

TPY v TPZ and another appeal
[2017] SGHCF 2

Case Number : District Court Appeal Nos 63 and 65 of 2016
Decision Date : 18 January 2017
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Adriene Cheong and Shaun Ho (Harry Elias Partnership LLP) for the appellant in DCA 63/2016 and respondent in DCA 65/2016; Gulab Sobhraj and Michael Low (Crossbows LLP) for the respondent in DCA 63/2016 and appellant in DCA 65/2016.
Parties : TPY — TPZ

Family law – Matrimonial assets – Division

18 January 2017

Judgment reserved.

Choo Han Teck J:

Introduction

1 This judgment concerns two appeals relating to the division of matrimonial assets. District Court Appeal No 63 of 2016 (“DCA 63/2016”) is an appeal brought by the Husband, and District Court Appeal No 65 of 2016 (“DCA 65/2016”) is an appeal brought by the Wife. The Husband is presently 45 years old and works as a Sales Relationship Manager at a multinational company. The Wife is presently 43 years old and is a Manager at a bank.

2 The parties married on 18 June 1998 in the United Kingdom. On 23 November 2011, the Husband filed for divorce on the basis of the Wife’s adultery. The divorce was initially contested but the parties eventually agreed for the divorce to proceed on the basis of the Husband’s claim, amended to the fact of unreasonable behaviour instead of adultery. Interim Judgment was granted on 4 December 2012. The marriage lasted 13 years. There is one child to the marriage (“the Child”). The Child was born on 27 June 2001 and is now 15 years old. The parties jointly own three properties but the Wife presently lives with the Child in a rented apartment. The three properties are:

- (a) a HDB flat at xxx, which was the matrimonial home (“the matrimonial home”);
- (b) a four-bedroom condominium unit at xxx (“the xxx property”); and
- (c) a property in the United Kingdom (“the UK Property”).

3 The ancillary matters were heard before the learned District Judge (“the DJ”) in 2015. The DJ gave her decision on the ancillary matters on 15 February 2016. The DJ’s Grounds of Decision can be found at *TPY v TPZ* [2016] SGFC 79 (“the GD”). After the DJ rendered her decision, the Husband applied to present further arguments. After hearing the further arguments, the DJ adjusted her orders on 26 April 2016. The adjusted orders are included within the GD. Dissatisfied with the DJ’s decision, the Husband filed DCA 63/2016 appealing the DJ’s orders in relation to the division of matrimonial assets. The two issues raised by the Husband on appeal are:

(a) Whether the DJ erred in law and in fact in attributing a ratio of 70:30 for indirect contributions (in favour of the Wife) (“the indirect contribution issue”); and

(b) Whether the DJ erred in failing to consider the Husband’s submissions that an adverse inference ought to be drawn against the Wife (“the adverse inference issue”).

4 The Wife then filed DCA 65/2016 also appealing the DJ’s orders in relation to the division of matrimonial assets. The issues raised by the Wife are:

(a) Whether the DJ erred in not attributing to the Wife a higher share ratio in respect of her indirect contributions; and

(b) Whether the DJ erred in not attributing to the Wife a higher share ratio in the division of the parties’ pool of matrimonial assets.

5 As pointed out by Ms Adriene Cheong (“Ms Cheong”), the Husband’s counsel, the issues raised by the Wife in DCA 65/2016 are linked to the indirect contribution issue raised by the Husband in DCA 63/2016. I therefore deal with the Wife’s case in DCA 65/2016 together with the Husband’s indirect contribution issue.

The decision below

6 After the trial below, the DJ ordered the division of matrimonial assets in the ratio of 34.5:65.5 in favour of the Wife. This ratio was based on the DJ’s finding that the Husband made direct contributions of 41% while the Wife contributed 59% towards the value of the pool of matrimonial assets. As for the parties’ indirect contributions, the DJ found that the Husband contributed 30% while the Wife contributed 70%. The DJ’s conclusions are summarised in the table below:

	Husband	Wife
Direct contributions (50% weightage)	41%	59%
Indirect contributions (50% weightage)	30%	70%
Average percentage contributions	35.5%	64.5%

7 In arriving at her decision on the indirect contributions of the parties, the DJ found the parties’ indirect *financial* contributions to be equal. This is stated at [44] of the GD:

44. Both parties contributed towards paying for the family’s and [the Child]’s expenses before the breakdown of the marriage. The bank statements exhibited by the Wife were inconclusive as to whether parties contributed equally into the joint accounts or not, or whether this was the practice throughout the years of marriage. The Wife said she bore more of [the Child]’s expenses after she and [the Child] moved out of the Matrimonial Home in 2012. It is undisputed that the Husband earned more than the Wife in the first ten years of the marriage and that the situation was reversed for the following five years. My analysis below on the contributions towards the assets show that the Husband paid more for the properties purchased in those earlier years as well and that in subsequent years, the Wife’s payments towards the properties overtook the Husband’s. The Wife has also accumulated substantially more assets in her own name than the Husband. I would conclude *on the totality of the evidence that parties’ contributions towards the expenses would have evened out over the years, and would attribute such contributions equally*

to both parties.

[emphasis added]

8 In arriving at her decision on the parties' indirect *non-financial* contributions, the DJ took the following issues into consideration at [71] – [72] of the GD:

71. I accept that the Wife had made the following indirect non-financial contributions:

a. She had nurtured and taken care of [the Child], and invested time and effort to promote his development and well-being, particularly when he was very young. Her efforts are especially recognised as it is undisputed that the Husband is out of Singapore for half of the week. She also continued this role after she and [the Child] moved out.

b. I accept that as a working mother, she had to have domestic help to assist in [the Child]'s care while she is working. However, I do not think this substantially reduces her role as [the Child]'s mother. In Tay Yong Kwang J's words, "Having a maid in the household, or a number of maids for that matter, does not mean abdication of parental responsibility" *Lee Chung Meng Joseph v. Krysgman Juliet Angela* [2000] 3 SLR(R) 965 at [41]. She would thus also have had to train and supervise the maid for the childcare arrangements and household chores.

c. She had made sacrifices in her career in the first years of the marriage, in order to take better care of [the Child]. This is obvious from the way her salary stagnated in those years, then quickly rose when [the Child] was older and the Wife could [better balance work and her other responsibilities] (*Note: bracketed words added on 26 April 2016*).

d. She had used her employee rates at xxx Bank for the mortgage of various properties owned by the parties throughout the marriage.

e. She was involved in the renovations for some of the properties, and had also played a part in deciding on investing in the Malaysian property.

72. I accept that the Husband had made the following indirect non-financial contributions:

a. He had spent time and engaged in activities with the child during the marriage.

b. It was largely his idea to take the risk of investing in real estate.

c. He had arranged for and managed various of the properties, particularly the UK property.

The indirect contributions issue

9 On appeal, the Husband claims that the DJ erred in attributing a ratio of 70:30 for indirect contributions in favour of the Wife. The Husband claims that a fair ratio to accurately reflect the circumstances of the marriage is 55:45 in favour of the Wife. The Husband is not seeking to disturb the DJ's finding that the parties made equal indirect financial contributions and his appeal *only* relates to the indirect non-financial contributions of the parties.

10 First, Ms Cheong argues that the DJ erred in finding that the fact that the parties had a domestic helper was immaterial because the Wife would have had to train and supervise the domestic

helper in performing household chores. Ms Cheong submits that both Husband and Wife would have had to manage the helper on a daily basis and cites *ANJ v ANK* [2015] SGCA 32 ("*ANJ v ANK*") at [27(c))] for the proposition that the assistance of a domestic helper would reduce the indirect contributions made by the homemaker.

11 Secondly, Ms Cheong argues that the DJ erred in finding that the Wife had made sacrifices in her career to care for the child. Ms Cheong submits that the Wife's salary stagnated and rose without any correlation to the Child's age or the supposed effort put in by the Wife. The Husband also claims that the Wife was ambitious and focused on her career throughout the marriage. In particular, he claims that the Wife would work whenever she could and despite her indications that she would stop working to care for the Child, she did not do so.

12 Thirdly, Ms Cheong submits that the DJ erred in considering the Wife's special employee rates for the mortgages on the parties' properties as an indirect non-financial contribution on the Wife's part. The Husband submits that the special employee rates should be considered as indirect financial contribution.

13 Finally, Ms Cheong submits that the DJ failed to take into consideration the Husband's indirect non-financial contributions. The Husband claims that the DJ did not take into account the following:

- (a) The Husband had assisted the Wife in finding employment and was supportive towards her in her times of need. The Husband was the one who helped the Wife secure her first job in London after the parties got married;
- (b) The parties were put up in a hotel paid for by the Husband's employer for the first month after they relocated from the United Kingdom to Singapore (including related expenses); and
- (c) The Husband had opened various savings accounts for the Child.

14 In the light of the above, the Husband submits that there is no reason for the ratio of indirect contributions that the DJ awarded and that the ratio of 55:45 in favour of the Wife would be more appropriate.

15 Mr Gulab Sobhraj ("Mr Sobhraj"), counsel for the Wife, submits that the DJ erred in attributing an indirect contributions ratio of 70:30 in her favour and ought to have attributed a higher ratio of 90:10 in her favour. In this endeavour, the Wife challenges the DJ's findings on *both* the indirect financial contributions and the indirect non-financial contributions. In relation to the indirect non-financial contributions, the Wife relies on the following circumstances in support of her case:

- (a) The Wife had given up her career and family in the United Kingdom to relocate to Singapore in January 2000;
- (b) The Wife had to juggle with managing her career and household in Singapore while the Husband was travelling for work on a regular basis;
- (c) When the Child was born, the Wife had taken unpaid leave to nurse the child and tend to his needs;
- (d) The Wife dealt with every aspect of managing the household and the Child, including but not limited to supervising the Child's education, training domestic helpers, supervising renovation works of some of the properties that the parties had purchased as investments and taking care

of the Husband. The Wife claims that her career progression suffered as a result as she could not take on positions that required extensive travelling;

(e) The Wife suffered from weight loss, low blood pressure and a general state of unwell due to her contributions to the marriage; and

(f) The Wife had procured employee rates from her employer so that the parties could enjoy preferential mortgage loan terms for the various properties that they had jointly purchased.

16 In relation to the indirect financial contributions, the Wife alleges that more should have been apportioned to her. She relies on the following circumstances in support of her case:

(a) At a time when the Wife was earning less than the Husband, the Wife claims that she had made an equal contribution towards the household and family expenses;

(b) The Wife claims that she had to bear the burden of paying for the majority of the expenses because the Husband was not regular in depositing funds into the joint account that the parties contributed to for household expenses;

(c) The Wife claims that she had set aside funds for the Child's future expenses such as education and insurance. She claims that the Husband did nothing in this regard but withdrew more than his contributions for his own benefit, for *eg*, to pay for his personal income tax, mobile phone bills and personal expenses; and

(d) The Wife claims that since September 2011 the Husband had ceased in making any contributions towards the maintenance of the Child. Between September 2011 and September 2015, the Wife has paid \$212,600 for the Child;

(e) The Wife claims that since 15 February 2016, the Wife pays all the monthly mortgage and interest each month for the xxx property as the Husband has stopped CPF payments towards his mortgage;

(f) The Wife claims that the Husband is occupying the xxx property rent free and that had the property been rented out, it would fetch about \$5,500 per month; and

(g) The Wife claims that the Husband cleaned out the joint accounts and left these with zero or close to zero balances.

17 In response to the Wife's claim in relation to the indirect non-financial contributions, the Husband raises the following in addition to what he claims in DCA 63/2016 (see [9] – [14] above):

(a) The Husband claims that the Wife did not give up her career in the UK. Instead, the Husband claims that the Wife was removed from her job in November 1999 for falsifying her resume and would not have had any career prospects in the UK. The Husband also points out that the Wife had demanded that the Husband place her name on the parties' property in the United Kingdom as a condition for relocating to Singapore;

(b) The Husband claims that the Wife's first job in Singapore was secured through the help of the Husband. The Husband also denies that the Wife managed the household on her own as the parties had employed a domestic helper;

(c) The Husband claims that he did not travel for half of each month as alleged by the Wife.

Based on the Husband's records, he did not travel in 2002, 2003, or 2004 and only travelled for 6 days in 2001;

(d) The Husband claims that the Wife had worked throughout her confinement period and had delegated her duties to the helper and took the time off as an opportunity to study for her Chartered Financial Advisor (CFA) qualification;

(e) The Husband claims that the Wife had also travelled significantly for business and that whenever the Wife travelled, the Husband would ensure that he remained in Singapore to take care of the Child; and

(f) The Husband claims that the Wife has not shown any proof of her alleged low blood pressure, weight loss and general feeling of illness.

18 In relation to the Wife's claims concerning her indirect financial contributions, Ms Cheong submits that the DJ's finding on that parties' indirect financial contribution would have equalised over the years is not wrong and should not be varied. In support of this, the Husband avers that:

(a) The Wife was secretive about her income and did not contribute her fair share towards the parties' household expenses during the course of the marriage;

(b) He had paid for the lion's share of the household expenses throughout the years such as the purchase of the parties' vehicles, petrol and hire-purchase instalments, dining, utilities and upkeep of properties as well as the majority of the Child's expenses;

(c) Contrary to the Wife's allegation, he did contribute money into the joint account in 2011 and points to the fact that \$45,000 was deposited in August 2011 by him;

(d) The Wife stopped contributing to the joint account sometime in 2011;

(e) He did not withdraw joint account monies for his own use during the marriage and that his withdrawals from the joint account during the marriage were legitimate and for the benefit of the family;

(f) The Wife had withdrawn a large sum of money from the parties' UK Citibank joint account and paid it to her solicitors;

(g) He had made a proposal on affidavit to contribute a reasonable sum for maintenance of the Child after the Wife and the Child moved out of the matrimonial home and the Wife commenced maintenance proceedings against the Husband;

(h) In relation to the rental expenses incurred by the Wife, he claims that the Wife could have chosen to stay at the xxx flat, which was vacant but chose to incur rental proceeds for another apartment;

(i) He had offered to pay half of the mortgage on the xxx property but the Wife refused his contributions; and

(j) He had not cleaned out the joint accounts.

My decision on the indirect contribution issue

19 Having considered the parties' submissions and the evidence, I am of the view that the appropriate ratio of the parties' indirect contributions should be 60:40 in favour of the Wife instead of 70:30 as awarded by the DJ.

Indirect financial contributions

20 In respect of the DJ's findings on the parties' indirect financial contributions (which the Wife has appealed in DCA 65/2016), I am not minded to disturb the DJ's findings that the parties had contributed equally as I find that the contentions raised by the Wife are unmeritorious. First, the evidence referred to by the Wife does not, contrary to her allegations, show that the Wife had been compelled to make equal contributions towards household and family expenses *throughout* the course of the marriage.

(a) The first set of bank statements referred to by the Wife are bank statements which show withdrawals made from the Wife's sole account and do not show that the parties had a practice of depositing equal amounts into the joint account.

(b) The text messages referred to by the Wife are merely text messages showing the parties discussing financial arrangements. They do not point towards any practice of equal financial contributions or evidence any default of contribution on the part of the Husband.

(c) The withdrawals shown on the bank statement of the parties' joint account between 2001 and 2003 do not evidence any impropriety on the part of the Husband. I accept Ms Cheong's submission that the parties, at the material time, were happily married and there is insufficient reason to support the allegation that the withdrawals made by the Husband during that time were improper.

21 Second, the Wife's contention that the Husband had 'cut off' maintenance since September 2011 is unsupported by the evidence:

(a) The Wife has not been able to point to any evidence that the Husband had stopped providing maintenance for the Child between September 2011, *ie*, the time when the action commenced until April 2012, *ie*, the time when the Wife and Child moved out of the matrimonial home.

(b) The Wife has also not been able to point to any evidence that she had requested the Husband to pay maintenance for the Child prior to her application for maintenance for the Child in Summons 14132/2012. I note that it is recorded in the Husband's affidavit dated 2 November 2012 in response to Summons 14132/2012 that the Husband was, in fact, willing to contribute a sum of maintenance, *ie*, \$1,500 per month, for the Child.

(c) At paragraph 23(b) of the Wife's submissions for DCA 65/2016, the Wife implicitly accepts that the Husband had complied with the Order of Court dated 22 August 2012 to pay \$2,200 per month for the Child's maintenance.

22 Third, the Wife's allegation relating to the Husband's action of locking her out of xxx property causing her to have to live in a rented apartment and incur rental expenses does not advance her case that her indirect financial contributions exceeded the Husband's. As pointed out by the Husband in his submissions, the Husband only moved into the xxx property on 10 July 2012, three months after the Wife moved out of the matrimonial home and the Wife could have moved into the xxx property had she wanted to do so in that intervening period. Furthermore, after the Husband moved out of the

matrimonial home, the matrimonial home was left vacant and the Wife could have moved back to the matrimonial home but instead chose to incur rent by renting an apartment. Finally, the Wife has been unable to point to any evidence that the Husband had withdrawn all or almost all the money in the joint accounts.

23 For completeness, I should also state that I agree with the DJ's findings on the indirect financial contributions of the parties. It is apparent that the Husband's salary was higher than the Wife's in the earlier years of the marriage and that the Wife's salary had caught up and exceeded the Husband's in the later years of the marriage, *ie*, from 2010 onwards. Also, given the evidence presented to the court, no party had been able to prove the parties' financial arrangements over the course of the marriage. Nonetheless, it is more likely than not that the parties would have contributed their incomes during the better times of their marriage in a manner which focused on the betterment of the household. This would, as found by the DJ, entail the Husband contributing more when he could, *ie*, from 2000 to 2009, and the Wife doing the same when she could, *ie*, from 2010 to 2013.

24 Accordingly, the DJ's finding that the parties had contributed equally in respect of their indirect financial contributions is a justified one and I uphold it as such.

Indirect non-financial contributions

25 In respect of the indirect non-financial contributions of the parties, I am of the view that the DJ should have weighed some of the factors differently. This mainly accounts for my variation of the indirect contribution ratio.

26 First, the presence of domestic help throughout the marriage is a material consideration that justifies a downward adjustment of the DJ's findings. Generally, the presence of a domestic helper in a household reduces the burdens of homemaking and caregiving for both parties. This, as observed by the Court of Appeal in *ANJ v ANK* at [27] may have an impact in determining the parties' indirect contributions:

...the engagement of a domestic helper naturally reduces the burden of homemaking and caregiving responsibilities undertaken by the parties, and to that extent, the weight accorded to the parties' collective indirect contributions.

Nevertheless, I caveat that the presence of a domestic helper within a household should not be treated as an overriding factor in the determination of the parties' homemaking and caregiving contributions. Domestic helpers play different roles and provide differing extents of help to the families they assist. In some families, it is also possible that the parties continue to contribute actively as homemaker and caretaker even in the presence of domestic help. This is consistent with the view taken by the Court of Appeal in *AQS v AQR* [2012] SGCA 3 where it stated at [40] that:

Having domestic help does not mean the wife made no contribution as a homemaker at all, especially when the parties' household here included two children.

Accordingly, the specific role that domestic helpers play within each household should be carefully considered in determining its effect on the parties' indirect contributions. The parties' participation in the management and supervision of the domestic helper should also be considered.

27 In the present case, both the Husband and the Wife worked full-time throughout the marriage and relied on the domestic helper substantially for homemaking and caregiving in order to focus on their respective careers. Nonetheless, the Wife was the main supervisor of the domestic helper as the

Husband frequently travelled for work throughout the marriage and was not at home in those periods. Notwithstanding the fact that both parties had benefitted from the domestic helper in terms of reducing their homemaking responsibilities, the fact that the Wife was the main supervisor and manager of the domestic helper weighs slightly in her favour.

28 Second, although I accept that the Wife made certain sacrifices in her career in order to care for the Child, I do not find them sufficient to justify the 70:30 ratio awarded by the DJ and a ratio of 60:40 in favour of the Wife is more appropriate. It is undisputed that the Wife worked full-time throughout the marriage even after the Child was born. It follows that for a significant part of each working day, the Wife was not at home and the Child was most likely cared for by the domestic helper. The Husband also worked full-time throughout the marriage and frequently travelled for work. This meant that for some periods, the Wife was the only parent at home with the Child and some regard should be given to this fact. Given the evidence of the stagnation of the Wife's salary in the early years of the marriage, I accept that the Wife may have given up certain employment opportunities (*ie*, working abroad or taking up a job that requires frequent travel) in the light of the marriage and the Child. Nevertheless, I am cognisant of the fact that the Wife has succeeded tremendously in her career and in fact earned more than the Husband in the latter years of the marriage. In the circumstances, I find that a 60:40 ratio in favour of the Wife is more justified than a 70:30 ratio.

29 Third, my interview with the Child supports the finding that both parents had contributed substantially to the care of the Child such that a 70:30 ratio awarded by the DJ was not justified. In the interview, which neither party had any objection to, I observed the Child to be articulate, well-adjusted and independent. During the interview, the Child informed me of the following:

(a) The Wife worked from 8am to 7pm daily and went to work about the same time as the Child went to school. The Child and the Wife have dinner together when the Wife comes home from work.

(b) The Husband worked overseas for some parts of the week and the Child meets the Husband during the weekends. The Husband brings the Child out and engages the Child in sports activities.

(c) The domestic helper cooks for the family and the Wife taught the domestic helper to cook.

These points are consistent with my findings made at [27] and [28] relating to the contributions of the Husband and the Wife.

30 I agree with the Husband's submission that the special employee rates for the mortgages that the Wife secured for the parties' properties ought to have been considered as an indirect financial contribution rather than an indirect non-financial one. Indirect financial contributions generally refer to the parties' monetary contributions to the household expenses. In the present case, the special employee mortgage rates would have helped the parties save on interest expenses that would otherwise have been incurred had the parties sought a mortgage from a bank at the normal rates. This is a financial contribution. However, in any event, I find that there is insufficient evidence concerning the Wife's special employee rates to justify disturbing the DJ's finding that the parties' were equal in their indirect financial contribution (see [20] to [23] above).

31 Finally, the two cases cited to me by Ms Cheong are not helpful as they are borne out of different circumstances.

(a) In *TJT v TJU* [2015] SGFC 166, the Court awarded the Wife 55% for her indirect contribution on the basis of a marriage which lasted 12 years with two children. In that case, the Husband worked full-time and the Wife worked part-time over the weekends and was the children's main caregiver.

(b) In *TKU v TKV* [2016] SGFC 17, the Court granted the Wife 60% for her indirect contributions on the basis of a marriage which lasted 16 years with two children. Similarly, the Husband worked full-time while the Wife worked part time.

32 As rightly pointed out by Mr Sobhraj, both cases cited by Ms Cheong concerned situations where the Wife did not work full-time and had made little indirect financial contributions. That said, I do not agree with Mr Sobhraj's submission that the Wife's indirect contributions in the present case should be significantly higher than those cited by Ms Cheong because she had worked full-time and contributed equally in terms of indirect financial contributions. It bears reminding that the approach in determining indirect contributions is a "broad brush" one where the court takes into account all factors before making a conclusion on the indirect contribution of the parties. This cannot be a strict mathematical exercise simply because "[n]o mathematical formula or analytical tool is capable of capturing or accommodating the diverse and myriad set of factual scenarios...as to how the parties may have chosen to divide among themselves duties and responsibilities in the domestic sphere" (see *ANJ v ANK* at [24]).

33 For the reasons stated above, I allow the Husband's appeal in part and vary the ratio of the parties' indirect contributions to 60:40 in favour of the Wife instead of 70:30 as awarded by the DJ. I dismiss the Wife's appeal.

The adverse inference issue

34 The Husband claims that the DJ erred in not drawing adverse inferences against the Wife for the following:

(a) the Wife's retention of the rental proceeds received from the rental of the parties' xxx property that the Husband says remain unaccounted for; and

(b) the Wife's increased spending habits which coincided with the Husband's discovery of her adultery and commencement of legal proceedings that the Husband alleges diminished the pool of matrimonial assets available for division.

Ms Cheong submits for an adverse inference to be drawn against the Wife and asks for an additional 5% of the matrimonial assets, valued at \$211,092.98, to be awarded to him.

35 The Wife's responses are as follows:

(a) In respect of the rental proceeds received from the rental of the xxx property, the Wife claims that the rental proceeds had been accounted for and that the withdrawals from the joint account containing the rental sums were used for the parties' other properties and for household and family expenses.

(b) In respect of the increased spending habits, the Wife claims that the Husband had failed to prove that the increased expenses had been used for the Wife's sole personal expenses.

I note that the DJ did not draw any adverse inferences in the GD.

36 The court has the power to draw adverse inference against the party who fails to make full and frank disclosure of the matrimonial assets (see *ANJ v ANK* at [29]). In order for the court to draw an adverse inference, there must be (see *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 at [62]):

- (a) a substratum of evidence that establishes a *prima facie* case against the person against whom the inference is to be drawn; and
- (b) that person must have had some particular access to the information he/she is said to be hiding.

Rental proceeds from xxx property

37 By way of background, the rental income (of approximately \$3,800 per month) from the xxx property was deposited directly into a joint bank account of the parties at xxx bank. The mortgage of the xxx property (amounting to \$5,700 per month) was also paid out directly from the same joint bank account. The Husband mainly contends that the excess amount from the rental proceeds (amounting to \$1,900 per month) remains unaccounted for.

38 I find that the Husband fails in his contention as there is no evidence to suggest that the Wife had drawn down on the rental proceeds in the joint bank account for her personal use or had failed to account for the proceeds. Contrary to the Husband's assertions, the evidence shows that both parties had access to the joint account and that many withdrawals had been made on the account although it is unclear whether the Husband or the Wife made the withdrawals on each occasion. The Husband admits to making a number of withdrawals from the joint bank account for various purposes. The Wife explains that she made withdrawals on the account for use for the other properties owned by the parties as well as for household and family expenses. At the trial below, the Wife produced cheque stubs which correspond to the withdrawals on the parties' joint bank account. In my view, this is sufficient to discharge her duty of full and frank disclosure and the Husband has not been able to provide any evidence to the contrary to challenge the authenticity of the cheque stubs.

39 Furthermore, I do not agree with the Husband's contention that the Wife had prevented him from accessing the joint bank account. The Husband's reliance on an email sent from xxx bank to prove that he could not access the bank statements is misplaced. A simple reading of an excerpt of the email shows that the bank was willing to send him statements relating to the joint bank account, albeit only by physical mail or encrypted email:

...

You have requested that we *re-send to you a set of statements relating to your account [xxxx]*.

As email is not a secure form for the sending of confidential documents, our privacy guidelines mandate that copies of your statement be mailed to you. If you require that we send the documents by encrypted email instead to your registered email address in our records, please let us know.

...

[emphasis added]

40 I observe that the account described in the email corresponds with the joint bank account of the parties which contained the rental proceeds. This means that the Husband had access to the

records of the joint account. Accordingly, I refuse to draw an adverse inference against the Wife as the Husband's assertion that the rental proceeds are unaccounted for is not proved.

The Wife's increased spending habits

41 Before considering the Husband's contention on the Wife's increased spending habits, I pause to comment that it is incorrect for the Husband to be seeking to draw an adverse inference on the basis of the Wife's misconduct in dissipating the assets through her personal expenditures. Instead, the Husband ought to have sought a negative contribution against the Wife for the alleged misconduct (see the Court of Appeal's approach in *AQS v AQR* [2012] SGCA 3 cited with approval in *Chan Tin Sun v Fong Quay Sim* [2015] SGCA 2 at [24]). Nevertheless, even considering the Husband's case as a properly framed argument, I am of the view that the Husband's allegations are not proved.

42 The Husband's position is that from August 2011 onwards, after legal proceedings commenced, the Wife began a spending spree which drew down significantly on her sole bank accounts that should have rightly been part of the pool of matrimonial assets. The Husband asserts that the Wife's increased expenditure is linked to the Wife's new romantic relationship and her loss of desire to preserve the matrimonial assets in the view of an impending divorce. In response, the Wife contends that the Husband failed to show that the increased expenses had been used for the Wife's personal expenses and that her increases in expenses were due to legitimate reasons.

43 I disagree with the Husband's contention. While it is true that the expenditures of the Wife, as observed from the bank statements of her sole account, increased substantially since August 2011, I am of the view that the Wife had been able to sufficiently explain most of the expenditures. The Wife moved out of the matrimonial home with the Child sometime in March 2012 and I accept that she would have had to shoulder increased expenses in relation to the Child and the household for the period of time before April 2013 when Summons 14132/2012 (*ie*, for the maintenance of the Child) was granted.

44 Finally, in respect of the increase in the Wife's expenses for spa and beauty services, I am of the view that although this is a personal expense, there is insufficient proof to find that it amounted to a dissipation of the matrimonial assets to the extent that justifies this court's intervention to ascribe a negative contribution to the Wife. For completeness, I also find that the Husband's allegations of the Wife's misconduct is not proved and therefore insufficient to warrant this court's intervention to ascribe a negative contribution to the Wife.

Conclusion

45 For the above reasons, I dismiss the Wife's appeal in DCA 65/2016. As made clear in my judgment, the ratio of 70:30 in relation to the indirect contributions of the parties made by the DJ in favour of the Wife is too high. It thus follows that the ratio of 90:10 for the same sought by the Wife in favour of her would be excessive. I allow the Husband's appeal in DCA 63/2016 in part and vary the DJ's orders relating to the parties' indirect contributions to 60:40 in favour of the Wife. The overall division of matrimonial assets is now based on the ratio of 59.5:40.5 in favour of the Wife.

	Husband	Wife
Direct contributions (50%)	41%	59%
Indirect contributions (50%)	40%	60%
Average percentage contributions	40.5%	59.5%

46 The division of assets is now to be effected as follows:

Description	Husband's share (\$)	Wife's share (\$)
Matrimonial home \$507,000	430,384.75 (84.89% of the value)	76,615.25 (15.11% of the value)
UK property \$786,654	786,654	
xxx \$1,010,718.49		1,010,718.49
Joint accounts \$22,242.25	22,242.25	
Husband's nett assets	470,572.13	
Wife's assets		1,424,672.71
Share of total pool of \$4,221,859.58	1,709,853.13	2,512,006.45
% share of matrimonial assets	40.5%	59.5%

47 In order to effect this change, the orders of the DJ concerning the matrimonial home at [2(9)] of the GD is set aside, and the following are ordered:

(a) the matrimonial home at xxx shall be sold in the open market within 6 months of the Certificate of Final Judgment. The proceeds of sale shall be used to pay the costs and expenses of sale. The balance thereafter shall be divided in the proportion 84.89% to the Husband and 15.11% to the Wife. Parties shall refund their respective CPF accounts of all monies utilised for the purchase, including accrued interest, from their own shares. Parties shall have joint conduct of the sale.

(b) Parties have liberty to apply.

48 I shall hear parties on the costs of both appeals.