and her asserted monthly expenses. In this regard, the Plaintiff naturally asserts that she was able to make up the difference by means of financial assistance from Mr Chay and that her declared expenses had not been inflated. Whilst much has been said by the parties of the Plaintiff's relationship with Mr Chay and his financial support to her over the many years, it is unclear as to the nature of the relationship and whether the monies provided by Mr Chay, in whole or in part, were loans that have to be repaid. That said, it is noted that the Plaintiff has exhibited some documents relating to the "friendly loans" made by Mr Chay. Regardless of this, it is clear that the relationship between Mr Chay and the Plaintiff is a longstanding one whereby he had provided financial support, whether as loans or otherwise, and business advice to the Plaintiff over the years.

49 The Plaintiff also asserts that the learned DJ erred in reducing her estimated monthly expenses post-divorce from S\$12,935 to S\$1,520 at [52] of the GD. For convenience sake, the Plaintiff's estimate and the learned DJ's assessment (in table form) are set out below:

S/No	Description of Wife's Claim	Amount claimed	Court's assessment

1.	Mortgage loan repayment	S\$2,800	This amount will be discontinued with the sale of the matrimonial property. If the Plaintiff intends to retain the property, the amount would have been taken into account for the division of the matrimonial property.
2.	Management fees	S\$70	Allowed
3.	House insurance and property tax	S\$150	Allowed
4.	Power and utility bills	S\$600	This is relatively high considering that the Plaintiff lived alone and often travelled overseas for business. A reasonable amount would be S\$200.
5.	Car and related expenses	S\$1,615	This is a luxury expense and if the Plaintiff is unable to afford this, she should consider a more viable alternative. The transport claim allowed would be S\$400.
6.	Telephone	S\$150	Allowed
7.	Food and miscellaneous	S\$2,000	No explanation is provided in relation to what amounts to "miscellaneous" expenses. The amount allowed for food-related expenses is S\$500.
8.	Maid	S\$700	This is a luxury expense, especially when the Plaintiff often travelled overseas. Expenses for hiring a part-time maid would be allowed at a lower amount of S\$200.
9.	Life insurance	S\$350	Disallowed given that this involves a savings element.
10.	Son's fees in London	S\$4,500	Disallowed since the Defendant is also paying his half-share of the son's expenses in the UK.
	Wife's claim	S\$12,935	
	Amount needed		S\$1,500

50 After considering the parties' submissions, this court agrees with the learned DJ's finding that the mortgage repayment should not be included as a long-term expense given that the court intends to order the division and sale of the matrimonial property. As for the claim in respect of the son's expenses in UK, the learned DJ was right to point out that the Defendant was also responsible for paying half of the fees and expenses incurred. Since the parties have agreed that they would be jointly and equally responsible for the son's expenses, it would not be right to include her half-share as part of her expenses in terms of assessing the division of matrimonial assets and an appropriate maintenance order. As for the Plaintiff's other expenses, it is noted in particular that the learned DJ reduced those in relation to the car, food and the maid.

51 The assessment of these expenses as part of the Plaintiff's financial needs is guided by the factors set out in s 114(1) of the Women's Charter (Cap 353, 2009 Rev Ed) ("WC"). In particular, regard must be had to the standard of living enjoyed by the family before the breakdown of the marriage as well as the achievement of what is just and equitable, insofar as it is practicable, to place the parties in the financial position in which they would have been if the marriage had not broken down (see s 114(2) of the WC). In these circumstances, I am of the view that a reasonable assessment of the expenses for transport and food is in the region of S\$1,000 for each item. In short, this court agrees that the learned DJ's estimate of the Plaintiff's monthly expenses was on the lower end of the scale and that a reasonable global estimate would be closer to S\$3,500.

52 Nevertheless, this court notes the earlier point that the Plaintiff's earnings, whilst variable, is higher than the learned DJ's estimate of S\$1,416 per month and probably much closer to S\$3,000 a month. Whilst her declared monthly expenses still far exceed the higher estimate of her average gross monthly income (based on what she has disclosed), the point is that in this court's estimation, her average monthly earnings are not far off the court's estimate of her reasonable expenses.

The Defendant's Assets and Means

53 As at the date of the hearing before the learned DJ, the Defendant had resigned from his employment with Rigel. He is currently unemployed. The Defendant asserts that at his current age of 63 years old, it would be difficult for him to find re-employment in the technology industry and that his attempts to find new employment have not been successful thus far. Prior to his resignation on 5 March 2012, his declared monthly take-home income, including salary, allowances, commissions and bonuses, was S\$6,624. [\[note: 37\]](#) The Defendant declared that he had no other sources of income and his only immovable property (in Singapore and overseas) was the matrimonial property in Singapore held in the joint names of both parties. [\[note: 38\]](#) He stated that he does not own a car or any shares, whether in Singapore or overseas. The Defendant declared 2 bank accounts which are solely in his name: [\[note: 39\]](#)

- (a) POSB: S\$986 as at 23 April 2012; and
- (b) Hang Seng Bank: HK\$6,162 as at 23 April 2012.

54 As regards his CPF account, the Defendant states that, as at 23 April 2012, he had: [\[note: 40\]](#)

- (a) S\$1,762 in his Ordinary Account;
- (b) S\$548 in his Special Account; and
- (c) S\$35,342 in his Medisave Account.

55 The Defendant further disclosed that the principal sum of S\$231,513.79, with an accrued interest of S\$41,301, had been withdrawn from his CPF account to meet the purchase of the matrimonial property.

56 The Defendant also declared 3 insurance policies in his name: [\[note: 41\]](#)

- (a) Prudential (Prusave), with an insured amount of S\$45,000;
- (b) Prudential (Prushield), which is a hospitalisation insurance; and

(c) Prudential (Prushield Extra), which is a rider for the Prushield policy.

57 In particular, the Defendant stated that he was unsure if there was any surrender value for Prusave. However, the Defendant went on to estimate the surrender value for Prusave as being less than S\$10,000. [\[note: 42\]](#) There was no surrender value disclosed for Prushield.

58 Insofar as his debts and liabilities are concerned, the Defendant declared a number of Hong Kong dollar denominated debts owing to Citibank, Bank of China, Development Bank of Singapore (Hong Kong) and UA Finance. [\[note: 43\]](#) These totalled some HK\$315,389. The Defendant also declared that his income tax liability in Singapore was yet to be assessed.

59 At [45] of the GD, the learned DJ noted that the Defendant's claimed expenses amounted to S\$4,650 per month. Unlike the Plaintiff, the Defendant did not include payments that he was making towards their son's education in the UK. Given that he is unemployed, the Defendant explained that he has been meeting these expenses through loans from family members.

60 In this appeal, the Plaintiff has made many allegations in respect of the Defendant's failure to provide full disclosure of his assets and means. In particular, she alleges that he likely possessed other assets in China given his many years of work there. The Plaintiff also suggests that the Defendant's resignation from Rigel was "contrived" and that, in all likelihood, the Defendant intends to leave Singapore for China.

61 As regards the allegation that the Defendant contrived to resign from Rigel in 2012, the learned DJ concluded that there was no basis for the Plaintiff's allegation. This court agrees and makes no further comment on this point. It is also of no use to speculate on whether the Defendant might choose to return to China in the future. In the event that he chooses to do so, it would most certainly be within his right to do so. Whether the Defendant is able to find similar work in China, Hong Kong or elsewhere at his current age is not something which this court is able to make any definitive assessment of. Having said that, this court sees no reason to disturb the learned DJ's finding at [51] of the GD that it will likely be difficult for him, at his current age, to secure employment with a comparable income as before.

62 In addition, much has been said by the Plaintiff in relation to her allegation that the Defendant had withdrawn substantial amounts from his CPF account when he turned 55 and that further amounts were withdrawn when he turned 60 in 2009. In the Plaintiff's view, this meant that S\$111,009.46 was not accounted for in the Defendant's Affidavit of Assets and Means. However, the learned DJ noted at [48] of the GD, that the Defendant had disclosed the withdrawal of sums from his CPF account when he turned 55 in 2006 [\[note: 44\]](#) and that an explanation was also provided as to how the monies were used for mortgage payments and other expenses. [\[note: 45\]](#) The Defendant also denied making any further withdrawals when he turned 60 and that the sum of S\$111,009.46 was nothing more than the consolidated amount for un-posted transactions in his POSB account accumulated over the years when he did not update his passbook as he was away in China. In these circumstances, I see no reason to disturb the finding of the learned DJ, at [57] and [58] of the GD, that the Defendant has provided adequate disclosure and explanation with regard to his CPF funds. In particular, it is noted that the Plaintiff's assertion that the Defendant did not disclose S\$62,200 in his CPF investment account was rejected given that the CPF Board had explained that the sum did not indicate that he held any investment holdings or made any profits.

Non-disclosure of inheritance by Defendant

63 I turn now to the general allegation that the Defendant has other undisclosed assets in China. Taking into account the assertions by the parties, the learned DJ concluded at [59] of the GD that the allegation was unproven and that cogent evidence was required to substantiate the same.

64 As mentioned earlier in this judgment, the Plaintiff applied for leave shortly before the start of the hearing of the appeal to admit new evidence in the form of a report and its accompanying enclosures from her Hong Kong solicitors. The report and its accompanying enclosures state that the Defendant received a half-share of the HK Property on 19 August 2011 pursuant to his mother's will. The half-share was sold on 30 March 2012 to the Defendant's niece and her husband for HK\$950,000. This information had not been disclosed previously by the Defendant. In these circumstances, leave was granted to the Plaintiff to admit this evidence and the hearing was adjourned to enable the Defendant to file an affidavit explaining the circumstances in which he had acquired the HK Property and how it had been subsequently disposed. What follows is a brief explanation as to why leave was granted, followed by a consideration of the impact of the new evidence.

65 The law on admission of new evidence on an appeal from the District Court to a High Court judge in chambers on ancillary matters was discussed at length by Woo Bih Li J in *ACU v ACR* [2011] 1 SLR 1235 ("*ACU v ACR*"). In that case, the District Court had granted the husband care and control of the children with access on terms for the wife. One factor underlying the decision on care and control was that the wife, who had been diagnosed as suffering from reactive depression, had previously threatened to commit suicide with the children. At the appeal, the wife's counsel sought leave to adduce fresh evidence, including a psychiatrist report stating that she was not suffering from a psychiatric condition that would prevent her from caring for the children.

66 In this regard, the power of the court to admit fresh evidence on appeal is generally governed by the rule set out in *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*"). The rule is well-known and comprises three cumulative conditions. First, that the evidence could not have been obtained with reasonable due diligence for use at trial. Second, the evidence must be such that if leave were granted, it would probably have an important influence (without necessarily being decisive) on the result of the case. Third, the evidence must be such that it is presumably to be believed, or in other words, the evidence is apparently credible though it need not be incontrovertible.

67 The question as to whether the *Ladd v Marshall* rule applies to an appeal from the District Court to a High Court judge in chambers was considered and qualified by the Court of Appeal in its decision of *Lian Soon Construction Pte Ltd v Guan Qian Realty Pte Ltd* [1999] 1 SLR(R) 1053 ("*Lian Soon Construction*"). Since an appeal to the High Court judge in chambers is by way of a re-hearing, it followed that in such cases, the judge possesses the discretion to admit fresh evidence even in the absence of special reasons. Even though an appeal to the Court of Appeal is also by way of a re-hearing, O 57 r 13(2) of the Rules of Court (Cap 332, R 5, 2006 Rev Ed) specifically provides that in the case of an appeal from a judgment after trial or a hearing on the merits of a case, further evidence is not to be admitted except on special grounds. These special grounds are essentially those set out in *Ladd v Marshall*.

68 In *ACU v ACR*, Woo J noted that in the context of appeals from a Registrar to a High Court judge in chambers (*ie*, Registrar's Appeals), *Lian Soon Construction* was decided on the basis that Registrar's Appeals were not governed by O 57 r 13(2). In the case of appeals from the District Court to a High Court judge in chambers, Woo J noted that the position was the same—there was no express rule prescribing the need for special conditions to be met for the admission of further evidence. Therefore, it is clear that this court, in the present appeal, possesses the discretion to admit fresh evidence. That said, even though a High Court judge in chambers is not bound by the rule in *Ladd v Marshall*, there is no reason why the three limbs of the rule cannot be referred to as a

starting point in guiding the exercise of the discretion. Nonetheless, it is clear from *ACU v ACR* that even if the first limb is not met, the judge may still exercise his discretion to admit fresh evidence especially if the second and third limbs appear to have been fulfilled.

69 In the present appeal, the evidence that the Defendant received a half-share of the HK Property by way of inheritance is a matter which is relevant to the overall assessment of his assets and means. The evidence was credible, especially given that the inheritance and sale were admitted by the Defendant. Even though the Plaintiff might have been able to discover the inheritance earlier, I decided to allow the new evidence to be admitted. This included both the report from the Hong Kong solicitors and the accompanying enclosures from the Hong Kong Land Registry.

70 The report establishes that the Defendant received a half-share of the HK Property on 19 August 2011, which was also confirmed by the Defendant himself. Divorce proceedings in this case, it will be recalled, had been commenced by the Plaintiff on 23 June 2011. Interim Judgment was granted on 19 March 2012. On 30 March 2012, the Defendant sold the HK Property for HK\$950,000. This was shortly after Interim Judgment had been granted and some time before the ancillary proceedings, which is the matter on appeal before this court.

71 The Plaintiff has asserted that the Defendant's half-share was sold at a considerable undervalue. This was because a property valuer in Hong Kong estimated the value of the HK Property on 30 March 2012 as being in the region of HK\$2.83m. [\[note: 46\]](#) In her oral submissions at the appeal hearing, the Plaintiff also suggested that the Defendant would have known that he was selling his share at an undervalue, that the sale price was unreliable and that there was no proper or satisfactory account of what had happened to the sale proceeds that he received.

72 The Defendant filed an affidavit dated 18 October 2013 setting out his explanation of the inheritance and subsequent disposal of the sale proceeds. [\[note: 47\]](#) The Defendant explained that the HK Property was an inheritance left by his mother to both his elder brother and him in equal shares. [\[note: 48\]](#) In a nutshell, the reason proffered by the Defendant as to why he did not disclose the inheritance was that his mother had expressed her firm wishes that the property was not to be given to the Plaintiff on account of her "extreme bad behaviour" towards the Defendant and his family. [\[note: 49\]](#) As such, the Defendant felt morally obligated to carry out his mother's wishes.

73 The date of the actual conveyance of the HK Property was on 30 March 2012. However, the Defendant exhibited in the affidavit a sale and purchase agreement in Chinese apparently signed on 21 August 2011 by the Defendant, his niece and her husband for the sale of his half-share and payment by an instalment plan. [\[note: 50\]](#)

74 In his affidavit, the Defendant explains that he sold his half-share in August 2011 as he was already finding it hard to meet his financial commitments and responsibilities. These included the son's school fees in the UK, wedding expenses for his second daughter's wedding in July 2013, credit card payments and personal living expenses. [\[note: 51\]](#) The Defendant asserts that he had no other source of funds as he was already in debt to his elder brother. He also explains that he wished to help his niece who had just gotten married and who was finding it difficult to acquire a home. To this end, the sale and purchase agreement dated 21 August 2013 was exhibited in his affidavit. [\[note: 52\]](#) Unfortunately, the document is in Chinese and no certified translation has been provided by the Defendant.

75 Nonetheless, at the hearing before me in chambers, parties did not seem to take any issue with

the essential contents of the sale and purchase agreement—that is, the Defendant’s half-share would be sold to his niece and her husband with payment of the sale price on an instalment basis over a 10-year period. In this regard, the Plaintiff’s counsel objected to the Defendant’s submission on this point. However, whilst I am reminded of the important principle that evidence should not be given from the Bar, this court does have exhibits in the Defendant’s Affidavit for Appeal Hearing (“DA-R”) supporting the sale on a 10-year instalment plan basis. These comprised some emails between the Defendant and his niece, which indicated that there was a balance sum of HK\$529,000 owing to the Defendant as at October 2013.

76 As mentioned earlier, the Plaintiff disputes the Defendant’s explanation set out in DA-R. In her affidavit in reply, she maintains that she had a good relationship with her mother-in-law. In particular, the Plaintiff noted that the Defendant did not produce the will or any other documentary evidence to support his statement that his mother did not wish the Plaintiff to have any share in the HK Property. She also disputed the genuineness of the sale and purchase agreement, the instalment plan and the Defendant’s explanation of why the sale was necessary in light of his alleged expenses and financial commitments.

77 Whilst the details and circumstances are very much in dispute, it is clear that the Defendant did indeed receive a half-share of the HK Property on 19 August 2011. This was not disclosed in the proceedings below. Further, even if I accepted the Defendant’s explanation in relation to this non-disclosure, it appears that the niece and her husband still owe the Defendant some HK\$529,000 in respect of the sale price. [\[note: 531\]](#) This was also not disclosed by the Defendant in the proceedings below.

Drawing of adverse inferences

78 Counsel for the Plaintiff submitted that even if the Defendant’s mother had expressed the wish that the Plaintiff be excluded from the inheritance, this did not excuse the Defendant from fulfilling his duty of full and frank disclosure.

79 This court agrees with that submission. The Defendant’s half-share would, at the very least, be relevant to ascertaining his assets and means. Even if the inheritance was not a matrimonial asset, it was still relevant as a component of his overall financial position at the time of the divorce. Indeed, it is noted that the Defendant stated at the hearing of the appeal that he knew that he should have made the disclosure but did not do so as a result of the moral pressure that he was labouring under. Section 112(10) of the WC defines “matrimonial asset” as including “any other asset of any nature acquired during the marriage by one party or both parties to the marriage”. However, this does not include “any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage”.

80 Even though the half-share of the HK Property was unlikely to be a matrimonial asset, it may still be relevant to the court when determining how to divide the other matrimonial assets between the parties. Section 112(2) of the WC sets out a broad non-exclusive range of factors to be taken into account in determining a fair and equitable division of matrimonial assets. Factors referred to in s 114(1) should also be taken into account if they are relevant.

81 Section 114(1) of the WC directs the Court, in assessing maintenance, to have regard to, *inter alia*, the “income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future”. It follows that the Defendant’s half-share in the HK Property ought to have been disclosed as a factor relevant to the assessment of the

Plaintiff's maintenance, and the division of the parties' matrimonial assets. To be clear, this court is not laying down a principle that in all cases, factors relevant to maintenance are "automatically" relevant in assessing what is an appropriate division of matrimonial assets. Rather, the relevance of any one factor and the weight to be ascribed to it will depend on the circumstances of each case.

82 Leaving aside the relevance of the HK Property as a component of the Defendant's assets and means, the Plaintiff also made a point that the Defendant's non-disclosure was a ground which supports her submission that an adverse inference ought to be drawn against the Defendant in assessing the division of the matrimonial assets and her maintenance. It will be recalled that the learned DJ rejected this submission given that the allegation of the Defendant's lack of candour and non-disclosure was vague and unsubstantiated. The position on appeal is different as the fresh evidence adduced does support her assertion of the Defendant's lack of candour, at least in respect of his interest in the HK Property.

83 At p 529 of Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2nd Ed, 2012) ("*Elements of Family Law in Singapore*"), Professor Leong Wai Kum states the well-known principle that the general duty owed by each party to make full and frank disclosure of all relevant information is particularly important given the court's power and discretion to divide the parties' matrimonial assets. Professor Leong goes on to explain at p 668 of her book that the position is the same in relation to the issue of maintenance. If the court is to be able to achieve the purpose behind its statutory powers, it needs to have "the full picture of the economic resources of the spouses and all relevant facts and circumstances". Indeed, this court is reminded of its own recent admonition that "it is of importance that parties and their legal representatives prepare the affidavits with as much supporting evidence so as to assist the court to reach a proper determination": see *Sim Kim Heng Andrew v Wee Siew Gee* [2013] SGHC 271 ("*Sim Kim Heng Andrew*") at [116]).

84 In these circumstances, this court has to take into account the fact that the Defendant has not made full and frank disclosure of his assets and this effectively means that an adverse inference would be drawn against him. In *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157, the Court of Appeal accepted that there were two approaches the court could adopt upon the drawing of an adverse inference. The first was to add a percentage figure (eg, 10%) to the spouse's overall assets as representing the spouse's undisclosed assets. The second approach was to order a higher proportion of the known assets to be given to the other spouse. There are other possible methods too. In this regard, the remarks of Chao Hick Tin JA at [66] bears repeating:

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 the 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.

85 In the present case, the fresh evidence indicates that at the date of the ancillary proceedings before the learned DJ, the Defendant had, at the very least, a right to receive another HK\$529,000 from the sale of his half-share in the HK Property to his niece and her husband. Whilst the Defendant has provided some explanation of the moral pressure he was under at that time, the fact remains that the information was relevant and had not been disclosed in the proceedings below. Even though this

court, on appeal, takes note of the Defendant's explanation for the sale of the HK Property and the disposition of the sums that he has received, the inference to be drawn supports the Plaintiff's general assertion that there is a likelihood of the Defendant having other undisclosed assets in Hong Kong or China.

86 In the circumstances of the present case, I am of the view that the most appropriate way to take account of the possibility of non-disclosure is to add a percentage to the award in respect of the known matrimonial assets. This is further elaborated below.

The decision on division of the matrimonial assets and maintenance

87 I turn now to set out this court's decision in respect of the appeal.

Division of the matrimonial property

88 The law pertaining to the division of matrimonial assets is relatively straightforward. Section 112(1) of the WC provides that the court shall have power, when granting or subsequent to the grant of a judgment of divorce, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks *just and equitable*.

89 In exercising the power to order the division of matrimonial assets, s 112(2) of the WC states that:

112(2). It shall be the duty of the court in deciding whether to exercise its powers under subsection (1) and, if so, in what manner, to have regard to all the circumstances of the case, including the following matters:

- (a) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the matrimonial assets;
- (b) any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage;
- (c) the needs of the children (if any) of the marriage;
- (d) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party;
- (e) any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce;
- (f) any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;
- (g) the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business; and
- (h) the matters referred to in section 114(1) so far as they are relevant.

90 In *Sim Kim Heng Andrew*, this court reviewed the basic principles pertaining to the division of matrimonial assets and noted that whilst cases frequently classify marital contributions as being either direct contributions or indirect contributions, s 112(2) does not actually use the terms “direct” and “indirect” in respect of the factors to be taken into account in determining what is a *just and equitable* division on the facts. Instead, a *non-exhaustive* list of factors is set out in eight subparagraphs. Some can be directly assigned a monetary value, such as monies spent on the acquisition of the matrimonial asset as well as monies spent on improving or maintaining the asset. Debts incurred for the benefit of the children of the marriage are also directly quantifiable in monetary terms. On the other hand, many factors cannot be easily assessed in monetary terms, such as the contributions made by caring for the family.

91 In *Sim Kim Heng Andrew*, it was highlighted that case law often reveals effort being expended in attempting to pigeon-hole contributions into direct and indirect contributions. Bearing in mind the danger of over-generalisation, emphasis tends to be placed on financial contributions that are directly linked to the cost of acquisition of the matrimonial property (eg, down payments, deposits, cash payments and mortgage repayments). That said, monies spent on renovation are also important and, in some cases, these may be substantial and may also add lasting value to the property. In other cases, the renovation may blur into maintenance or day-to-day household expenses, such as the re-painting of walls or the repair of electrical wiring, etc. It goes without saying that other financial contributions which are not attributable to the value of the matrimonial asset (eg, a home) may include monies spent on fittings such as furniture and the like. The list is endless. The point made and which guides this court is that contributions to the matrimonial household extend far beyond the home as a physical or economic asset. It bears repeating that monies spent on the maintenance of the property are relevant to the division of the matrimonial assets alongside contributions to the welfare of the family. As was said by this court in *Sim Kim Heng Andrew* at [83]:

Classifying contributions as direct financial contributions, indirect financial contributions and indirect non-financial contributions is convenient and may be helpful in taking a structured approach. But, at the end of the day, the classifications must not rule the decision. What rules the decision is the court’s assessment of all the contributions made by each spouse which are relevant so as to achieve a just and equitable division. It cannot be assumed that any particular factor will always be given more weight. Whether it does or does not must depend on the court’s assessment of the factors as a whole. A holistic approach is what the legislation requires.

92 Coming back to the present case, this court agrees that the percentage contribution of the parties to the cost of acquisition (ie, the initial payments and CPF contributions) is in the region of 71.1% for the Defendant and 28.9% for the Plaintiff. In addition, both parties claimed to have made contributions towards the renovation and maintenance of the property. Whilst there is some dispute and lack of certainty as to the actual amounts spent, this court has already noted earlier (at [36] and [37] above) that the evidence supports the Plaintiff’s claim that her financial contributions (at least S\$64,645) in this respect were much higher than the Defendant’s (at most S\$20,000).

93 Turning to the other financial contributions towards the household expenses such as electricity bills and property tax, this court agrees with the learned DJ that the evidence suggests that both parties played their part in this respect. That said, it does not appear that due regard was given to the fact that the Plaintiff was responsible for paying the rent for the rental accommodation for a period of some ten years prior to the acquisition of the matrimonial property. Whilst there are very few details as to the payments made at that point in time, this court accepts that, as a matter of principle, this is a contribution to the marital household that has to be taken into account (not on a mathematical basis but by means of a broad brush approach).

94 In the case of indirect contributions in general, it will be recalled that the learned DJ at [35] of the GD found that the length of the marriage was long and that both parties had played their part in terms of non-financial contributions. The allegations made by each party in respect of the other party's conduct and relationship with the children and family were unfortunate and have not been helpful. It has been noted that the Defendant did spend long periods away from Singapore (for work-related purposes) during which the Plaintiff was effectively in charge of the day-to-day running of the household. During these periods, the Defendant did, however, remit monies back to Singapore.

95 The learned DJ's decision was essentially to award the Plaintiff a 50% share of the matrimonial property. Taking into account the fact that the Plaintiff's contributions towards the renovations were higher than the Defendant's, the Plaintiff's contributions towards the rent for the rental accommodation and the evidence as to the non-disclosure of the HK Property (and the adverse inference that is to be drawn), this court decides that the order of the learned DJ is to be varied such that the Plaintiff receives a 65% share of the matrimonial property.

Maintenance

96 Moving on, the learned DJ decided to deal with the Plaintiff's claim for maintenance as part of her overall decision on the division of the matrimonial property. Aside from the Plaintiff's age, declared earnings and expenses, the learned DJ formed the view at [50] of the GD that the Plaintiff "obviously had other forms of financial resources". This was especially so given the significant shortfall between her declared gross monthly income and her alleged monthly expenses. The point has already been discussed earlier and it has been pointed out that the learned DJ used too low a figure of S\$1,416.66 in calculating the Plaintiff's average monthly income (at [46] and [47] above). Nevertheless, even if the Plaintiff's figure of S\$3,142 is adopted, this is still considerably lower than her declared expenses of S\$10,685 per month for the period before the divorce. The Plaintiff's explanation that she had been relying on Mr Chay for financial support was not accepted by the learned DJ on the basis that there was no concrete evidence proffered to support the assertion. That said, it bears noting that even if it is accepted that Mr Chay has been financially supporting the Plaintiff for many years, it is unclear whether all the assistance or any part of it was by way of loans, gifts or otherwise. With regard to the issue of backdated maintenance, the learned DJ rejected the Plaintiff's claim as the evidence revealed that the Defendant did remit monies until he lost his job in March 2012.

97 In approaching the issue of maintenance, the observations of MPH Rubin JC in *Wong Amy v Chua Seng Chuan (Tow Lee Cheng Christine, co-respondent)* [1992] 2 SLR(R) 143 at [39]–[40] are noteworthy. In that case, the learned judge opined that an elastic approach is needed in exercising the discretion to achieve a just solution driven by the court's sense of justice. On the facts of this case, whilst it is acknowledged that there has been a lack of candour on the part of the Defendant, it is also clear that the learned DJ had taken the view that the Plaintiff's financial income and resources were likely to be higher than that disclosed by her. This has been discussed above and this court sees no reason to disagree with the learned DJ's observations. Further, given the obvious acrimony and bitterness accompanying the breakdown of the marriage, as well as the state of uncertainty surrounding the Defendant's employment prospects, this court agrees that the better approach is to take into account the issue of maintenance (*ie*, the Plaintiff's needs and expenses) as a factor in determining the division of the matrimonial property. In coming to this decision, this court agrees with the view expressed in *Elements of Family Law in Singapore* at p 666 that where the just and equitable division of matrimonial assets yields to the wife a fair share of the surplus wealth, the order for maintenance may be nominal or even dismissed (in appropriate cases).

98 It will be recalled that the net value of the matrimonial property has been estimated to be S\$1.2m. On this basis, the Plaintiff will receive a sum in the region of S\$780,000 if the property is sold

and the net sum divided in the proportion of 65:35 in favour of the Plaintiff as ordered above. Bearing in mind her age, assets and needs, this figure represents a fair share of the surplus wealth sufficient to account for all her maintenance needs. On this basis, I am not minded to disturb the learned DJ's decision on the issue of maintenance.

Conclusion

99 The appeal is, accordingly, allowed in part. The learned DJ's orders are varied as follows:

(a) The matrimonial property at 4B Marigold Drive, Singapore 576387 is to be divided in the proportion of 65:35 in favour of the Plaintiff.

(b) The Plaintiff is given an option to buy over the Defendant's 35% share provided that she gives notice of her intention to do so within 30 days from the date of this judgment.

(c) In the event that the Plaintiff opts to buy over the Defendant's 35% share, then this shall be at valuation for purposes of sale in the open market less the outstanding mortgage loan. The Plaintiff shall be responsible for the costs and expenses of such a transfer/sale of the Defendant's 35% share to her. The Defendant is to refund his CPF account of monies utilised for the purchase, inclusive of any accrued interest, from his 35% share, if so required by the CPF Board. The transfer/sale of the Defendant's 35% share to the Plaintiff shall be completed within 4 months after the expiry of the 30-day option period.

(d) In the event that the Plaintiff indicates in writing that she is not exercising the option above or upon the expiry of 30 days from the date of this judgment, whichever occurs first, the matrimonial property is to be sold in the open market with the parties having joint conduct of the sale. Upon successful sale, the proceeds are to be used to repay the outstanding mortgage loan and costs and expenses of the sale. The net proceeds thereafter are to be apportioned in the proportion of 65:35 in favour of the Plaintiff. The parties are to refund their respective CPF accounts of monies utilised therefrom for the purchase, inclusive of any accrued interest, if so required by the CPF Board.

(e) The Plaintiff's 65% share shall be inclusive of her claims for maintenance against the Defendant. No further maintenance will be ordered in favour of the Plaintiff.

100 For the avoidance of doubt, Orders 6, 7 and 8 of the learned DJ are to remain.

101 Given that the appeal has only succeeded in part, I am not inclined to make any order as to costs. Each party shall bear their own costs of this appeal. The learned DJ's order as to costs in relation to the proceedings below is to remain.

[\[note: 1\]](#) *Kwong Ling Yi v Liu Kah Foong* [2013] SGDC 229 at [61]–[62] (at Record of Appeal, vol I, p 48).

[\[note: 2\]](#) Defendant's Affidavit for Appeal Hearing (Divorce) filed on 18 October 2013 at pp 1–2.

[\[note: 3\]](#) Appellant's Skeletal Arguments/Submissions filed on 9 September 2013 at paras 18–23; GD at [2] (at Record of Appeal, vol I, p 33).

[\[note: 4\]](#) Plaintiff's 2nd Affidavit for Ancillary Matters Hearing filed on 4 July 2012 ("PA2") at para 22 (at

Record of Appeal, vol III (Part A2), p 361).

[\[note: 5\]](#) See *eg*, Plaintiff's 3rd Affidavit for Ancillary Matters Hearing filed on 13 August 2012 ("PA3") at para 23 (at Record of Appeal, vol III (Part A2), p 397) and Defendant's 2nd Affidavit for Ancillary Matters Hearing filed on 4 July 2012 ("DA2") at para 22 (at Record of Appeal, vol III (Part B1), p 643).

[\[note: 6\]](#) PA3 at para 22 (at Record of Appeal, vol III (Part A2), p 396).

[\[note: 7\]](#) Defendant's 4th Affidavit for Ancillary Matters Hearing filed on 29 October 2012 ("DA4") at para 4 (at Record of Appeal, vol III (Part B1), p 796).

[\[note: 8\]](#) PA2 at para 4 (at Record of Appeal, vol III (Part A2), p 355).

[\[note: 9\]](#) PA2 at para 6 (at Record of Appeal, vol III (Part A2), pp 355–356).

[\[note: 10\]](#) PA3 at para 21 (at Record of Appeal, vol III (Part A2), p 396).

[\[note: 11\]](#) PA3 at para 57 (at Record of Appeal, vol III (Part A2), p 406).

[\[note: 12\]](#) Plaintiff's 1st Affidavit for Ancillary Matters Hearing (Affidavit of Assets and Means) filed on 28 May 2012 ("PA1") at para 7 (at Record of Appeal, vol III (Part A1), p 88).

[\[note: 13\]](#) PA2 at paras 23–25 (at Record of Appeal, vol III (Part A2), p 361).

[\[note: 14\]](#) PA2 at paras 26 (at Record of Appeal, vol III (Part A2), p 362).

[\[note: 15\]](#) PA3 at paras 36–37 (at Record of Appeal, vol III (Part A2), p 400).

[\[note: 16\]](#) Plaintiff's 5th Affidavit for Ancillary Matters Hearing filed on 29 October 2012 ("PA5") at para 8 (at Record of Appeal, vol III (Part A2), p 505).

[\[note: 17\]](#) PA5 at paras 25–29 (at Record of Appeal, vol III (Part A2), pp 510–512).

[\[note: 18\]](#) Plaintiff's 7th Affidavit for Ancillary Matters Hearing file on 17 January 2013 ("PA7") at para 51 (at Record of Appeal, vol III (Part A2), p 546).

[\[note: 19\]](#) Defendant's 3rd Affidavit for Ancillary Matters Hearing filed on 14 August 2012 ("DA3") at para 6 (at Record of Appeal, vol III (Part B1), pp 690–691).

[\[note: 20\]](#) DA3 at para 14 (at Record of Appeal, vol III (Part B1), pp 696–697).

[\[note: 21\]](#) DA3 at para 15 (at Record of Appeal, vol III (Part B1), pp 697–698).

[\[note: 22\]](#) PA5 at para 26 (at Record of Appeal, vol III (Part A2), pp 510–511).

[\[note: 23\]](#) PA5 at para 27 (at Record of Appeal, vol III (Part A2), p 511).

[\[note: 24\]](#) DA4 at para 16 (at Record of Appeal, vol III (Part B1), p 802).

[\[note: 25\]](#) DA4 at para 16 (at Record of Appeal, vol III (Part B1), p 802).

[\[note: 26\]](#) PA7 at para 47 (at Record of Appeal, vol III (Part A2), pp 544–545).

[\[note: 27\]](#) PA3 at para 2 (at Record of Appeal, vol III (Part A2), p 390).

[\[note: 28\]](#) Defendant’s 5th Affidavit for Ancillary Matters Hearing filed on 14 January 2013 (“DA5”) at para 24 (at Record of Appeal, vol III (Part B1), pp 883–884).

[\[note: 29\]](#) PA1 at para 16 (at Record of Appeal, vol III (Part A1), pp 90–91).

[\[note: 30\]](#) PA1 at para 16 (at Record of Appeal, vol III (Part A1), pp 90–91).

[\[note: 31\]](#) PA1 at para 3(c) (at Record of Appeal, vol III (Part A1), p 87).

[\[note: 32\]](#) PA1 at para 9 (at Record of Appeal, vol III (Part A1), p 89).

[\[note: 33\]](#) PA1 at para 8 (at Record of Appeal, vol III (Part A1), pp 88–89).

[\[note: 34\]](#) PA1 at para 11 (at Record of Appeal, vol III (Part A1), p 89).

[\[note: 35\]](#) PA1 at para 14 (at Record of Appeal, vol III (Part A1), p 90).

[\[note: 36\]](#) PA1 at para 12 (at Record of Appeal, vol III (Part A1), p 89).

[\[note: 37\]](#) Defendant’s 1st Affidavit for Ancillary Matters Hearing (Affidavit of Assets and Means) filed on 17 May 2012 (“DA1”) at para 3(d) (at Record of Appeal, vol III (Part B1), pp 611–612).

[\[note: 38\]](#) DA1 at para 7 (at Record of Appeal, vol III (Part B1), p 613).

[\[note: 39\]](#) DA1 at para 12 (at Record of Appeal, vol III (Part B1), p 615).

[\[note: 40\]](#) DA1 at para 13 (at Record of Appeal, vol III (Part B1), p 616).

[\[note: 41\]](#) DA1 at para 10 (at Record of Appeal, vol III (Part B1), p 614).

[\[note: 42\]](#) DA2 at para 10 (at Record of Appeal, vol III (Part B1), p 638).

[\[note: 43\]](#) DA1 at para 19 (at Record of Appeal, vol III (Part B1), p 618).

[\[note: 44\]](#) DA2 at para 14 (at Record of Appeal, vol III (Part B1), p 640).

[\[note: 45\]](#) DA5 at para 15 (at Record of Appeal, vol III (Part B1), p 879).

[\[note: 46\]](#) Plaintiff's Affidavit for Summons Hearing (Divorce) filed on 3 October 2013 at para 7(d).

[\[note: 47\]](#) Defendant's Affidavit for Appeal Hearing (Divorce) filed on 18 October 2013 ("DA-R").

[\[note: 48\]](#) DA-R at para 2.

[\[note: 49\]](#) DA-R at para 2.

[\[note: 50\]](#) DA-R, Exhibit LKF-1.

[\[note: 51\]](#) DA-R at para 3.

[\[note: 52\]](#) DA-R, Exhibit LKF-1.

[\[note: 53\]](#) DA-R, Exhibit LKF-4.