ATE
v
ATD
and another appeal

[2016] SGCA 2

Court of Appeal — Civil Appeals Nos 64 and 65 of 2015
Andrew Phang Boon Leong JA, Judith Prakash J and Steven Chong J
26 November 2015

Family law — Matrimonial assets — Division

Family law — Maintenance — Wife

15 January 2016

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

Introduction

1 These were appeals by both the defendant ("the Husband") and the plaintiff ("the Wife") against the decision of the High Court judge ("the Judge") in *ATD v ATE* [2015] SGHC 131 ("the GD"). The Husband appealed in Civil Appeal No 64 of 2015 ("CA 64/2015") against the decision of the Judge that he pay the Wife a sum of $36,000 (as a matter of division of assets) and that he pay the Wife nominal maintenance of $1 per month. The Wife appealed in Civil Appeal No 65 of 2015 ("CA 65/2015") against the decision of the Judge that the net sale proceeds of the matrimonial home in the sum of $186,097.51 were

to be divided equally between the parties and that the Husband should pay her a sum of $36,000.

2 We allowed both appeals in part. In particular, we ordered that the Husband pay the Wife a sum of $63,000 instead. We also rescinded the Judge's order that the Husband pay the Wife nominal maintenance of $1 per month. Further, we made no order as to costs and made the usual consequential orders. We now give the detailed grounds for our decision.

The facts and decision in the court below

Background

3 The parties were married on 28 March 2008. Their only child, a daughter ("the Child"), was born on 5 April 2011. The Wife had applied for divorce on 5 April 2013, on the Child's second birthday, and Interim Judgment was granted on 18 September 2013. The parties agreed to have joint custody of the Child with care and control to the Wife and reasonable access to the Husband. The Husband is presently paying monthly maintenance of $1,300 for the Child.

4 Both the Husband and the Wife are well educated and in well paid employment. Based on the Notice of Assessment for 2013, the Wife's gross monthly income was $10,185.08 while the Husband's income was $8,012.50.

5 The matrimonial home was purchased by the Wife, the Husband and the Husband's mother. $560,000, which amounted to half of the purchase price, was contributed by the Husband's mother. The remaining $560,000 was contributed by the Husband and the Wife through repayments to a mortgage loan.

6 The sale of the matrimonial home was completed on 3 April 2013. The Husband's mother's share is no longer in the picture as the parties have settled her claim out of court. This left a sum of $186,097.51 as the net sale proceeds of the matrimonial home less the monies paid out to the Husband's mother.

The Judge's decision

7 The Judge considered that the pool of matrimonial assets included the net sale proceeds of the matrimonial home valued at $186,097.51 and the sums in the parties' respective CPF accounts as well as their various bank accounts. These other assets – the sums in the parties' CPF and bank accounts – amounted to $1,147,351.85 (at [38] of the GD). A number of assets were excluded from the pool by the Judge. Amongst the assets excluded (by their mutual agreement) were the parties' present residences. The total size of the matrimonial pool, including the net sale proceeds of the matrimonial home, was therefore $1,333,449.36.

8 The Judge first dealt with the net sale proceeds of the matrimonial home as a separate class from the other assets in the pool. The Judge found that – leaving aside the Husband's mother's payment of half the purchase price – the parties contributed equally both to the repayments to the matrimonial home as well as the outgoings of the home. The Judge therefore awarded each party half of the net sale proceeds of $186,097.51.

9 In so far as the other assets were concerned, the Judge found that neither party had at the outset given full disclosure, though the Wife did subsequently give better discovery than the Husband. The Husband had not produced updated documents relating to his emoluments and his latest tax assessments at the ancillaries hearing, which took place more than 15 months after parties had filed

their initial affidavits of assets and means. In particular, the Husband had failed to produce his income tax assessment for the year of assessment 2014, during which time he had been promoted to his current position of Associate Director. Both parties also had a tendency to inflate their expenses. The Judge also noted that the Husband was calculating and that generosity was not part of his nature. She therefore found it unlikely that he had contributed more than his share of expenses.

10 In light of the above, the Judge ordered the Husband to transfer $36,000 to the Wife, which was the rounded up figure of 15% of the Husband's surplus assets of $239,334.59. The Judge indicated that this was to take into account both the drawing of an adverse inference against the Husband and the Wife's indirect contributions as a wife and mother.

11 Finally, to avoid exacerbating the acrimonious relationship between the parties further, the Judge ordered that each party should bear their own costs (at [41] of the GD).

12 To recapitulate, the Judge's orders were as follows:

(a) The net sale proceeds of the matrimonial home in the sum of $186,097.51 were to be divided equally between the parties.

(b) The Husband was to pay the Wife a sum of $36,000.

(c) The parties were to retain all other assets in their respective names and possession.

(d) The Husband was to pay the Wife maintenance of $1 per month.

(e) The parties were to bear their own costs of the proceedings.

13 As we have mentioned at the outset, the Husband appealed against the orders listed at (b) and (d) above, whilst the Wife appealed against the orders listed at (a) and (b) above.

Our decision

The order for division of matrimonial assets

14 We turn first to the manner in which the Judge divided the matrimonial assets. In effect, the Judge had divided the matrimonial assets largely along the lines of the direct contributions of the parties (as she had found), except that the Husband was to pay the Wife an additional $36,000. This award of $36,000 was largely premised on the fact that the Husband had failed to disclose all his assets (see the GD at [36]–[40]). Although we increased the amount payable by the Husband to the Wife from $36,000 to $63,000, our reasons for varying the amount payable were premised on a wholly *different* legal basis than that adopted by the Judge in the court below. Put simply, we increased the amount payable by the Husband to the Wife to reflect more accurately the *Wife's indirect contributions*. In our view, the award made in the court below suggested, in fact, *the opposite*: that the *Husband's* indirect contributions were weightier. This is not surprising as the Judge had – as we have just pointed out – arrived at the award payable by the Husband to the Wife by way of a completely *different* legal basis altogether, although in fairness to the Judge, she did recognise that the Wife did make indirect contributions as a wife and mother (see the GD at [39]).

15 To begin, we considered the arguments of the parties in relation to the size of the matrimonial pool. As already noted, the parties' present residences were excluded by agreement from division. On appeal, the Husband argued that the numbers were unfair because he had purchased his new flat on 3 April 2014.

As his relevant documents were disclosed at an earlier date, this meant that the numbers relied upon by the Judge did not reflect the pending cash and CPF payments for the new flat that he had purchased. On the other hand, the Wife's new property was purchased in early 2013 which meant that the expenses would have been accounted for. This argument was unmeritorious. The purchase of the Husband's new flat was completed well before the hearing before the Judge but he chose not to update his numbers; neither did he try to adduce new evidence before this court. He only invited this court to take this into account in a general sense. We could not see how we could do so. Similarly, the Wife argued that the surrender value of the Husband's insurance policies, amounting to $56,743.32, should be added to the pool, but we saw no reason to make any adjustments to the Judge's determination of the pool of matrimonial assets. We therefore proceeded on the basis that the total pool of the matrimonial assets, including the net sale proceeds of the matrimonial home, were as found by the Judge.

16 Further, we were satisfied that the Judge was correct to consider that the direct contributions of the parties to the matrimonial home were equal, and we similarly proceeded on that basis.

17 In arriving at the figure of $63,000, we bore in mind the structured approach set out by this court in *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ*"), whilst simultaneously being cognisant of the caveat in that same case that that approach should not detract from the overall purpose and spirit underlying the division of matrimonial assets pursuant to s 112 of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Women's Charter"), as embodied in the following observations (at [30]):

> In our view, the approach which we have advanced herein would enable us to better strike a proper balance between the

> search for a principled test and the need to remain sensitive to the factual nuances of each case. We are nevertheless mindful that, by the very nature of matrimonial disputes, each case presents a unique set of facts and we do not propose to say that these principles are necessarily exhaustive, nor do we expect them to be hard and fast rules that must immutably be applied even to cases of exceptional facts. The controlling principle has always been and remains that the court must approach the exercise with broad strokes based on its feel of what is just and equitable on the facts of the case. On this note, we turn to examine the facts of the present appeal.

18 In so far as the structured approach set out in *ANJ* is concerned, this court observed as follows (at [22]−[29]):

> 22 The ultimate objective of any approach towards the division of matrimonial assets is to accord due and sufficient recognition to each party's contribution towards the marriage – without overcompensating or undercompensating a spouse's indirect contributions – so that the outcome would, in the circumstances of each case, lead to a just and equitable division. Using the structured approach, the court could first ascribe a ratio that represents each party's direct contributions relative to that of the other party, having regard to the amount of financial contribution each party has made towards the acquisition or improvement of the matrimonial assets. Next, to give credit to both parties' indirect contribution throughout the marriage, instead of giving the party who has contributed more significantly than the other an "uplift" to his or her direct contribution percentage, the court should proceed to ascribe a second ratio to represent each party's indirect contribution to the well-being of the family relative to that of the other. Using each party's respective direct and indirect percentage contributions, the court then derives each party's average percentage contribution to the family which would form the basis to divide the matrimonial assets. Further adjustments (to take into account, *inter alia*, the other factors enumerated in s 112(2) of the [Women's Charter]) may need to be made to the parties' average percentage contributions – a point which we will return to shortly.
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> 23 One may feel that this somewhat structured approach deviates from the broad-brush approach well-endorsed by our courts and represents a step towards an arithmetical exercise that has been consistently eschewed by this court. It really does not. Even in respect of direct financial contributions of the parties, not infrequently, the situation is less than clear. In a case where the documentary evidence falls short of establishing

exactly who made what contribution and/or the exact amount of monetary contribution made by each party, the court must make a "rough and ready approximation" of the figures (see *NK v NL* [[2007] 3 SLR(R) 743] at [28], citing *Hoong Khai Soon v Cheng Kwee Eng* [1993] 1 SLR(R) 823 at [17] with approval). At the end of the day, the court would have to approach the issue by exercising sound judgment, having regard to the inherent veracity of each party's version of events reflected in their affidavits or testimony as well as the documentary evidence. This is where "broad brush" comes in.

24 In relation to indirect contributions, the problem with ascertaining the extent of the parties' contributions with precision is further compounded. In the nature of things, for the court to ascribe a ratio in respect of the non-financial or indirect financial contributions of the parties, the court is clearly not indulging in any mathematical calculation because often there is very little concrete evidence to be relied upon. Contributions in the form of parenting, homemaking and husbandry, by their very nature, are incapable of being reduced into monetary terms. No mathematical formula or analytical tool is capable of capturing or accommodating the diverse and myriad set of factual scenarios that may present themselves to court as to how the parties may have chosen to divide among themselves duties and responsibilities in the domestic sphere. It is in making this determination that what is known as the broad brush approach would have to come into play. What values to give to the indirect contributions of the parties is necessarily a matter of impression and judgment of the court. In most homes, even in a home where both the spouses are working full time, in the absence of concrete evidence it is more likely than not that ordinarily the wife will be the party who renders greater indirect contributions. That said, even in a home where the wife is a full-time homemaker, it would be an exceptional home where the husband renders no indirect contribution at all. What values to attribute to each spouse in relation to indirect contributions would be a matter of assessment for the court and in that regard broad strokes would have to be the order of the day. In seeking to arrive at a ratio that represents both parties' comparative indirect contribution towards the family, the court must, in the final analysis, exercise sound discretion along with a keen emphasis on all the relevant facts of each case.

25 We would reiterate that while we seek to bring in some system into the question of determining how the matrimonial assets of a marriage are to be divided, we do not pretend to be scientific. The broad brush is in no way replaced as we recognise all too clearly that in any marriage many things are done unrecorded – out of love, concern and responsibility – and

not with the view to building up a case in the event the marriage fails. It would be a sad day for the institution of marriage if parties were to enter into a marriage with a mental outlook of tracking their contributions towards the marriage.

26 This court has observed in *Lim Choon Lai v Chew Kim Heng* [2001] 2 SLR(R) 260 at [14], that "[a]s for the non-financial contributions, they also play an important role, and depending on the circumstances of the case, they can be just as important". We made similar remarks in *NK v NL*, that spousal contributions, regardless of whether it rests in the economic or homemaking spheres, are equally fundamental to the well-being of a marital partnership (at [41]). The strength in the above approach lies in the fact that it paves the way for the court to put financial and non-financial contributions on an *equal footing*, as opposed to the traditional "uplift" approach that places direct financial contribution as the foremost consideration. We would underscore that s 112 of the [Women's Charter] does not give pre-eminence to any of the factors enumerated in s 112(2). We should, however, also point out that, for the very same reason, the approach proceeds on the basis that the collective indirect contribution made by both parties carries *equal weight* as the collective direct financial contribution made by both parties. This may well be the case in many instances, but there will also be instances where one component necessarily assumes greater importance than the other on the facts and correspondingly greater weight should be attached to that component as against the other. In cases that fall within the latter category, the court should tweak or calibrate the "average ratio" in favour of one party to reflect what would be a just and equitable result in the circumstances of each case. To do so, the court must engage in a *non-mathematical* balancing exercise to determine the appropriate weight that should be accorded to the parties' collective indirect contribution as against their collective direct contribution. We stress that the balancing exercise should be non-mathematical in nature, and should instead be based on the court's sense of what is fair and just. This is [a] fact-sensitive inquiry where context is paramount. Put simply, the "average ratio" is a non-binding figure; it is meant to serve as an indicative guide to assist courts in deciding what would be a just and equitable apportionment having regard to the factual nuances of each case.

27 The circumstances that could shift the "average ratio" in favour of one party are diverse, and in our judgment, there are at least three (non-exhaustive) broad categories of factors that should be considered in attributing the appropriate weight to the parties' collective direct contributions as against their indirect contributions:

(a) The length of the marriage. Indirect contributions in general tend to feature more prominently in long marriages ([*Tan Hwee Lee v Tan Cheng Guan* [2012] 4 SLR 785] at [85]). Conversely, indirect contributions usually play a *de minimis* role in short, childless marriages (*Ong Boon Huat Samuel v Chan Mei Lan Kristine* [2007] 2 SLR(R) 729 at [28]).

(b) The size of the matrimonial assets and its constituents. If the pool of assets available for division is extraordinarily large and all of that was accrued by one party's exceptional efforts, direct contributions are likely to command greater weight as against indirect contributions (see *Yeo Chong Lin v Tay Ang Choo Nancy* [2011] 2 SLR 1157 ("*Yeo Chong Lin*")).

(c) The extent and nature of indirect contributions made. Not all indirect contributions carry equal weight. For instance, the engagement of a domestic helper naturally reduces the burden of homemaking and caregiving responsibilities undertaken by the parties, and to that extent, the weight accorded to the parties' collective indirect contributions in the homemaking and caregiving aspects may have to be correspondingly reduced. The courts also tend to give weighty consideration to homemakers who have painstakingly raised children to adulthood, especially where such efforts have entailed significant career sacrifices on their part.

28 The above principles are germane to the general run of matrimonial cases where the parties' direct and indirect contributions are the only two factors engaged under s 112 (*ie*, ss 112(2)(*a*) and 112(2)(*d*)) when the court's powers to divide matrimonial assets are called upon. We are mindful that there remains a number of other factors under s 112, including the needs of the children; the presence of an agreement between the parties with respect to the ownership and division of matrimonial assets; period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party; and the matters referred to in s 114(1) relating to a maintenance order for the wife. In so far as the remaining factors become relevant for consideration in the appropriate case, the court is well-advised to make adjustments as it deems necessary to the principles stated in this judgment for the purposes of reaching a just and equitable result on the facts before it.

29 Finally, for the avoidance of doubt, we should add that nothing we have said thus far detracts from the court's powers to draw [an] adverse inference against either party whenever he

> or she is found to have failed to make full and frank disclosure of the matrimonial assets. It is trite that the party whom the court has found to have hidden away certain matrimonial assets would receive a lower proportion of the known assets (if the court has not already added a specific sum into the pool of matrimonial assets available for distribution to account for the undisclosed assets) (*Yeo Chong Lin* at [66]).
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> [emphasis in original]

19 Turning to the facts of the present case, both parties worked full-time, with the Wife having the more financially rewarding career. The marriage lasted about five years, and the parties were childless for the first three years of the marriage, during which they had part-time help. The Husband moved out of the matrimonial bedroom shortly after the Child was born; he moved out of the matrimonial home altogether in January 2013. In looking after the Child, the parties had the assistance of both a full-time maid and the Wife's mother (who had moved in with them).

20 Even when they lived together, they had kept their finances apart. The Wife never depended on the Husband financially during the marriage. The Judge had found that the Husband was a calculating man and, indeed, the Wife also said that he was "extremely stingy with his finances". In a rather business-like way, he made sure that she paid her share of the household expenses and even when they went shopping together, he would keep track of the expenses and then seek reimbursement from her afterwards if he had made the upfront payment.

21 Given that the marriage was a short one, that both Husband and Wife were working, the manner in which both Husband and Wife conducted their lives during the marriage itself, and that there was a not inconsiderable amount of assistance on the domestic scene, the appropriate ratio between direct and indirect contributions ought to be 75% and 25%, respectively.

22 In so far as the ratio of indirect contributions by the Husband and the Wife, respectively, was concerned, counsel for *both* parties were *in agreement* (correctly, in our view) that the proportions ought to be 40% and 60%. In so far as the ratio of the direct contributions by the Husband and the Wife was concerned, given the manner in which the parties conducted their finances, we were of the opinion that their contributions were reflected by the matrimonial assets in their respective names.

23 When we apply those numbers to the *whole* of the matrimonial pool (including the net sale proceeds of the matrimonial home), the average ratio is derived as follows:

	Husband	**Wife**
Direct contributions (75% weight)	59%	41%
Indirect contributions (25% weight)	40%	60%
Average percentage contributions	54.25%	45.75%

24 In the circumstances, and given what we decided was the total pool in so far as the division of matrimonial assets was concerned, we retained the Judge's order that the net sale proceeds of the matrimonial home be equally divided between the parties but ordered that the Husband transfer to the Wife an amount of $63,000 (rounded off) instead of $36,000. This would result in a division of all the matrimonial assets along the lines of the parties' contributions, as indicated by the preceding table.

25 We turn now to the second issue – the circumstances under which a court should order nominal maintenance and why we decided to rescind the order of

nominal maintenance ordered in the court below on the facts of the present appeal.

The order for nominal maintenance

The applicable principles

26 The entire topic of maintenance of a former wife has been comprehensively dealt with by a leading scholar in Singapore family law (see Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2nd Ed, 2013) at ch 18 ("*Leong*")). Indeed, our local case law on this specific topic owes much to, and embodies many of the views of, Prof Leong in both this work as well as her other works in the field.

27 Turning specifically to the issue of *nominal* maintenance, the purpose – put simply – is to *preserve* the right of the wife to apply for *substantive* maintenance should the need arise in the future. This is an important point because, as this court held in *Tan Bee Giok v Loh Kum Yong* [1996] 3 SLR(R) 605 ("*Tan Bee Giok*") at [15], once an application for maintenance (other than an order for *interim* maintenance (see the Singapore High Court decision of *Ryan Neil John v Berger Rosaline* [2000] 3 SLR(R) 647 at [64])) has been made and rejected, that is the end of the matter inasmuch as the wife concerned is precluded from applying for maintenance should such a need to do so arise in the future (see also the recent decision of this court in *APE v APF* [2015] 5 SLR 783 at [2], which reaffirmed this statement of principle in *Tan Bee Giok*). In light of this principle, a court must carefully consider all the circumstances of the case concerned as a rejection of the wife's application for maintenance would have very significant consequences indeed. *However, there needs to be a balance inasmuch as the consequences just mentioned ought* ***not*** *to result in courts being* (adopting Lord Denning's famous description (albeit in a

somewhat different context) in the English Court of Appeal decision of *Candler v Crane, Christmas & Co* [1951] 2 KB 164 at 178) *"timorous souls" – **always** preserving the wife's right to maintenance by ordering nominal maintenance. What the court does need to do is to **closely examine the facts and circumstances of the case** in order to arrive at a **principled** decision as to whether or not nominal maintenance ought or ought not to be ordered.* It is important, at this juncture, to point out that as this is quintessentially a *factual* inquiry, it would be invidious (and even futile) for this court to attempt to lay down the legal principles in a comprehensive or exhaustive fashion. That is simply not possible given the very nature of the inquiry itself. That having been said, we will attempt to furnish some broad guidance – with the caveat that the legal framework will undoubtedly ***evolve*** in future cases as the law is developed further.

28 What seems to us to be clear is this: ***The courts cannot – and ought not to – order nominal maintenance automatically or as a matter of course.*** As already alluded to above, the court *must* examine closely all the facts and circumstances of the case before deciding whether or not to award nominal maintenance in order to preserve the wife's right to apply for maintenance in the future.

29 Another (related) principle is that ***it will not suffice for the wife to argue – without more – that she is entitled to an order of nominal maintenance simply because her situation might change in the future***. Indeed, it has, in general, never been the duty of the courts to compensate parties for ***the vicissitudes of life*** (this last-mentioned concept ought not to be confused with the more technical line of cases which relate to the role of intervening acts in the context of the ascertainment of the measure of damages to be awarded by the court (see generally the discussion in the decision of this court in *Salcon Ltd*

v United Cement Pte Ltd [2004] 4 SLR(R) 353), although there is some overlap in terms of the central idea when viewed from a non-technical perspective). More importantly, accepting such an argument would not only result in the ***blanket*** order of nominal maintenance in virtually every case, it would also result (in substance and effect) in making ***the husband a general insurer of sorts***. This would be wholly *contrary* to the very *purpose* of awarding maintenance to a former wife in the first place – a point to which we will return shortly. For present purposes, it suffices to note that an application for nominal maintenance takes place in the context of a marriage that has already been ***terminated***. In any event, it has never been – and ought not to be – the case that a party (let alone a *former* spouse) has a duty to be a *general insurer vis-à-vis* another party. Indeed, in order to provide for the vicissitudes of life, persons generally have recourse to the purchase of ***insurance policies***.

30 Quite apart from the two general (and related) principles just referred to, it would be inadvisable for this court to lay down more specific principles simply because the factual permutations are enormous (from a human standpoint, possibly infinite). As already mentioned, ***the precise facts and circumstances of each case are of the first importance***, and this is itself a (further, and third) general principle that is so obvious, yet vital. That having been said, we have also mentioned that the law in this particular sphere will undoubtedly ***evolve*** over time. Although it is not the case that specific factual matrices will *necessarily* lead to general principles being formulated, the entire process of legal development is far more nuanced and interactional in nature and, in this regard, it is entirely possible that embedded within *specific* fact situations are *general* rules and principles which could be developed over time. Indeed, the facts of the present case illustrate this.

31 Before we consider the facts of the present case, there is another general principle that can, in our view, guide the courts. It is, arguably at least, as important as, if not more important than, the three general principles already set out above. And it is this: ***The court ought always to bear in mind the underlying rationale and purpose for the award of maintenance generally to former wives***. As this court stated in *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506 ("*Foo Ah Yan*"), the overarching principle embodied in s 114(2) is that of financial preservation, which requires the wife to be maintained at a standard that is, to a reasonable extent, commensurate with the standard of living she had enjoyed during the marriage – but we also cautioned that s 114(2) had to be applied in a "*commonsense holistic manner* that takes into account the new realities that flow from the breakdown of marriage" (at [13] and [16]; emphasis in original). In this regard, some elaboration may be apposite. As this court (adopting the views of Prof Leong) has emphasised in *Foo Ah Yan* at [22] and [26]:

> 22 Furthermore, the duty of a husband to maintain his wife during the marriage, as provided by s 69(1) of the Act, and the obligation to provide maintenance to a former wife under s 113 of the Act are ***driven by separate forces***. As Prof Leong Wai Kum pointed out in *Elements of Family Law in Singapore* [(LexisNexis, 2007)] at p 476:
>
> > In the former situation, the objective is to provide modest maintenance, namely, to help her overcome her immediate financial need which may well be the same objective when ordering maintenance for a dependent child. In the latter situation, maintenance ordered for a former wife, however, serves the far more ambitious objective of giving her a fair share of the surplus wealth that had been acquired by the spouses during the subsistence of the marriage.
>
> Indeed, while the court must have regard to all circumstances of the case when ordering maintenance in both contexts, the matters that the Act specifically directs the court to consider under ss 69(4) and 114 of the Act are not identical. It is thus conceivable that one who justifiably fails to maintain his wife

> during the course of their marriage may nevertheless be obliged to do so after the marriage has ended.
>
> …
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> 26 As the power to order maintenance is ***supplementary to*** the power to order division of matrimonial assets, ***courts regularly take into account each party's share of the matrimonial assets when assessing the appropriate quantum of maintenance to be ordered***: see, for example, *BG v BF* [[2007] 3 SLR(R) 233] at [75]–[76], *Rosaline Singh* [[2004] 1 SLR(R) 457] at [13]; *Tan Bee Giok* at [27] and *AQS* [[2012] SGCA 3] at [51]. Indeed, this inquiry falls within the matters to be considered under s 114(1)(*a*) of the Act …
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> [emphasis added in italics and bold italics]

In a similar vein, Prof Leong has observed that the award of maintenance for a *former* wife takes into account the fact that the former wife ought to try to regain self-sufficiency and that an order of maintenance is *not* intended to create life-long dependency by the former wife on the former husband (see *Leong* at pp 693−694 as well as the Singapore High Court decision of *Quek Lee Tiam v Ho Kim Swee (alias Ho Kian Guan)* [1995] SGHC 23 at [13], [21] and [22], respectively (which paragraphs of this last-mentioned judgment are in fact cited by Prof Leong in her treatise)).

32 Indeed, Prof Leong goes *further* and "suggests that the purpose of the current power to order maintenance of a former wife in the Women's Charter section 113 cannot be any different from that of the power to divide matrimonial assets in section 112, *viz* to give the former wife a fair share of the wealth that had been acquired or built up by the marital partnership" (see *Leong* at p 663). She elaborates further as follows (see *ibid*):

> Where there is accumulation of money from which a lump sum order of maintenance can be ordered, the exercise of the power to order maintenance directly divides the former spouses' accumulated wealth between them. Even of an order for periodic payments of maintenance, while it is not executed against accumulated wealth, it should be remembered that the

> husband's future earning capacity was built up, in part, during the marriage. As the spouses have been engaging in an equal co-operative partnership of different efforts for mutual benefit during their marriage, the former wife should be regarded to have contributed to the husband's earning capacity by taking care of the home and their children so that he can focus his efforts on his career. An order that a husband should continue to maintain his former wife is justified to compensate her for her role during marriage especially where the discharge of this role has prejudiced her personal financial status. It is in this sense that the power to order maintenance of a former wife also helps achieve some equalisation of the former spouses' financial statuses, just as the power to order the division of their matrimonial assets.

33 There is no need to arrive at a definitive pronouncement on Prof Leong's more radical suggestion as set out in the preceding paragraph as it is unnecessary for the purposes of the present appeal. What *is* clear (and this represents the present law on the matter) is that there *is*, as evinced by *the very language* of ss 112 and 114 themselves, *an inter-relationship* between both provisions and that this, as noted in, *inter alia*, *Foo Ah Yan* (at [26]; see also above at [31]), results in the power of the court to order a division of matrimonial assets being the primary power, with the power to order maintenance being ***supplementary*** to the power to order a division of matrimonial assets (see also *Leong* at p 665).

34 The following observations by Prof Leong might also be usefully noted (see *Leong* at p 666):

> The order to the husband to continue to provide maintenance to his former wife, being supplementary to the order to divide their matrimonial assets between them, fills the gap remaining between the financial statuses of the former spouses. The order of maintenance corrects any residual inequality that remains in the spouses' financial resources. The author suggests this view:
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> 1 Where the just and equitable division of their matrimonial assets yields to the former wife a fair share of the surplus wealth of the marital partnership, the order of maintenance may be merely nominal.

> 2 Where it yields her substantial properties, the application for maintenance may even be dismissed.
>
> 3 It is only where there are not enough matrimonial assets to divide or the nature of the assets given to the economically weaker former spouse 'cannot both provide a decent home for her (and the children, if as usual, they remain in her care) and produce some acceptable level of income, should the court make an order for her maintenance'.
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> Where the exercise of the power to divide matrimonial assets suffices to equalise the financial statuses of the former spouses, the court may make no order of maintenance for the former wife, a mere nominal order (to keep the husband's liability alive) or, at most, a modest order of maintenance. Where there is hardly any matrimonial asset to divide between the former spouses, the power to order maintenance for the former wife can be expected to be exercised to its full extent because it must perform the role that is normally discharged by the power to divide matrimonial assets. Then there is the residual situation where, despite the exercise of the power to divide matrimonial assets, the homemaker and child carer remains financially disadvantaged by the roles discharged during marriage. Here it is expected that the court will also exercise the power to order maintenance for the former wife to the extent needed to better equalise the financial statuses of the former spouses. It is discussed below that maintenance orders, when juxtaposed with the order of division of matrimonial assets made between the same couple, falls into several categories.

35 The observations just quoted are, in fact, exemplified in the case law. For example, in the decision of this court in *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520, the parties were a couple divorcing after 30 years of marriage, their children grown and independent. The husband had been a jet-setting banking executive while the wife was a homemaker for the most part of the marriage. But by investing moneys given to her, the wife was able to amass a sizable sum from her investments. On the other hand, the husband was afflicted by various health issues in the later stages of his career, and his income had been reduced to a trickle. No order of maintenance was made in view of the ill-health of the husband and the (equal) distribution of the matrimonial assets made to the wife and husband (see at [21], [45] and [48]);

interestingly, this court found support for its decision not to grant maintenance in the "purpose and tenor" of s 114(2) of the Women's Charter – a provision which has oft been interpreted by our courts in a *purposive* manner (see, for example, *Foo Ah Yan* at [14]−[16], as well as *Leong* at pp 683−687).

36 A second instance where no order of maintenance in favour of the wife was made was in the Singapore High Court decision of *Rosaline Singh v Jayabalan Samidurai (alias Jerome Jayabalan)* [2004] 1 SLR(R) 457, where the share of matrimonial assets awarded by the court to the wife was substantial *and* the husband was heavily in debt and unlikely to be able to find employment owing to his age and circumstances in the future whilst the wife was already over 67 years of age (see at [13]).

37 A third instance is the decision of this court in *Tham Khai Meng v Nam Wen Jet Bernadette* [1997] 1 SLR(R) 336. The parties had joint custody of their children, aged 10 and 8, with care and control to the wife. The wife came from a comfortable family and had had a good education. Notwithstanding the fact that the children to the marriage were still relatively young and that the wife was unemployed at the time of the appeal, in view of the short length of the marriage, the wife's potential earning capacity and the value of her share of the matrimonial assets, the court made no order of maintenance of the wife. In coming to this decision, the court considered that the parties should have a clean break and that the issues of maintenance of the wife and maintenance of the children should be considered separately (at [43]–[45]).

38 Reference may also be made to the recent Singapore High Court decisions of *Guo Ningqun Anthony v Chan Wing Sun* [2014] SGHC 56 (at [125]); *AOF v ACP and another* [2014] SGHC 99 (at [78]); *AOB v AOC* [2015]

2 SLR 307 (at [29]); as well as *ASP v ASQ* [2015] SGHC 123 (at [48]). In each of these cases, the court similarly made no order for maintenance of the wife.

39 Before we turn to the next point, the Singapore High Court decision of *ADB v ADC* [2014] SGHC 76 also merits some discussion. It was a brief marriage of persons who were each capable of earning a comfortable income. Between the parties, the wife owned significantly more assets than the husband. The wife had a child, aged 16 and from a previous marriage, whom the husband adopted and loved. The parties were financially independent. In deciding not to award the wife any maintenance, Choo Han Teck J stated (at [10]) that "[t]he idea that maintenance is an unalloyed right of a divorced woman is an idea borne from the time when women were housewives living on the maintenance of the men".

40 In the Singapore High Court decision of *Shailja Sharma @ Bhatara Shailja v Rajat Sharma and another appeal and other matters* [2014] SGHC 256, Valerie Thean JC interpreted Choo J's remark as merely suggesting that that maintenance should not be granted as a matter of course, and not that there is a starting point that there would be no order as to maintenance where a wife is working (at [78]). Thean JC's view is entirely consonant with our holding in this respect, which is that there is *no* starting point *either way*.

41 We have cited a few cases to give a flavour of the multifarious considerations that could weigh on the court's exercise of discretion. *However*, it is of the first importance to emphasise that the ultimate decision arrived at by a court in any given case will depend, in the final analysis, upon ***the precise facts and circumstances concerned*** (which is, in fact, the third general principle referred to above (at [30])).

The principles applied

42 We *rescinded* the Judge's order of nominal maintenance in the court below. Indeed, in arriving at her decision to award the Wife nominal maintenance, the Judge observed thus (see the GD at [5] and [34]):

> 5 As at the date of the hearing and earlier, the Wife earned more than the Husband (by about $1,749 per month). However, she requested (which request the court acceded to) for $1.00 nominal maintenance to be awarded to her in order to preserve her right to claim maintenance in case something untoward should happen to her and there was a need to do so in the future. This award is the first ground of the husband's appeal.
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> …
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> 34 As I noted at [5] of this judgment, the Wife explained why she wanted nominal maintenance of $1.00 – to maintain her right in case a need arose for her to apply for maintenance in future. I found this perfectly reasonable. It was wholly unreasonable of the Husband to deny her this right bearing in mind that the Wife may never exercise her right at all. On the other hand, if the Wife did not have at least a nominal maintenance order in her favour, she would be precluded from making any such claim in future (see *Tan Bee Giok v Loh Kum Yong* [1996] 3 SLR(R) 605).

43 We would respectfully disagree with the Judge's reasons for ordering nominal maintenance in the present case as set out in the preceding paragraph. What, in effect, the Wife was requesting – and which the Judge agreed with – was that the Husband be a *general insurer* for the wife for an indefinite period of time. The preservation of the Wife's right to claim maintenance in the event any misfortune should befall her appeared to be the sole basis for her request and indeed, the Judge's decision to award nominal maintenance to the Wife. As we have already emphasised above, this cannot – and ought not to – be the case. The future is impossible to predict and that something untoward could happen is always possible. However, that is – in and of itself – an insufficient reason for granting nominal maintenance, bearing in mind that this is an obligation that might be visited on the husband concerned at *any time* in the future *even though*

the marriage has already been terminated. Hence, something ***more*** must be shown on the facts and circumstances of the particular case to justify the court awarding the wife concerned nominal maintenance.

44 In the present case, counsel for the Wife could not articulate any reason why the Wife should be entitled to nominal maintenance save for the possibility that something untoward might happen to her. We note, once again, that the marriage was a short one to begin with. More importantly, it was clear that the Wife is not only working but is also at least as professionally successful as the Husband – they had even discussed the possibility of the Husband becoming a stay-at-home husband if the Wife should get promoted at work. There was no evidence that her earning capacity had been adversely affected through the course of the marriage. Indeed, that was why she did not apply for substantive maintenance; in the circumstances, no such order would have been made in any event. Whilst it is true that she did not receive an extremely large amount in relation to the division of matrimonial assets, neither did the Husband. This, again, is due to the fact that the marriage was a short one.

45 Based on all the relevant facts, it was clear that the Wife was more than capable of taking care of herself, and had in fact been doing so. In the circumstances, we could not see any justification for imposing on the Husband the *continuing (albeit contingent) obligation* to provide the Wife with maintenance at some indeterminate time in the future. We also note that a substantial portion of the Husband's take-home pay is being directed towards the Child's maintenance and this correspondingly relieves the Wife of her financial burden in this particular regard.

46 In all the circumstances, therefore, we did not think that the order of nominal maintenance was justified on the facts of this particular case.

Conclusion

47 For the reasons set out above, we allowed both appeals in part and, in the circumstances, made no order as to costs. The usual consequential orders applied.

Andrew Phang Boon Leong Judge of Appeal	Judith Prakash Judge	Steven Chong Judge

Chia Chwee Imm Helen and Mok Shu Ya Eleanor (Chia-Thomas Law Chambers LLC) for the appellant in Civil Appeal No 64 of 2015 and the respondent in Civil Appeal No 65 of 2015;
Koh Tien Hua and Yoon Min Joo (Harry Elias Partnership LLP) for the respondent in Civil Appeal No 64 of 2015 and the appellant in Civil Appeal No 65 of 2015.