

TUV v TUW
[2016] SGHCF 15

Case Number : Divorce (Transferred) No 4062 of 2007
Decision Date : 15 December 2016
Tribunal/Court : High Court
Coram : Debbie Ong JC
Counsel Name(s) : Patrick Chin Meng Liong (Chin Patrick & Co) for the plaintiff; Rina Kalpanath Singh and Nadia Moynihan (Kalco Law LLC) for the defendant.
Parties : TUV — TUW

Family Law – Custody – Access

Family Law —Matrimonial assets —Division

Family Law – Maintenance

15 December 2016

Debbie Ong JC:

Background facts

1 The parties were married in September 1996 and had four children (“the Children”). At the time of the hearing before me, the plaintiff husband (“the Husband”) was 48 years old, the defendant wife (“the Wife”) was 49 years old and the Children were 18, 17, 14 and 13 years of age. The two older children are boys (“the Sons”) while the two younger children are girls (“the Daughters”). One of the Daughters, Q, was diagnosed with cancer in December 2006. This was undoubtedly a difficult time for the family. Fortunately, Q has recovered.

2 The Husband left the matrimonial home in September 2007 and filed for divorce shortly thereafter. Interim judgment for divorce was granted in August 2009. I heard the ancillary matters relating to custody, care and control of the Children, division of matrimonial assets, and maintenance for the Wife and the Children on 3 June and 22 August 2016. On 14 September 2016, I delivered my oral judgment with brief reasons. The parties have appealed against my orders and I now give fuller grounds of my decision.

Custody, care and control, access

3 Although the Wife initially submitted that she should have sole custody, this was not a matter that was pursued during the hearings. The parties were content to have joint custody and the Husband was agreeable that care and control should remain with the Wife. The Wife also informed the court that she was supportive of the Husband having access to the Children. The aspects on which the parties wished the court to make specific orders related to access arrangements. The parties informed the court that there were no problems with access generally, but were of the view that specific access arrangements particularly in respect of the younger children and holidays would benefit the family.

4 I ordered that the Husband and Wife shall have joint custody of the Children, and the Wife shall have care and control of them. As for access, I noted that the Sons were older and would have more varied schedules than the Daughters. I ordered that the Husband have access to the Children in the following manner:

- (a) The Husband shall have reasonable liberal access to the Sons. Access to the Sons shall be mutually arranged, with the participation of the Sons, as the case may be.
- (b) The Husband shall have access to the Daughters in the following terms:
 - (i) Alternate weekend access with (A) alternating with (B):
 - (A) overnight weekend access from Saturday 2.00 pm to Sunday 5.00 pm; and
 - (B) weekend access during the day on Sunday from 12.00 pm to 6.00 pm.
 - (ii) The third and fourth weeks of the June school holidays.
 - (iii) The third, fourth and fifth weeks of the December school holidays.
 - (iv) Alternate public holidays from 10.00 am to 5.00 pm. He shall have access on the first day of the Chinese New Year in one year and the second day of the Chinese New Year in the following year.
- (c) The Husband may take the Children out of Singapore during his access time. He shall give the Wife 48 hours' notice of his intention to take the Children overseas and the Wife shall provide the Children's passports for the purpose of the overseas access.

5 I was heartened by the efforts put in by both parties to work together in the interests of the Children and I commend the parties for cooperating with each other in enabling the Children to spend time with both parents. Section 46 of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Women's Charter") imposes a legal obligation on both parents to "co-operate with each other ... in caring and providing for the children". I exhort the parties to continue to discharge their parental responsibilities by also supporting the other parent in parenting and bonding with the Children. To this end, the access arrangements which I have ordered may be adjusted by the parties' mutual agreement. It is not in the welfare of the Children to be inflexible with access arrangements. For example, the parties may arrange between themselves for access to be carried out in different weeks of the school holidays and for different lengths, in accordance with the best interests of the Children. If the Children wish to spend more weekends overnight with the Husband, the parties can also mutually agree to make suitable arrangements.

Division of matrimonial assets

The applicable legal principles

6 Section 112 of the Women's Charter provides that the court shall have the power to order the division of matrimonial assets in such proportions as the court thinks just and equitable. It is well established that the court's power to divide matrimonial assets is to be exercised in broad strokes. The court ought not to be engaged in a precise mathematical exercise. This approach, which has come to be known as the "broad brush approach", has been adopted in numerous decisions (see, for example, *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 at [33]–[35] and *ANJ v ANK* [2015] 4

SLR 1043 (“*ANJ*”) at [17] and [21]).

7 In *ANJ*, the Court of Appeal set out a structured framework consistent with the broad brush approach for the division of matrimonial assets that would sufficiently accord recognition to each party’s direct and indirect contributions to the marriage. The structured approach involves the following steps (at [22]):

Using the structured approach, the court could first ascribe a ratio that represents each party’s direct contributions relative to that of the other party, having regard to the amount of financial contribution each party has made towards the acquisition or improvement of the matrimonial assets. Next, to give credit to both parties’ indirect contribution throughout the marriage, instead of giving the party who has contributed more significantly than the other an “uplift” to his or her direct contribution percentage, the court should proceed to ascribe a second ratio to represent each party’s indirect contribution to the well-being of the family relative to that of the other. Using each party’s respective direct and indirect percentage contributions, the court then derives each party’s average percentage contribution to the family which would form the basis to divide the matrimonial assets. Further adjustments (to take into account, inter alia, the other factors enumerated in s 112(2) of the [Women’s Charter]) may need to be made to the parties’ average percentage contributions

8 The Court of Appeal in *ANJ* cautioned that the application of the structured approach is *not* a return to an arithmetical exercise, which has been consistently eschewed by the court. For instance, the court observed that the parties’ direct financial contributions towards the acquisition of the matrimonial assets would often be far from clear. The broad brush approach is applied even in respect of ascribing a ratio which represents each party’s direct contributions: where the evidence falls short of establishing the direct financial contributions of the parties, the court must make a “rough and ready approximation” of the figures, approaching the issue with sound judgment, having regard to the “inherent veracity of each party’s version of events reflected in their affidavits or testimony as well as the documentary evidence” (see *ANJ* at [23]). This is an important point in the present case, and is a point that I will return to later.

The parties’ matrimonial assets and their values

9 The parties’ most substantial matrimonial asset is their matrimonial home located at Alnwick Road (“the Alnwick Property”) which they own in joint names. Besides the Alnwick Property, the Husband also owns 48.41% of the shares in a real estate services company (“the Company”), where he is the Chief Executive Officer. The matrimonial assets also include bank accounts, insurance policies and motor vehicles. The pool of matrimonial assets were not disputed by parties, but the valuation of certain assets were disputed.

10 At the first ancillary matters hearing on 3 June 2016, I directed parties to submit the most updated agreed summary of their matrimonial assets and their values (indicating the agreed values and the disputed values), in the form of a table. The parties subsequently submitted other information that I had directed be filed, but did not submit this tabular summary of matrimonial assets. At the subsequent hearing on 22 August 2016, without this direction being complied with, the court gave both parties copies of a table of figures reflecting the parties’ matrimonial assets and liabilities (“the Table”), which was prepared by the court from perusing the papers in these proceedings. Both counsel examined the Table and accepted the figures therein as accurate. The figures in the Table are presented below at [18]–[20].

11 The operative date for the purposes of determining the *value* of the matrimonial assets I

adopted in the present case is the date of the ancillary matters hearing. The Court of Appeal in *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 (“*Yeo Chong Lin*”) was of the view (at [39]) that Parliament did not intend to prescribe a definite cut-off date for *identifying* the pool of matrimonial assets, but stated that once an asset was regarded as a matrimonial asset to be divided, its *value* should be assessed at the date of the hearing of ancillary matters. This should be understood in the light of *ARY v ARX and another appeal* [2016] 2 SLR 686, where the Court of Appeal held that the date of the interim judgment of divorce ought to be taken as a starting point, but not a fixed operative date, for identifying the pool of matrimonial assets and further, that “the court has not only the discretion to select the operative date to *determine* the pool of matrimonial assets, it also has the discretion to determine the date at which those assets should be *valued*” (at [36]) [emphasis in original]. In my view, the date of the ancillary matters hearing ought to be used as a starting point as the operative date for valuing the assets. As it was impractical to have parties constantly updating every value each time the matter was fixed for hearing, the values which I adopted were the values which the parties adduced that were as close to the date of the ancillary matters hearing as possible.

Values of the Alnwick Property and the shares in the Company

12 While the parties had agreed to most of the values stated in the Table, the value of the Alnwick Property and the shares in the Company were disputed. The parties initially took different positions on the value of the Alnwick Property. It was then agreed during the hearing on 3 June 2016 that the parties would appoint a valuer to conduct a valuation of the Alnwick Property. The Alnwick Property was inspected on 19 July 2016 by a valuer from Savills Valuation and Professional Services (S) Pte Ltd and valued at \$4,100,000 as at 28 July 2016. This was the value I adopted for the purposes of the division exercise.

13 Turning to the shares in the Company, a report by Nexia TS Advisory Pte Ltd (“Nexia”) dated 1 February 2016 valued the 100% equity in the shares at \$174,000 as at 31 December 2013. This valuation was done pursuant to an order of court dated 13 May 2013, which ordered that a valuation of the Company be done by an independent expert to be jointly appointed by both parties.

14 The Wife submitted that the valuation of the Company by Nexia was flawed because the information that Nexia had of the Company came solely from the Husband and that the Husband had not been fully forthcoming with the information. She requested that Nexia be ordered to release the information relied on to reach its valuation of \$174,000 or that a new valuation to be made.

15 I declined to do so. Nexia was an independent expert appointed by both parties pursuant to the order of court. It was the Husband’s evidence that the Wife was the party who chose Nexia as the expert. Given that the Nexia report on the Company was made by *independent* professionals who were appointed by both parties and commissioned by the Wife, I do not find sufficient reason to reject the values presented therein in favour of another report or to use a different value.

Table of matrimonial assets

16 The parties did not dispute the values of the other assets and were content to accept the values on the face of the documents. As stated above at [10], both counsel accepted the figures in the Table at the hearing on 22 August 2016.

17 Based on both counsel’s confirmation, the following tables set out the assets and liabilities of the parties. These tables of assets only include assets which have a value of more than \$1,000. The Husband’s joint bank accounts with the Children were not included in the pool of matrimonial assets as

the amounts therein are small. Further, I treated them as intended for and belonging to the Children. One of the Husband's bank accounts (OCBC Account No 5XX-X-XXX748) was also excluded as it was also held in the Husband's mother's name and had a relatively small balance of slightly more than \$1,000 (as at 30 November 2015).

18 The following shows the assets and liabilities in the Husband's name:

Table 1: Assets in the Husband's name	
Description of asset	Value
UOB Account No 3XX-XXX-X60-2	\$4,036.50 (30 Nov 2015)
OCBC Account No 5XX-X-XXX737	\$1,078.97 (31 Dec 2015)
Central Provident Fund ("CPF") Account	\$141,904.31 (Jan 2016)
Central Depository shares	\$4,595.43 (Nov 2015)
Insurance policies	\$233,485.96 (from Husband's affidavit dated 25 July 2016)
Motor vehicle	\$42,552 (Jul 2016)
48.41% of shares in the Company	\$84,233.40
Total	\$511,886.57

Table 2: Liabilities in the Husband's name	
Description of liabilities	Value
RHB Account No 5-XX-XXXX12-08	\$7,423.78 (30 Nov 2015)
RHB Account No 5-XX-XXXXX0-07	\$59,890.77 (30 Nov 2015)
DBS Cashline Account No 0XX-XXXX54-7	\$33,178.67 (20 Nov 2015)
Total	\$100,493.22

The net asset value of the assets in the Husband's name is \$411,393.35 (which I rounded to \$411,400 for ease of calculation).

19 The following shows the assets in the Wife's name (there are no liabilities in her name):

Table 3: Assets in the Wife's name	
Description of asset	Value
Motor vehicle	\$35,000 (May 2011)

CPF Account	\$142,083.76 (Jan 2016)
Bank accounts (consolidated)	\$31,000 (Mar 2011)
DBS Vickers shares	\$12,000 (Dec 2010)
CDP Account	\$61,875 (Mar 2011)
Insurance Policy No XXXXX593	\$20,087.48 (May 2011)
Insurance Policy No XXXXX581	\$9,621.25 (May 2011)
Insurance Policy No XXXXXXX137	\$16,720.79 (2011)
Total	\$328,388.28

The net value of the assets in the Wife's name is \$328,388.28 (which I rounded to \$328,400 for ease of calculation).

20 The following shows the assets and liabilities in the parties' joint names:

Table 4: Assets in the parties' joint names	
Description of asset	Value
The Alnwick Property	\$4,100,000 (Jul 2016)
Total	\$4,100,000

Table 5: Liabilities in the parties' joint names	
Description of liabilities	Value
UOB Account No 1XX-XXX-X04-6	\$99,893.76 (May 2016)
Total	\$99,893.76

The net value of the assets in the parties' joint names is \$4,000,106.24 (which I rounded to \$4,000,000).

21 Based on these tables, the total net value of the matrimonial assets is \$4,739,800.

Parties' direct contributions

Direct contributions to the Alnwick Property

22 The Alnwick Property was purchased in January 2002 for \$1.25m. This was financed in part by a \$1m loan from UOB Bank. Based on the UOB bank statements, the cost of acquiring the Alnwick

Property (excluding stamp duty and legal fees) may be computed as follows:

Table 6: Cost of acquisition of the Alnwick Property	
Description	Value
Upfront cash payment	\$250,000
Mortgage repayments (including interest)	\$1,119,100.79
Total	\$1,369,100.79 (rounded to \$1.37m)

23 It was not disputed that \$210,201.89 from the Husband's CPF account and \$264,911.19 from the Wife's CPF account were used to purchase the Alnwick Property. It was also not disputed that the parties each contributed \$73,784.70 for payment of stamp duties and legal fees. However, the parties advanced vastly different positions on their contributions with respect to other payments (eg, towards discharging the mortgage).

24 The Wife's position was that the funds for the acquisition came from the sale proceeds of the parties' second property ("the Ripley Property"). The Ripley Property was purchased for \$930,000 in 1999 and sold for \$1,050,000 in 2002. According to the Wife, she had used the entire sale proceeds of \$208,000 from the sale of a condominium unit which she owned solely ("the Tanglin Property") to pay for the cash portion of the Ripley Property. When the Ripley Property was sold in 2002, the sale proceeds of \$325,000 were used to purchase the Alnwick Property. Whilst the Husband agreed that the Wife had put in about \$200,000 for the purchase of the Ripley Property, he also stated that he had put in more than \$130,000 in cash, paid for the stamp duty and legal fees and funded the renovations for the Ripley Property such that his financial contribution to the Ripley Property exceeded the Wife's financial contribution.

25 Besides the issue of contribution to the Ripley Property, the Wife also argued that she contributed to the acquisition of the Alnwick Property through her director's fees amounting to \$473,000. It was not disputed that the Wife was a director of the Company during the subsistence of the marriage. The Wife's position was that she assisted the Husband in the business, handled the accounts of the Company and received director's fees which were used to discharge the mortgage over the Alnwick Property.

26 On the other hand, the Husband's position appeared to be that he contributed entirely to the mortgage repayments. He submitted that the Wife was only a nominal director in the Company and did not perform any substantial role. According to the Husband, the Wife's director's fees from 2000 to 2004 were only declared for tax purposes and no sums were received by the Wife. However, from April 2004 onwards, the director's fees were paid directly into her designated bank account for the purpose of allowing her to receive regular income for the family and also to enable the Husband to take advantage of tax deductions in order to reduce his tax liability. It was not entirely clear whether or not the Husband's position was that the Wife's director's fees were used to pay the mortgage on the Alnwick Property. On the one hand, he stated at para 8 of his affidavit dated 30 July 2014 that "[t]he mortgage for the home was never at all paid from her director's fees but it was from my account". However, at para 65 of the same affidavit, he stated:

The [Wife] talks as if she was a partner and a co-worker. She is seeking to misguide the Court as to her role and place. She was never anything in the company except in name and she was used

to receive CPF and director's fees which was used to make payment for the [Alnwick Property] in order to minimise tax incidence for myself.

27 Putting the assertions of the parties aside, the documentary evidence showed that the mortgage loan for the Alnwick Property was progressively repaid from 2002 to 2013. The Wife also exhibited income tax information for the years 2001 to 2011 which showed that she had been paid director's fees. These income tax information were forms submitted by the Husband (as employer) to the Inland Revenue Authority of Singapore over those years as a declaration that these sums were paid by the Company to the Wife. However, there was little else by way of objective evidence. For example, there was no documentary evidence clearly showing the proportion of the parties' direct financial contributions to the Ripley Property. Neither was there evidence indicating that the sale proceeds from the Ripley Property were used entirely to fund the purchase of the Alnwick Property, nor evidence which proved that the Wife's director's fees had been fully channeled towards the mortgage repayments.

28 Many of the arguments proffered by the parties were not substantiated with documentary evidence. This was not surprising. It is only to be expected that when parties are still in a functioning marriage, neither may keep records of transactions with a view to producing them in the event of a divorce. As the Court of Appeal had noted in *ANJ* (at [23]):

Even in respect of direct financial contributions of the parties, not infrequently, the situation is less than clear. In a case where the documentary evidence falls short of establishing exactly who made what contribution and/or the exact amount of monetary contribution made by each party, the court must make a "rough and ready approximation" of the figures (see *NK v NL ...* at [28], citing *Hoong Khai Soon v Cheng Kwee Eng* [1993] 1 SLR(R) 823 at [17] with approval). At the end of the day, the court would have to approach the issue by exercising sound judgment, having regard to the inherent veracity of each party's version of events reflected in their affidavits or testimony as well as the documentary evidence. This is where "broad brush" comes in.

The broad brush approach is thus also applicable to the process of reaching the parties' direct financial contributions.

29 Having regard to the totality of the evidence, I accepted that the truth was somewhere in between both parties' assertions. In my view, the Wife's director's fees might have been used, in part, to repay the mortgage loan. I also accepted that both the Husband and the Wife had contributed to the purchase of the Ripley Property, and that the sale proceeds of the Ripley Property might have been used, in part, to fund the purchase of the Alnwick Property. At the same time, it was clear from the evidence that the Husband was the main breadwinner, who worked hard as a businessman and generated most of the parties' wealth during the marriage. Although the Wife had contributed to the Company, her contributions were not as substantial as the Husband's. Given the evidentiary difficulties, it was not possible to arrive at a precise mathematical conclusion, apart from these broad factual observations.

30 It was therefore necessary to apply a broad brush approach and approximate the parties' respective direct financial contributions to the acquisition of the Alnwick Property, having regard to the broad factual premises which I have observed above. To reiterate, it was likely that the funds for the acquisition of the Alnwick Property came from both the sale proceeds of the Ripley Property, the Husband's own funds derived from the real estate business, and the Wife's director's fees that had been declared by the Company. In this regard, the sale proceeds of the Ripley Property were attributable to the efforts of both the Husband and the Wife. With this in mind and taking a broad brush approach, it was, in my view, fair to attribute the payments towards the acquisition of the

property (after accounting for the amount contributed from each party's CPF funds over which there was no dispute) in the proportion of 70% to the Husband and 30% to the Wife. The following table sets out the relevant calculations:

Description of contribution towards acquisition	Husband's contribution	Wife's contribution
Husband's CPF	\$210,201.89	-
Wife's CPF	-	\$264,911.19
Payments towards mortgage or other payments (70:30)	\$626,420.84	\$268,466.08
Total contribution of each party to the cost of acquisition of the Alnwick Property (\$1.37m)	\$836,622.73	\$533,377.27

31 The parties' undisputed contribution of \$73,784.70 each for payment of the stamp duty and legal fees may also be attributed to each of them as their direct financial contributions to the purchase of the Alnwick Property.

32 The Husband also submitted that he had contributed to the general upkeep of the Alnwick Property as well as towards renovation costs and provided receipts and invoices evidencing his contributions. I accept that the Husband made such contributions but I took them into account as the Husband's *indirect* contributions to the marriage, which I accounted for below (see [40] below). It was noted that the Husband had submitted that these expenses formed part of his indirect financial contributions in his affidavit of asset and means dated 23 February 2011 (at para 22).

Direct contributions to the other matrimonial assets

33 As there was no evidence of the parties' historical contributions towards the acquisition of the assets held in the parties' own names, I applied a broad brush approach and used the value of the assets in the parties' respective names (see [18] and [19] above) as reflecting their respective direct financial contributions.

Ratio of the parties' direct contributions

34 The ratio of the parties' direct financial contributions to the matrimonial assets was thus computed as follows:

Direct financial contributions	Husband's contribution	Wife's contribution
Assets in the name of either party	\$411,400	\$328,400
Contributions towards acquisition of Alnwick Property	\$836,622.73	\$533,377.27

Stamp duty and legal fees for Alnwick Property	\$73,784.70	\$73,784.70
Total contributions	\$1,321,807.43	\$935,561.97
Percentage	58.55%	41.45%
	Rounded to 59%	Rounded to 41%

Parties' indirect contributions

35 The Wife submitted that she had taken on the role of homemaker even when she was working during the early years of the marriage. Between 1994 and 2000, the Wife was employed as a regional marketing manager in an American company. This job required her to travel a fair bit. Thus, in the early years of the marriage when the Sons were very young, she was working and caring for the family with the assistance of domestic helpers.

36 In 2000, the Wife left her job with the American company. Between 2000 and 2004, she helped out in the Husband's real estate business and studied for a bachelor's degree in real estate valuation at the National University of Singapore in the years before 2004. During this period, the Daughters were born. It appeared from the evidence that, compared to the earlier years of the marriage, the Wife spent more time with the Children during this period.

37 As mentioned earlier, Q was diagnosed with cancer in December 2006. This was a stressful time for both the Husband and the Wife. In her first affidavit of asset and means, the Wife detailed her efforts in taking care of Q. It was around this time that cracks began to appear in the parties' relationship. The Children lived with the Wife after the Husband left the matrimonial home sometime in 2007.

38 The Husband submitted that during the early years of the marriage, he was involved in looking after the Sons when the Wife was travelling for business. Not only did he provide for the welfare of the family then, he also took on responsibilities in the school advisory committee of Deyi Secondary School from 2004 to 2010. He was also involved in taking care of Q during the period of her illness and juggled between his home and business duties during this period.

39 It was clear from the evidence that the Wife's contributions to the welfare of the family were substantial. The parties had raised four children in this marriage. She was the main caregiver of the Children during the marriage and had taken care of the Children for many years after the parties were separated. Although she appeared to have spent some amount of time away from the family during the early years of the marriage, she played a much more active role in the family during the later years of the marriage, when she managed the Children's daily needs, assisted them with their homework, and sent the Children for their various extra-curricular activities. During the period of Q's illness, the Wife was heavily involved in caring for Q. In a report, Dr Chan Mei Yoke, Q's doctor, noted that the Wife was the one who accompanied Q to her hospitalisation and outpatient appointments. The Wife stated that when Q was settled in the hospital ward, she would be home in the afternoon to check on the other children before heading back to the hospital later in the day.

40 The Husband had also contributed to the family's welfare in no small amount. It was important to note that the Wife was employed in the early years of the marriage, and that the parenting effort (especially of the Sons) would have come from both parents (though not necessarily to an equal

extent). When Q was ill and the Wife was focused on caring for her, the Husband played a role in taking care of the home and the other children. Besides his care of the Children, the Husband also contributed substantially to the family's welfare financially. As I have stated above, I had taken the amounts that the Husband paid towards the upkeep of the Alnwick Property (*ie*, the matrimonial home) as his indirect contributions to the marriage. This amount of approximately \$800,000 is substantial and if it had been included in the calculation of the ratio of direct contributions, would have raised the Husband's ratio by a fair amount. In my assessment of the facts, the Husband's contribution to the upkeep of the matrimonial home was just one instance of his overall provision for the family. It was therefore important to give sufficient weight to this when this was being accounted for as indirect contributions. While this was not a precise mathematical exercise, due weight had to be given to the Husband's efforts in providing a comfortable life for the family.

41 In the circumstances, I found it fair to attribute the indirect contributions to the marriage in the proportions of 60% to the Wife and 40% to the Husband.

Just and equitable division of the matrimonial assets

42 Applying the structured framework in *ANJ*, the average ratio was derived as follows:

<i>Table 9: Derivation of the average ratio</i>		
	Husband	Wife
A. Direct contributions	59%	41%
B. Indirect contributions	40%	60%
Average of A and B	49.5%	50.5%

43 This was a 13-year marriage where four children have been raised. Both the parties participated, to different degrees, in homemaking, parenting and the generation of wealth. Taking a broad brush approach, I found it just and equitable for each party to receive an equal share of the total pool of matrimonial assets valued at \$4,739,800. This worked out to each receiving the value of \$2,369,900 in the assets.

Adverse inferences

44 Both parties submitted that an adverse inference should be drawn against the other. The structured approach under *ANJ* permits adverse inferences to be drawn where these are warranted by the facts (at [29]). This may result in the court either increasing the pool of matrimonial assets to account for the undisclosed assets or awarding the party whom the court finds to have failed to make full and frank disclosure a lower proportion of the known assets. However, a court would not draw an adverse inference against a party too readily (see *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 ("*Koh Bee Choo*") at [30]). In order for an adverse inference to be drawn, it must be demonstrated that there is a substratum of evidence that establishes a *prima facie* case against the person against whom the inference is to be drawn, and that person must have had some particular access to the information he is said to be hiding (see *Koh Bee Choo* at [28] and *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 at [62]).

45 The Wife submitted that an adverse inference ought to be drawn against the Husband for his failure to disclose his assets such as his ownership in a sole proprietorship known as RX, his safe

deposit box, as well as some apartment units in Singapore and in Beijing. The Husband, on the other hand, alleged that the Wife had failed to provide the money trail of the Tanglin Property sale proceeds.

46 I did not think that there was a sufficiently solid substratum of evidence upon which it was appropriate to draw an adverse inference against the Husband or the Wife. The Husband's assertion against the Wife concerning the proceeds of the Tanglin Property was a bare one, not sufficiently supported by any *prima facie* evidence. Indeed, the evidence was that the Wife had purchased the Tanglin Property in 1995 and sold it in 1998 and unless the Wife was so unusually fastidious with record-keeping, it was only to be expected, given the passage of time, that she would not be able to provide coherent records of the money trail.

47 I accepted that the Husband's initial failure to disclose his interest in RX was a result of inadvertence and that the sole proprietorship was not of substantial value. The Husband also explained that he had closed up his safe deposit box in September 2008, and supported this with a letter confirming the closure of the safe deposit box.

48 The Wife raised the issue of the Husband's alleged apartment units in Singapore. Some of these units were located in a condominium development known as the Icon ("the Icon units"), while another unit was located in another condominium development known as the Riviera ("the Riviera unit"). In respect of the Icon units, it appeared that the Husband co-owned one unit with two other family members. There was evidence that other Icon units were purchased by the Husband's family members or companies. During the hearing of 22 August 2016, the Wife's counsel confirmed that the Wife was not asserting that the Icon and Riviera units were specific matrimonial assets to be included in the matrimonial asset pool but was only asking the court to make adverse inferences against the Husband. The Wife asserted that the Husband's family members and companies were holding these properties for him. I was unable to find a *prima facie* case that the Husband was hiding assets in the name of his family members or the companies with respect to the Icon units. In respect of the unit in which he co-owned, there was little information provided about the source of funds for that purchase, when this unit was purchased or when it was sold. In an affidavit dated 22 May 2012, the Husband stated that the Icon units were purchased after the parties had separated and had already been sold, with the profits divided according to each person's contribution. In my view, the Husband could have provided more information on the units he owned, but I find that his failure to do so was due to a lack of diligence and I was not satisfied that it was appropriate to make an adverse inference against him under the circumstances.

49 As for the Riviera unit, this was owned by the Husband's sister and appeared to have been sold sometime in 2009 or 2010 after the parties had separated. The Wife relied on a court judgment regarding the sale of this property involving the Husband's sister, but the judgment only demonstrated that the Husband acted as his sister's agent in the sale, and not that he had beneficial ownership of the property. This could explain why the Husband did not furnish further information on this property.

50 The Wife also alleged that the Husband was concealing a property in Beijing, and relied on a transcribed conversation as evidence of this. The conversation apparently recorded the Husband speaking to a friend about money and a Beijing apartment. The transcript recorded a man speaking, but it was not clear from the transcript itself whether the man was the Husband, when the conversation took place, and with whom the conversation took place. Without more information, such as the primary recording or the evidence of how the recording took place, there was little weight, if any, that I could place on this evidence.

51 Finally, although this was not a matter raised by the Wife as an issue before me, I note that, in

relation to disclosures of the shares in companies held by the Husband, there was insufficient basis for me to draw an adverse inference against the Husband, even if he could have been fuller in the disclosures. The Husband had disclosed his shareholding in these companies from his first affidavit of asset and means and there was no evidence that he had an intention to actively conceal this information. When discovery was sought of the financial statements for 2009 and 2010, the Husband produced them. The Wife did not argue that the Husband's interest in these companies ought to fall within the pool of matrimonial assets, and the only contest concerning the Husband's shareholding in the various companies before me was in relation to the valuation of the Company, which I have dealt with at [13]–[15] above.

Maintenance

The Wife

52 The Wife is presently employed and earning an income. She submitted that she earned \$2,800 per month. Although her income tax statements reflected a higher amount, it was explained that these were because her statements reflected the interim maintenance of \$1,200 per month which she had been receiving from the Husband. I accepted this explanation which was substantiated by supporting documentation.

53 The Wife submitted that she spent about \$2,780 per month on the basis that the household expenses were shared with the Children. Her income was therefore sufficient for her own expenses. Further, she was to receive more than \$2m worth of assets in the division order. I therefore ordered that there shall be no maintenance for the Wife.

The Children

54 The Husband submitted that the maintenance for the Children be fixed at \$5,000 per month. On the other hand, the Wife submitted that the expenses of the Children amounted to about \$9,500 per month. It is noted that the Children had been receiving \$5,100 per month as interim maintenance.

55 In my view, the list of expenses which the Wife exhibited were rather generous. For example, the list included an expenditure of \$1,000 per month on holidays, and \$460 per month on dining out, movies and concerts. Some of the sums, such as home maintenance of \$400 per month were also questionable and, in my view, there was also some double-counting within the list of expenses. Also, the expenses of various items would fluctuate each month depending on the Children's activities. A holistic approach ought to be taken, instead of one which microscopically analyses each item of anticipated expense.

56 Expenses and needs are not the only factors to be considered. I note that the Husband was a man of some means. He earned an annual income of \$227,204 in the past year (*ie*, year of assessment ("YA") 2016), which amounts to an income of about \$18,750 per month. I also note that the Husband earned the following annual income: (a) \$152,932 in YA 2015; (b) \$302,552 in YA 2010; and (c) \$300,452 in YA 2009. The Husband has therefore been able to earn between \$12,000 and \$25,000 per month, though I noted that the Husband's income in YA 2015 appeared to be somewhat of an anomaly relative to his income in other years.

57 Having regard to the Children's monthly expenses as well as the Husband's income, I ordered that the Husband shall pay \$7,500 per month for the Children's maintenance.

Conclusion

58 For the above reasons, I made the following orders:

- (a) The parties shall have joint custody of the Children, with care and control to the Wife and access to the Husband on the specified terms.
- (b) The Husband and Wife shall each receive 50% of the total pool of assets valued at \$4,739,800.
- (c) There shall be no maintenance for the Wife.
- (d) The Husband shall pay \$7,500 as monthly maintenance for the Children.
- (e) The parties shall bear their own costs.

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