

THL v THM  
[2015] SGHCF 11

**Case Number** : Divorce (Transferred) No [X]  
**Decision Date** : 09 November 2015  
**Tribunal/Court** : High Court  
**Coram** : Valerie Thean JC  
**Counsel Name(s)** : Khoo Boo Teck Randolph and Moraly Joseph Veronica (Drew & Napier LLC) for the plaintiff; Gloria James-Civetta (Gloria James-Civetta & Co) and Philip Jeyaretnam SC and Ang Yi Rong (Rodyk & Davidson LLP) for the defendant.  
**Parties** : THL — THM

*Family law – Custody – Care and control*

*Family law – Maintenance – Wife and children*

*Family law – Matrimonial assets – Division*

9 November 2015

Judgment reserved.

**Valerie Thean JC:**

**Introduction**

1 The Father, a 50-year old British citizen, and the Mother, a 42-year old Australian citizen, were married for 10 years and have a daughter, T1, aged 10, and a son, T2, aged seven. Interim judgment for their divorce was granted on 15 September 2014.

2 The matters before me are: (a) custody, care and control of, and access to the children; (b) division of the couple's matrimonial assets; and (c) maintenance.

**Background facts**

3 The couple married in August 2004 in the United States of America where they had lived and worked as permanent residents. Six months into the marriage, in February 2005, the parties moved to Hong Kong for the purposes of the Father's employment with Bank A. [\[note: 1\]](#) The Mother quit her job at an international news agency and has not worked since. The two children of the marriage were born while the parties resided in Hong Kong.

4 In January 2010, the family moved from Hong Kong to Singapore for the Father to take up his new employment with Bank B. [\[note: 2\]](#) He is currently employed by Bank C. [\[note: 3\]](#) The family have lived in Singapore since moving from Hong Kong in 2010 and both children attend school here.

5 On 23 April 2014, the Mother filed for divorce in the State Courts. A counterclaim followed and, on 15 September 2014, interim judgment was granted on the basis that each party had behaved in such a way that the other party could not reasonably be expected to live with him or her.

**The children**

6 The Father seeks sole custody, care and control of the two children, whereas the Mother seeks joint custody and sole care and control. The Mother also previously filed an application for relocation, which her counsel, Mr Randolph Khoo ("Mr Khoo"), clarified on 28 September that she is no longer pursuing.

### ***Background and the interim care and control orders***

7 The Mother has been the primary caregiver of the two children since T1's birth. After filing for divorce in April 2014, she moved out of the matrimonial home on 3 June 2014 with both children. After hearing applications from both parties, on 11 July 2014, the Family Court granted the parties joint custody of the children, and gave the Mother interim care and control of the children with access to the Father.

8 On 11 June 2015, the Family Court changed these arrangements, giving care and control to the Father and access to the Mother. The reason for this change is an incident which started on the night of 7 June 2015 and culminated on the morning of 8 June 2015. Unsurprisingly, both parties have different versions of the incident.

9 In brief, the Father suggests that the Mother had tried to take her own life and those of their two children. It is not disputed that the Mother tried to feed the children two small white tablets each on the night of 7 June 2015. What those tablets were, however, is disputed. T1 hid the tablets given to her, while T2 ate his in his ice-cream with persuasion from the Mother and T1. The next morning, past the time that the children usually wake for school, T2 woke T1 saying he was not able to find their mother. T1 looked around the apartment. Being alarmed at not being able to find her mother, and discovering that the telephones and iPads at home had been reset and could not work, T1 went to the guardhouse with T2 to call their father at 8.37am. The Father immediately got into a taxi. On arrival, the Father found the children at the guardhouse in pyjamas, with T2 barefoot.

10 The Father brought the children back to the apartment. The door had been left wide open by the children. He saw on the dining table eight pages of typed and handwritten notes prepared by the Mother, a list of persons known to her (comprising her mother, her lawyers, the Father, and four friends) with their respective contact details, a pile of photographs in a clear plastic bag, and large coloured alphabet cut-outs which spelt out T1's name. There were essentially two notes prepared by the Mother. The Father concluded that the notes were suicide notes and called the police immediately. When he went out into the corridor to talk to one of the persons named on the contact list, he found the Mother leaning against the wall. She had blurred speech, could not walk steadily, and promptly fell fast asleep on the living room sofa.

11 The Mother, on the other hand, contends that the white tablets were simply vitamins. On 7 June 2015, she had laid out artwork she was working on with T1 on the dining table. The supposed suicide notes were simply journals written to ventilate her feelings. These had been stacked near a printer in the dining room. She concluded that the Father, upon entering the apartment, must have "rifled through" her personal belongings and fabricated a suicide story. [\[note: 4\]](#) On the morning of 8 June 2015, at about 5am, she had gone out to get some air and exercise by walking up and down a staircase near the apartment. The Mother claims that she was very exhausted from the exercise because she had not been sleeping well the week before, [\[note: 5\]](#) and when she stopped and sat on the stairs, she fell into a "deep sleep" before she knew it. When she awoke, she realised it was 9am. In her rush to get back to the apartment, she fell on the stairs and bruised her forearms. She had to lie on the living room sofa to rest and calm herself when she returned, and to recover from the shock of seeing the Father, the condominium security staff, emergency personnel and policemen at the

apartment. [\[note: 6\]](#) While an empty wine bottle was found on the kitchen counter, her explanation was that it was kept for use as a vase.

12 I have not comprehensively narrated all the details of the incident or the subsequent allegations exchanged. I have only outlined the details which are directly relevant to my finding that the Mother's version of events is unpersuasive. While the Mother insisted the tablets were vitamins, she adduced no evidence of like vitamins of the same size or form. The vitamins which the children ordinarily consumed were in pastille form. Her notes did not appear, on an objective reading, to be mere journaling. Instead, they indicated a troubled internal struggle and cry for help. Looking at the time log of the various calls made to or by the Father on his mobile telephone, including the first call from his children at 8.37am, his call to the guardhouse after he got into a taxi at 8.42am, and the call placed with emergency services at 9.03am, it did not appear that he would have had the time to find the various documents which alarmed him if they had not been in plain sight.

13 The Mother's insistence that the wine bottle was for decorative use only is not credible. Dr Calvin Fones ("Dr Fones"), the independent expert appointed by both parties, was of the view that the degree of somnolence which the Mother exhibited that morning was not attributable to fatigue from sleep deprivation. His view was that she had either consumed more alcohol than she had admitted, or had consumed other medication with a sedative effect. Dr Fones concluded that the incident of 7–8 June 2015 was not a serious suicide attempt but, taken in the context of the Mother's history, constituted "**self-injurious behaviour with no suicidal intent**" [emphasis in original]. [\[note: 7\]](#) I find Dr Fones' assessment reasonable, and I approach the incident on that basis.

### **Care and control**

14 In this case, up until 11 June 2015, which is when the interim care and control order was switched, the Mother had been the children's primary caregiver. The Father, a banker, had been fully focused on his career, which demanded long hours and constant travel.

15 Here, Dr Fones' assessment is of relevance. He highlighted the Mother's history of depression. In 2011, she had experienced a single episode of "Major Depressive Disorder with anxiety features" ("Major Depressive Disorder") for which she had been treated by Dr Nelson Lee ("Dr Lee") up until end 2013. A final review by Dr Lee in April 2014 indicated that she was in remission. Dr Fones was of the view that the 2011 episode was of moderate severity and concluded that the 7–8 June 2015 incident, as mentioned above, was not a serious suicide attempt but, taken in the context of the Mother's history, constituted self-harming behaviour. In his view, this did not render her incapable of performing the role of a parent with care and control of the children.

16 Three reasons, nonetheless, prevent me from making an order giving care and control to the Mother at the present time.

17 The first and paramount consideration is the interests of the children. An important issue is the effect the 7–8 June 2015 incident had on the daughter, T1. Following a confidential report from the care and protection services, I gave directions on 18 August 2015 for parties to appoint an independent child psychiatrist. Parties agreed on Dr Ung Eng Khean ("Dr Ung"), and his report dated 18 September 2015 concluded that the 7–8 June 2015 incident was a "terrifying and traumatic" experience for T1. He opined that T1 is suffering from Post-Traumatic Stress Disorder ("PTSD") [\[note: 8\]](#) and that there is "clear estrangement" between T1 and her mother, whom T1 fears and feels insecure towards. [\[note: 9\]](#) T1's account of the evening of 7 June 2015 – which consisted of a series

of events and interaction with her mother that took place while T2 was asleep – and her fear on the morning of 8 June 2015 that her mother had committed suicide, were largely accepted by Dr Ung.

18 T1's PTSD makes it inappropriate for her to return, at this moment, to her mother's primary care. The Mother asked for care and control of T2 if the court was unwilling to make such an order for T1. I considered this but find it inappropriate. T1 and T2 have been raised together and find solace and comfort in each other.

19 Two other reasons also weigh against a change of care and control even for T2 at this point in time. One is the Mother's mental and emotional fragility and the difficulties she has coping with the same. Children cannot draw emotional and psychological security and stability from their dependency on the primary caregiver if the primary caregiver is not himself or herself emotionally and psychologically stable and secure (see, in the context of relocation, the local High Court decision of *BNT v BNS* [2014] 4 SLR 859 at [17], citing with approval the English Court of Appeal decision of *Payne v Payne* [2001] Fam 473 at [30]–[31]). In this case, there is a risk that the Mother might suffer a relapse. Dr Fones stated that Major Depressive Disorder is commonly associated with relapse, and a single episode of Major Depressive Disorder is associated with up to a 50% risk of relapse over time. Dr Fones also stated that the difficulties the Mother faced in coping with the divorce was a major risk factor for relapse. It follows from this that it would be safer for any change in care arrangements to be considered only as part of a measured and well-planned transition.

20 The last factor relates to the Mother's tendency to downplay the 7–8 June 2015 incident, noted by Dr Ung. She has brushed the incident aside as an instance of exhaustion. Nevertheless, recognition of what has happened and its impact on the family is crucial to her addressing any risks associated with her medical history. It is also fundamental to rebuilding the trust in her relationship with T1: Dr Ung noted that her current attitude invalidates T1's feelings.

21 I am also satisfied that the Father is able to care for the children. He has re-arranged his work schedule since 11 June 2015 in order to do so, and has secured the support of his current employers to devise flexible working arrangements. [\[note: 10\]](#)

22 For those reasons, I award care and control of both children to the Father, with liberal access to the Mother.

### **Access**

#### *Interim access orders*

23 The Family Court granted interim supervised access to the Mother on weekdays from Monday to Friday of two hours a day. No provision for weekend access was made in that interim order.

24 After the case was transferred, I augmented the access order to include supervised access to the Mother on Saturdays from 9am to 8.30pm and for her to have Skype access on Sundays before dinnertime from 5.30pm to 6pm. Subsequently, the children's two-week October school holiday was split into two halves, with the Father taking the first half and the Mother having longer hours of supervised access, from 10am to 2pm, in the second half.

#### *Current access orders*

25 Going forward, it would be best if change and transition is measured and well-planned. It is good for the Mother's weekday supervised access to continue for the time being. However, given that

T2 has school activities on Tuesdays and Thursdays, I order that access on Tuesdays and Thursdays ought to be at the Father's home to prevent T2 from becoming overly tired.

26 As for access on the weekends, I make a slight modification to the access timing on Saturdays under the interim order such that it is to take place from 10am (instead of 9am) to 8.30pm; this, again, is to ensure that the children are well rested. The Mother's half-hour Skype access on Sundays is to remain, save that it is now to take place *after* the children's dinnertime, and before bedtime, from 7.30pm to 8pm.

27 From 1 December 2015, a supervised overnight access is to be added from Friday evening at 5pm until Saturday at 8.30pm. Supervision should be on the same basis as present arrangements. With the additional weekend access, the Tuesday access should be replaced by a half-hour Skype communication from 7.30pm to 8pm with the Mother, to give T2 sufficient rest.

28 Regarding the children's school holidays, access during this period ought to be divided in the same manner as the October holidays were. In the first week, the Father may travel with the children and the Mother will have a half-hour Skype access each day (if parties are unable to agree on a time, then this will be at 7.30pm to 8pm according to the time in whatever jurisdiction the children are in). In the second week, the Mother's access to the children will be from 2pm to 7pm (with overnight access from Friday 2pm to Saturday 8.30pm). For school vacations which are longer than two weeks, this arrangement of alternating weeks may continue and the Father may travel with the children (with two weeks' notice to the Mother) in any of the weeks where he has the children.

#### *The ongoing and evolving interests of the children*

29 These orders that I make on care, control and access are appropriate for this family *at this point in time*. As with all cases involving children, what is appropriate for each child will change with time and his or her growing interests and maturity. *The Father and the Mother are encouraged to adapt flexibly to their children's changing needs.*

30 Litigation emphasises the past. Relationships, on the other hand, require a positive perspective and narrative of the future. With the object of helping the parents see the situation from their children's point of view, I interviewed both children on 21 October 2015 with the help of a court counsellor. The same counsellor and I thereafter followed on with a session on 26 October 2015 with the parents, to reflect back to them the views and feelings of their children from a third party perspective. From these interviews, it is clear that father, mother, daughter and son all share a bond that can and should be nurtured.

31 Dr Ung saw the end goal for this family as *a parity of access between father and mother, including overnight and vacation stays with the Mother*. Parties ought to work towards this goal, modifying by agreement arrangements to increase contact for the Mother over the course of time, while persevering with the necessary therapy and monitoring. Dr Ung recommended three courses of action for the family: (a) on T1's PTSD, for her to continue with therapy; (b) related to T1's PTSD, third-party assistance with psychotherapeutic intervention in the form of family therapy (mainly between T1 and the Mother, with reduced involvement of the Father); and (c) for the Mother's condition, continued therapy and monitoring. On this last point, Dr Fones had also recommended periodic psychiatric reviews once every two months and psychotherapy for the Mother. I would add to these suggestions a fourth: the Mother to keep the Father updated on her reviews in order to lessen any anxiety associated with her access. Both sets of counsel, on 28 September 2015, and the couple, on 26 October 2015, indicated a willingness to follow up as recommended. The couple also expressed an agreement to keep each other updated so as to create a better climate of trust and

cooperation between them. This is necessary in order to ensure a stable and secure environment for their children.

## **Custody**

32 The Father has sought sole custody in this case. His counsel, Mr Philip Jeyaretnam SC ("Mr Jeyaretnam SC"), takes the position that the Mother's actions during the 7–8 June 2015 incident fell within the physical or emotional abuse exception first recognised by the Court of Appeal in *CX v CY (minor: custody and access)* [2005] 3 SLR(R) 690 ("*CX v CY*") at [38] (and later reaffirmed in *ZO v ZP and another appeal* [2011] 3 SLR 647 ("*ZO v ZP*").

33 In my view, the incident of 7–8 June 2015 did not amount to abuse in the manner intended by the Court of Appeal in *ZO v ZP* or *CX v CY*. Dr Fones' assessment in the context of the Mother's medical condition and history was that the children remained her priority.

34 The Court of Appeal in *CX v CY* reminded us that custody is essentially "the right to make the more important, longer-term decisions concerning the upbringing and welfare of a child" (see [32]). In this case, the Mother's medical condition is capable of treatment and she should be encouraged and supported in her ongoing therapy. In my judgment, as the children's primary caregiver up until 11 June 2015, her input would be valuable and important to their continued and longer-term welfare. Joint custody is appropriate.

## **Division of matrimonial assets**

### ***Defining the pool of matrimonial assets – disputed assets***

35 The pool of assets must first be delineated. I start with the disputed assets which may be divided into three categories. The first concerns two properties in London owned by the Father, which he says should not fall within the pool of matrimonial assets, while the second involves certain bank accounts owned by the Mother, which she likewise says should not be subject to the court's power of division. The third category concerns the parties' personal items. I shall consider each of these classes of assets in turn.

#### *The London properties*

36 For convenience, I shall refer to the two respective properties in London as "Property A" and "Property B" while referring to them collectively as "the London Properties". The London Properties are presently held by the Father in his sole name. He purchased Property A in 1989 and Property B in 1997. [\[note: 11\]](#) Both properties were therefore purchased by the Father *prior* to the parties' marriage in 2004. Notably, however, the Father's purchase of the London Properties was financed by way of mortgage loans, a good part of which were serviced *during* the marriage. The mortgage in respect of Property A was fully repaid in October 2012, while the same was done in respect of Property B in October 2014. [\[note: 12\]](#) Both properties were rented out during the marriage.

37 It is apposite, in view of the arguments, to set out the definition of "matrimonial asset" in s 112(10) of the Women's Charter (Cap 353, 2009 Rev Ed). This section reads as follows:

(10) In this section, "matrimonial asset" means —

(a) any asset acquired before the marriage by one party or both parties to the marriage —

(i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or

(ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and

(b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,

but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

38 The Father argues that the London Properties are properly *pre-matrimonial* assets under **limb ( a )** of s 112(10). He acknowledges that the mortgages on the properties were serviced during the marriage but highlights that the primary source of funds for this purpose was the rental income from the properties themselves; hence this was, as he described, a “passive income stream” which he had put in place *prior* to the marriage. [\[note: 13\]](#) Furthermore, where there was a shortfall in the rental income and the mortgage repayments, the Father also submits that he had topped up the difference using his own *pre-matrimonial* earnings. [\[note: 14\]](#) The Husband also produced documentary proof to show that even though monies from the parties’ joint account had been applied towards the London Properties during the marriage, this was not applied to the acquisition of those properties but only their *maintenance*. On this view, then, the onus was on the Mother to demonstrate how the London Properties were transformed into “matrimonial assets” under either of the two avenues statutorily provided in s 112(10)(a)(i) and (ii). In this regard, the Father submitted that the family did not reside in the London Properties at any time, nor was it “substantially improved” during the marriage.

39 Mr Khoo’s position, which I prefer, is that the London Properties should be regarded as falling within **limb ( b )** of s 112(10) of the Women’s Charter as assets “acquired during the marriage by one party or both parties to the marriage”.

40 In *BHN v BHO* [2013] SGHC 91 (“*BHN*”), the High Court read the word “acquired” in s 112(10)(b) to refer not merely to the point of purchase of the asset in question, but to *the entire course of its acquisition*. Therefore, even though the London Properties were purchased by the Father from the original seller *prior* to the marriage, this does not *ipso facto* preclude the said properties from being regarded as matrimonial assets because the fact is that their acquisition continued, through the servicing of the mortgage loans, *during* the marriage. As explained in *BHN* at [36]:

I was unable to accept the plaintiff’s position that Lagoon View should be completely disregarded as a matrimonial asset, as suggested by Ms Wong. Section 112(10) of the Women’s Charter defines a matrimonial asset as, inter alia, “any other asset of any nature acquired during the marriage by one party or both parties to the marriage”. **In interpreting the phrase “acquired during the marriage”, I found the following comments in *Chee Kok Choon v Sern Kuang Eng* [2005] 4 MLJ 461 at [9] sensible and instructive in the present case:**

**... The word ‘acquired’ is not the same as ‘purchased’ as ordinarily understood. In a family law setting, especially in terms of division of matrimonial assets, a down-payment may have been paid, and one party may continue mortgage instalments for the next 15 or 20 years. In such a case, the ‘acquisition’ continues until the asset is**

**fully acquired** . For example, in the case of an EPF balance, a certain sum is 'acquired' before marriage; the balance is acquired during marriage; and further acquisition continues even after a divorce. It is only the portion 'acquired' during marriage that can be considered a matrimonial asset. ... [emphasis added]

[original emphasis in italics; emphasis added in bold]

41 Based on this reading of s 112(10)(b), it is clear that the London Properties ought *prima facie* to fall within its scope. The question which next arises is whether, on the Father's argument, the London Properties should nevertheless be taken out of the scope of s 112(10)(b) because, as he says, the funds used for repaying the mortgage loans come primarily from the rental income generated on those properties and, to a lesser extent, his pre-matrimonial income. In other words, *BHN* only applied where the acquisition is serviced by "active earnings"; in *BHN* the acquisition was paid with salary earned. The unarticulated premise of this argument is that notwithstanding that an asset appears to have been acquired during the course of a particular marriage, the court should go on to scrutinise the *source of funds* for the acquisition.

42 In my judgment, this does not accord with the wording of s 112(10)(b), which simply directs the court's inquiry to the *timing of the acquisition* of the property concerned. Within a marriage, the aspiration is for both parties to cooperate for the benefit of the family. In the context of a homemaker wife, which the Mother was, her contribution to the family allows the income-earner the time and capacity to pursue a range of investments, which include his career. His entire investment portfolio is enhanced and supported by all of the help he receives at home. Whether he funds a specific investment within this portfolio out of his salary or a pre-existing pool of money is arbitrary.

43 Of relevance is the reasoning applied by the Court of Appeal in *Hoong Khai Soon v Cheng Kwee Eng and another appeal* [1993] 1 SLR(R) 823 ("*Hoong Khai Soon*"). In that case, it was disputed whether the husband's undivided half share in a property that he jointly purchased with his brother *during* the marriage as tenants in common fell into the matrimonial pool of assets. The first instance judge held that this asset was *not* a matrimonial asset because it was purchased using the sale proceeds of the parties' former matrimonial home which, in turn, was a *gift* from the husband's family. The Court of Appeal took a different view at [17]:

... In the absence of documentary evidence or other evidence as to the figure, we are left to make a rough and ready approximation that the husband paid for half of 1B Jalan Haji Salam as renovated. The money came from the proceeds of sale of 7 Bedok Rise. Although the latter property was a gift, ***we do not think that we should trace the source of funds for a purchase to its origin . It would be inimical to the concept of a matrimonial partnership if the source of funds for every asset acquired during marriage had to be shown to not originate from the generosity of a third party.*** [emphasis added in bold italics and underlined bold italics]

44 I recognise that the above statements in *Hoong Khai Soon* were made in a different context. Nevertheless, the point is the same one. Whether the asset first came into the marriage funded from an earlier gift that has been realised or as an earlier purchase that is still being acquired does not make a difference to the issue at hand. What the Court of Appeal made clear was that one ought not to trace the source of funds so long as the acquisition in question occurs during the marriage: doing so would be "inimical to the concept of a matrimonial partnership".

#### *The Mother's disputed accounts*

45 The second category of disputed assets relates to several of the Mother's bank accounts

started during the marriage. The Father has contended all along that these were from the matrimonial accounts. Indeed, the Mother explained to Dr Fones when she saw him that, from 2012, she had decided to give herself financial stability. This was mentioned in Dr Fones' affidavit. Accordingly, this category of assets also falls within the pool of divisible assets.

*Jewellery and other personal effects*

46 While there were jewellery and other personal effects which formed part of the matrimonial pool of assets, the items in this case did not have large resale value, when considered against the total size of the overall pool of assets. I do not include them in the division, save for the bronze case replicas of the children's feet, which are easily shared out. A similar exercise of discretion was made by the High Court in *Tay Ang Choo Nancy v Yeo Chong Lin and another (Yeo Holdings Pte Ltd, miscellaneous party)* [2010] SGHC 126 at [48] (and this was not disturbed on appeal in *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 ("*Yeo Chong Lin*") (see [52])).

47 These items were the following, and to be retained in the following manner:

<b>Items to remain with the Mother</b>
Her jewellery (Table 2 of the agreed table of assets dated 27 October 2015)
One half of each pair of bronze replicas of the children's feet
Any of the photo-books in her possession
Any sundry furniture in her possession
Canvas painting of elephant made by T2's class which is in her possession
Piano in the Mother's possession
<b>Items to remain with the Father</b>
His watch
Cutlery set in his possession
One half of each pair of bronze replicas of the children's feet
Any of the photo-books in his possession
Any sundry furniture in his possession

*Table of assets*

48 Parties sought guidance on the date on which the assets were to be valued. In *Yeo Chong Lin*, the Court of Appeal stated that the operative date could be one of four options, highlighting at [36] that "[u]ltimately, perhaps the adoption of an operative date or dates may not really be that critical as compared to arriving at a just and equitable division".

49 In the present case, the Father suggested that I should use the date of the interim judgment for valuing the matrimonial assets because currency values have risen for the assets in his name and have fallen for the assets in her name: a division nearer the date of the hearing of the ancillary matters weighs in the Mother's favour. I do not consider this a decisive factor because he could simply hold the assets and sell them at an appropriate time when the currency value has risen further.

The date ought to be decided on the premise of that which best achieves a just and equitable division.

50 Of relevance in this case is the on-going care of the children, which has continued after the grant of interim judgment. In *Yeo Gim Tong Michael v Tianzon Lolita* [1996] 1 SLR(R) 633 and *ARX v ARY* [2015] 2 SLR 1103, the wife continued looking after the children after interim judgment was granted, and the court took into account the continued indirect contribution of the wife, choosing an operative date as at when the ancillary matters hearing had commenced. Having regard to the facts of this case, it would be just and equitable to consider the whole length of the marriage insofar as we are able, and to put both parties' acquisitions made during that time into the basket. This would allow the court to take a more holistic and comprehensive view of both parties' contribution – both indirect and direct - to the marriage.

51 Parties thereafter tendered a table of assets on 27 October 2015 based on my guidance that the various values ought to be as close to the date of the ancillary hearing as practicable.

52 Parties on both sides made allegations about dissipation of the accounts in each other's names. Expenses on both sides would have been high, however, given the on-going litigation, medical expenses, the continued needs of the children and the two households. In light of that, I use the latest available values for these various accounts.

53 The pool of divisible assets, based on the parties' agreed table, could be summarised (to the nearest dollar) as follows (the assets the parties agree to exclude have been excluded from this summary):

<b>Category</b>	<b>Amount</b>	<b>Remarks</b>
Joint assets	\$86,252	Certificate for a debenture valued at \$84,600 is in the Mother's possession.
(Undisputed) assets held by the Mother	\$634,016	Total of disputed and undisputed assets held by the Mother: \$767,293.
(Disputed) assets held by the Mother	\$133,277	
(Undisputed) assets held by the Father	\$2,758,968	Table listed a total of \$2,556,146. Bonus of \$210,000 received after the date of IJ but before the AMs was put back in while a fall in value of vehicle in same duration was taken out (\$7,178, being \$25,000 – \$17,822).
(Disputed) assets held by the Father	\$2,648,872	Table listed \$3,054,253. Sale proceeds from Connecticut property (\$383,787) and Deutsche Bank Deferred Payment Bonus Shares (\$21,594) deducted as these were channelled into other assets listed.
<b>Total</b>	<b>\$6,261,385</b>	

### ***Just and equitable division***

54 In dividing the assets I followed the structured approach set out in *ANJ v ANK* [2015] 4 SLR

1043 ("ANJ") (at [22]–[27]), summarised in *Twiss, Christopher James Hans v Twiss, Yvonne Prendergast* ("Twiss") [2015] SGCA 52 at [17] as follows:

- (a) Express as a ratio the parties' direct contributions relative to each other, having regard to the amount of financial contribution each party made towards the acquisition or improvement of the matrimonial assets;
- (b) Express as a second ratio the parties' indirect contributions relative to each other, having regard to both financial and non-financial contributions; and
- (c) Derive the parties' overall contributions relative to each other by taking an average of the two ratios above, keeping in mind that, depending on the circumstances of each case, the direct and indirect contributions may not be accorded equal weight and one of the two ratios may be accorded more significance than the other.

55 Using this approach, I begin with the direct contributions. Only the assets acquired during the marriage are under consideration and the Mother was a homemaker throughout the marriage. Thus the financial contribution is wholly the Father's.

56 In respect of the indirect contributions, the Mother had been the primary caregiver of the two children up until 11 June 2015. She gave up her employment and assisted with her husband's relocation, once to Hong Kong, and then subsequently to Singapore. Her view of their domestic life was one marked by the demands of long hours and travel that the Father's employment necessitated.

57 The Father's view of their domestic history, on the other hand, was that theirs was a difficult family life marred by quarrel and the Mother's depression, not one that was supportive and encouraging for his career. Mr Jeyaretnam SC urged me to see the 7–8 June 2015 incident as a negative contribution by the Mother. In this regard, I note that the recent Court of Appeal decision in *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 ("*Chan Tin Sun*") makes clear at [27] that the court can – in determining the respective contributions made by parties to a marriage – ascribe a *negative* value to one spouse's contributions on account of his or her misconduct which fundamentally undermines the co-operative partnership and harms the welfare of the other spouse. However, as the Court of Appeal also emphasised at [25], evidence of that misconduct has to be both "*extreme* (*ie*, manifestly serious) and *undisputed*" [emphasis in original], and that was evidently the case in *Chan Tin Sun* where the former wife had systematically poisoned the former husband with arsenic over a period of time. The allegations of the Mother's misconduct in the present case are plainly not of the same gravity as the misconduct in *Chan Tin Sun*. In this case, I find that it would be more appropriate to view the 7–8 June 2015 incident in the full context of the history of the family and the Mother's contribution to the household.

58 In relation to the children, the Father has assumed their care in a substantial way since 11 June 2015, with major adjustments to his work hours. There was, additionally, evidence from his former colleagues to show that, when he was with his previous employer, Bank B, he avoided working or travelling on weekends and in fact requested for permission to stop travelling altogether for a period of time to care for the children and provide relief to the Mother during her depression in 2011.

59 Taking a broad brush approach, I am of the view that a 60:40 assessment of indirect contributions in favour of the Mother would be fair.

60 An average of the two ratios is the next step. Referencing *ANJ* at [27] and *Twiss* at [21], the Court of Appeal has advised that adjustments could be made between the financial and non-financial

ratios, having regard to the pool of assets and length of marriage. Here, the pool of assets is large, and the Father started acquiring the London properties prior to their marriage, which was a 10-year union. Greater weightage ought to be given to the direct contributions. Considering all the circumstances, I am of the view that awarding the Mother a 25% share of the total pool of matrimonial assets would be appropriate.

61 Coming to the figures, a 25% share amounts to \$1,565,346 (to the nearest dollar). Deducting the various sums held by the Mother (\$767,293), and also the value of the Canadian International School Hong Kong Debenture which certificate is in the Mother's possession (\$84,600), the amount to be paid by the Father is \$713,453 (to the nearest dollar). I order that this sum be paid by the Father to the Mother within 28 days of today. Each party ought to keep the assets which are in their own name. The Father would also keep the money in the bank accounts held jointly; the Mother ought to take any necessary steps to allow him to do so.

62 The personal items which the Mother should hand over to the Father, being half of each pair of the bronze-case replicas of the children's feet, should be delivered within 14 days of today.

## **Maintenance**

### ***The interim consent order***

63 By a consent order dated 2 September 2014, the Father was paying interim maintenance of \$13,200 on the 25th of each month for the Mother and the two children, who were living with her at the time. Additionally, he paid for the children's school fees and the children's and the Mother's health insurance. He has been making these payments since the order took effect on 25 September 2014 up until the present.

### ***Quantum of periodic order***

64 Both parties agree that maintenance ought to be a periodic and not a lump sum order.

65 The Father contends that \$8,158.75 is sufficient, while the Mother asks for \$11,300. In my view, \$9,500 is appropriate:

	<b>Husband's position</b>	<b>Wife's position</b>	<b>Court's decision</b>
Household expenses	\$2,058.75 ( <i>ie</i> , \$6,176.25 / 3)	\$2,160	\$2,000
Rent	\$4,100	\$4,100	\$4,100
Wife's expenses	\$2,000	\$3,000	\$3,400
Children's expenses	\$0	\$1,320	-
Family welfare	\$0	\$720	
<b>Total</b>	<b>\$8,158.75</b>	<b>\$11,300</b>	<b>\$9,500</b>

66 In deciding that the Mother's expenses came up to \$3,400, I took into account her continued therapy and her monthly health insurance premiums, which should be paid out of her maintenance sum (the Father has been paying for the latter under a separate limb of the consent order).

## **Duration of order**

67 The Father submits that the periodic maintenance order should be for a maximum duration of five years. He points out that the Mother, who is only in her early forties, has a good twenty years before reaching the retirement age. She should therefore seek gainful employment to support herself financially. He offered to pay her, in addition to the sum of maintenance every month, a further \$15,000 per annum to support her education expenses to re-skill and re-enter the workforce; [\[note: 151\]](#) and he offered to do so for a maximum of five years. [\[note: 161\]](#) The Mother, on her part, has indicated that she intends to re-train herself in order to gain employment and has estimated the cost of her re-skilling at \$23,737.

68 I do not think it wise to impose a five-year cut-off date for the Mother's maintenance. While the Mother worked for 10 years prior to giving up her career for the family, she is already 41, has not worked for some 10 years, and will be trying to gain entry as an expatriate into the local workforce. Her history of Major Depressive Disorder and ongoing therapy might also make employment more difficult for her. A cut-off date could potentially be too harsh in light of the fact that she has given up the most productive years of her working life to care for the family.

69 Thus, I order that the Father maintains the Mother at \$9,500 per month for four years from the 25th of this month (*ie*, November 2015), after which he is to pay her a reduced sum of \$2,000 per month. This calibrated maintenance order should, in my view, afford the Mother reasonable financial support for a sufficient period of time within which she can re-train and seek employment while also accounting for the possibility that she might face some difficulties in doing so.

70 In this regard, I note that a similar order was made by the High Court in *Lim Kok Sian Brandon v Ong Ai Geok (alias Wang Aiyu)* [2005] 2 SLR(R) 437 ("*Lim Kok Sian Brandon*"). In that case, the court found that the former wife's monthly expenses of \$3,500 were reasonable. As in the present case, the court in *Lim Kok Sian Brandon* was cautious not to stipulate a cut-off date in the periodic maintenance order because the former wife had a depressive disorder which made her unable to start working for a considerable period of time; nor did the court there think it appropriate for the former wife to be maintained at \$3,500 per month indefinitely. A balance was therefore struck by reducing the periodic maintenance payable by the former husband after a certain number of years. The following passage in *Lim Kok Sian Brandon* at [21] is particularly instructive:

The next question was whether the provision of maintenance without a long stop and without ordering a lump sum was reasonable. I was not prepared to take the risk of assessing that five years would be sufficient for the wife to recover. Erring on the side of caution, and seeing that the decision involved the provision of maintenance for a wife who suffers from depressive disorder, I thought that the husband by way of a capital settlement of all future claims for maintenance could afford to part with two-thirds of his gross annual income earned in the year 2004. Alternatively, I ordered maintenance at \$3,500 per month for three years and thereafter at \$2,500 per month. If and when she recovers and finds full-time work, the husband can apply to court to revisit the issue.

71 A final issue concerns Mr Jeyaretnam SC's arguments that the Father has paid an excess in maintenance for some five months. The interim consent maintenance order provided a sum of \$13,200 for the Mother and two children, without specifying specific sums for each. Care and control was switched on 11 June 2015 but the Father has continued to pay the \$13,200.

72 I do not think it appropriate to make an order for the return of any specific sum of money as

the maintenance was paid pursuant to a court order covering generally the Mother and children that remained and was not varied. In *AXM v AXO* [2014] 2 SLR 705, the Court of Appeal also advised against backdating final maintenance orders where such an order would overlap with an interim order that has not been varied: ordering the return of money would achieve the same effect. Instead, I limit the Father's retraining offer to three years, rather than his suggested five-year period. The Mother may seek reimbursement of up to \$15,000 per annum from the Father for a maximum of three years from today for the expenses which she incurs to re-train herself, subject to proof of expense.

## **Costs**

73 Counsel stated that they were both in agreement that no order be made on costs. I so order.

## **Conclusion**

74 In summary, I make the following orders in respect of parties' ancillary matters:

- (a) The Father and the Mother shall have joint custody of T1 and T2.
- (b) The Father is to have sole care and control of the children.
- (c) The Mother is to have supervised access to the children on the following terms:
  - (i) from Monday to Friday, she is to have supervised access to the children from 5pm to 7pm. Tuesday and Thursday access is to be at the Father's home;
  - (ii) on Saturday, she is to have supervised access to the children from 10am to 8.30pm; and
  - (iii) on Sunday, she is to have Skype access to the children from 7.30pm to 8pm.
- (d) From 1 December 2015, the Mother's access is varied on the following terms:
  - (i) Friday and Saturday access will be replaced by overnight supervised access from Friday, 5pm to Saturday, 8.30pm;
  - (ii) Tuesday access is to be replaced by a half-hour Skype communication from 7.30pm to 8pm; and
  - (iii) during school holidays, access is to be divided such that the Father has the children for the first week. The Mother is to have daily half hour Skype communication during this week. The Mother has supervised access in the following week from 2pm to 7pm from Sunday to Thursday (with overnight access from Friday 2pm to Saturday 8.30pm). The pattern of alternating weeks is to continue if the school holiday lasts longer than two weeks. Where there is an uneven number of weeks, the last odd week is to be divided between the Father (Sunday to Tuesday on the first week arrangements) and the Mother (Wednesday to Saturday on the second week arrangements). The Father may travel (with two weeks' notice to the Mother) on any of the weeks where he has the children.
- (e) The Father is ordered to pay \$713,453 to the Mother within 28 days of today.
- (f) Each party is to retain all assets in their sole name. The Father is to retain the money in the parties' joint accounts and the Mother is to take any necessary steps to enable the Father to

do so. The Father must take steps necessary (if any) to transfer the Canadian Debenture to the Mother.

(g) The Mother is to deliver to the Father his half of the bronze replica pairs of the children's feet within 14 days of today.

(h) The Father is to maintain the Mother at \$9,500 per month for four years from 25 November 2015, after which he is to pay her a reduced sum of \$2,000 per month. Maintenance is to be paid on the 25th of each month.

(i) The Father is also to reimburse the Mother up to \$15,000 per annum for a maximum of three years from today for the expenses which she incurs to re-train herself, subject to proof of expense.

(j) No order on costs.

(k) Liberty to apply.

75 Finally, leave is granted for the Mother to withdraw her application for relocation, Summons No [Y], with no order on costs.

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[\[note: 1\]](#) "Bank A" is a reference to ABN Amro Bank.

[\[note: 2\]](#) "Bank B" is a reference to Deutsche Bank.

[\[note: 3\]](#) "Bank C" is a reference to Westpac Banking Corporation.

[\[note: 4\]](#) Wife's 12th Affidavit dated 10 June 2015 filed in support of SUM 312/2015 at para 26.

[\[note: 5\]](#) Wife's 12th Affidavit dated 10 June 2015 filed in support of SUM 312/2015 at para 16.

[\[note: 6\]](#) Wife's 12th Affidavit dated 10 June 2015 filed in support of SUM 312/2015 at para 16.

[\[note: 7\]](#) Dr Calvin Fones' Report at para 56.

[\[note: 8\]](#) Executive Summary of Dr Ung's Report at para 8.

[\[note: 9\]](#) Executive Summary of Dr Ung's Report at paras 26–28.

[\[note: 10\]](#) Husband's Reply Submissions (Ancillary Matters and Relocation) dated 11 August 2015 at para 167.

[\[note: 11\]](#) Husband's written submissions dated 21 May 2015 at para 236.

[\[note: 12\]](#) Husband's written submissions dated 21 May 2015 at para 236.

[\[note: 13\]](#) Husband's written submissions dated 21 May 2015 at para 238.

[\[note: 14\]](#) Husband's written submissions dated 21 May 2015 at para 242.

[\[note: 15\]](#) Husband's 4th Ancillary Affidavit dated 11 August 2015 at para 569.

[\[note: 16\]](#) Husband's 4th Ancillary Affidavit dated 11 August 2015 at para 569.

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