

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2016] SGHCF 8

District Court Appeal No 140 of 2015

Between

TIT

... Appellant

And

TIU

... Respondent

District Court Appeal No 142 of 2015

Between

TIU

... Appellant

And

TIT

... Respondent

JUDGMENT

[Family law] — [Maintenance] — [Wife]

[Family law] — [Maintenance] — [Child]

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

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TIT
v
TIU and another appeal

[2016] SGHCF 8

High Court — District Court Appeal Nos 140 and 142 of 2015
Valerie Thean JC
13 and 25 April 2016

13 May 2016

Judgment reserved.

Valerie Thean JC:

Introduction

1 District Court Appeal No 140 of 2015 (“DCA 140/2015”) is an appeal brought by the Husband, and District Court Appeal No 142 of 2015 (“DCA 142/2015”) is an appeal brought by the Wife. DCA 140/2015 and DCA 142/2015 shall hereinafter be collectively referred to as “the Appeals”.

2 The Husband is a citizen of the United Kingdom (“UK”) and the Wife is a citizen of Thailand. The parties were married in the UK on 30 May 1998. The Wife was 24 years old at the time of marriage and the Husband, 32. Now aged 42 and 50 years old respectively, the Wife and the Husband have four children presently aged 16, 14, 12 and 9 years old. Throughout the marriage, the Wife was a home-maker while the Husband worked as an engineer at a

global energy company based in the UK (“the Company”). In the course of the parties’ marriage, they relocated seven times to diverse places such as Beijing, southern China, Spain and Malaysia. Such were the demands of the Husband’s job, which kept him very busy throughout the marriage. The four children were born during these relocations in a period of seven years. In 2008, parties relocated to Singapore.

3 The Husband commenced divorce proceedings on 27 November 2012 alleging that the Wife had behaved in such a way that he could not reasonably be expected to live with her. On her part, the Wife counterclaimed on a similar basis. The Wife left the matrimonial home on 1 November 2013 and has since late November 2013 shuttled between Singapore and Thailand. Interim Judgment (“IJ”) was granted on 24 February 2014 on both the Claim and Counterclaim.

4 The District Judge (“DJ”) made orders in relation to the ancillary matters on 14 August 2015. The DJ’s decision can be found at *TIT v TIU* [2015] SGFC 162 (“DJ’s GD”). On 25 August 2015, a Certificate of Final Judgment (“FJ”) was obtained.¹

5 At the hearing of the Appeals, the Husband sought to adduce evidence that after the hearing of the ancillary matters, he had suffered a relapse of Bell’s Palsy, a medical condition which he had experienced before and been retrenched because of the global downturn in the oil and gas industry. The Wife, on her part, sought to adduce evidence of the Husband’s remarriage on 26 September 2015, after the hearing of the ancillary matters. Both

¹ Order of Court dated 25 August 2015 (FC/ FJ 3689/2015).

applications were granted in view of the relevance of the evidence to maintenance and the division of assets, respectively.

The DJ's decision

6 The DJ found the value of the pool of matrimonial assets to be S\$542,216.39 (DJ's GD at [52]). Applying the structured approach in *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ v ANK*"), she awarded the Wife 25% of the assets. This amounted to S\$135,554.10. As the Wife had obtained the benefit of the sale proceeds of a matrimonial property the parties owned in Thailand ("the Thai Property"), the DJ ordered her to retain the same and her own assets, leaving a balance of about S\$50,000, which the Husband was ordered to pay her, while he retained all the other matrimonial assets. Using a multiplier of ten years and a multiplicand of S\$1,262 as a monthly figure, the DJ awarded the Wife lump sum maintenance of S\$145,000 (rounded down from S\$151,440). The Husband was ordered to maintain the children solely. The parties were to have joint custody of the four children of the marriage, with care and control to the Husband and reasonable access to the Wife.

Issues on appeal

7 Both Husband and Wife appealed against the asset division and spousal maintenance. In addition, the Husband appealed against the DJ's order that he solely maintain the children. I deal with these issues in turn.

Division of assets

The asset pool

8 As mentioned, the DJ set the asset pool as S\$542,216.39. Two issues arose in the Appeals.

(i) *The Husband's Pension*

9 The Husband previously disclosed that the pension he was to receive from the Company had a guaranteed transfer value of S\$265,506 (£132,753 at a currency conversion rate agreed by counsel of £1=S\$2) (“the Pension”) in an affidavit that was filed pursuant to the Wife’s request for discovery and interrogatories.² The ancillary matters fact and position sheet of the Husband also listed the Pension as an asset. This was omitted from the pool of assets divided at the Family Court.

10 Counsel for the Wife, Mr Godwin Campos (“Mr Campos”), argued that the Pension of S\$265,506 must be included in the matrimonial pool. While Mr Koh contended that the details of the Pension were not clear, it did not seem equitable for the Husband to have the benefit of any lack of clarity which he ought to have provided as part of his duty of disclosure. A statement of entitlement provided by the Husband furnished the broad details of the Pension.³ In this regard, while the Husband joined the pension scheme one year before parties married, this asset was acquired throughout the duration of the marriage and “‘acquisition’ continues until the asset is fully acquired” (see *BHN v BHO* [2013] SGHC 91 at [36], citing *Chee Kok Choon v Sern Kuang Eng* [2005] 4 MLJ 461 at [9]).

11 The query which followed from the inclusion of the asset was its valuation for the purposes of inclusion. Here, the acquisition of the Pension started on 1 May 1997, one year prior to the marriage. The date furnished for the guaranteed price was 16 June 2014, about four months after the date of the

² Husband’s 1st Affidavit for Discovery dated 2 July 2014, pp 3, 53–55.

³ Husband’s 1st Affidavit for Discovery dated 2 July 2014, pp 53–55.

IJ. The document also showed that the Husband had left the fund by the time of the IJ, as the fund was part of his expatriate package based on UK terms and benefits and he started employment on local terms with the Singapore subsidiary in May 2013. With his retrenchment in 2016 from the local subsidiary, at the minimum, it appeared open to him to exit the scheme or to transfer the minimum guaranteed sum into another scheme. In view of the uncertainties attached to its value, I find it equitable to use a conservative approach. Applying the ratio of 15:16; that is, the ratio of the length of marriage relative to the period over which the guaranteed sum of the Pension was accumulated, I derive a figure of S\$248,912. The sum within the matrimonial pool of assets and available for division is therefore S\$791,128.39 (S\$542,216.39 + S\$248,912).

(ii) *Issue of an adverse inference against the Wife*

12 At the hearing below, the DJ rejected the Husband's contention that an adverse inference should be drawn against the Wife regarding her alleged retention of amounts disbursed by the Husband for the purchase of and subsequent proceeds of sale of the Thai Property ("the Thai Property Transactions"). The DJ was of the view that "[t]he explanations and tables provided by the Husband were mere assertions and self-serving, with no supporting documents to show the alleged purposes for which the monies were used" (DJ's GD at [50]). A second contention of the Husband in respect of, *inter alia*, accounts held by the Wife in the UK ("the UK Accounts") was similarly rejected.

13 The Husband repeated the above arguments on appeal.

14 The law on the drawing of adverse inferences was succinctly summarised by the Court of Appeal in *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 (“*Koh Bee Choo v Choo Chai Huah*”) (at [28]) and *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 (at [62]). Two requirements must be established by the party seeking to draw an adverse inference against the other:

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

The Thai Property Transactions

15 The Husband transferred monies to the Wife between August 2011 and September 2011, *when the parties were still on good terms* for the purchase of the Thai Property. To this end, the Husband alleges that THB 4,979,433 had been transferred to the Wife during this period. He provided some bank statements that suggest that at least THB 3,500,000 was transferred to the Wife.⁴ It was undisputed that the purchase price of the Thai Property was THB 1,300,000. The Husband’s first allegation is that the Wife had siphoned THB 3,679,433. He arrives at this figure by deducting the amounts transferred to the Wife from the purchase price of the Thai Property. He also adduces the Wife’s bank statement/book that shows withdrawals of THB 2,610,000 on 18 September 2011 and THB 100,000 at or about that time.

⁴ ROA Vol 3C, p 2261 onwards

16 The Wife states that the monies in excess of the purchase price of the Thai Property were spent on holidays and other expenses in relation the Thai Property. The Husband's retort to this is that the Wife has not adduced evidence to show that this is the case. He also argues that any expenditure by the family while on holiday in Thailand would be minimal.

17 In my judgment, this allegation of siphoning is completely at odds with the factual matrix at the relevant time. The transfers to the Wife and the withdrawals by the Wife should be, in all likelihood, matters wholly known to the Husband, as all these events occurred *when the parties were still on good terms*, and, perhaps, even more importantly, *the Husband managed the money in the family*. The Husband must therefore have known how these monies were expended at the relevant time.

18 The second allegation of siphoning is in relation to the sale proceeds of the Thai Property. The Wife sold the Thai Property in December 2013. According to the receipt by the Department of Lands, Thailand, the sale price was THB 2,000,000.⁵ The Husband argues that the declared sale price of the Thai Property at THB 2,000,000 by the Wife was far below the market value of the Thai Property, which should be between THB 5,000,000–7,000,000 (based on unidentified printouts that show that a neighbouring property was valued at THB 7,000,000).⁶ The Husband argues that the Wife had to put back into the matrimonial pool THB 3,000,000 (S\$120,000), based on his “conservative” use of THB 5,000,000 as the likely sale price of the Thai Property.

⁵ ROA Vol 3D, p 3043 onwards.

⁶ ROA Vol 3C, p 2281 onwards,

19 To the extent that the Husband has sought to argue that there must have been some illegal dealings on the part of the Wife to “engineer” the sale price of the Thai Property, these allegations, in the absence of (at the very least) a valuation report to reflect the value of the property at the relevant time of sale, are unsupported by evidence. The certificate from the Department of Lands would thus be conclusive evidence that the sale proceeds of THB 2,000,000 were received and retained by the Wife from the sale of the Thai Property. The Husband’s printouts in this case *fell far short* of laying the substratum of evidence to establish any siphoning on the part of the Wife.

The UK Accounts

20 The Husband identifies four UK Accounts that were not allegedly disclosed by the Wife. He is unable to ascribe balances to three of them. He states that “the bank accounts existed at some point of time”.⁷ He argues that the fourth account has a balance of £3,000. He then quite astonishingly argues that the court should draw an adverse inference of about S\$17,000 in relation to the said accounts.⁸ The Wife’s position is that the UK Accounts were controlled and operated by the Husband. There was also some argument that “S Yau” referred to was the Husband’s mother, but no evidence was given on affidavit. Analysing the arguments in totality, I find that the Husband’s position that I should draw an adverse inference of S\$17,000 against the Wife is simply not borne out by the evidence. I therefore agree with the DJ that there is no reason to draw an adverse inference against the Wife in relation to this item.

⁷ Appellant’s Case (DCA 140/2015), para 49.

⁸ Appellant’s Case (DCA 140/2015), para 51.

Division of the asset pool

21 The next issue was then the division of the asset pool, using the structured approach set out in *ANJ v ANK* [2015] 4 SLR 1043 (“*ANJ v ANK*”). 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”.

The DJ's asset division and issues on appeal

22 The DJ's division from the application of *ANJ v ANK* in the present case is summarised in the table below.

	Husband	Wife
Step 1 Ratio	100	0
Step 1 Ratio (50% weight)	50	0
Step 2 Ratio	50	50
Step 2 Ratio (50% weight)	25	25
The average ratio	75	25

23 I highlight briefly that the DJ took the view (at [39]–[40]) that the Wife made substantial indirect and non-financial contributions in the first ten years of marriage although she did have intermittent help from her family members, some cleaning or housekeeping services during the overseas postings, or a maid for a period of time in China. She found that the Wife's indirect contributions were lessened in the last five years of the marriage. The DJ found (at [41]) that the Husband also made substantial indirect contributions in the management of the family's dealings with third parties for financial, medical and school matters and noted his increased involvement with the children's matters after the Wife left the matrimonial home in November 2013. She therefore decided that the parties' indirect contributions were in equal proportions for the duration of the marriage.

24 Turning back to the division, the DJ determined that the Wife's 25% share of the pool of matrimonial assets amounted to S\$135,554.10. As the Wife had obtained the benefit of the sale proceeds of the Thai Property, the DJ ordered her to retain the same and her own assets, leaving a balance of about S\$50,000, which the Husband was ordered to pay her. The Husband was to retain all the other matrimonial assets. To this end, the Husband was to solely enjoy the benefit of all assets held in the parties' joint names by way of a transfer from the Wife of her share, title and interest in a property in the UK and a closure of the parties' bank account, with the balance amounts retained by the Husband.

25 During the Appeals, there was agreement on the direct contribution ratio (*ie*, the Step 1 ratio) used below. The Appeals concerned the indirect contribution ratio (*ie*, the Step 2 ratio), and the weightage applied in coming to the overall ratio.

Arguments on the indirect contribution ratio

26 The Wife argues that her indirect contributions should be increased as she was the sole care giver of the children and managed the household during the first ten years of the marriage. The Wife points out that she went through seven relocations together with the Husband while having to go through four pregnancies and attending to the new-borns in unfamiliar environments.⁹ She highlights that the parties' marriage was a "traditional" one where the Husband worked and provided for the family, while the Wife fulfilled her duties as a wife, mother and caregiver for the family. She argues her conventional role in the family should not be diminished.¹⁰

⁹ Appellant's case (DCA 142/2015), para 45.

27 The Wife acknowledges that both the Husband and she enjoyed an extravagant lifestyle of “partying” in the last five years of the marriage, but argues that this was at the Husband’s urging and with his participation, and did not have the effect of reducing her indirect non-financial contributions during this period. She states that this “must be seen in light of the Husband’s engineering of [the] divorce”.¹¹ In any case, it is the Wife’s position that she took care of the children till she left the matrimonial home in November 2013. All in all, the Wife argues that the indirect contributions in Step 2 should be revised to 80:20 in her favour.¹²

28 The Husband argues that his indirect contributions outweigh the Wife’s when the entire length of the marriage is considered especially because the Wife moved out since November 2013, leaving the Husband as the *de facto* caregiver of the children.¹³ He submits that his indirect financial contributions to the marriage have not been given sufficient weight. The Husband also makes the point that the DJ had erred in giving more weight to the first ten years of the marriage, where the Wife’s indirect non-financial contributions were, arguably, large.¹⁴ In any case, he wants the court to take cognisance of the fact that the Wife had help from a maid and/or her family members in part, and diminished in the last five years of the marriage. The Husband then concludes that “the Wife’s indirect contributions should be adjusted to 60% to 40% in favour of the Husband”.¹⁵

¹⁰ Appellant’s case (DCA 142/2015), para 46.

¹¹ Appellant’s case (DCA 142/2015), para 48.

¹² Appellant’s case (DCA 142/2015), para 59.

¹³ Appellant’s Case (DCA 140/2015), para 13.

¹⁴ Appellant’s Case (DCA 140/2015), para 14.

¹⁵ Appellant’s Case (DCA 140/2015), para 20.

The Husband's remarriage as a material fact

29 During the hearing, I asked counsel to address me on the corollary issue of the Husband's non-disclosure of his intention to remarry. Here, the DJ dealt with ancillary matters on 14 August 2015. FJ was obtained on 25 August 2015.¹⁶ The Husband remarried on 26 September 2015. Given the requisite notice periods that would have to be given to the relevant authorities before a marriage can be registered in Singapore, the fact that the Husband would be remarrying would have crystallised some months before the hearing of the ancillary matters. In fact, the Husband travelled to the UK with his current wife, her two children and his three children in December 2014, *well before* the ancillaries were heard by the DJ.¹⁷

30 The Husband argues that he need not have disclosed this fact, as it was not relevant to the ancillary matters. He highlights that his current Wife is, in any case, gainfully employed and a woman of means. The current wife's expenses for the trip to UK were financed by herself and do not suggest undisclosed assets or income on the Husband's part.¹⁸ Mr Koh submits that there was no legal obligation on the part of the Husband to disclose his intention to remarry. He argues that it is "merely a moral obligation" and a fact that was "good [for the court] to know". He points out that, in any case, the Husband's remarriage does not impinge on the welfare of the children as the children live with him. Mr Campos argues that the Husband's intention to remarry is a material fact that ought to have been disclosed. In his view, it would colour the Husband's whole version of the Wife's lifestyle being the

¹⁶ Order of Court dated 25 August 2015 (FC/ FJ 3689/2015).

¹⁷ Husband's Affidavit dated 2 February 2016, para 28.

¹⁸ Husband's Affidavit dated 2 February 2016, para 29.

reason for the breakdown of the marriage. He argues that this non-disclosure by the Husband should operate in favour of the Wife such that a lot more credit be given to her version of events.

31 As noted by the Court of Appeal in *BG v BF* [2007] 3 SLR(R) 233 (“*BG v BF*”), at [52], the general duty owed by parties to the court to “make full and frank disclosure of all relevant information within his or her knowledge[,] is particularly relevant in the context of the division of matrimonial assets.” The absence of full and frank disclosure would entitle the court to draw a suitable adverse inference.

32 In the context of matrimonial proceedings, the lack of full and frank disclosure is normally argued in the context of one party not disclosing his or her assets (see, for example, *Koh Kim Lan Angela v Choong Kian Haw* [1993] 3 SLR(R) 491 at [31]). Nevertheless, in keeping with the observations of the Court of Appeal in *BG v BF* that the duty of full and frank disclosure is one that is derived from general law, the duty of full and frank disclosure must extend with equal force to material facts.

33 In *Tay Long Kee Impex Pte Ltd v Tan Beng Huwah (trading as Sin Kwang Wah)* [2000] 1 SLR(R) 786, the Court of Appeal gave guidance on what “material facts” are (at [21]):

... The difficulty here is in determining what facts are material. Any definition of “materiality” has to be, by its very nature, general. In the words of Ralph Gibson LJ in *Brink’s-Mat Ltd v Elcombe* [1988] 3 All ER 188 “*material facts are those which it is material for the judge to know in dealing with the application.*” It need not be “decisive or conclusive” — *per* Warren L H Khoo J in *Poon Kng Siang v Tan Ah Keng* [1991] 2 SLR(R) 621. We would add that the duty to disclose applies not only to material facts known to the applicant but also such additional facts which he would have known if he had

made proper inquiries. The extent of the inquiries which an applicant should make would have to depend on the facts and circumstances prevailing in the case.

[emphasis added]

34 Seen from this perspective, the fact that the Husband was planning to remarry is without a doubt material to the Court's analysis when dealing with parties' ancillary matters. Generally, it is central to the issue of the children's well-being. Even if, as in the present case, the issue of their care and control was largely uncontested arising from the circumstances, it was relevant to the Court's wider role in ensuring that arrangements have been made in the children's best interests.

35 In the case at hand, the remarriage was relevant as to whether lump sum maintenance should be ordered for the Wife. Indeed, Mr Campos' submission was that this non-disclosure lent great credence to the Wife's version of events in relation to her contributions to the family, the Husband's behaviour in taking over the management of the home, and his role in alienating the children against her. I agree with this to some degree. It explained why, for example, he would padlock the gates in late November 2013 after the Wife left the matrimonial home, or omit to update the Wife on the family's new address after they moved out themselves. The Husband's conduct also indicated that he knew the importance of his remarriage in context. The children were under strict instructions from the Husband not to disclose the relationship, and later, the remarriage, to their mother.

My conclusion on the indirect contribution ratio

36 Viewing the parties' indirect contributions in the round, the 50:50 allocation made by the DJ in relation to the Step 2 ratio was too low. From

1998 to 2009, for the first 11 years of the marriage, it was not disputed that the Wife was the sole anchor in the home. During this time, the couple relocated seven times and had four children closely spaced together, in the span of seven years. The youngest child was only two when they made their final move to Singapore in 2008. The care of four babies and young children born in quick succession in unfamiliar surroundings would have been extremely demanding. Even if, as the Husband contended, the Wife had help from a grandmother and uncle at various points, this does not detract from her substantial role for these first 11 years.

37 In 2009, the Wife's household burden was lightened with, *inter alia*, a maid, but she still had charge of all household matters. The Husband participated in the couple's active social life and thus could scarcely complain now about that. While the Husband took over household matters in 2012, this too, was with the help of a maid; and this was already the 14th year of the marriage, when the youngest was about 5 years old, past the most punishing babysitting years. His failure to inform the Court of his remarriage plans and his decisions which sought to marginalise the Wife from the lives of the children were not made in the children's best interests, and may be taken into consideration in context. On the whole, the Step 2 ratio should be 35:65 in favour of the Wife.

Weightage and overall ratio

38 The Wife suggested that the weightage in Step 3 of *ANJ v ANK* of the Step 1 and Step 2 ratios should be 40:60 in favour of indirect contributions. She argues that this is necessary in "recognition of the length of [the] marriage, the size of the matrimonial assets and the extent and nature of indirect contributions made by both parties throughout the marriage".¹⁹

39 It is argued by the Husband that in this 15 year marriage where the Wife had a maid for some part, the weightage under Step 3 of the ratios in Step 1 and Step 2 should be 55:45 in favour of direct contributions. He argues that in a marriage of such moderate length, where the Husband was the sole breadwinner, the indirect contributions would not feature much.²⁰

40 Viewing the whole marriage in its context, I was of the view that the weightage in Step 3 should be equal. While the Wife's contributions to the home were substantial, this was so for a period of just under a dozen years, and the Husband has been in charge of the home since sometime in 2012. At the same time, while the Husband was solely responsible for the accumulation of the family wealth, the total asset pool, despite his 15 years on a UK expatriate pay package, was surprisingly modest. Deducting the property in the UK, which mortgage was largely funded by rental save for £200 a month, the sum remaining is small in the light of his career trajectory which, for example, on his Singapore assignment from 2008–2013, included monthly pay of S\$43,000 a month and benefits²¹.

41 My various findings in the Appeals using the *ANJ v ANK* approach are summarised as follows:

	Husband	Wife
Step 1 Ratio	100	0

¹⁹ Appellant's case (DCA 142/2015), para 60.

²⁰ Appellant's Case (DCA 140/2015), para 25-26; 29.

²¹ DJ's grounds of decision, at [12].

Step 1 Ratio (50% weight)	50	0
Step 2 Ratio	35	65
Step 2 Ratio (50% weight)	17.5	32.5
The average ratio	67.5	32.5

Mechanics of allocation

42 The Wife's share of the matrimonial pool amounts to S\$257,116.73. The sale proceeds for the Thai Property retained by the Wife amounts to S\$79,833 and the Wife holds S\$5,419.45 in her name. The Husband therefore has to pay the Wife S\$171,864.28. The DJ's orders that the Husband retain the assets in his own name and the Wife assists to transfer her share in assets in their joint names remain.

Maintenance for Wife

43 As mentioned, the DJ ordered S\$145,000 (rounded down from S\$151,440) as lump sum maintenance to be paid by the Husband to the Wife. The DJ arrived at the lump sum amount by applying a multiplier of ten years to a monthly maintenance amount of S\$1,262.

44 The Husband submits that the Wife's reasonable maintenance should be pegged against the Thai standard of living. Therefore, the Wife should be given no more than S\$250 per month.²² Alternatively, if assessed on Singapore

²² Appellant's Case (DCA 140/2015), para 63.

standards, the maximum the Wife should receive is S\$1,028.33 per month. He arrives at this figure by, *inter alia*, reducing the amount awarded by the DJ to the Wife (see DJ's GD at [61]) for utilities, clothing and shoes and airfare from Thailand to Singapore.

45 The Husband also argues that he should not maintain the Wife for ten years as she "has free reins to pursue her career" and does not have to care for the four children²³; even if the court orders lump sum maintenance, the multiplicand should be three years.²⁴ He seems to be arguing that he could ill afford to pay. Four months after the Husband filed for divorce, his terms of employment changed from expatriate status with allowances to a local package. At the time of the Appeals, as adduced through his affidavit filed after the hearing of the ancillary matters, he had been retrenched because the oil and gas sector was in a downturn. He had also suffered a relapse of Bell's Palsy.

46 The Wife, on her part, argues that the sum of S\$1,263 per month used to compute the lump sum maintenance by the DJ should be raised to S\$2,700 per month to take into account that she was spending S\$3,500 per month up to the time of the divorce.²⁵ This reduced amount, she argues, takes into account that she will "find some modest employment as well as scale down her lifestyle and expenses".²⁶ She argues that a multiplier of 16 years should be applied instead of the ten years applied by the DJ. She submits that the lump sum maintenance should amount to S\$518,400.

²³ Appellant's Case (DCA 140/2015), para 69.

²⁴ Appellant's Case (DCA 140/2015), paras 74, 78.

²⁵ Appellant's case (DCA 142/2015), para 75(vi).

²⁶ Appellant's Case (DCA 142/2015), para 74.

47 There is no merit to the Husband's contention that the Wife's standard of living should be pegged to the Thai rate. The Wife has to substantially spend her time in Singapore so that she can be near the children.

48 As noted in *ANJ v ANK* (at [42]), "an appellate court will seldom interfere in the orders made by the court below unless it can be demonstrated that it has committed an error of law or principle, or has failed to appreciate certain material facts". The appellate court will also be slow to make minor adjustments for idiosyncratic reasons (see *Koh Bee Choo v Choo Chai Huah* at [46], citing *MZ v NA* [2006] SGHC 95 at [5]).

49 A *clean break* is desirable whenever feasible (see *AYM v AYL and another appeal* [2014] 4 SLR 559 (at [18])). This was especially so in this case where the Husband has remarried.

50 Coming to the sum set by the DJ, the monthly figure was a conservative one, and made with a thorough analysis of each expense item of the Wife (see DJ's GD at [61]). While ten years could be generous, this balanced out the modest monthly sum. The same lump sum could have been attained with fewer years and a monthly sum on the more generous side of the scale. In this case, it would also be reasonable to allocate some sum for training. The Wife married the Husband at 24 and has spent most of the marriage on the children and home. Her command of English remains poor and she will have to take time to equip herself with skills in order to rejoin the workforce. Therefore, I find myself in broad agreement with the DJ.

51 One issue is whether I ought to change the order in light of the Husband's evidence as to his retrenchment from 15 January 2016 and his Bell's Palsy relapse. His emails and letters in his own affidavit, however,

indicate that he was ready to commence work as at the date of retrenchment. It is also clear that the Bell's Palsy was a pre-existing condition for the Husband. The relapse and its management was part of a condition that he has managed over the course of his career. What is important is that the evidence indicates that he is *able to pay* the lump sum ordered. His testimonials and recommendations also indicate that he is likely to be able to gain employment again in due course.

52 There is thus no reason to make any kind of adjustment as to the award of S\$145,000.

The Wife's responsibility for child maintenance

53 In light of the uncertainty surrounding the Wife's earning capacity, the DJ ordered that the Husband maintain the children solely.

54 The Husband submits that since he has care and control of the children and the Wife has the potential to earn up to S\$2,500 as a makeup artist in the future, the Wife should pay a cumulative maintenance of S\$200 per month for the four children. He appears to be suggesting that the law *categorically demands* that both parents should contribute to the maintenance of the child. The Wife on the other hand argues that her income capacity remains uncertain, as there is no guarantee that she will get a job although she had completed the makeup artist course. It is "purely unreasonable" for the Husband to ask her to contribute towards the maintenance of the children at his point.²⁷

²⁷ Respondent's case(DCA 140/2105), para 54.

55 The Husband’s appeal may find support in two High Court cases where husband and wife were ordered to bear their children’s maintenance equally.

56 In *BNH v BNI* [2013] SGHC 283 (“*BNH v BNI*”), the parties were undergoing a divorce and the wife there earned less than the husband. The husband earned an average monthly income of \$36,214.55. The wife’s monthly income was \$19,162.42. The court ordered maintenance for both children at \$9,500 a month, to be split equally between the parties, with comment (at [37]) as follows: “[a]lthough the [h]usband earns more than the [w]ife, given my comments that marriage is really an equal partnership between the parties, I am of the view that the cost of maintenance should be equally borne by both parties”.

57 In *TBC v TBD* [2015] 4 SLR 59 (“*TBC v TBD*”), the High Court decided that s 68 of the Charter imposed an obligation on both parents a duty to maintain their child, whether they were legitimate or illegitimate, and also reviewed various cases in relation to the apportionment of maintenance of a child. It held (at [27]) that the relevant legal position should be stated as follows:

In the absence of any statutory provisions which regulate the apportionment of the maintenance to be paid by parents to their children, it is left to the courts to lay down the proper approach to be followed. The primary concern of s 68 is that parents discharge their duties to maintain their child or children. Each parent stands in the same parent-child relationship with the child or children and each parent has the duty to maintain the child or children. Against that backdrop, the starting point should be that the parents bear the financial burden equally. One parent’s burden should not be decreased just because the other parent is wealthier, and one parent’s burden should not be increased just because the other parent is less well off. However, this should not be an

inflexible rule; if one parent is unable to contribute equally with the other parent, then that parent should contribute what he or she can, and the other parent should make up the shortfall, so that the child will receive the full measure of maintenance. The norm should not be that parents contribute in proportion to their means because that will place unequal burdens on them for no good reason.

[emphasis added]

58 In that case, while the complainant drew a lesser salary as compared to the respondent, who was the father of the illegitimate child, the court ordered that the parties contribute equally to the maintenance of the child.

59 The statutory directive to parents as regards the maintenance of their children is found in s 68 of the Charter. It provides as follows:

Duty of parents to maintain children

68. Except where an agreement or order of court otherwise provides, it shall be the duty of a parent to maintain or contribute to the maintenance of his or her children, whether they are in his or her custody or the custody of any other person, and whether they are legitimate or illegitimate, either by providing them with such accommodation, clothing, food and education as may be reasonable having regard to his or her means and station in life or by paying the cost thereof.

60 Also set out in s 69(4) of the Charter are the factors that the court would consider in ordering maintenance for the wife or child. Those factors are:

- (a) the financial needs of the wife or child;
- (b) the income, earning capacity (if any), property and other financial resources of the wife or child;
- (c) any physical or mental disability of the wife or child;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) the contributions made by each of the parties to the marriage to the welfare of the family, including any

contribution made by looking after the home or caring for the family;

(f) the standard of living enjoyed by the wife or child before the husband or parent, as the case may be, neglected or refused to provide reasonable maintenance for the wife or child;

(g) in the case of a child, the manner in which he was being, and in which the parties to the marriage expected him to be, educated or trained; and

(h) the conduct of each of the parties to the marriage, if the conduct is such that it would in the opinion of the court be inequitable to disregard it.

61 In this context, while the law regards both parents as equally responsible, it does not regard all parents as equally able or capable. As noted by the district judge in *XB v XC* [2008] SGDC 144 (at [34]), “equality in responsibility does not necessarily suggest equality in financial contribution regardless of each parent’s financial means.” Equality in responsibility holds *each* parent responsible for the care of their children. It does not translate into exactly the *same duties*, as the tasks they allocate between themselves must be a function of their talents and abilities. Where circumstances are such that capabilities differ, parents have a *duty to cooperate* so that their children are fully looked after. In making various child orders post-divorce, Courts have long recognised the different roles each parent may play. For example, while joint custody may be the norm, exceptions apply if the situation so demands (see *CX v CY (minor: custody and access)* [2005] 3 SLR 690 at [24]). Different orders are made as to care and control or access for each parent as the specific needs of each child requires. When the Court’s intervention is required to support parents in their co-parenting, the paramount interest of the child would mean that the Court does so with regard to the circumstances of the family and *how each parent’s distinct capabilities may best be directed in*

the best interests of their children. The issue of child maintenance should be treated in like manner.

62 Of interest is the approach of the High Court and Court of Appeal in *ANJ v ANK*. In that case, the High Court ordered that the apportionment of the children's expenses between the Husband and the Wife be in the proportion 65:35. On appeal, the Court of Appeal held (at [43]) that although the ratio of the Husband's monthly income to the Wife's monthly income was 62:38, there were no grounds for appellate intervention. The important point to note is the Court of Appeal's acceptance of the principle that maintenance of the children should be apportioned in accordance with, *inter alia*, the financial capabilities of the parents.

63 The prevailing standard of s 68 (and s 69) of the Charter must be reasonableness having regard to all the circumstances of the case, and the best interests of the children. In accordance with the Court of Appeal's approach in *ANJ v ANK*, the financial capabilities of the parents must be *a valid consideration*. In this context, both the parties in *TBC v TBD* and *BNH v BNI* were well able to afford the orders for equal contribution. In the present case where the Wife has no income, her lack of financial means is *a relevant factor* that suggests that she is not in a position to contribute to the maintenance of the children. She married young, without any qualifications, and was far too busy with the house and home for most of the marriage to acquire skills or training. For the last 18 years, the Husband has maintained the family solely. With the transition, it is reasonable to allow the status quo *vis-à-vis* the children's maintenance to continue and to give the Wife some time to acquire skills and training in order to re-position herself in the job market, at the age of 42. In contrast, the Husband is well educated, has been – and, in my opinion,

remains – a man of means. It is reasonable for the Husband to continue to maintain the children solely at this point in time, while the Wife is finding her feet.

64 That said, a mother's financial responsibility to her children is a continuing one, for so long as the circumstances mandated under the Charter prevail. If circumstances for the Wife improve, the Husband is always able, under the law, to apply for a variation in the child maintenance order upon a material change in circumstances.

Conclusion

65 In the result, I dismiss the Husband's appeal in DCA 140/2015 *in toto*. I allow in part the Wife's appeal in DCA 142/2015. Paragraph 3(f) of the DJ's orders dated 14 August 2015 is set aside, and the following are ordered in addition:

- (a) The Wife shall retain the proceeds of sale for the Thai Property, and the Husband is to pay the Wife S\$171,864.28 being the balance of the Wife's share of the matrimonial assets.
- (b) Parties have liberty to apply.

66 I shall hear parties on the costs of the Appeals.

Valerie Thean
Judicial Commissioner

Koh Tien Hua and Chew Wei En (Harry Elias Partnership LLP) for
the appellant in DCA 140/2015 and respondent in DCA 142/2015;
Campos Godwin Gilbert (Godwin Campos LLC) for the respondent
in DCA 140/2015 and appellant in DCA 142/2015.
