

AMB v AMC
[2014] SGHC 169

Case Number : DT 1129 of 2012
Decision Date : 26 August 2014
Tribunal/Court : High Court
Coram : Tan Siong Thye J
Counsel Name(s) : Yee May Kuen Peggy Sarah (PY Legal LLC) for the plaintiff; Yeo Soon Keong and Chiu Chuang Thet (Quahe Woo & Palmer LLC) for the defendant.
Parties : AMB — AMC

Family law – Custody – Care and control

Family law – Maintenance – Child

Family law – Maintenance – Wife

Family law – Matrimonial assets – Division

26 August 2014

Judgment reserved.

Tan Siong Thye J:

Introduction

1 The plaintiff-wife is 46 years old (“the wife”) while the defendant-husband is 47 years old (“the husband”). They were married on 17 December 1994 and their marriage lasted 17 years. [\[note: 1\]](#) They have two sons from this marriage, aged 17 and 15 respectively. [\[note: 2\]](#) One is now studying in a local Junior College while the other is in Secondary Three. [\[note: 3\]](#) Collectively, they will be referred to as “the sons”.

2 Before the divorce, the husband was the main financial provider of the family. He was a Chief Financial Officer (“CFO”) at a logistics company earning a net salary of \$18,689 monthly. [\[note: 4\]](#) His contract was terminated on 23 November 2012 because of anxiety, depression and comorbid panic attacks. [\[note: 5\]](#) The husband alleged that as a result of his medical condition, he was not able to secure a permanent job. [\[note: 6\]](#) Currently, he is staying in the matrimonial home.

3 The wife is the primary caregiver of the family. She is also a part-time accountant and does free-lance work. [\[note: 7\]](#) She left the matrimonial home together with their sons because of the husband’s violence and harassment. They are now staying in a one-room rental flat.

The divorce proceedings

4 On 13 March 2012, the wife filed for divorce on the ground of the husband’s unreasonable behaviour. The husband contested the divorce. On 13 September 2012 the Family Court granted the wife an interim judgement (“the Interim Judgment”). This application is for the resolution of the

following ancillary issues:

- (a) custody, care and control as well as access of the sons;
- (b) division of the matrimonial assets; and
- (c) maintenance for the sons and the wife.

I now proceed to address each issue in turn.

Issue 1: Custody, care and control of the sons

Difference between custody order and care and control

5 The Court of Appeal ("CA") in *CX v CY (minor: custody and access)* [2005] 3 SLR(R) 690 ("CX") held that the objective of custody orders is different from care and control orders and stated at [32]:

As was appropriately summarised by Anthony Dickey in *Family Law* (LBC Information Services, 3rd Ed, 1997) at pp 326–327:

[A]t common law, care and control concerns the right to take care of a child and to make day-to-day, short-term decisions concerning the child's upbringing and welfare. Custody without care and control (that is, custody in its narrow sense) concerns the right to make the more important, longer-term decisions concerning the upbringing and welfare of the child.

It has been suggested that decisions such as those pertaining to religion, education and major healthcare issues feature under the "important and longer-term decisions" concerning the child's upbringing will be relevant issues relating to custody of the child: Debbie Ong, "Custody Orders, Parental Responsibility and Academic Contributions" [2005] SJLS 405 at p 409. I shall first deal with the issue pertaining to care and control of the sons.

Who should be granted care and control of the sons?

6 The husband and wife both seek care and control of the sons.

The wife's case for care and control of the sons

7 The wife submitted that the husband does not have the interests of the sons at heart. [\[note: 8\]](#) As proof of the husband's lack of concern for the sons' best interests, she tendered evidence to show that the husband had stressed and traumatised her and their two sons by hitting them. The wife stated that she had obtained a Personal Protection Order ("PPO") against the husband for herself and her elder son on 21 December 2011. [\[note: 9\]](#) Despite the PPO against the husband, he continued to be violent towards the wife and the sons. Four police reports were thus filed. On 13 August 2012, the husband was arrested for breach of the PPO although no charges were pressed against him. [\[note: 10\]](#)

8 The sons also provided evidence of the husband's violence towards them. The older son stated in his affidavit that his parents had an altercation on 25 September 2011 when his father tried to hit the mother. [\[note: 11\]](#) He stood up against the father to prevent him from hitting his mother and he was also assaulted. [\[note: 12\]](#) This was similarly the case for the younger son, who also tried to

protect his mother against the father but was pushed away roughly by the latter. [\[note: 13\]](#) Besides the use of violence, the wife also submitted that the husband is also a bad influence on the sons as he indulged in watching pornographic materials, smoked heavily and did not show keen interest in their schoolwork. He had also failed to contact the sons since they left the matrimonial home on 1 November 2012. [\[note: 14\]](#)

The husband's case for care and control of the sons

9 The husband, on the other hand, submitted that the sons will be better off with him. He claimed to be involved with their education, to have attended parent-teacher meetings and to have helped them with their homework. [\[note: 15\]](#) He also stated that he played a greater role in their upbringing and in their education. He also encouraged them to participate in outdoor activities and family outings. [\[note: 16\]](#) In contrast, he alleged that the wife was the poorer parent because she was an absent mother, allowed the sons to be obsessed with computer games, used vulgar language in front of the children and failed to provide a clean and conducive environment. [\[note: 17\]](#)

Interviews of the sons by the court

10 Since the positions of the parties were diametrically opposed and the sons are sufficiently matured, I interviewed the sons separately in the presence of both parties' counsel so as to arrive at the decision that would be in their best interests. I gave significant weight to their testimony and evidence, seeing that they are of a sufficiently matured age. During the interview, the sons were unequivocal in their disdain for the father and clearly stated that they wanted to live with the mother as she was the parent who cared about them and took care of their physical, mental and educational needs. [\[note: 18\]](#) This was also the position maintained by them in their respective affidavits. [\[note: 19\]](#)

Reasons why the court grants care and control of the sons to the wife

11 In light of the interviews and affidavits provided by the sons, I find it hard to believe that the husband was a caring and loving father that he painted himself to be. Further, I also find that the husband's assertions do not sit well with the other pieces of evidence tendered before this court, such as his acts of masturbation, heavy smoking, pornography watching and disruptive behaviour generally. If he was indeed concerned about the sons' well-being, he would have known that his bad habits could not have been in their best interests. It is unsurprising that the sons prefer to live with their mother. [\[note: 20\]](#)

12 The elder son's examination results also weigh against the husband's allegations that the wife could not take care of the sons' educational needs. His good results showed that the wife was capable of ensuring that the sons' educational needs were met and that they benefitted from her care. Despite the adverse family circumstances, the elder son performed well enough in the O levels to secure a place in a respectable junior college and is now pursuing his studies in the science stream. [\[note: 21\]](#) How could he have achieved such results if the wife was indeed the villain that the husband sought to portray?

13 Accordingly, I order that the wife shall have care and control of the sons with reasonable access to be given to the husband. As the sons are sufficiently mature, I shall leave it to the father and sons to work out the arrangements on access.

Should sole or joint custody of the sons be awarded?

14 As for custody of the sons, the husband initially asked for sole custody but subsequently changed his application to joint custody. The wife maintained her application for sole custody throughout the divorce proceedings. [\[note: 22\]](#)

The wife's case for sole custody of the sons

15 The wife submitted that while it would be ideal that joint custody should be awarded so as to maintain parental bonds, but it would not be practicable in the present case. [\[note: 23\]](#) This was because, *inter alia*:

(a) The husband was abusive. First, the PPO obtained on 21 December 2011 still subsists [\[note: 24\]](#) and second, his bullying, harassment and violence escalated after the Interim Judgment was awarded, leading to her and the sons moving out of their matrimonial home. [\[note: 25\]](#)

(b) The husband was violent towards their younger son and assaulted him in the wife's absence. [\[note: 26\]](#)

(c) The husband's character was vindictive and he would annoy her and the sons with, *inter alia*, his acts of heavy smoking, masturbation and watching pornography. To make matters worse, he did not even clean up after himself, with the tissue he used to masturbate strewn around and semen stains left on the sofa where he masturbated. [\[note: 27\]](#)

(d) The husband disregarded the children's educational needs by turning up the volume of the television even though they were in the midst of their examinations. [\[note: 28\]](#)

The husband's case for sole custody of the sons

16 The husband on the other hand denied his acts of violence and repulsive behaviour. He claimed that he was never charged and was released the following day, thus showing that the wife's actions in contacting the police were vindictive. [\[note: 29\]](#) He also cited the wife's failure to apply for a Domestic Exclusion Order as a factor against the wife's accusations and there was no evidence as to the same. [\[note: 30\]](#)

The law

The importance of the parental bond

17 The court has always been in favour of joint custody so that parental bonds are maintained: Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2nd Ed, 2013) at p 331. In CX, the CA at [38] held that:

We would emphasise that recent decisions have been inclined towards making joint or no custody orders due to the need to ensure that the child becomes attached to both parents. The idea behind joint or no custody orders is to ensure that neither parent has a better right over the child and that both have a responsibility to bring the child up in the best way possible. Similarly, the child has a right to the guidance of both his parents. Parenthood is a lifelong responsibility and does not end at a particular age of the child, but continues until the child reached adulthood. The question we have to answer will always be what is best for the child in the future.

18 The above approach gives effect to Singapore's international obligations, viz, the 1989 United Nations Convention on the Rights of the Child (20 November 1989), 1577 UNTS 3/ [1991] ATS 4 / 28 ILM 1456 (1989), Art 18 (entered into force 2 September 1990). It is to ensure that best efforts are used to support both parents in the execution of their common responsibilities for the upbringing and development of the child. This approach is also echoed by case law and academic opinion. Thus in making custody orders, the objective of striving to maintain the parental bond should always be one which the court should strive to meet as far as practicably possible.

Circumstances for granting a sole custody order

19 There are, however, exceptions to this general approach. Two such exceptions were mentioned in CX at [38]:

We agree with Assoc Prof Debbie Ong that *the exceptional circumstances where sole custody orders are made may be where one parents physically, sexually, or emotionally abuses the child (see Debbie Ong, "Making No Custody Order" ([19] supra) at p 586), or where the relationship of the parties is such that co-operation is impossible even after the avenues of mediation and counselling have been explored, and the lack of co-operation is harmful to the child (see Debbie Ong, "Parents and Custody Orders" ([27] supra) at p 222-223). [emphasis added]*

Therefore, the first exception is where the party seeking custody had ill-treated or exhibited violence against the children, the court will give an order for sole custody in the interests of and for the children's welfare.

20 The second exception relates to a complete lack of cooperation between the antagonistic parents, thus making it impossible for the parents to make proper major decisions for the best interest of their child. This is exemplified in two earlier decisions. In *Albert Yeap alias Yeap Beng Yong v Wong Elizabeth (m w)* [1998] SGHC 97, a sole custody order was order to minimise conflicts between the parents. Lee Seiu Kin JC (as he then was) held that (at [16]):

16 Given such animosity, I am of the view that the best order to make is one which would *minimise any source of conflict*. If joint custody were given, I anticipate that the parties would have endless disagreements on matters such as choice of schools, tutors, healthcare, etc. Such quarrels would only serve to drive the parties further apart. But more than that, the youngest child, Earl, would grow up in the midst of this animosity, torn between father and mother and may blame himself for these conflicts. Sometimes it is better for a decision to be made, even if it turns out that the perfect option is not chosen, rather than for the matter to be the subject of conflict between the parents. It is clear in my mind that what is called for in this case is for custody of the minor children be granted to their mother who knows the children the best and, in the circumstances, will be in a better position than the husband to take such decisions. [emphasis added]

21 The same purpose of minimising conflict was also seen in *Tan Yong Chew v Tan Bee Lay (m w)* [1997] SGHC 161 at [8] where Rajendran J held that joint custody was not preferred because it might result in the two parties pulling in different directions where it came to decisions such as "which school the child is to attend" which could be detrimental to the child's interests. Therefore in such situations, the reluctance to grant joint custody orders stems from the court's fear that the parties would not be able to cooperate, thereby compromising the child's interests.

Does the factual matrix of this case justify a sole custody order?

22 In my view, there is a difference between granting a sole custody order on the basis of acrimony and one in which parties are unable to cooperate with each other. In the former, as was the case in *CX*, the basis for the grant of a sole custody order was the lack of communication arising from the bitter feelings both parties had towards each other. This has been frowned on by the CA. In the latter, the parties must have shown that they had tried to work together in the child's best interests but failed. This would be a legitimate ground for a sole custody order to be made. The two scenarios are thus distinct and different.

23 In this case the husband had shown himself to be a poor parent from the following acts:

(a) He smoked heavily in the presence of the wife and the sons. On several occasions he even antagonised them with cigarette smoke despite their best efforts to avoid it. [\[note: 31\]](#)

(b) He was erratic when it came to basic things like providing for his family. The wife alleged that the husband did not know how much was required for the maintenance of the children as he is indifferent towards the children's needs. The husband's contribution of \$1,200 a month towards the household was far from adequate. [\[note: 32\]](#) On the other hand the husband indulged in his lavish lifestyle, involving an expenditure of more than \$17,000 a month.

(c) He verbally abused the wife. [\[note: 33\]](#)

(d) He failed to provide for the children's schooling needs and when the wife managed to obtain financial aid for the younger son's schooling needs from the government after they moved out from the matrimonial home, he made baseless accusations against her such that the financial aid was revoked. [\[note: 34\]](#)

24 The husband also did not set a good example for the sons. He withdrew his \$1,200 monthly maintenance whenever he was displeased with the wife or his children. The wife had to give him sex to appease him [\[note: 35\]](#). His addiction to pornography and masturbation, at times visible to the elder son, [\[note: 36\]](#) was also a bad influence to his sons.

25 In contrast, the wife showed much greater concern and interest in the sons. She moved out with the sons to stay in a one-room rental flat so that they could focus on their studies and avoid the annoyances of their father.

26 The wife submitted that in *ARI v ARJ* [2011] SGDC 135, the district judge had granted a sole custody order in favour of the wife. However, that case is materially different. In that case, the child concerned was very young. Before the eventual sole custody order was made, the district judge had ordered joint custody of the child. The parties had also shown that they were unable to work together for the welfare of the child despite the involvement of social workers. It was only when all else failed that the district judge ordered a sole custody order.

27 In this case the children are older and more matured. The wife must show that the husband is so unfit for parenting that the benefits of having his involvement in the sons' lives outweigh the harm that he would bring to the sons. Alternatively, the wife must show that their relationship is such that cooperation is impossible even after mediation and counselling have been attempted and this lack of cooperation is harmful to the sons: Assoc Prof Debbie Ong, "Parents and Custody Orders—A New Approach" [1999] SJLS 205 at pp 222–223.

28 In considering the custody of the sons I am also mindful of s 125 of the Women's Charter (Cap

353, 2009 Rev Ed) ("WC") which requires the court to place the welfare of the sons as paramount consideration. Section 125 of the WC states:

125. —(1) The court may at any time by order place a child in the custody of his or her father or his or her mother or (where there are exceptional circumstances making it undesirable that the child be entrusted to either parent) of any other relative of the child or of any organisation or association the objects of which include child welfare, or of any other suitable person.

(2) In deciding in whose custody a child should be placed, the paramount consideration shall be the welfare of the child and subject to this, the court shall have regard —

(a) to the wishes of the parents of the child; and

(b) to the wishes of the child, where he or she is of an age to express an independent opinion.

During my interviews with the sons, they unequivocally preferred the mother over the father. I have given considerable weightage to their preference in my deliberation on the issue of the custody of the sons.

29 While the behaviour of the husband was deplorable, I agree with the CA in *CX* on the importance of preserving the parental bond with the child. I also find that there is no evidence that the parties are unable to work together for the sons' benefit. Therefore I am inclined to grant a conditional joint custody order in order to preserve the parental bond that exists between each of them and the sons. In the event the husband and the wife are unable to arrive at a consensus on issues pertaining to custody order, the wife should have the final say.

Parental responsibility

30 It is never a pleasant experience for parties undergoing a divorce and for children who are caught in between divorcing parents. Despite the difficulties, parties have to strive to put their differences aside so that the greater good can be achieved for their children. Assoc Prof Debbie Ong's article *Custody Orders, Parental Responsibility and Academic Contributions* at p 415 gives some helpful insight:

In a perfect world, there should be no marital disputes. If there are, the disputes should be resolved before they escalate till divorce is inevitable. But if divorce is inevitable, the parties should be able to overlook their differences with each other for the sake of their children and raise them together. But if the parties are unable to cooperate with each other in raising their children, they should be helped to do so. Family law endeavours to help parties to co-operate with each other by reiterating the principle that it is in the child's best interests that neither parent is excluded from the child's life even where there is a breakdown in the parents' marriage.

31 With a conditional joint custody order I hope that the husband will take some time to reflect on his actions and be a better father for the sake of his sons. It is essential that the husband be reunited and re-establishes his relationship with his sons and get more involved in their lives.

Issue 2: The division of the matrimonial property

The just and equitable principle and the broad brush approach

32 The division of matrimonial assets is premised on the just and equitable principle. This principle

is embodied in s 112(1) of the WC which states:

The court shall have power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, 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.

33 Under s 112(2) of the WC, the court is required to consider the following factors in the division of matrimonial assets:

(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.

34 It is trite law that the court should adopt a broad-brush approach in considering the division of matrimonial assets. In *NI v NJ* [2007] 1 SLR(R) 75, V K Rajah J held at [18] that this approach calls for the application of sound discretion rather than a purely rigid or mathematical formula and generally speaking when a marriage ends a wife is entitled to an equitable share of the assets she has helped to acquire directly or indirectly. This approach was reaffirmed by the CA in *BCB v BCC* [2013] 2 SLR 324 at [10]:

The broad-brush approach is particularly apposite because, in the nature of things, an approach that is rooted in the forensic search for the actual financial contributions of the parties towards the acquisition of the assets will inevitably fail to adequately value the indirect contributions made towards the other expenses that are incurred in the course of raising a family and will also be a heavily fact-centric exercise. Moreover, these facts will typically not be borne out by contemporaneous records, as underscored by the court in *Soh Chan Soon v Tan Choon Yock* [1998] SGHC 204 at [6] (cited by this court in *NK v NL* [2007] 3 SLR(R) 743). *The broad-based approach also avoids what this court has described as an otherwise fruitless "mechanistic accounting procedure reflected in the form of an arid and bloodless balance sheet" that "would be contrary to the letter and spirit of the legislative scheme" underlying s 112* (see *NK v NL* at

[36], an observation which was most recently referred to by this court in *AYQ v AYR* [2013] 1 SLR 476 at [18]). Indeed, such a broad yet principled approach enables us to strike a balance between the search for a just and principled outcome in each case and the need to remain sensitive to the nuances of each fact situation we are confronted with. We pause to note - parenthetically - that this is why the Singapore courts have avoided extreme points of departure. For example, this court has held that there is no starting point, presumption or norm of an equal division of matrimonial assets, a holding that is wholly consistent with the legislative background which resulted in s 112 and its concomitant broad-brush approach (see, for example, the decision of this court in *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 at [50]-[58]). Another example - to be considered in a moment - is the fact that the court will take into account both direct as well as indirect contributions by both parties to the marriage. [emphasis added]

I shall list out the matrimonial assets which the court has to determine. To arrive at a just and equitable division of matrimonial assets, the court has to consider the extent of direct and indirect contributions of the parties.

Matrimonial assets for division

35 The following table sets out the matrimonial assets for division between the parties:

No	Items	Value
1.	Blk 239 Compassvale Walk Singapore 540239 [note: 37]	Estimated value: \$552,500
2.	56 Punggol Walk A Treasure Trove Singapore 828833 [note: 38]	Estimated Value - \$1,130,852.80 Less Loan - \$875,000.00 Balance - \$255,852.80
3.	Audi car [note: 39]	\$190,000.00 Loan - \$206,553.57
4.	The husband's insurance policies [note: 40]	\$39,399.10
5.	Money in the wife's bank account [note: 41]	\$2,177.29
6.	Husband's bank accounts as disclosed	\$8,706.87
7.	Wife's insurance policies [note: 42]	\$25,536.20
8.	Wife's shares [note: 43]	\$5,397.60
9.	Husband's Central Provident Fund ("CPF") money [note: 44]	\$27,481.00 (Ordinary) \$41,652.00 (Medisave) \$91,119.00 (Special) \$160,252.00

10.	Wife's CPF money [note: 45]	\$30,849.71 (Ordinary) \$39,912.36 (Medisave) \$41,254.72 (Special) \$112,016.79
	Total:	\$1,161,838.65

Financial contributions of the husband and wife for the matrimonial home at Compassvale Walk

36 The main matrimonial asset owned by the husband and the wife is Block 239 Compassvale Walk Singapore 540239 ("the Compassvale Property"). Before the divorce proceedings commenced, the wife's direct financial contribution towards the repayment of the loan for this property was higher than the husband and was in the region of 59% to 41% in her favour. [\[note: 46\]](#) On 16 September 2012, a few days after the Interim Judgement was issued, the husband paid up the outstanding mortgage in full, the sum being \$102,213.35 from his CPF. [\[note: 47\]](#) With this, the direct financial contribution of the husband and wife for the matrimonial home is now 70% to 30% in favour of the husband.

Financial contributions of the husband and wife for the purchase of Treasure Trove

37 There is also another matrimonial property at 56 Punggol Walk A Treasure Trove Singapore 828833 ("Treasure Trove"), which is held in the sole name of the husband. [\[note: 48\]](#) Prior to the purchase of this property, the parties had purchased 18 Flora Drive, Ferrara Park ("Ferraria Park"), which was in joint names. The wife contributed \$19,465.56 of her CPF money towards the purchase of this property. [\[note: 49\]](#) This property was subsequently sold and the parties disputed the distribution of the proceeds of sale from this property sale.

38 The wife alleged that the proceeds of \$200,000 from the sale of this property were deposited into the joint POSB account of the husband and wife. Subsequently, this sum was transferred to the husband's personal account. [\[note: 50\]](#) On the other hand, the husband submitted that the proceeds from the sale of Ferrara Park were \$100,000 and not \$200,000. [\[note: 51\]](#) He claimed that he paid for the initial payment, legal fees, stamp fee, agent's commission, etc as well as gave \$50,000 to his wife. [\[note: 52\]](#) The wife denied having received the \$50,000. [\[note: 53\]](#)

39 The wife also alleged that the proceeds of the sale of Ferrara Park was used to purchase Treasure Trove and that the husband admitted that Treasure Trove was bought with matrimonial funds. However, the husband alleged that he paid 20% of the purchase price (\$21,800) of Treasure Trove with fresh funds. He borrowed \$70,000 from his mother and \$80,000 from his sister. [\[note: 54\]](#) He also claimed to have borrowed money from his relatives for the down payment. [\[note: 55\]](#) However, I find that the husband's claims are bare assertions. [\[note: 56\]](#) There are no affidavits from his mother, sister and relatives which if true he could easily obtain.

Purchase of the Audi

40 The husband sold the Mitsubishi and bought an Audi around October 2013. [\[note: 57\]](#) He has not revealed the proceeds from the sale of the Mitsubishi. The outstanding loan for the Audi is

\$206,553.57 while its value is only \$190,000. [\[note: 58\]](#) Hence this is a negative asset and I have not included this into the net total of the matrimonial assets.

Indirect contributions

41 With respect to indirect contributions, I note that the parties did not employ a domestic helper to assist in the running of the household. The whole responsibility of caring for the needs of their sons and the husband thus fell on the shoulders of the wife. The husband alleged that he had contributed indirectly to the family especially when he was unemployed and during the better years of their marriage. [\[note: 59\]](#) I am of the view that between the husband and the wife, the latter made significantly more indirect contributions towards the family during the marriage.

What would be a just and equitable division of the matrimonial assets?

The husband's claim

42 The husband submitted that he should be given almost all the matrimonial assets besides those assets in the name of the wife. His claims were basically for: [\[note: 60\]](#)

- (a) 100% of the Compassvale Property worth \$552,500;
- (b) 100% of Treasure Trove with a net worth of \$255,852.80; and
- (c) all the rest of the matrimonial assets belonging to him with a net asset value of \$630,350.
 - (i) his insurance policies worth \$39,399.10;
 - (ii) the money in his bank account amounting to \$8,706.87; and
 - (iii) his CPF money amounting to \$160,252.

In total, his claims amount to 88% of the matrimonial assets against the wife's 12%.

The wife's claim

43 On the other hand, the wife submitted that she should be given the Compassvale Property and those assets in her sole name: [\[note: 61\]](#)

- (a) 100% of the Compassvale Property worth \$552,500;
- (b) the money in her bank account amounting to \$2,177.29;
- (c) her insurance policies worth \$25,536.20;
- (d) the shares in her name worth \$5,397.60; and
- (e) her CPF money amounting to \$112,016.79.

44 This would amount to about 60% for the wife and 40% against the husband of the matrimonial assets.

Review of relevant cases on division of matrimonial assets

45 A review of past precedents would be helpful in the determination of what would be a just and equitable division of the matrimonial assets. In *Chan Yuen Boey v Sia Hee Soon* [2012] 3 SLR 402, Steven Chong J reviewed the past cases and came to the conclusion that “the proportion awarded to homemaker who have made modest financial contributions for marriages lasting 17 to 35 years with children ranged between 35% to 50% of the total matrimonial assets.” He held at [34] to [35] that:

34 From my review of the cases, *the proportion awarded to homemaker wives who have made modest financial contributions for marriages lasting 17 to 35 years with children ranged between 35% to 50% of the total matrimonial assets* (see *ZD v ZE* [2008] SGHC 225, *Tan Cheng Guan v Tan Hwee Lee* [2011] 4 SLR 1148, *AXC v AXD* [2012] SGHC 15, *Wong Ser Wan v Ng Cheong Ling* [2006] 1 SLR(R) 416, *Yow Mee Lan v Chen Kai Buan* [2000] 2 SLR(R) 659, *Rosaline Singh v Jayabalan Samidurai* [2004] 1 SLR(R) 457 and *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 (“*Lock Yeng Fun*”). Where the wife also worked and supported the family financially, the courts have not hesitated to award her up to 60% of the total assets (see *Lim Choon Lai v Chew Kim Heng* [2001] 2 SLR(R) 260 and *Tan Bee Bee v Lim Kim Chin* [2004] SGHC 242 (“*Tan Bee Bee*”).

35 The exceptions, where the apportionment in favour of the wife was less than 35%, typically concerned cases where the total pool of matrimonial assets had been very substantial, in excess of \$100m (see, *Ng Ngah Len @ Datin Sandra Kuah v Kuah Tian Nam @ Dato Peter Kuah* [2003] SGHC 109 (“*Ng Ngah Len*”) and *Yeo Chong Lin (CA)*). In those exceptional situations, the apportionment to the wife had been, in absolute terms, substantial.

[emphasis added]

46 The CA in *BCB v BCC* [2013] 2 SLR 324 also undertook an exhaustive inquiry into cases where the marriages were ten years or longer, the couples had children, both parties were working and where the husband had greater direct financial contributions than the wife. Andrew Phang Boon Leong JA relied on an empirical study by Lim Hui Min entitled “Matrimonial Asset Division: The Art of Achieving a Just and Equitable Result” in *SAL Conference 2011: Developments in Singapore Law between 2006 and 2010, Trends and Perspectives* (Yeo Tiong Min, Hans Tjio & Tang Hang Wu gen eds) (Academy Publishing, 2011) at pp 191–243. Paragraph 101 of the article was cited by the CA at [13]:

It appears that when the husband has greater direct financial contributions to the matrimonial assets than the wife, who is an 'ordinary' working mother, the wife will get about 40% of the pool of matrimonial assets, which will be more than her direct financial contributions.

47 These precedents provide useful guidance. In this case the wife had substantially financed the purchase of the Compassvale Property. Her direct contribution was about 30% after the husband had paid \$102,314.35 from his CPF account towards the matrimonial home at about the time of the Interim Judgement. [\[note: 62\]](#) As for the purchase of Treasure Trove, I find that the down payment of \$218,800 came from the matrimonial funds, especially from the proceeds of the sale of Ferraria Park. [\[note: 63\]](#) Therefore, the wife had made substantial financial contributions towards the two matrimonial properties, which are the two main matrimonial assets in this case.

Should an adverse inference be drawn against either party?

48 During the course of proceedings, an issue of adverse inference arose because both parties alleged that the other had not made full and frank disclosure of the assets, and urged the court to draw an adverse inference against the other. [\[note: 64\]](#) The law on drawing adverse inferences is succinctly stated in the CA case of *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 at [28]:

We consider that the trial judge was correct in rejecting the Wife's plea to do so. It is well established that in order for a court to draw an adverse inference, there must, in the first place, be some substratum of evidence that establishes a *prima facie* case against the person against whom the inference is to be drawn. In addition, it must be shown that the person against whom the inference is to be drawn has some particular access to the information he is said to be hiding (perhaps because it is peculiarly within his knowledge). In other words, the court's ability to draw an adverse inference does not and cannot displace the legal burden of proof that continues to lie with the plaintiff, or, as in this appeal, the Wife.

49 I have perused the submissions of each party and I accepted the explanation of the wife regarding the purported case of false declaration to the Ministry of Education [\[note: 65\]](#) which was corroborated by the younger son's affidavit. [\[note: 66\]](#) I also accepted the wife's explanation that she has a joint DBS bank account with her mother. However, I am unable to accept the husband's explanation that he borrowed monies from his mother, sister and relatives to pay for the 20% down payment amounting to \$218,800 for the purchase of Treasure Trove. [\[note: 67\]](#) There are no affidavits from his mother and sister. Why is this so? In the absence of proof, I am unable to accept his bare assertions.

50 The husband also failed to account with supporting evidence the proceeds of the sale of the Ferraria Park property and the sale of the Mitsubishi car. He also claimed that his monthly expenses amounted to \$17,656. [\[note: 68\]](#) However, the bank accounts that he disclosed showed amounts, which made it hard to believe he could afford such a lavish lifestyle.

51 For the above reasons, I find that the husband has not made a full and frank disclosure of his assets and I draw an adverse inference against him. Taking into account the direct and indirect contributions of the parties, I am of the view that a just and equitable division of the matrimonial assets would be 45% for the wife and 55% for the husband. I also award an additional 5% to the wife because of the adverse inference drawn against the husband. Therefore, the wife will have 50% share of the matrimonial assets. As the wife will have custody, care and control of the son she will have the first option to the matrimonial home, which is the Compassvale Property.

Issue 3: The maintenance of the sons and the wife

The maintenance of the sons

52 The parties gave an indication of the expenses of the two sons. The following comparative tables regarding the expenses of the sons from the perspective of the wife and husband are as follows:

The older son			
Description		Defendant's Assessment	Plaintiff's Assessment
a.	Pocket money (\$60 per week)	\$240.00	\$240.00

b.	Food	\$200.00	\$500.00
c.	Mobile phone	\$40.00	\$40.00
d.	School fees	\$13.00	\$13.00
e.	School books/uniforms (\$450 per year)	\$33.33	\$33.33
f.	Hair cut	\$10.00	\$10.00
g.	Clothing/shoes/assessment books (\$450 per year)	\$37.50	\$37.50
h.	Medical fees (\$60 x 3 times a year approximately)	\$15.00	\$15.00
i.	Transport	\$45.00	\$45.00
j.	School trips (\$200 per year)	NIL	\$16.67
k.	Outings with friends	NIL	\$80.00
l.	Travelling allowance (\$1800 per year)	NIL	\$150.00
Total per month		\$633.83	\$1,180.50
The younger son			
Description		Defendant's Assessment	Plaintiff's Assessment
a.	Pocket money (\$60 per week)	\$240.00	\$240.00
b.	Food	\$200.00	\$500.00
c.	Mobile phone	\$40.00	\$40.00
d.	School fees	\$13.00	\$13.00
e.	School books/uniforms (\$450 per year)	\$33.33	\$33.33
f.	Hair cut	\$10.00	\$10.00
g.	Clothing/shoes/assessment books (\$450 per year)	\$37.50	\$37.50
h.	Medical fees (\$60 x 3 times a year approximately)	\$15.00	\$15.00
i.	Transport	\$45.00	\$45.00
j.	School trips (\$200 per year)	NIL	\$16.67
k.	Outings with friends	NIL	\$40.00
l.	Travelling allowance (\$1800 per year)	NIL	\$150.00
Total per month		\$633.83	\$1,140.50

53 From the comparative table above, I noticed that the parties have agreed on a number of items. They disagreed however with the estimate for food. The wife included school trips, outing with friends and travelling allowances as part of the son's expenses. The husband, however, opined that those items are unnecessary.

54 The maintenance of the sons is a shared responsibility. In this case, I am mindful that I have

given custody, care and control to the wife. It is a heavy responsibility. The husband claims that he is now unemployed. Prior to the divorce, I note that he was capable of earning much more than his wife. I find that with his former experience of being a CFO of a relatively large company, his prospects of reemployment remain bright. Taking all the circumstances into consideration, I order that the husband pays \$700 per month for each of the two sons with effect from 1 November 2012.

The maintenance of the wife

55 The husband does not wish to pay for the maintenance of the wife. [\[note: 69\]](#) He alleged that the wife is working as a part-time accountant earning about \$3,000 per month. If she worked full time, she could earn about \$10,000 per month. [\[note: 70\]](#) The wife, who is now 46 years old, is asking for lump sum maintenance of \$366,560.16. This amount is derived by using the multiplier of 19 years, *ie*, up to the age of 65 years old, at \$1,607.72 per month. [\[note: 71\]](#) The table below sets out the wife’s expenses together with the comments of the husband regarding those expenses: [\[note: 72\]](#)

Item	Wife’s claim	Husband’s response to wife’s claim
Insurance expenses		
Insurance–NTUC Life Policy	\$39.10	The wife has not shown evidence of these expenses.
Insurance–NTUC DPS	\$7.00	
Insurance–AIA Life Policy	\$72.00	
Insurance–AIA (Son) Life Policy	\$57.56	
Insurance–AVIVA Eldershield	\$18.15	
Medishield	S\$9.50	
Medishield (Son)	S\$2.75	
Total insurance expenses:	\$193.81	
Personal expenses		
Food	\$500.00	The wife’s expenses are on the high end and she has not shown the receipts for her claim in respect of facial/hair products.
Hypertension medication (\$80 for 2 months)	\$40.00	
Medical fees (\$100 x 3 times a year) approximately	\$25.00	
Yearly blood test, urine test and thyroid test (\$200 per year) approximately	\$16.66	
Facial/hair products	\$120.00	
Clothing/shoes/bags/accessories/ hair grooming (\$840 per year)	\$70.00	
Telephone bills	\$50.00	
Transportation	\$120.00	

Allowance/Red packets (\$720 per year)	\$60.00	The husband should not be made liable to pay for red packets.
Travelling allowance (\$1,800.00 per year)	\$150.00	The wife knows that he had "been paying for the holiday trips" and they are not routine.
Pocket money for parents	\$250.00	The husband says he should not be liable to pay for the wife's parents' pocket monies
Household expenses		
Town Council	\$63.50	Husband does not deny wife paid for these and is still paying for them even though she has moved out of the matrimonial flat.
Broadband/Telephone bills	\$79.90	
HDB property tax/TV licence (\$125 per year)	\$10.42	
Utilities (For 4 people)	\$200.00	Husband says he paid for these but tendered no evidence.
Domestic helper once a year for spring cleaning	\$8.33	
Air conditioner servicing (\$40 twice a year)	\$6.67	
Household items/groceries	\$180.00	
Rental	\$600.00	
Total personal and household expenses:	\$2050.48	

56 On the issue of the wife's maintenance, firstly, I have to decide whether she should be given maintenance. If the answer is yes, then I have to determine the appropriate and just amount for her maintenance. Section 113 of the WC, states that "the court may order a man to pay maintenance to his wife or former wife". Section 114 of the WC stipulates a myriad of non-exhaustive factors that the court should take into account for the assessment of the maintenance:

114. —(1) In determining the amount of any maintenance to be paid by a man to his wife or former wife, the court shall have regard to all the circumstances of the case including the following matters:

(a) 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;

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

(f) the contributions made by each of the parties to the marriage to the welfare of the family, including any contribution made by looking after the home or caring for the family; and

(g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring.

(2) In exercising its powers under this section, the court shall endeavour so to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

57 Bearing in mind the above provisions and her expenses, I am of the view that the wife's claim for maintenance is on the high side. I agree with the husband that pocket money for the wife's parents at \$250 per month should not be included in the wife's expenses. A fair amount for the maintenance of the wife will be \$1,200 per month with effect from 1 November 2012.

58 I am also not inclined to award lump sum maintenance for her. The wife is about 46 years old and it is possible that she may re-marry in the future. Thus it would be fairer to award a monthly maintenance instead. If there are changes in the circumstances of either party, they can separately apply for a variation order. For the sake of clarity, I have built into their maintenance orders the monthly household expenses of \$548.82 as such a sum cannot be a standalone order.

Conclusion

59 The summary of my orders is as follows:

(a) The wife will have care and control of the sons.

(b) The parties shall have joint custody of the sons, on the condition that the wife shall be the final decision-maker with respect to all decisions in which the parties cannot agree upon.

(c) The wife will have a 50% share of the total matrimonial assets with the first option to acquire the Compassvale Property. If this option is not exercised within six months of the judgement, the Compassvale Property shall be sold in the open market.

(d) If the wife decides to buy over the Compassvale Property, the husband shall transfer all his rights, shares and interests in that property to the wife upon payment of the difference, if any. The wife shall bear all the expenses for the transfer.

(e) This order is made subject to the Central Provident Fund Act (Cap 36, 2013 Rev Ed) ("CPF Act") and the subsidiary legislation made thereunder. The CPF Board shall give effect to the terms of this order in accordance with those provisions.

(f) The husband will pay maintenance of \$700 per month for each son with effect from 1 November 2012.

(g) The husband will pay maintenance of \$1,200 per month to the wife with effect from 1 November 2012.

(h) The Registrar of the Supreme Court is empowered to execute, sign, or indorse all

necessary documents relating to matters contained in this order on behalf of either party should either party fail to do so within seven days of the written request being made to the party.

60 There will be no order as to costs.

[\[note: 1\]](#) PBOA (Ancillary matters) vol 1 at Tab 1 para 5(e).

[\[note: 2\]](#) Older son's affidavit dated 11 March 2014 at para 1; younger son's affidavit dated 11 March 2014 at para 1.

[\[note: 3\]](#) Older son's affidavit dated 11 March 2014 at para 1; younger son's affidavit dated 11 March 2014 at para 1.

[\[note: 4\]](#) DBOA (Ancillary matters) vol 1 Tab 2 at p 12.

[\[note: 5\]](#) DBOA D3 at para 7 and p 110.

[\[note: 6\]](#) Df's affidavit filed 11 February 2014 at para 2(b).

[\[note: 7\]](#) PBOA (Ancillary matters) vol 1 Tab 2 at p 2.

[\[note: 8\]](#) Pf's submissions at p 5 para 9.

[\[note: 9\]](#) PBOA (Ancillary matters) Tab 1 at p 30.

[\[note: 10\]](#) Younger son's affidavit filed 11 March 2014 at para 7.

[\[note: 11\]](#) Older son's affidavit filed 11 March 2014 at para 32.

[\[note: 12\]](#) Older son's affidavit filed 11 March 2014 at para 32.

[\[note: 13\]](#) Younger son's affidavit filed 11 March 2014 at para 17.

[\[note: 14\]](#) Pf's further submissions at p 6 para 4(l).

[\[note: 15\]](#) Df's submissions at para 8.

[\[note: 16\]](#) Df's submissions at para 8.

[\[note: 17\]](#) Df's submissions at para 9.

[\[note: 18\]](#) Minute sheet dated 17 March 2014; see generally older son's affidavit filed 11 March 2014 and younger son's affidavit filed 11 March 2014.

[\[note: 19\]](#) Older son's affidavit filed 11 March 2014 at para 39; younger son's affidavit filed 11 March 2014 at para 24.

[\[note: 20\]](#) Minute sheet dated 17 March 2014.

[\[note: 21\]](#) Pf's submissions at para 10.

[\[note: 22\]](#) Pf's submissions at p 5.

[\[note: 23\]](#) Pf's submissions at p 6.

[\[note: 24\]](#) Pf's submissions at p 5 para 6(a).

[\[note: 25\]](#) Pf's submissions at p 6 para 6(c).

[\[note: 26\]](#) Pf's submissions at p 6.

[\[note: 27\]](#) Pf's submissions at p 6.

[\[note: 28\]](#) Pf's submissions at p 6.

[\[note: 29\]](#) Df's further submissions at para 3.

[\[note: 30\]](#) Df's further submissions at para 3.

[\[note: 31\]](#) Pf's submissions at p 8, incident on 26 Oct 2012.

[\[note: 32\]](#) Pf's submissions at p 12 para 7–8.

[\[note: 33\]](#) Pf's submissions at p 8, incident on 18 Oct 2012.

[\[note: 34\]](#) Pf's submissions at p 9.

[\[note: 35\]](#) Pf's submissions at p 12 para 8.

[\[note: 36\]](#) Older son's affidavit dated 11 March 2014 at para 16.

[\[note: 37\]](#) Pf's submissions at p 29.

[\[note: 38\]](#) Pf's submissions at p 29.

[\[note: 39\]](#) DBOA (Ancillary matters) (vol 1) Tab 2 para 6.

[\[note: 40\]](#) DBOA (Ancillary matters) (vol 1) Tab 2 p 4.

[\[note: 41\]](#) PBOA (Ancillary matters) (vol 2) Tab5 p 34.

[\[note: 42\]](#) PBOA (Ancillary matters) (vol 1) Tab 2 para 7.

[\[note: 43\]](#) PBOA (Ancillary matters) (vol 1) Tab 2 para 8.

[\[note: 44\]](#) Pf's submissions at p 29.

[\[note: 45\]](#) PBOA (Ancillary matters) (vol 1) Tab 2 para 10.

[\[note: 46\]](#) Pf's submissions at p 30.

[\[note: 47\]](#) Pf's submissions at p 32.

[\[note: 48\]](#) Pf's submissions at p 33 para 10.

[\[note: 49\]](#) PBOA (Ancillary matters) Tab 2 at p 30.

[\[note: 50\]](#) Pf's submissions at pp 32–33 para 5.

[\[note: 51\]](#) DBOA D2 para 13.

[\[note: 52\]](#) DBOA (Ancillary matters) (vol 1) at Tab 3 p 4.

[\[note: 53\]](#) PBOA (Ancillary matters) (vol 1) at Tab 4 p 8.

[\[note: 54\]](#) DBOA D3 para 5.

[\[note: 55\]](#) DBOA D2 para 33.

[\[note: 56\]](#) Pf's submissions at p 35 paras 19–20.

[\[note: 57\]](#) Pf's submissions at p 36 para 27.

[\[note: 58\]](#) PBOA (Ancillary matters) vol 1 Tab 2 at p 3.

[\[note: 59\]](#) Df's submissions at para 31.

[\[note: 60\]](#) Df's submissions at para 60.

[\[note: 61\]](#) Pf's submissions at p 51 para 35.

[\[note: 62\]](#) Df's submissions at para 29.

[\[note: 63\]](#) PBOA (Ancillary matters) (vol 1) Tab 2 at p 3.

[\[note: 64\]](#) Df's submissions at para 38; pf's submissions at p 41.

[\[note: 65\]](#) PBOA (Ancillary matters) (vol 2) Tab 16 at paras 6–17.

[\[note: 66\]](#) Younger son's affidavit filed 11 March 2014 at paras 20–21.

[\[note: 67\]](#) See pf's submissions at p 34 para 16.

[\[note: 68\]](#) Pf's submissions at p 23.

[\[note: 69\]](#) Df's submissions at para 16.

[\[note: 70\]](#) Df's submissions at paras 16 & 19.

[\[note: 71\]](#) Pf's submissions at p 25 para 17.

[\[note: 72\]](#) Pf's submissions at pp 13–23.

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