IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2016] SGHCF 7

Divorce Transfer No 1519 of 2013

Between

TNK

… Plaintiff

And

TNL

… Defendant

GROUNDS OF DECISION

[Family law] — [Maintenance] — [Wife]

[Family law] — [Matrimonial assets] — [Division]

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v
TNL

[2016] SGHCF 7

High Court — Divorce Transfer No 1519 of 2013
Valerie Thean JC
22 February and 2 March 2016

11 May 2016

Valerie Thean JC:

Introduction

1 These grounds of decision discuss the appropriate ancillary financial provisions to be made for a home-maker wife in a long marriage.

Facts

2 The plaintiff ("the Wife"), and the defendant ("the Husband"), were married almost forty years ago on 21 November 1978. The Wife is 56 and the Husband is 60 years old. The parties have three children, all of whom have attained the age of majority. The children are 37, 34 and 28 years old respectively.

3 The Wife became a homemaker shortly after parties married. The Husband, who is a director in a listed company ("the Company"), was the main fee-earner throughout the marriage. First an odd job labourer, he later started the Company with a few business partners. In time, the Company became publicly listed. His assets are essentially derived from the success of the Company. Unfortunately, the fortunes of the Company have been in decline since 2012.

4 On 27 March 2013, the Wife commenced divorce proceedings against the Husband premised upon his behaviour. The divorce was uncontested. Interim Judgment was granted on 14 May 2013. The issues before me in the ancillaries on 22 February were as follows: (1) division of the matrimonial assets; (2) maintenance for the Wife; and (3) costs (together, "the issues").

5 After hearing the parties, I gave oral judgment in relation to the ancillary matters on 2 March 2016. In brief, I ordered an equal division of the matrimonial assets valued at $5,200,670 and, in keeping with the need for a clean break, that a lump sum maintenance of $171,517 be paid to the Wife by the Husband. The parties have appealed, and I now set out the reasons for my decision in relation to the issues.

Division of assets

Delineation of pool of matrimonial assets

6 The asset pool was determined from the joint table of assets prepared by counsel for the Husband and the Wife. The parties *mutually agreed* on the date the assets should be valued for the purposes of the ancillaries. The issue of the relevant operative date for determining the pool of matrimonial assets

therefore did not arise for consideration. The asset pool is set out in Table 1 below.

Table 1: Asset Pool[1]

S/No.	Asset/ Ownership	Joint names	Husband's	Wife's
1	Matrimonial Home	$2,900,000	-	
2	Joint OCBC bank account	$11,908		
3	Two cars	-	$224,814	-
4	Husband's insurance policies	-	$55,522	-
5	Husband's shares in the Company	-	$914,894	-
6	Husband's bank accounts	-	$98,247	-
7	Husband's CPF	-	$221,833	-
8	Wife's insurance policies	-	-	$100,811
9	Wife's shares in	-	-	$481,608

[1] See Joint Table of Assets dated 12 February 2016 ("JTOA").

	the Company			
10	Wife's shares	-	-	$622
11	Wife's bank account	-	-	$1,276
12	Wife's CPF	-	-	$189,135
Total		$2,911,908	$1,515,310	$773,452
		$5,200,670		

7 The values assigned to all but one item in Table 1 were undisputed. The parties differed on the valuation of the Matrimonial Home, *viz*, a three-storey terrace house in Singapore (see S/No. 1 of Table 1) ("the Matrimonial Home"). The Husband submitted that the "estimated value" of the Matrimonial Home was $2,800,000;[2] however, no evidence was adduced in support of this valuation. The Wife arranged for a valuation of the Matrimonial Home and provided evidence that the market value of the Matrimonial Home was $2,900,000.[3] In the premises, I used the value pinned on the Matrimonial Home by the Wife, as it was supported by evidence that was not, in any sense, undermined by the Husband during the proceedings. I highlight for completeness that the Husband was able to provide the latest documents for one of the Wife's insurance policies (see S/No. 8 of Table 1), *viz*, AIA LXXXXXX640. In the hearing on 22 February 2016, counsel for the Wife, Mr Irving Choh ("Mr Choh"), agreed that the value in the document produced by the Husband should be used in the computation of the Wife's

[2] Husband's 1st affidavit for AM Hearing dated 25 July 2013, p 2.

[3] Wife's 3rd affidavit for AM Hearing dated 2 October 2015, pp 19–28.

insurance policies. This figure was used in the computation of the value of the Wife's insurance policies.

Disputed assets

8 There were three categories of disputed assets. They were as follows:

(a) proceeds from the surrender of two of the Wife's insurance policies;

(b) proceeds from the sale of a jointly-owned apartment; and

(c) sums withdrawn by the Wife from the joint account and put by the Wife into a joint account with their daughter ("the Daughter") and used thereafter by the Daughter to purchase property.

(together, "the Disputed Assets").

9 After hearing parties, I decided not to return any of these sums into the pool, for the reasons that follow.

(a) Proceeds from surrender of the Wife's two insurance policies

10 The Wife surrendered two insurance policies for a total value of about $78,253. These were: (1) AIA UXXXXXX265 ("the AIA Policy"), which was surrendered on 20 June 2007 at a surrender value of $43,848.20; and (2) Great Eastern XXXXXX506 ("the GE Policy"), which was surrendered on 19 July 2010, at a surrender value of $34,404.50. The parties disputed how these assets should be accounted for.[4]

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[4] JTOA, p 3.

11 The Wife contended that the AIA Policy was surrendered by the Husband and that the proceeds were taken by him on surrender.[5] The Wife adduced no evidence to support her position. In fact, during the hearing on 22 February 2016, Mr Choh acknowledged that the Wife had not stated how the proceeds were taken by the Husband despite the fact that she was both the owner and beneficiary of the AIA Policy. The Husband's case was that the Wife took the proceeds from the AIA Policy because the proceeds would have been paid to her when the AIA Policy was surrendered. Given the lack of evidence adduced by the Wife to support her position, I agree with the Husband.

12 There was the second issue of the proceeds in relation to the GE Policy. The Wife contended that she surrendered the GE Policy to maintain herself, because *after she commenced divorce proceedings*, the Husband stopped paying the premiums in relation to those policies. She said that the proceeds from surrendering the GE Policy were used to supplement the $2,000 monthly expenses that the Husband used to pay her before she commenced the divorce proceedings. Counsel for the Husband, Ms Lim Poh Choo ("Ms Lim"), pointed out that the Husband had not stopped paying maintenance to the Wife at the material time when the GE Policy was surrendered. He only stopped paying maintenance in July 2015 when the Wife left the Matrimonial Home with the Daughter. In fact, the Husband only cancelled the supplementary credit card and the automatic teller machine ("ATM") card for the parties' joint account with POSB Bank at the end of 2012. In the face of these facts, Mr Choh conceded that no explanation had been adduced by the Wife as regards the proceeds in relation to the GE Policy.

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[5] Wife's 3rd affidavit for AM Hearing dated 2 October 2015, para 6.

(b) Proceeds from the sale of a jointly-owned apartment

13 The parties at one time jointly owned an apartment at the Interlace at 208 Depot Road ("the Interlace Apartment"), which was purchased in August 2009. The Husband sold the Interlace Apartment in January 2013. The sale price was $1,129,800. As noted from the completion accounts prepared by the Husband's solicitors in relation to the sale transaction, the Husband received $331,058 ("the Sale Proceeds") after, *inter alia*, redeeming the mortgage on the Interlace Apartment.[6] The proceeds were initially deposited in the parties' OCBC joint account ("the EasiSave Account") in March 2013.

14 In July 2013, slightly over three months after divorce proceedings were commenced by the Wife, the balance in the EasiSave Account had dwindled to about $1,676. It was unclear where the Sale Proceeds went to, and the Wife held the Husband accountable. The Husband, on his part, pointed out that the Wife had the same access to the EasiSave Account that he did. At the same time, the Wife pointed out that the Husband had not assisted with discovery in this regard. He failed to comply fully with a court order to disclose complete sets of his account statements between July 2011 and July 2014.[7] The thrust of her submission was that there had been no full and frank disclosure by the Husband as regards the Sale Proceeds. The Husband on the other hand contended that he used the Sale Proceeds to, *inter alia*, maintain the family. He itemised the use of the Sale Proceeds as follows:[8]

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[6] See final completion account dated 4 March 2013 in Husband's 3rd AOM dated 2 Oct 2015 at p 37.

[7] See Wife's written submissions, p 10 and Husband's affidavit dated 30 September 2014 filed pursuant to the Registrar's order.

[8] Husband's 3rd AOM dated 2 Oct 2015, paras 7–11.

(a) $43,000 to buy a car for his son;

(b) about $20,000 to help his son buy a flat;

(c) $18,000 to partially repay a car loan;

(d) $63,000 as a loan to an errant friend that had not been repaid;

(e) $60,000 in shares, which were purchased in another friend's name and have drastically plunged in value;

(f) maintenance and expenses of the household; and

(g) agent's commission, legal fees and miscellaneous charges.

15 Based on the Husband's cheque record, only item (c) was disbursed in 2013. Items (a) and (b) were disbursed between February and March 2014, which would be after the monies in the EasiSave Account had been spent.[9] As regards the alleged bad loan and investment (items (d)–(e) above), the Husband did not adduce evidence to support those assertions. Separately, he mentioned paying $20,000 for his elder son's renovation loan[10] and expending $200,000 on a failed business venture with his younger son.[11]

(c) The Wife's joint account with the Daughter

16 In the course of discovery, the Wife revealed a joint account with the Daughter with POSB Bank ("the POSB Account"), which the Husband hitherto had no knowledge of.[12] It was evident from the Wife's passbook that

[9] Husband's 3rd AOM dated 2 Oct 2015, p 40.

[10] Husband's 3rd AOM dated 2 Oct 2015, para 23.

[11] Husband's 3rd AOM dated 2 Oct 2015, para 43.

about $139,000 ("the Withdrawn Sum") had been withdrawn by the Daughter in two tranches of about $32,000 and $107,000 in early March 2013, slightly before the divorce proceedings were commenced by the Wife.[13] About $1,276 remained in the POSB Account after the said withdrawals and as at the date of the ancillaries. The Wife contended that the monies in the POSB Account belonged to herself and the Daughter. The Wife stated that the monies in the POSB Account comprised allowances given to her by her children, which varied from $300 to $500.[14] It was not disputed that the monies were withdrawn to finance the Daughter's flat, where the Wife now lives together with the Daughter's family.

17 The Husband submitted that the Withdrawn Sum should be added to the matrimonial pool, as it was siphoned from the matrimonial pool. In this regard, he argues that the sums in the POSB Account (including the Withdrawn Sum) were accumulated either from his monies or from the parties' joint bank account.[15]

18 The Daughter filed an affidavit and averred that the sums in the POSB Account, while held jointly, were her own savings from "working for several years".[16] The Husband contended that the Withdrawn Sum could not belong to the Daughter, as she had no means to save that much money.[17] Therefore, the

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[12] Wife's 1st AOM dated 11 June 2013, para 12.

[13] Wife's 1st AOM dated 11 June 2013, p 55.

[14] Wife's 1st AOM dated 11 June 2013, para 12.

[15] Husband's 2nd AOM, para 11; Husband's written submissions, p 13.

[16] Husband's affidavit dated 16 Jan 2015, para 13. Daughter's affidavit dated 1 October 2013, para 8.

[17] Husband's written submissions, p 14.

affidavit filed by the Daughter "contain[ed] half-truths or [were] not true at all".[18] According to the Husband, the Daughter had all along worked as "[a telecommunications] [o]perator, a car agent and in [the Company] for [six to seven] years".[19]

19 I noted that the Daughter was not a high earner – her last drawn salary at the Company was $1,500 a month; by her own admission she could not pay for her car instalments of $700 a month, and had not been earning enough to pay income tax. Having considered the evidence, I was of the view that *some proportion* of the Withdrawn Sum must have come from the Wife.

20 Mr Choh mounted an alternative argument to address the legal effects that, in his view, should flow from a finding that the Wife must have deposited monies into the POSB Account from the parties' joint account. He submitted that the presumption of advancement applied to such monies deposited into the POSB Account by the Wife, such that the monies belonged to her. His argument assumed that the Wife would be thus free to channel the money onward to the Daughter.

21 Mr Choh relied on *In re Eykyn's Trusts* (1877) 6 ChD 115 ("*In re Eykyn's Trusts*"). The court there had to, *inter alia*, decide whether the presumption of advancement operated in relation to certain investments transferred by the husband to the wife. The court held (*per* Malins VC) that the investments were advancements for benefit of the wife. Malins VC made clear (at 118) that the presumption only applied *where the property is held in the sole name of the wife*, as follows:

[18] Husband's 3rd AOM dated 2 Oct 2015, para 44

[19] Husband's affidavit dated 27 January 2015, para 14.

> The law of this Court is perfectly settled that when a husband transfers money or other property *into the name of his wife only*, *then the presumption is, that it is intended as a gift or advancement to the wife absolutely at once*, subject to such marital control as he may exercise. And *if a husband invests money, stock, or otherwise, in the names of himself and his wife, then also it is an advancement for the benefit of the wife absolutely if she survives her husband*, but if he survives her, then it reverts to him as joint tenant with his wife.
>
> [emphasis added].

22 As noted in the decision of the House of Lords *Pettitt v Pettitt* [1970] AC 777 ("*Pettitt v Pettitt*") (at 815) *per* Lord Upjohn, when the property is held jointly and not in the sole name of one party, "the presumption is in effect no more than a joint beneficial tenancy". Lord Upjohn summarised succinctly the legal position as follows (at 815):

> So that, in the absence of all evidence, if a husband puts property into his wife's name he intends it to be a gift to her, but if he puts it into joint names, then (in the absence of all other evidence) the presumption is the same as a joint beneficial tenancy. …

23 I note also the case of *In re Young* (1885) 28 ChD 705 ("*In re Young*"). In that case, the spouses, who died within five days of one another, had opened a joint account mainly contributed to by the wife. The husband drew out monies from the account to make investments for himself. It was held (at 708) *per* Pearson J that the joint account belonged beneficially to the spouses jointly and so passed to the survivor by survivorship but that the investments purchased by the husband in his own name belonged to his estate.

24 The decision in *In re Young* may be explained by reference to *In re Bishop, decd* [1965] Ch 450 ("*In re Bishop*") (endorsed along with *In re Young* in *Pettitt v Pettitt*, at 815). The husband in that case drew on the joint account with the wife to make investments in his own name and in the wife's

own name. It was held (at 456) *per* Stamp J that *as long as it can be treated that the spouse drawing out money from the account has the authority of the other*, an asset purchased by that party in his or her own name belongs to him. In my view, *In re Bishop* makes a very important point. The question of whether the presumption of advancement applies in relation to monies drawn out from a joint account depends on whether it can be ascertained if the spouse drawing out money had the authority of the other.

25 This approach is in keeping with the Court of Appeal's guidance in *Lau Siew Kim v Yeo Guan Chye* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*"). In that case, the Court of Appeal held (at [56]) that a presumption of advancement must *first* be premised on a gift that, outside of the relationship, would result in the operation of the presumption of a resulting trust. The issue of a resulting trust could only arise if the Wife had the authority to withdraw the Withdrawn Sums from the joint account in order to create the second account. Since, in this case, the Husband was totally unaware of the second account, there could be no question of authority having been given.

26 On the facts, it was likely, on balance, that the Wife would not have had the authority to withdraw the Withdrawn Sum from the matrimonial assets, which she did just three weeks before she commenced the divorce proceedings. Therefore, the presumption of advancement did not apply. The Withdrawn Sum was not hers to deal with as she pleased. The Court could put this sum back into the matrimonial pool for division.

27 The Husband made an argument in his affidavit and his Fact and Position Sheet that he wished to go one step further to assert an interest in the Daughter's flat. I did not think this argument had any merit. First, the

Daughter was not party to the divorce proceedings. There were no pleadings and no evidence led to trace the amounts given by the Wife (even if we assume for one moment that these amounts came *solely* from the joint account held by the Husband and Wife) to the Daughter's flat. The Husband would have to ventilate these matters in separate civil proceedings. Second, as a matter of law, there will be serious difficulties in employing the common law tracing rules to trace monies into the Wife's joint bank account with the Daughter, as there would have been a mixture of funds (see *Agip (Africa) Ltd v Jackson* [1989] 3 WLR 1367 at 1382 *per* Millett J (as he then was) affirmed on appeal in *Agip (Africa) Ltd v Jackson* [1991] 1 Ch 547). I note also that the presumption of advancement would apply in respect of the sum of money passing from the Wife to the Daughter; the Wife would have intended to make a gift to the Daughter who was setting up a new home. The short point is that *the issue of the Wife taking money without authority out of the matrimonial assets* could not create a claim for the Husband *on the Daughter's property*. The Husband's tangential averment that he should be entitled to a share in the Daughter's flat was misplaced.[20] Given my decision that the Withdrawn Sum was taken without authority and thus could be returned to the matrimonial pool for division and observations on why the Husband's arguments were unsustainable, the Husband has no basis for a separate claim on the Daughter's property.

28 In the above context, I was mindful that the presumption of advancement traditionally applies between father and child. However, I note the Court of Appeal's guidance in *Lau Siew Kim* (at [67]) that the categories where the presumption of advancement applies are not treated as closed.

[20] Husband's 2nd AOM, para 11.

Indeed, in *Lee Tso Fong v Kwok Wai Sun* [2008] HKCFI 385, the High Court of Hong Kong held (at [17]) that the presumption of advancement applied equally between mother and child as it did between father and child. I note also that the fact that the child is an adult would not be fatal to the *prima facie* operation of the presumption of advancement. In this regard, the Court of Appeal held in *Low Gim Siah and others v Low Geok Khim and another* [2007] 1 SLR(R) 795 (at [46]) that the presumption of advancement was *prima facie* applicable as between a father and an adult son in relation to certain bank accounts.

Conclusion on the Disputed Assets

29 To summarise, there were allegations on both sides that money ought to be returned to the pool because of dissipation of assets by the other.

30 As noted, I found that the Wife had retained, without satisfactory explanation, the proceeds which she obtained on surrendering the AIA Policy and the GE Policy.

31 It was also clear that some part of the monies in the POSB Account that were then applied by the Daughter to purchase the flat must have come from money within the matrimonial pool. In the premises, at the very least, part of the Withdrawn Sum would have formed part of the matrimonial pool.

32 At the same time, on the Husband's part, I noted that Sale Proceeds in relation to the Interlace Apartment were deposited into the EasiSave Account in March 2013; however, the bulk was withdrawn by July 2013. This was a joint account to which both parties had access, and the proceeds were not strictly accounted for. Instead, the Husband's case appeared to be that over the

course of time, he has spent at least the same amount of money on failed ventures (one of which involved $200,000 in a business with his younger son) and car, insurance, assistance with a home purchase and other expenses for the three children.

33 The Husband and Wife both had merit in their respective contentions about money each had taken. One option would be to take the final sum outstanding after reconciling the three unexplained sets of assets, and make the Husband liable for another $113,805 within the pool. There were two reasons why I did not do so. First, from the affidavits, it seemed that the Husband did not keep good accounts throughout the marriage. He was not well educated and his expertise was in construction. Viewing the parties' accounts of their lives together, the Husband's contention that he did not have a full ledger of his failed ventures was not a surprising one. For example, this was also the case *vis-à-vis* his household money or money given to the Wife, who had free access to the safe deposit box at home and on one occasion in 2003 appears to have taken $180,000. He had not queried the insurance proceeds in 2007 or 2010, and was not even aware when the Wife took out the Withdrawn Sum from their joint account for the Daughter's benefit. A second important consideration was that his contention that his new investments had failed was also not surprising. It appeared, on balance, that the Husband was not a sharp businessman or investor. He had worked his way up the Company, and the family wealth was accumulated through his years there. The Company is a publicly listed one and the change in management and falling share price have been publicly documented. In line with the Company's ailing health, he had been pushed out of the management of the Company, hence his attempts to build up new businesses, which had unfortunately failed.

34 I accepted the Husband's evidence that he was not in possession of any other hidden sums. The money has been spent in his attempts to build a new life in the light of his planned departure from the Company. *The question which arises is whether it should be returned*. In my judgment, it would not be equitable to do so on the facts of this case. Between the parties, throughout the time they were married, there seemed little expectation that they would each hold the other to precise line items and balance sheets. In the good years, large cash sums were kept at home. The Wife had full access to the Husband's safe deposit box, from which she had taken various sums, and in addition he gave her substantial sums in cash from time to time. The parties also owned a joint account from which the Wife had free access for household use through the issuing of cheques (and an ATM card for many years). The Husband contended that the Wife had a history of overspending, which required him to sell Interlace. Viewing all the facts of this case in their totality, with particular reference to how parties conducted their joint lives and dealt with their joint accounts, I concluded that no adverse inference need be drawn nor any notional sum be added back into the pool. It was just and equitable to use the known and undisputed asset pool remaining at the end of their marriage (see Table 1) for the purposes of division.

35 In this context, I draw a distinction between cases where the court *excludes a known asset* from the pool, and cases where the court is asked to *add a sum* to the pool. In the first category, there exists *an asset* amenable to division. For this category, the Court of Appeal has given guidance that generally, assets ought not to be excluded from the pool although one party may have a larger or smaller share in the division, depending upon the equities of the situation (see *Tan Hwee Lee v Tan Cheng Guan and another appeal and another matter* [2012] 4 SLR 785 ("*Tan Hwee Lee*"), at [41]). In the second

category, where there is no specific asset, the court may be asked to *add* a sum to the pool. Again, two different scenarios arise here. One could be circumstances where an adverse inference has been drawn and the court is asked to infer that the sum exists and has been squirrelled away. In such a case, it follows that *the asset exists*, and thus the Court of Appeal's guidance must still apply. Where the money has been *spent*, on the other hand, the role of the Court is to decide whether the party who has spent the money *ought to account for it*. In effect, the Court is penalising that party, as the party thus held accountable would do so *out of his share of the assets*. Where there has been clear misconduct, this would be reasonable. In the present case, however, I did not think it equitable to take the Husband to task for the extra notional sum, given the context of their joint lives and all the circumstances of the case.

Division of the pool

36 The Court of Appeal set out the structured approach in *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ v ANK*") (at [22]–[26]) to work out a just and equitable division of matrimonial assets. This approach, may be summarised, with reference to *Twiss, Christopher James Hans v Twiss, Yvonne Prendergast* [2015] SGCA 52 at [17] and *ANJ v ANK* at [28], 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 (the derived ratio shall be referred to as "the average ratio"), 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. Adjustments could also be made in respect of other relevant factors under s 112 or 114(1) of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Charter").

I shall hereinafter refer points (a)–(c) above as "Step 1" to "Step 3".

Step 1: Direct contribution ratio

37 The Husband computed the Wife's contribution as 8.8% and his at 91.2%. In this regard, the Husband took into account the following amounts contributed by the Wife to the Matrimonial Home: $17,000 from her Central Provident Fund ("CPF") and $50,000 in cash. [21]

38 The Wife initially computed her contribution as 24.2%. Two components were used to derive this percentage. First, the Wife considered her contribution to the Matrimonial Home to stand at 19.6% by reason of the following specific contributions: $17,000 from her CPF and $100,000 in cash. Second, she considered the assets in her name, which exceed $700,000 (see Table 1), to also form her contributions to the pool.[22]

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[21] Husband's written submissions, p 23.

[22] Wife's written submissions at p14 and 15.

39 Mr Choh relied, in parts of his submissions, on the presumption of advancement for sums of money passing from the Husband to the Wife. In his analysis, the monies given by the Husband to the Wife absolutely would form gifts. The Wife took as her financial contribution the money saved from sums given to her. The Husband, on the other hand, contended that most – if not all – of those amounts originated from money he had provided to the Wife. The nub of the issue was how the contributions as regards inter-spousal gifts should be *allocated* in relation to the division of matrimonial assets.

40 A starting point for considering this argument would be the Court of Appeal's guidance in *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 ("*Lock Yeng Fun*") (at [40]) that the law treats the matrimonial assets as community property and to that extent is *agnostic as to ownership* in deciding whether the *asset is liable to be divided* under s 112 of the Charter.

41 Further, the Court of Appeal in *Wan Lai Cheng v Quek Seow Kee and another appeal and another matter* [2012] 4 SLR 405 ("*Wan Lai Cheng*") subsequently drew a distinction between inter-spousal gifts and gifts that emanate from a third party. It noted (at [40]) that a "pure" inter-spousal gift should be included in the matrimonial pool and should not be denied recognition, as it involved the initial effort expended by the donor spouse in the original acquisition of the gift. Thus, (at [41]) "pure" inter-spousal gifts were not "gifts" for the purpose of s 112(10) of the Charter, as it was, by its very nature, always acquired by one spouse during a marriage, and thus fell to be divided as a matrimonial asset under s 112(10)(*b*) of the Charter, which encompasses assets which are acquired by one party during the marriage or by both parties during the marriage.

42 The Court of Appeal re-affirmed its position in *Wan Lai Cheng* in *Tan Hwee Lee* and held (at [30]) that "pure" inter-spousal gifts may be divided at the end of the marriage.

43 It follows from these authorities that gifts of money that the Husband gave to the Wife that remained in her accounts ought to be attributed as the Husband's direct contribution in the Step 1 analysis. A distinction ought to be drawn, nonetheless, between, first, the assets currently in the Wife's name that the Husband had paid for; and second, money given to her which she had channelled into the Matrimonial Home. For the former, it followed from the approach in *Wan Lai Cheng* and *Tan Hwee Lee* that these "pure" inter-spousal gifts *prima facie* embodied the Husband's financial contribution, as he paid for the insurance policies and arranged for her shares and CPF. In this regard, it was not disputed that the assets in the Wife's sole name (see Table 1 above) were acquired by the Husband.

44 The monies from the Wife in relation to the purchase of the Matrimonial Home, however, stood on a different footing. When these monies were given by the Husband to the Wife absolutely for her consumption, the money had been at the Wife's disposal. She could have spent it on the household or herself, but she chose instead to save it in order to alleviate the Husband's financial burden of purchasing the Matrimonial Home. It could be said that by so doing she converted the gift into a direct financial contribution to the Matrimonial Home. This approach is consonant with that of the Court of Appeal in *Lock Yeng Fun*.

45 In *Lock Yeng Fun*, the parties were married for almost 30 years with two children. The wife was predominantly a home-maker, while the husband

was a successful banking executive. In the High Court, the wife was awarded a 40% share of the assets. On appeal, the Court of Appeal found (at [20]) that apart from her caring for the household, the wife had managed to amass a sizable sum of close to $500,000 from her investments (albeit from the monies given to her by the husband for household and miscellaneous expenses). The Court of Appeal, in revising the wife's share of the assets to 50%, stated that "[the wife] must be given due credit for this *direct financial contribution* in the division of matrimonial assets" (at [41]) [emphasis added]. The Court of Appeal here was referring to the investment gains amassed by the wife. In my judgment, I found that there was merit to the Wife's argument that the monies she applied to the Matrimonial Home should be recognised as her contributions to the Matrimonial Home.

46 As regards the Wife's direct contributions under Step 1, I was left with two figures in parties' submissions: 19.6% suggested by the Wife and 8.8% by the Husband[23]. Both parties were unable to argue with credible evidence how much cash the Wife contributed to the Matrimonial Home (which was essentially the only asset she contributed to in the Asset Pool). On a "*rough and ready approximation*" (see *ANJ v ANK* (at [17])) on the exercise of discretion in relation to Step 1, I set the direct contribution ratio for the pool at the mid-mark: 14:86 in favour of the Husband.

Step 2: Indirect contribution ratio

47 This was a very long marriage that had lasted 35 years up to the time of the Interim Judgment. The Wife's submissions focused on how she devoted herself completely to the management of the family and three children, while

[23] Husband's written submissions, para 7.3.3.

the Husband worked extremely long hours. The Husband had done well for himself, progressing from an odd-job labourer to a businessman of not insubstantial means. The Wife submitted that their division of dominion – the Husband's in the corporate sphere and hers in the domestic – allowed the Husband to focus on his career. The Wife thus argued that recognition had to be given to her indirect contributions. The Wife proposed a ratio of 25:75 in her favour in relation to Step 2.[24]

48 The Husband accepted that the Wife made indirect contributions to the marriage. In some part of his submissions, he accepted that this might even amount to 70%.[25] He then however decided to spectacularly dilute this figure to a Step 2 ratio of effectively 35:65 in his favour by assigning 100% of indirect non-financial contributions to himself. He also pointed out that the Wife had the assistance of a maid since 1997 to do household chores and argued that this, in addition to various gifts he made to, *inter alia*, his sons, should be taken into account in reducing the Wife's contribution ratio in Step 2. I noted that while the Wife agreed that the parties had a maid, her evidence was that the maid was only engaged in 2003 and not in 1997.[26] I pause to note that based on the Husband's purported application of *ANJ v ANK*, he proposed the Wife receive 26% of the matrimonial assets in this very long marriage.

49 In my judgment, it would not be consonant with *ANJ v ANK* to calculate an indirect financial ratio separate from an indirect non-financial ratio as suggested by counsel for the Husband. While the court has to *have*

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[24] Wife's written submissions, para 38.

[25] Husband's written submissions, p 23.

[26] Wife's written submissions, para 34.

regard to *both* indirect financial contributions and non-financial contributions in Step 2, the approach proposed in *ANJ v ANK* should not be reduced into a categorical and schematic addition of the parties' indirect financial contributions and non-financial contributions and pitting them against each other. The Step 1 ratio analyses the direct contribution to the assets, the Step 2 ratio analyses, *in the round*, all the other kinds of contribution necessary to building up the family. Where the husband has contributed financially to the expenses of the home, it should be taken into account; but *not in a manner that dilutes the non-income earner's substantial intangible contribution to the family*. A holistic assessment must be made.

50 Here, the Wife played a vital part in running the household and caring for the children. At the beginning of the marriage she also contributed her savings from prior to the marriage when she worked part time as a carpenter's help while studying. By the Husband's own admission, he worked from dawn to dusk and the home was left entirely to the Wife. Even taking the Husband's case that the maid was appointed in 1997 and not 2003 as claimed by the Wife, the Wife managed without a maid for about 20 years. Additionally, even with the maid, the Wife would have to give instructions and co-ordinate the household. In this regard, the Court of Appeal has held on numerous occasions that ensuring the smooth running of the household by training, managing and supervising the execution of duties assigned to maids is at least as essential and important as the direct performance of the chores itself (see *Tan Hwee Lee* at [89]; *Pang Rosaline v Chan Kong Chin* [2009] 4 SLR(R) 935 at [20]). The Wife also highlighted that she managed the household throughout the marriage while simultaneously coming to terms with the Husband's various affairs he had since 1985.[27]

51 No analytical tool can fully capture the non-financial or indirect financial contributions of the parties. The diverse factual circumstances that change over the course of a marriage would affect these indirect contributions. These contributions are therefore to be ascertained as "a matter of impression and judgment" (see *ANJ v ANK* (at [24])). In light of the parties' very long marriage and clear allocation of roles in the marriage that the Wife was assigned very substantially the task of managing the household. In the premises, I accepted the Wife's submission that the ratio in relation to Step 2 should be 25:75 as between the Husband and herself.

Step 3: Adjustment of the average ratio

52 I derived the average ratio from Step 1 and Step 2 before considering the exercise of my discretion under Step 3. For convenience, I have set out the computation in Table 2 below.

Table 2: the average ratio computation

	Husband	**Wife**
Step 1 Ratio	86	14
Step 1 Ratio (50% weight)	**43**	**7**
Step 2 Ratio	25	75
Step 2 Ratio (50% weight)	**12.5**	**37.5**

[27] Wife's written submissions, para 34.

The average ratio	**55.5**	**44.5**

53 As seen from Table 2, the average ratio was 44.5%. In *ANJ v ANK* (at [27]), the Court of Appeal highlighted as non-exhaustive factors, three considerations that would affect the weightage of the ratios: the length of the marriage, the size of the assets and its constituents, and the extent and nature of indirect contributions.

54 Of particular relevance to this case was the Court of Appeal's observation in that passage that indirect contributions, in general, tended to feature more prominently in long marriages. In my judgment, the Step 2 ratio had to be awarded 60% weight in this case. My computation of the Step 3 adjusted ratio is set out in Table 3 below.

Table 3: the Step 3 adjusted ratio computation

	Husband	**Wife**
Step 1 Ratio	86	14
Step 1 Ratio (40% weight)	**34.4**	**5.6**
Step 2 Ratio	25	75
Step 2 Ratio (60% weight)	**15**	**45**
The Step 3 adjusted ratio	**49.4**	**50.6**

55 In relation to Step 3, I decided that a "just and equitable" division in the present case would be an equal division. In the present case, the Husband's financial contributions and the Wife's non-financial contributions were made consistently, in an unstinting manner and over a ***very long*** period of time; therefore, an equal division was appropriate in keeping with the parties' understanding that each will take sole charge respectively of the financial and non-financial aspects of running the entire family unit.

Observations on the way the case was argued and contingent analysis

56 Ms Lim stated in her written submissions that the ratio allocated to the Wife under Step 1 should be 8.8%. As noted, I fixed the ratio at middle mark between the figures proposed by the Husband (8.8%) and Wife (19.6%) in relation to Step 1 at 14%. It is noteworthy that Ms Lim's analysis of the Step 1 ratio appears to not take into account the entire Asset Pool. It is unclear why this was the case. On the one hand, it could be an acknowledgement by the Husband that a startlingly low figure cannot be ascribed to the Wife's direct contributions, given that she did contribute to the Matrimonial Home and her commitment to alleviate the Husband's financial burden. To that extent, the Husband might be attempting to put before the court a palatable division via the application of *ANJ v ANK*. Of course, this could also be an omission on counsel for the Husband's part. Fortunately, the outcome of the division *in this case* does not depend on these contingencies; the streams converge on either analysis. Let me elaborate with a contingent analysis.

57 Taking instead the 14% as the Wife's contributions to the Matrimonial Home, the Wife's direct contribution figure to the Asset Pool would be about 8%. Under that scenario, the Step 1 ratio would then have been 8:92 as between Wife and Husband respectively. With such a low percentage awarded

under Step 1 to the Wife, as a matter of law, the weightage under Step 3 would need to be reviewed and increased to reflect the full extent of the Wife's indirect contributions to this very long marriage (see discussion below from [59]–[68] below). Moving modestly from the 60% weightage to about 62% (the band of Step 3 weightages for ***very long*** marriages, in my judgment, being 60–65% in favour of the Step 2 ratio) *the Step 3 adjusted ratios would be almost the same*; that is, 49.5:50.5, albeit swapped in favour of the Husband. An equal division would therefore have still have been appropriate on this contingent analysis of the parties' submissions.

58 In long marriages, with the extended passage of time under scrutiny, the evidence would not give a precise answer as to financial contribution; non-financial contribution would be even more difficult to quantify with exactitude. Just as an example, if the Wife's figures as to direct contribution to the Matrimonial Home had been used and the original 60% weightage applied, the adjusted ratio would be 50.6:49.4 for the Husband and Wife respectively. Ultimately, the framework is a *guide* that must remain sensitive to the factual circumstances of each case. The deeper point I make is that one must appreciate that *ANJ* v *ANK* places in the hand of the Court a very robust and dynamic tool that must be used in a nuanced manner. An analysis of contingent scenarios, as outlined above, when dealing with the submissions of the parties therefore both anchors the court's analysis and gives the Court a sense of the ultimate division. Nevertheless, as the Court of Appeal concluded in *ANJ v ANK* (at [30]): "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."

Comparison with previous cases

59 I analysed the division derived from the application of *ANJ v ANK* with the previous cases, which I now elaborate upon.

60 Ms Lim relied on the decision of the Court of Appeal in *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 ("*Yeo Chong Lin*"). In that case, over the course of the 49-year marriage, the husband was the breadwinner while the wife was a full-time homemaker. They had four children all of whom had grown up by the time of the divorce. The High Court awarded the wife 35% of the assets to the wife. On appeal the wife sought half the assets. The Court of Appeal highlighted (at [80]) that it would only exercise its direction to disturb the division of the High Court if the judge erred in law or had taken into account irrelevant considerations and failed to take into account relevant considerations. On the facts, the Court of Appeal found no specific basis to question the division made in the High Court.

61 Of note was the Court of Appeal's observation (at [2]) of the exceptional feature of the case: the pool of matrimonial assets was *exceptionally large*, estimated at about $69m (at [71]). In my view, the sheer quantum in *Yeo Chong Lin* made it a very different case from the present. That case could not be used to advance a general proposition that a home-maker wife in a long marriage should be awarded 35% of the assets. In a post-*ANJ v ANK* scenario, the weightage in that case in deriving the Step 3 adjusted ratio would have been adjusted in favour of the direct contribution because of the substantial size of the asset pool.

62 Mr Choh relied on the decision of the Court of Appeal in *Tan Hwee Lee* (which the Court of Appeal also referred to in *ANJ v ANK*). I found this

case, where the matrimonial assets were worth about $6.5m, relevant. In *Tan Hwee Lee*, the parties were married for 28 years and the husband was the sole bread winner throughout the marriage. The High Court awarded the wife 50% of the matrimonial assets. The Court of Appeal's illuminating observations as regards the trend of "approximating equality for the homemaker for long marriages with children" (which it endorsed) were as follows:

> 85 Although it has been stated by this court that equality in division is not the starting point or the norm in the division of matrimonial assets between spouses (see *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 ("*Lock Yeng Fun*") at [57]), it also remains true that the "courts would nevertheless not hesitate to award half (or even more than half) of the matrimonial assets if such a decision is justified on the facts" (*Lock Yeng Fun* at [58]). This is especially so in long marriages where "the law acknowledges the equally important contributions of the homemaker to the partnership of marriage" (see *NK v NL* at [41]), as the academic commentators above (at [82]–[83]) have helpfully observed.

63 The husband in *Tan Hwee Lee* argued on appeal that the wife should be awarded merely 14.3% of the overall total assets, as she was a home-maker. The Court of Appeal disagreed (at [82]) with the husband's contention that the wife should be awarded merely 14.3%. While the wife did not work and therefore provided no direct financial contributions, the Court of Appeal upheld the High Court's equal division. In this regard, the court took into account the marriage having lasted 28 years, over which the wife made significant non-financial contributions to the household. She managed the household and took care of the children, especially when the husband was at work or away. The court found this to be so even though the family had a maid (see observations at [50] above). On the other hand, the Court of Appeal found that there was little to show that the husband made significant non-financial contributions at all.

64 *Tan Hwee Lee* is not a single precedent standing in the Wife's favour, but a recent example of a long line of Court of Appeal cases which recognise the importance of intangible contributions made to the home.

65 In *Lim Choon Lai v Chew Kim Heng* [2001] 2 SLR(R) 260 ("*Lim Choon Lai*"), the Court of Appeal in stated (at [14]) that non-financial contributions can be just as important as financial contributions, depending on the circumstances of the case. More recently, in *Lock Yeng Fun* (at [50]), the Court of Appeal, while deciding that there was no starting point of equality, stated that the "*fullest* effect" must be given to non-financial contributions. Both Court of Appeal decisions endorsed the approach in *Yow Mee Lan v Chen Kai Buan* [2000] 2 SLR(R) 659 ("*Yow Mee Lan*"), the facts of which bear some resemblance to the case at hand.

66 *Yow Mee Lan* concerned a successful businessman husband whose wife was predominantly a homemaker who did some work in the husband's business. The High Court judge considered that the marriage was long and that the parties had built themselves up from scratch with very little educational qualifications. While the husband had capitalised on his skills to develop the business, the wife was totally and unstintingly committed to the marriage and the household. The judge emphasised that a party's financial contributions towards the acquisition of any particular matrimonial asset could not be primarily determinative of how it was divided. She therefore disagreed with the district judge's great emphasis on the husband's role as an income generator. The judge considered that an equitable division in the circumstances was an equal division. She held (at [43]) that in a marriage, "partners often have unequal abilities whether as parents or income earners but as between them, this disparity of roles and talent should not result in unequal

rewards where the contributions are made consistently and over a long period of time".

67 In *AYQ v AYR* [2013] 1 SLR 476, when deciding that indirect contribution ought to be considered at the end of the marriage, the Court of Appeal held (at [23]) that this approach was adopted in order not to *undervalue* the indirect contribution, explaining:

> …This approach would accord with the view of the marital enterprise being a partnership of efforts of both spouses and that, during the course of marriage, the spouses contribute to the betterment of it in ways that they can without consciously accounting with mathematical precision as regards the quantum and type of their respective contributions.

68 In *ANJ v ANK* (at [17] and [26]) the Court of Appeal reiterated the guidance of *Lim Choon Lai* (at [14]) and *NK v NL* [2007] 3 SLR(R) 743 (at [41]) that spousal contributions in both the economic and homemaking spheres are equally fundamental to the well-being of a marital partnership.

Closing observations on the final ratio used

69 In this particular case, neither party was well educated. The Wife was a carpenter's helper who gave up work after marriage and the Husband was an odd-job labourer when they married. The assets within the pool had been entirely built up in their years together. While the Husband concentrated on his employment, the Wife's domain was the home. In their good years, the parties shared a joint account and neither expected the other to explain how they spent money. They fully cooperated in the joint enterprise of their lives together, each doing their role in providing for their children. In my judgment, this was a marriage where spouses had contributed in a partnership of efforts.

These were therefore circumstances where their overall contributions to the marriage had to be *weighed equally*.

70 I should mention two final matters. The first is that in the course of oral submissions, Ms Lim suggested that *ANJ v ANK* had rendered the matrimonial jurisprudence in relation to long marriages irrelevant: in her view, *ANJ v ANK* changed the law. I have sought to show here that *ANJ v ANK* does not overturn a long established line of Court of Appeal authority.

71 The second, in closing, is that the power of the *ANJ v ANK* structured analysis is that it ensures a logical flow in deciding a division. This is important because the division the court makes is fundamental to the family that the case brings to the attention of the court: thus, arbitrariness ought to be minimised and a principled approach used as far as possible. At the same time, while the court follows structured steps, its singular statutory duty is to ensure that the final result, weighing up all relevant factors, brings a just and equitable closure to parties' joint lives and allows them a sensible future. Arising from this, the steps of the process are not disparate, but connected in their purpose: the delineation of the asset pool and its division are linked by the final objective that the allocation achieves. Thus, in excluding the outstanding sum from the Husband at [34] above, I also bore in mind that I would adjust the Step 3 weightage in favour of the Wife, and that the Husband would have the final burden of liquidating the assets as necessary. The object, in the final result, was to set a just and equitable division: fair to both parties in the context of how they had ordered their joint lives, and, at the same time, a sound basis upon which they could reasonably move forward, their shared partnership of efforts having now come to an end.

Allocation of the assets

72 Half the Asset Pool was $2,600,335. Each party was entitled to this amount. In order to implement the division, I deducted the assets held in the Wife's name (see Table 1) from the Wife's share of the matrimonial assets and found that $1,826,883 remained payable to the Wife, who will return her CPF monies with interest to her CPF account.

73 I gave the Husband the first option to purchase the Matrimonial Home. The property was to be sold if the Husband did not wish to do so or did not have sufficient means to ensure that the Wife receives her stipulated share of the pool. The Wife's outstanding share of the Asset Pool would then be taken out of the proceeds of sale.

Maintenance for the Wife

74 The Husband is now 60 years old, and is on a contract with the Company, the share values of which have been plummeting for some years. In line with recovery efforts at the publicly listed company, a new management team had been put in place. His employment (at $8,000 a month for this year) was therefore not secure beyond the end of this year. The Court of Appeal noted in *AYM v AYL and another appeal* [2014] 4 SLR 559 (at [18]) that a lump sum payment allowed a clean break in the marriage and should be used whenever feasible. I determined that a lump sum payment was suitable in the present case, taking into account the Husband's projected income stream in the future and his assets at hand.

75 In her submissions, the Wife asked for $4,000 a month to be paid for 19 years to her. In this regard, the Wife tabulated a long list of monthly

expenses which slightly exceeded $4,000.[28] Ms Lim on the other hand submitted in the hearing that the Husband should be asked to provide monthly maintenance of $800, as the Wife received allowances from the children.

76 Having considered all the relevant factors, I determined that it was appropriate to quantify the lump sum maintenance at $3,000 for five years. Calculated on the basis of an annual effective interest rate of 2%, the present value at the date of payment of this lump sum which was payable to the Wife was $171,517. In fixing this lump sum, I took into account that the Husband stopped giving the Wife maintenance after she moved out of the Matrimonial Home with the Daughter's family in July 2015 (although she had possession of one of his two cars and access, via the use of cheques, to their joint account).

77 In the present case, the object of the decided sum was to give the Wife a sufficient amount to weather the transition of the divorce. Three factors were in play. The first was the desirability of a clean break through a lump sum payment. The second was the declining fortunes of the Husband and the Company. In *NI v NJ* [2007] 1 SLR(R) 75, the Court of Appeal cautioned (at [16]) that the statutory directive in s 114 of the Charter, which the court considered in awarding maintenance, had to be applied in "a commonsense holistic manner that accords with and takes into account the new realities that follow a failed marriage". Here, both parties would have to make adjustments as one household transitioned into two. It would not be tenable for the Husband to pay a lump sum calculated over 19 years as suggested by the Wife. The third, as highlighted by the Court of Appeal in *ATE v ATD* [2016]

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[28] Wife's written submissions, para 51.

SGCA 2 (at [33]), is that the power of the court to order maintenance is *supplementary* to that to order a division of matrimonial assets. In this case, the total financial provision for the Wife would amount to about $2.8m. On the assumption that the Wife would not be expected to seek employment, this amount, if wisely invested, was sufficient to secure her future.

Costs

78 Having regard to the circumstances, I made no order on costs of the ancillaries. As for the costs of the divorce, previously adjourned into chambers by the judge granting the divorce, this was initiated by the Wife arising from the Husband's behaviour. I ordered costs of $2,000 to the Wife.

Conclusion

79 In summary, I made the following orders:

(a) Upon the Husband's transfer of $1,826,883 to the Wife within four months of 2 March 2016, the Wife will do all that is necessary to transfer her rights, title and interest in the Matrimonial Home to the Husband, with the Wife responsible to return the sum owing to her CPF account with interest. The costs and expenses of the transfer shall be borne by the Husband.

(b) The Matrimonial Home is to be sold if the Husband cannot pay the Wife $1,826,883 within four months of 2 March 2016. The Wife will authorise the Husband to sell the Matrimonial Home and the Husband shall have sole conduct of the sale. The costs and expenses of sale shall be borne equally. The Wife will receive the remainder of $1,826,883 after deduction of her share of the costs and expenses of

sale from the proceeds of sale and is to return the requisite amount with interest to her CPF account.

(c) The Husband is entitled to withdraw the balance in his joint bank account with the Wife. He may close the joint account and the Wife is to do all that is necessary to assist.

(d) Save for the above, parties are to retain all assets held in their sole names, with the Wife to return the Mercedes car to the Husband forthwith.

(e) The Husband shall pay to the Wife the sum of $171,517 within a month of 2 March 2016.

(f) No order as to costs save that costs of divorce are awarded to the Wife and fixed at $2,000.

(g) Parties have liberty to apply.

Valerie Thean
Judicial Commissioner

Irving Choh and Stephanie Looi (Optimus Chambers LLC) for the plaintiff;
Lim Poh Choo (Alan Shanker & Lim LLC) for the defendant.
