

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2017] SGHCF 1

Divorce Transfer No 4482 of 2012

Between

TVJ

... Plaintiff

And

TVK

... Defendant

FOUNDATIONS OF DECISION

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

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TVJ

v

TVK

[2017] SGHCF 1

High Court — Divorce Transfer No 4482 of 2012
Valerie Thean JC
12 August 2016; 21 September 2016; 19 October 2016

3 January 2017

Valerie Thean JC:

1 These grounds of decision concern matters ancillary upon divorce.

Introduction

2 The plaintiff (“the Husband”), and the defendant (“the Wife”), were married on 12 March 1980.¹ The Husband is 63 years old, the Wife is 59 years old.² On 14 September 2012, the Husband commenced divorce proceedings against the Wife and obtained an interim judgment (“IJ”) for divorce on the ground of the Wife’s unreasonable behaviour on 28 January 2013.³ Up to that

¹ Defendant’s affidavit dated 6/11/2013 (DA 1) at para 2.

² Statement of Claim for divorce (14 September 2012).

³ Plaintiff’s submissions at para 1.

point, parties had been married for some 33 years. The parties have a 19 year old daughter (“the Child”),⁴ who will be completing her polytechnic education in 2017.

3 This action was commenced by the Husband on 14 September 2012. The Wife did not at that time participate in proceedings. The Husband obtained the IJ on 28 January 2013, and a first set of ancillary orders in the High Court on 26 June 2013.⁵ On 27 October 2015, pursuant to the Wife’s application, the first set of ancillary orders were set aside by the High Court judge who made the first set of ancillary orders, with costs reserved to the hearing of the ancillary matters.

4 On 19 October 2016 I dealt with: (a) division of the matrimonial assets; (b) maintenance for the Wife; (c) custody of the Child; and (d) costs. The Husband has appealed and I furnish my grounds of decision.

Division of assets

The pool of matrimonial assets

5 The agreed operative date used for determining the pool of matrimonial assets in this case was the date of interim judgment, 28 January 2013 (“the Operative Date”).

6 In order to determine the asset pool, I first dealt with the following disputes:

⁴ Statement of Claim for divorce (14 September 2012).

⁵ Defendant’s Bundle of Affidavits at p 13.

- (a) the correct valuation of several of the parties' assets which were agreed as part of the pool of matrimonial assets;
- (b) whether some of the parties' disclosed assets were part of the pool of matrimonial assets;
- (c) whether the Husband had further undisclosed assets or assets which he had wrongfully dissipated; and
- (d) the extent of the Husband's outstanding liabilities.

Disputed valuations

7 The valuation of the following assets were in dispute:

- (a) the parties' joint properties;
- (b) the Wife's POSB Account XX-XXX26-9;
- (c) the Wife's jewellery; and
- (d) the Husband's P Pte Ltd shares.

8 The parties owned two real properties held in joint names. The first was an executive HDB flat at Marsiling ("the Marsiling HDB"). The Husband valued it at \$603,500 while the Wife valued the same at \$600,000.⁶ Given the *de minimis* difference between the two valuations offered, I valued the Marsiling HDB at the more conservative \$600,000. The second property was a condominium ("the Condominium"). The Husband valued it at \$1.5m while the Wife valued the Condominium at \$1.3m. Given the absence of clear

⁶ Defendant's submissions, p 6.

evidence either way, and in fairness to both parties, I ascribed a value in the middle: \$1.4m.

9 The Wife's POSB Account XX-XXX26-9 ("POSB 26-9") was \$248,676.17 on the Operative Date.⁷ The Wife submitted that POSB 26-9 should only be valued at \$100,000 because the rest of the money comprised gifts from her family and relatives.⁸ The Wife's evidence was that she received \$42,711.98 as her share of the net sale proceeds from her parents' HDB flat; she also received a gift of \$60,000 from her brother as a token of appreciation for the help she rendered him.

10 In this case, I found that the moneys which the Wife received from her brother and parents were likely intended as gifts to *both* the Husband and the Wife. Her brother and her parents had been living in the parties' matrimonial home for a long time. Further, both the Husband and the Wife had played a part in helping her brother with his education. In the circumstances, there was no basis to exclude those sums from the pool of matrimonial assets. I therefore ascribed the full bank balance to the pool.

11 Regarding the Wife's jewellery, the Wife valued it at \$8,500 whereas the Husband valued it at \$150,000. The Wife gave detailed evidence of the value and weight of the three bangles and two necklaces which she owned, and a photograph.⁹ The Husband's assertion that the Wife's jewellery weighed approximately 2kg and hence was worth approximately \$150,000 was a bare

⁷ Wife's affidavit dated 14/3/2016 (DAdis6, DBOA vol II) at para 6(b); Defendant's Bundles of Affidavits vol 2 Tab PL 1 at p6.

⁸ Defendant's submissions at para 58

⁹ Wife's affidavit dated 14/3/2016 (DAdis6, DBOA vol II) at para 8; Wife's affidavit dated 3/8/2016 (DAM-4).

statement.¹⁰ I therefore valued the Wife's jewellery at the more conservative value of \$8,500.

12 Finally, there were various points of dispute regarding the Husband's shares in P Pte Ltd. First, there was dispute as to the *number* of P Pte Ltd shares owned by the Husband. The Husband asserted that he had 280,000 P Pte Ltd shares.¹¹ The Wife asserted that the Husband had 281,660 P Pte Ltd shares.¹² Based on the documentary evidence, on 15 April 2011, the Husband owned 79,773 P Pte Ltd shares.¹³ By 3 May 2011, his shareholding went up to 281,660 shares¹⁴ and stayed at 281,660 as at 31 December 2011.¹⁵ Apart from the Husband's assertion, there was no further documentary evidence that his shareholding subsequently went back down to 280,000. Additionally, I noted that the Husband's evidence on this issue had been inconsistent throughout the course of the proceedings. He admitted in his affidavit dated 3 May 2013 that he owned 281,660 P Pte Ltd shares.¹⁶ I found that the Husband owned 281,660 P Pte Ltd shares.

13 The parties disputed, in addition, the *value* to be ascribed to each P Pte Ltd share. The Husband relied on a letter dated 13 March 2014 from P Pte Ltd's accountant, stating that the *net assets* of the company based on the financial statements for the year ending 31 December 2012 were valued at

¹⁰ Plaintiff's submissions at para 89.

¹¹ Plaintiff's submissions at para 14.

¹² Defendant's submissions at para 24.

¹³ Plaintiff's affidavit dated 14/3/2016 (PA16) at p 64.

¹⁴ Plaintiff's affidavit dated 14/3/2016 (PA16) at p 68.

¹⁵ Plaintiff's affidavit dated 24/3/2014 (PA9/PA2) at p 136.

¹⁶ Plaintiff's affidavit dated 3/5/2013 (PA5) at para 4.

\$855,361 (total assets of \$1,821,154 minus total liabilities of \$965,793); the net asset value per share was thus \$1.221.¹⁷

14 The Wife, however, referred to four share transfer forms showing that the Husband had purchased P Pte Ltd shares on or around 26 April 2011 from four other shareholders at a significantly higher price of approximately \$5.33 per share.¹⁸ Her submission was that the Husband had not explained why the value of his P Pte Ltd shares had dropped so significantly since then. Further, she pointed out that although a valuation of the P Pte Ltd shares was conducted in 2011, the Husband was unwilling to disclose the valuation report on grounds of confidentiality.¹⁹ The Wife also submitted that P Pte Ltd's investment properties, namely five commercial properties, were undervalued in P Pte Ltd's financial statements as the accountants reflected only the book value, but not the market value, of the properties. In the 2014 interrogatories, the Husband had answered that the value of the properties was \$3.2m.

15 I found that the fall in the value of the Husband's P Pte Ltd shares since 2011 plausible in light of the payment out of dividends of \$2.95m to shareholders in 2011. The 2011 financial statements showed that the total net assets of the company fell from \$3,924,988 to \$914,290.²⁰ With a total asset value of P Pte Ltd at approximately \$5.4m in 2010, a \$2.95m dividend payout, which forms a significant portion of \$5.4m, would explain the significant fall in the value of the P Pte Ltd shares.

¹⁷ Plaintiff's submissions at para 13, Plaintiff's affidavit dated 24/3/2014 (PA9/PA2) at p 186.

¹⁸ Plaintiff's affidavit dated 14/3/2016 (PA16) at pp 71, 72, 74, and 75.

¹⁹ Defendant's submissions at para 37.

²⁰ Plaintiff's affidavit dated 24/3/2014 (PA9/PA2) at p 138.

16 The financial statements showed that the company's commercial properties, however, were at an undervalue as contended by the Wife. These, reflected as "Investment Properties" in the company's accounts, were only valued at approximately \$1.27m in P Pte Ltd's 2012 financial statements on the basis of the independent valuation of the properties *in 2009* (of \$1.59m), with assumption of depreciation each year (hence, the 2012 reduced value of \$1.27m).²¹ The Husband had estimated the value in 2014 as \$3.2m. The Wife obtained an independent valuation of the commercial properties from Colliers International Consultancy & Valuation (Singapore) Pte Ltd. The commercial properties were valued at \$3,725,000 as at the Operative Date.²² The Husband accepted this valuation.²³ The Husband initially claimed that the commercial properties were subject to a \$1.4m term loan. Such a loan, if it existed, would have already been in the company accounts.

17 Counsel for the Wife submitted that the value of P Pte Ltd was in fact \$1.8m, as the book value was a depressed value. The fact that the company received substantial annual rentals (as evident from its 2010, 2011, and 2012 accounts of \$364,020,²⁴ \$412,346,²⁵ and \$444,408²⁶) showed that it was a valuable going concern.²⁷ The net tangible asset approach would not have taken this into consideration. While there was logic in counsel's argument, in absence of an expert opinion as to the extent of the additional margin, I

²¹ Plaintiff's affidavit dated 24/3/2014 (PA9/PA2) at pp 164, 170, 176, and 177.

²² Defendant's affidavit dated 9/9/2016 at para 6.

²³ Plaintiff's affidavit dated 14/9/2016 at para 5.

²⁴ Plaintiff's affidavit dated 24/3/2014 (PA9/PA2) at p 132.

²⁵ Plaintiff's affidavit dated 24/3/2014 (PA9/PA2) at p 159.

²⁶ Plaintiff's affidavit dated 24/3/2014 (PA9/PA2) at p 184.

²⁷ Defendant's submissions at para 35.

nevertheless preferred a more conservative approach of using the book value as a base, and adding the enhanced valuation of the commercial properties to the book value, still following the initial approach of the net tangible asset value. Thus, adding the enhanced value of the commercial properties to the net asset value of P Pte Ltd reflected in the 2012 accounts, \$2,454,430, came to \$3,309,791.²⁸ Dividing then by the number of shares, the value ascribed to each share was \$4.73. The Husband's **281,660 P Pte Ltd shares were therefore valued at \$1,331,790** (rounded down to nearest dollar).

Disputed assets

18 This category concerns (a) bank accounts of the Husband; and (b) rental from the Marsiling HDB which the Wife had retained.

19 Regarding the Husband's bank accounts, in this case, arising from the Wife's requests for discovery, the Husband furnished the Wife instead with a letter of authorisation to deal directly with his banks. Subsequently, in his submissions, the Husband objected to the inclusion of certain bank accounts belonging to him on the basis that the Wife had not disclosed more updated bank statements in respect of the said accounts which she had allegedly received from the bank.²⁹ These accounts were: (a) Standard Chartered Account No XX-X-XXXX20-5 containing \$11,673.83 as of 2 January 2009; (b) Maybank Account No X-XXX-XX-XX70-9 containing \$37,572.66 as of 15 January 2012; and (c) OCBC Account No XX-XXX42-8 containing \$9,743.59 as of 19 April 1999.

²⁸ Plaintiff's affidavit dated 24/3/2014 (PA9/PA2) at p 164.

²⁹ Plaintiff's submissions at paras 21 and 22.

20 The Husband's argument here turned the duty of discovery on its head. In the *Husband's affidavit of assets and means* dated 9 April 2013, the above three bank accounts were listed as belonging to him and containing the exact balances stated above.³⁰ Given that these accounts belonged to the *Husband*, the onus was upon *him* to obtain the relevant bank statements as at the agreed Operative Date. Not having done so, there was no basis for the Husband to then dispute that these accounts contained the sums stated above on the footing only that the Wife had not disclosed more updated bank statements. Without updated bank statements before the court, and given the above bank accounts were disclosed by the *Husband himself* as containing the above sums, which the Wife accepted, I accepted the values proffered.

21 Regarding the rental from the Marsiling HDB, this arose over a period of a year, and came to either \$32,000 (contended by the Husband) or \$25,000 (contended by the Wife). The Wife contended that she had the Husband's permission to use this sum as additional money for the household. The rental was deposited into her POSB account, which showed various withdrawals of small amounts, supporting her evidence that she used the money to run the household. The remainder of the rental remained in her account which was part of the asset pool at the time of the asset division. In my view, it was not necessary to add the difference into the asset pool as the money had been reasonably spent on the household.

Undisclosed assets and dissipation on part of the Husband

22 The Wife alleged that the Husband had undisclosed assets and that he had been dissipating assets. Her submission was that these undisclosed and

³⁰ Plaintiff's affidavit dated 9/4/2013 (PA 4) at para 8.

dissipated assets should be added to the matrimonial pool. These allegations related to:

- (a) 300 shares in A Pte Ltd;
- (b) cash withdrawals totalling \$313,180 at Marina Bay Sands lost through gambling;
- (c) substantial withdrawals and deposits made from and into two OCBC Moneymax Accounts (“OCBC OO1”); and
- (d) expenditure of \$979,000 more than what would and should have been his reasonable expenditure.

23 The Wife submitted that the Husband’s non-disclosures justified the court drawing an adverse inference against him.³¹ She submitted that a substantial sum should be added back into the asset pool.

A Pte Ltd shares

24 A Pte Ltd’s 2012 financial statements showed that the company had a total share capital of two shares,³² and that as of 31 December 2012, the Husband and Ronald each held one share in A Pte Ltd.³³ The Husband thus had a 50% stake in A Pte Ltd. The 2012 financial statements also showed that A Pte Ltd’s net asset value was a negative figure (\$27,923).³⁴ For these reasons I did not ascribe a value to A Pte Ltd for the purposes of the asset pool.

³¹ Defendant’s submissions at para 66.

³² Plaintiff’s affidavit dated 14/09/2016 at p 58.

³³ Plaintiff’s affidavit dated 14/09/2016 at p 56.

³⁴ Plaintiff’s affidavit dated 14/09/2016 at p 58.

Nevertheless, I noted that the Husband did not disclose his shareholding in A Pte Ltd until very late in the day, following multiple queries from the Wife on his said shareholding. In my view, this lent support to the Wife's submission that an adverse inference should be drawn against the Husband given his lack of full and frank disclosure about his assets.

Husband's gambling expenses

25 The Husband admitted that he spent \$310,180 gambling at MBS.³⁵ The Wife asked for this sum to be added back to the pool.³⁶ The Husband, however, submitted that the Wife knew about his gambling habit all along and had not objected to it.

26 A useful preliminary point to note was that the evidence showed withdrawals from the ATM at MBS: the Husband may or may not have used the full sum for the purposes of gambling at MBS. Secondly, regarding the Husband's contention that the Wife was aware he gambled, the Wife, while conceding that the Husband had a gambling habit, stated that she was not aware of its full extent.³⁷ In light of the various circumstances, I found it equitable to add \$150,000 back into the matrimonial pool, slightly less than half the amount in contention.

OCBC 001

27 The Wife asserted that from 2008 to 2014, the *total deposits* (above \$5,000) into OCBC 001 which could not be accounted for (having excluded

³⁵ Plaintiff's affidavit dated 19/5/2016 (PA17) at p 33.

³⁶ Defendant's submissions at para 84.

³⁷ Defendant's affidavit dated 1/4/2015 (DA 5) at para 12.

moneys from CPF and the Husband's disclosed salary) totalled \$3,350,982.95. The total unaccounted for withdrawals in the same time period, excluding the sum of \$1,546,249.84 the Husband estimated as his expenses (which assumed the Husband spent \$19,000 per month), amounted to \$2,506,079.39. The Wife submitted that the source of these deposits, and the reasons for the withdrawals, were not known.³⁸

28 In relation to the *deposits*, the Husband's evidence was that they come from (a) dividends from P Pte Ltd, (b) insurance payouts, (c) 4D winnings, (d) CPF, (e) payouts from the Husband's mother's insurance policy, (f) sale of shares, (g) money borrowed (amounting to \$971,303), (h) money repaid from others who borrowed money from him and (i) salary (including director's fees and bonus). Most of these explanations were not corroborated by any evidence. He also could not remember where \$423,002.30 worth of deposits came from.³⁹

29 The Wife submitted that

- (a) the \$423,002.30 which was unaccounted for suggested he had income from other sources;⁴⁰
- (b) the Husband had significant wealth and he had given no credible reason why he had to borrow sums amounting to \$971,303;⁴¹ and

³⁸ Defendant's affidavit dated 1/4/2015 (DA 5) at paras 9-11; Defendant's submissions at paras 67-83.

³⁹ Plaintiff's affidavit dated 19/5/2016 (PA17) at p 31.

⁴⁰ Defendant's submissions at para 69.

⁴¹ Defendant's submissions at para 70.

- (c) there were inconsistencies in the Husband's evidence regarding dividends received.⁴²

30 Regarding the *withdrawals*, the Wife suggested that these were of even greater concern as these showed the Husband's dissipation of assets. The Husband could not remember the purpose of \$50,000 worth of withdrawals. For the rest, he explained that the rest of the withdrawals above \$5,000 went towards (a) repayment of debts and granting of loans extended to other people, (b) CPF withdrawals given to the Wife, (c) payment of car loans, (d) payment for the purchase of shares, (e) renovation of the Condominium, (f) payment for the Condominium, (g) expenses (including monthly allowances to the Wife) and (h) money spent gambling at Marina Bay Sands ("MBS").⁴³

31 The Wife's main complaint regarding his explanations is that many of the Plaintiff's explanations were not corroborated by evidence. There was some merit to this complaint:

- (a) Withdrawals totalling \$891,667.87,⁴⁴ which were allegedly loan repayments or loans extended to others by the Husband, were completely uncorroborated by evidence.
- (b) The Husband had refused to disclose the sum outstanding in his share account nor did he give an account of the shares he held. Withdrawals were, however, explained away as share purchases with "DBS Vickers Ballas". Only a few of these transactions were supported with corresponding documentation. The unsupported

⁴² Defendant's submissions at para 79.

⁴³ Plaintiff's affidavit dated 19/5/2016 (PA17) at pp 23-53.

⁴⁴ Plaintiff's affidavit dated 14/3/2016 (PA16) at p 49.

withdrawals allegedly for share purchases amounted to approximately \$300,000.⁴⁵

(c) There were other miscellaneous payments (eg, “Payment to Ang Seah Hoe”) which were not explained by the evidence.⁴⁶

The unexplained deposits support counsel for the Wife’s submissions that the Husband had income from various sources that were not disclosed, such as rental from the properties owned by P Pte Ltd, other business dealings and so forth. The additional substantial unexplained withdrawals strongly suggested a pattern of dissipation by the Husband.

Other expenses totalling \$979,000

32 The Wife submitted that the Husband’s expenses of approximately \$1.5m over the relevant period far exceeded his reasonable expenses of \$7,886 per month as stated in his affidavit of assets and means dated 9 April 2013.⁴⁷ Compared to her frugal habits, the Wife asserted that the Husband’s high expenditure resulted in the matrimonial assets being recklessly dissipated. Given that the Husband had not properly accounted for his high expenditure, apart from asserting that much of it had been spent on gambling, this lent weight to the inference that he had dissipated assets.

Adverse inference

33 In *ANJ v ANK* [2015] 4 SLR 1043 (“*ANJ v ANK*”) at [29], the Court of Appeal held that the court had the power to draw adverse inferences against a

⁴⁵ Plaintiff’s affidavit dated 14/3/2016 (PA16) at pp 25 and 49.

⁴⁶ Plaintiff’s affidavit dated 14/3/2016 (PA16) at p 25, Jan 2008 withdrawal of \$18,000.

⁴⁷ Defendant’s submissions at paras 86-88.

party who had failed to make full and frank disclosure of his assets. In my view, it was reasonable, in this case, to draw a conclusion that the Husband had funds elsewhere. First, the pattern of discovery showed that the Husband was chary of giving information unless required. The Husband did not disclose his A Pte Ltd shares until confronted by the Wife. More importantly, his share account, while admitted in the course of an interrogatory, was not disclosed: the Husband rather nonchalantly stated that it was “not relevant”. Second, there were substantial unexplained withdrawals from OCBC 001, and third, unexplained high expenses.

34 Regarding the specific sum, the Wife suggested adding back \$1,979,000 for OCBC 001 and unexplained expenditure. The Husband’s case, however, was that he was “rolling money around”, through loans and their subsequent repayment, to meet his business needs. Counsel for the Wife pointed out, however, that between the deposits and withdrawals, a significant sum had been siphoned out: he estimated this as at least \$1,019,479.30, over and above the dissipation of \$979,000 in expenses and \$313,180 for gambling. It was also clear from the Husband’s notation of deposit and withdrawal for the purposes of his share account that his undisclosed share account would have at least \$300,000. I decided to add a conservative sum of \$500,000 to the asset pool arising from the adverse inference I had drawn against him.

Husband’s liabilities

35 The Husband contended he was subject to the following liabilities:

- (a) \$200,000 owed to his friend Ronald;
- (b) \$137,582 owed to his friend Ramakrishnan;
- (c) \$70,000 owed to P Pte Ltd; and

(d) \$18,213.18 owed to DBS.

36 I first considered the alleged debt owed to Ronald. In the earlier affidavits, both the Husband and Ronald asserted that a sum of \$268,642.50 was owed by the Husband to Ronald. In the light of OCBC bank statements showing the loan's repayment, on 6 April 2015, Ronald filed an affidavit to say that the debt has been repaid⁴⁸ and the Husband also filed an affidavit to retract the claim that he owed Ronald \$268,642.50⁴⁹. Subsequently, in his second affidavit dated 19 May 2016, the Husband claimed for the first time that he owed Ronald a further sum of \$200,000, which he received into his account on 18 April 2011.⁵⁰ Ronald filed an affidavit on 19 May 2016 to corroborate the Husband's claim that a debt of \$200,000 was still owing to him.⁵¹ The Wife pointed out that although it has been some 5 years since the disbursement of the loan, no part of it has been repaid nor was there any evidence of any demand for repayment made by Ronald. At the same time, the Husband had prepared a ledger of alleged loans to various persons but there is no entry relating to Ronald; instead an 18 April 2011 movement of \$200,000 is described as a dividend.⁵² In light of the unsatisfactory nature of the evidence, I did not take account of this loan.

37 Similarly, the claim that a debt of \$137,582 was owed to Ramakrishnan only surfaced for the first time in the Plaintiff's affidavit dated 19 May 2016.⁵³ On the same day, Ramakrishnan filed an affidavit in support of

⁴⁸ Affidavit of Ronald Charles Klyne dated 25/3/2015 (PA 12) at para 4.

⁴⁹ Plaintiff's affidavit dated 25/3/2015 (PA 13/PA 7) at para 6.

⁵⁰ Plaintiff's affidavit dated 19/5/2016 (PA 17) at para 28.

⁵¹ Affidavit of Ronald Charles Klyne dated 19/5/2016 (PA 19).

⁵² Plaintiff's reply affidavit dated 6/5/2015 (PA 14) at pp 284-297.

⁵³ Plaintiff's affidavit dated 19/5/2016 (PA 17) at para 29.

the Husband's claim that the Husband owed him \$87,530.⁵⁴ This discrepancy between the quantum of debt the Husband and Ramakrishnan claimed was explained by reference to a difference in disbursement dates. Nevertheless, this allegation surfaced for the first time only in May 2016. In two affidavits filed by the Husband earlier, on 6 May 2015 and 18 January 2016, this debt of \$137,582 did not appear on the list of debts the Husband claimed were owed by him as of 28 January 2013. To date, the debt remains unpaid and there is no evidence that Ramakrishnan has demanded repayment of it. In the circumstances, there was insufficient evidence for me to find that the Husband owed Ramakrishnan any money.

38 As for the \$70,000 debt allegedly owed to P Pte Ltd, the documents suggested that this loan was disbursed in two parts: a \$50,000 loan and then a \$20,000 loan. To first deal with the \$20,000, the Husband had exhibited a payment voucher of \$20,000 dated 22 February 2012 made out to him and described as "staff loan". This was supported by a corresponding OCBC debit note dated 22 February 2012 showing a corresponding \$20,000 cheque deposit into his account and the debit note described the transaction as "STAFF LOAN" under "Additional Details".⁵⁵ The only evidence supporting the alleged \$50,000 loan was an OCBC debit note dated 10 January 2012 for \$50,000.⁵⁶ On balance, I found that the documentary evidence was insufficient to prove that the Husband did indeed owe P Pte Ltd \$70,000. There was no evidence as to *why* the money was borrowed, and the *terms* on which it was borrowed, or that there was any intention to repay the debt.

⁵⁴ KKV Ramakrishnan's affidavit dated 19/5/2016 (PA 18) at para 4.

⁵⁵ Plaintiff's affidavit dated 18/1/2016 (PA 15) at pp 119-120.

⁵⁶ Plaintiff's affidavit dated 18/1/2016 (PA 15) at p 121.

39 The \$18,213.18 debt allegedly owed to DBS was supported by a bank statements dated 31 December 2012 and 1 January 2013.⁵⁷ However, the Husband was not able to provide an account of why this sum was borrowed and whether it was a valid expense for the benefit of the family. I therefore rejected this debt.

Final table of assets

40 I conclude with parties' pool of matrimonial assets:

Table 1 : Asset Table

S/No.	Asset Description	Court's Determination (\$)	Remarks
Assets in joint names			
1	Marsiling HDB	\$600,000.00	Marginally lower value used
2	The Condominium	\$1,400,000.00	Average of two close valuations
Sub Total		\$2,000,000.00	-
Assets in sole name of Husband			
3	Shares held with P Pte Ltd (S) Pte Ltd	\$1,331,790.00	Finding of Court
4	AXA Prudential Policy	\$26,227.73	Agreed
5	Prudential Life	\$11,949.91	Agreed
6	Standard Chartered as at 02/01/09, about \$11,673.83	\$11,673.83	Wife's value accepted

⁵⁷ Plaintiff's affidavit dated 18/1/2016 (PA 15) at pp 117-118.

7	Maybank as at 15/6/2012, about \$37,572.66	\$37,572.66	Wife's value accepted
8	OCBC XX-XXX42-8 as at 19/4/99, about \$9,743.59	\$9,743.59	Wife's value accepted
9	OCBC 001 (A)	\$5,916.72	Agreed
10	OCBC 001 (B)	\$56,604.98	Agreed
11	Motorcar	\$26,000.00	After deduction for hire purchase
12	CPF Ordinary account	\$23,660.72	Agreed
13	CPF Special account	\$43,500.00	Agreed
14	CPF Medisave account	\$1,686.12	Agreed
15	CPF Retirement account	\$65,163.27	Agreed
16	Sum allocated for shares, adverse inference and gambling	\$650,000.00	Added
	Sub Total	\$2,301,489.53	
Assets in sole name of Wife			
16	POSB 26-9	\$248,676.17	Money from relatives included
17	POSB XXX-XXX89-3	\$3,898.71	Agreed
18	POSB XXX-XXX89-7	\$989.87	Agreed
19	CPF Ordinary account	\$123.44	Agreed
20	CPF Medisave account	\$2,424.59	Agreed
21	CPF Retirement account	\$14,094.65	Agreed
22	Jewellery	\$8,500.00	H's claims not proved
23	AIA Insurance Policy A	\$46,275.62	Agreed
24	AIA Insurance Policy B	\$0.00	No surrender value
25	AIA Insurance Policy C	\$0.00	No surrender value
26	AIA Insurance Policy D	\$0.00	No surrender value

27	1,360 SingTel Discounted shares	\$4,962.00	Agreed
Sub Total		\$329,945.05	-
Total value of all assets		\$4,631,434.58	-

Division of the pool

41 Having defined the pool of matrimonial assets, I now explain how I divided the pool.

Applicable legal principles

42 The Court of Appeal set out a structured approach in *ANJ v ANK* (at [22]–[26], [28]) to work out a just and equitable division of matrimonial assets:

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

could also be made in respect of other relevant factors under ss 112 or 114(1) of the Women's Charter.

Direct contribution ratio

43 The Husband computed the Wife's direct contribution as 1.25% and his at 98.75%. The Husband only gave credit to the Wife for her CPF contribution of \$15,819.07 to the Marsiling HDB.⁵⁸ The Wife computed her direct contribution as 2.18%. She submitted that she should additionally be given credit for her \$15,000 contribution to renovations of the Condominium and for her \$30,000 contribution to renovations of the Marsiling HDB.⁵⁹

44 There was insufficient evidence to determine whether the Wife did indeed contribute to the renovations of the Condominium and the Marsiling HDB. On a "*rough and ready approximation*" (see *ANJ v ANK* (at [23])), I set the direct contribution ratio for the pool at 2:98 in favour of the Husband.

Indirect contribution ratio

45 This was a very long marriage that had lasted almost 33 years up to the date of the IJ.

46 The Wife proposed an indirect contribution ratio of 90:10 in her favour. She asserted that she contributed to paying for the family's expenses early on in the marriage before the Husband's business took off. She also asserted that the Husband travelled overseas frequently and that she cared for their daughter with little help from him. She had experienced three painful

⁵⁸ Plaintiff's submissions at para 114.

⁵⁹ Defendant's affidavit dated 21/1/2016 (DAM 1) at para 21.

miscarriages prior to giving birth to their daughter.⁶⁰ Further, the Husband was hardly by her side during her pregnancy and she did all the household chores.

47 The Husband proposed an indirect contribution ratio of 60:40 in his favour. He asserted that he was very supportive during the Wife's pregnancy and that he participated in caring for her family (her parents and brother). He also asserted that he took care of their daughter when she was sick and that he would fetch her to and from school at times. He claimed that he would fix things around the house (*eg*, light bulbs, tap) and that he oversaw the renovations of their matrimonial house.⁶¹ Finally, he claimed that the Wife neglected him and their daughter when her parents started living with them as her attention was solely on her parents.⁶²

48 It was undisputed that the Husband was the sole breadwinner and that he spent most of his day working and travelled very frequently. As a result, the Wife was the main person maintaining the household. She also contributed to the household expenses at the beginning of the marriage, before the Husband's business took off. While the Husband did make some effort to take care of their daughter and the household, his contributions were limited given that he was busy with work most of the time. While the Wife did take care of her family in their home, this was with the agreement of the Husband. In the circumstances, I set the indirect contribution ratio at 75:25 in favour of the Wife.

⁶⁰ Defendant's affidavit dated 21/1/2016 (DAM 1) at para 22(f)–(m).

⁶¹ Plaintiff's affidavit dated 22/1/2016 (PA 15) at para 26(ii).

⁶² Plaintiff's affidavit dated 19/5/2016 (PA 17/PAM 2) at para 21(h).

Adjustment of the average ratio

49 In *ANJ v ANK* at [27], the Court of Appeal highlighted three considerations that can 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 the indirect contributions made. Indirect contributions feature more prominently in long marriages. Taking into account the 33-year marriage between the parties, I awarded the indirect contributions ratio a 65% weight in this case. The adjusted ratio was thus computed as follows:

Table 2: Adjusted Ratio Computation

	Husband	Wife
Step 1 Ratio	98	2
Step 1 Ratio (35% weight)	34.3	0.7
Step 2 Ratio	25	75
Step 2 Ratio (65% weight)	16.25	48.75
The Step 3 adjusted ratio	50.55	49.45

50 Taking all the circumstances into account, I found that a **50:50** split of assets to be a just and equitable division, for reasons which follow.

Reasons for the final ratio

51 It was clear in this case that the Husband' contribution was as the fee earner, and the Wife's was in the home. It was, by all measures, a very long

marriage. The couple started in humble circumstances, in one instance with the Wife having to pawn her jewellery to assist the Husband. Through their joint efforts in their respective spheres, all of the asset enhancement being divided was obtained during the marriage. As is usual in cases of divorce, there were expressions of dissatisfaction on both sides with the other's contribution to the marriage. The fact of the matter is that, in this case, both parties had put in strong and equal effort into the marriage, over a very long period of time.

52 Of relevance here is the guidance of the Court of Appeal that financial and non-financial contributions to the household should be equally respected: see *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520, *Lim Choon Lai v Chew Kim Heng* [2001] 2 SLR(R) 260 (“*Lim Choon Lai*”), *Tan Hwee Lee v Tan Cheng Guan and another appeal and another matter* [2012] 4 SLR 785. Also, in *NK v NL* [2007] 3 SLR(R) 743 at [41], the Court of Appeal affirmed the principle that the process of matrimonial division of assets “must involve a mutual respect for spousal contributions, whether in the economic or homemaking spheres, as both roles are equally fundamental to the well-being of the marital partnership”. The Court of Appeal added that financial and non-financial contributions should be put “on an equal footing” (at [27]). 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* (at [41]) that spousal contributions in both the economic and home-making spheres are equally fundamental to the well-being of a martial partnership.

53 In such cases of long marriage where parties have ordered their lives where one party concentrates solely on the home and family, strictly applying steps (a) and (b) of the *ANJ v ANK* approach without adjusting the ratio at step (c) may lead to a greater emphasis on financial rather than non-financial

contributions. In the first step of the direct contribution ratio, parties' direct contributions are based on their *financial contributions to the matrimonial assets*. The parties' indirect contributions comprise *both their financial and non-financial contributions* to the welfare of the household, above and beyond their financial contributions to the matrimonial assets. Given that financial contributions feature in computing both the direct and indirect contributions ratio, the Court, in cases such as the present, must adjust the final ratio such that there is no role discrimination weighing in favour of the fee earner. Such a conclusion would be contrary to the well-established position that courts give equal respect to the economic and homemaking spheres given the fundamental importance of each role to the well-being and flourishing of the marital partnership. In following the three-part analysis in dividing parties' assets, the Court's singular statutory duty is to ensure that the final result brings a just and equitable closure to parties' joint lives. As stated by the Court of Appeal 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."

Value of the Wife's half share

54 The total value of the matrimonial assets came up to \$4,631,434.58. The Wife was entitled to 50% of that, which was \$2,315,717.29. Deducting the assets held in the Wife's name (which have been valued at \$329,945.05), \$1,985,772.24 remained payable to the Wife.

Maintenance for the Wife

55 In 2013, the Husband's monthly income was approximately \$12,906.92.⁶³ His counsel indicated that his monthly income was \$12,000 at

the time of the hearing. The Husband estimated that his monthly expenses amounted to \$7,886.⁶⁴ The Husband proposed to give the Wife \$1,000 per month and the daughter \$1,500 per month as maintenance.⁶⁵ He objected to a lump sum maintenance award as he claimed that he did not have enough savings and also submitted that the fact he had been dutifully paying \$2,500 to the Wife suggested he was unlikely to default.⁶⁶

56 It was clear from the evidence that the Husband enjoyed income over and above his declared monthly income. This explained why he could have such high monthly expenditures. His counsel conceded that his expenses of \$1,073,004 for a period of 61 months came to \$17,590 per month. ACRA searches conducted by counsel for the Wife showed that the Husband was involved in many businesses. P Pte Ltd also seemed to be a source of income. He explained on affidavit that P Pte Ltd was resting on rental income, and he receives a portion of that rental income. Referencing his 40% share of the \$444,408 obtained annually after deducting expenses, his rental income would be \$123,000 annually. This was a steady income stream that was stable. From the Husband's spending pattern, it was clear that he had recourse to other sources of funds.

57 The Wife was last a clerk and would have difficulty re-entering the labour market after being a home-maker for many years. Since June 2012 to the present, the Husband had been giving the Wife monthly maintenance of \$2,500 for herself and the Child. The Wife claimed that she had other

⁶³ Plaintiff's affidavit dated 22/1/2016 (PA 15) at para 9.

⁶⁴ Plaintiff's affidavit dated 22/1/2016 (PA 15) at para 20.

⁶⁵ Plaintiff's affidavit dated 22/1/2016 (PA 15) at para 32.

⁶⁶ Plaintiff's submissions at paras 105-110.

expenses which she had been using her savings for and that the \$2,500 from the Husband had been insufficient.⁶⁷ She also claimed that her financial situation was ameliorated by the fact that from August 2012 to August 2013, the Husband had allowed her to keep the rental of \$2,600 from the Marsiling HDB, which meant that she effectively had \$5,100 to spend each month.⁶⁸ Her monthly maintenance claim for herself and her daughter was \$3,043.44 and \$2,193.33 respectively.⁶⁹

58 A lump sum award was appropriate because of the desirability of a clean break between the spouses in this case, especially in light of the animosity between them. Affordability was not an issue for the Husband. The Wife asked for a lump sum based on a 12-year period. Because the Wife had been awarded a substantial sum of assets pursuant to the division of matrimonial property and because the Court's power to order maintenance is supplementary to that to divide assets (see *ATE v ATD and another appeal* [2016] SGCA 2 at [33]), I decided to award the Wife a small lump sum to ease the transition. I set this sum at \$171,422, using a sum of \$3,000 per month, discounted using the net present value formula over five years with an assumption of interest at 2% per annum.

Implementation of orders

59 Adding the sum the Wife was entitled to pursuant to the division of assets, namely, **\$1,985,772.24**, and the lump sum maintenance of **\$171,422** awarded to the Wife, a total sum of **\$2,157,194 (nearest dollar)** was payable to the Wife. In the circumstances, I found that the best way of effecting my

⁶⁷ Defendant's affidavit dated 21/1/2016 (DAM 1) at para 16.

⁶⁸ Defendant's affidavit dated 21/1/2016 (DAM 1) at para 18.

⁶⁹ Defendant's affidavit dated 21/1/2016 (DAM 1) at para 16.

decision on the division of matrimonial assets and maintenance was to order, *inter alia*, that the **Husband transfer the Condominium and the Marsiling HDB to the Wife**. This addresses the needs of the family in ensuring that the Wife and their daughter would continue to have stability. The Wife is also advanced in age and would be disadvantaged in the job market in the light of her many years as a home-maker. This would allow her a stable source of income from rental collected from the Marsiling HDB. While the Husband was living at the Marsiling HDB, he had previously rented property elsewhere for a year, allowing the Wife the benefit of the rental. His business interests indicated that he was also experienced on the property market and given his various sources of funds, would be able to find alternative accommodation easily.

60 Given that the two properties were valued at \$2m, the Husband was ordered to pay a further sum of **\$157,194** to the Wife. Specifically, I ordered that the Husband was to pay the Wife the first \$100,000 in three months, and the remainder \$57,194 within three months thereafter. Parties were to keep all other assets in their own names.

Child orders

61 The Husband and Wife were given joint custody of the Child, with care and control to the Wife and liberal access to the Husband.

62 The Child is 19 and will complete her polytechnic education in 2017. For the Child's maintenance, in accordance with the Husband's prior proposal, I awarded the Child \$1,500 per month until she completed her education. The Husband was ordered to credit the monthly maintenance of \$1,500 to the Child on the first day of each month with effect from 1 November 2016.

Costs

63 In the case at hand, the Husband initially obtained ancillary orders in absence of the Wife's participation. Upon the Wife's application to set the judgment aside, the High Court previously decided that, while the order for the division of assets obtained in the Wife's absence was regular, the orders made ought to be set aside. Costs of that setting aside were reserved to me. The Wife asked for those costs as well as the costs of the hearing on the ancillary matters before me.

64 In general, costs are not ordered in matrimonial cases; nevertheless, the court exercises its discretion to do so in appropriate cases: see rr 854(b), 856, and 857, Family Justice Rules 2014 (GN S 813/2014), and *Cheung Kam Yi Betty v Liu Tsun Kie* [2012] SGHC 213 at [79]. Costs remain an important tool in regulating the litigation process in family cases, in discouraging misconduct and incentivising sensible behaviour on the part of litigants.

65 Of relevance here was the Husband's significant non-disclosure. In the Husband's first affidavit filed for the ancillary matters, there were non-disclosures in the areas both of his salary - in the previous proceedings he stated it was \$8,000 per month whereas later he admitted it was over \$12,000 a month - as well as his assets, where various businesses had not been disclosed. Even after that judgment was set aside, the Husband did not do much better on disclosure in the second set of ancillary matters. The enhanced value of the properties held by P Pte Ltd came to light during his interrogatories and it was the Wife who sought and obtained an updated valuation of the properties held by the company after queries from the Court. Another company, A Pte Ltd, was discovered by the Wife in the course of litigation and the Husband conceded when confronted by the Wife. Disclosure of his bank accounts, obtained by the Wife after a discovery application, led to information as to

withdrawals and expenditure that were ill explained. As at the hearing of the second set of ancillary issues, the Court still had not had sight of his share trading account, information he dismissed, in answer to an interrogatory, as “irrelevant”.

66 Such conduct must be discouraged, for several reasons. Fundamentally, in family cases, where there is no general process of inspection and discovery applicable to other kinds of civil litigation, parties’ disclosure of their assets is fundamental to the exercise of the court’s discretion. The principle of full and frank disclosure applies not only to contested proceedings but also to exchanges of information between parties and their solicitors leading to consent orders without further inquiry of the court: see *Livesey (formerly Jenkins) Respondent and Jenkins Appellant [on Appeal From Jenkins V. Livesey (formerly Jenkins)]* [1985] 1 AC 424. Thus, although the Wife did not participate in the initial hearing of the ancillary matters and the judgment thereby obtained was regular, the onus was upon the Husband to give the Court full and frank disclosure even in his first affidavit. The court’s ability to exercise its statutory discretion under the Women’s Charter rests upon parties’ compliance with their duty of disclosure and respect for the processes of the Court. Secondly, the “catch-me-if-you-can” attitude leads to an inevitable sequence of requests for documents, interrogatories and disclosure by further affidavits. This increases the costs and length of litigation, and is unhelpful to an orderly assessment of evidence and adjudication of issues. Finally, such conduct also increases emotional strain and conflict between parties, often with adverse impact on any children within the family.

67 In the circumstances, I found it just to award the Wife the costs of the setting aside and the subsequent hearing of the ancillary matters before me. I fixed these costs, in the round, at \$15,000 (inclusive of disbursements).

Conclusion

68 In summary, I made the following orders:

(a) The Husband shall transfer his share, interest, and right in the Condominium and the Marsiling HDB to the Wife. The Wife to bear the costs of both transfers. The Husband is to effect the transfer of the Condominium within three months, and the transfer of the Marsiling HDB within six months, from the date of the judgment, with no reimbursement of the Husband's CPF monies.

(b) The Registrar of the Family Justice Courts shall sign the documents effecting the above transfers if the Husband fails to do so within the stipulated time and upon the Wife giving the Husband seven days' written notice of her intention to effect the transfer.

(c) The Husband is to pay a further sum of \$157,194 to the Wife. The first \$100,000 was to be paid in three months, and the remainder \$57,194 within three months thereafter.

(d) Each party is to keep the rest of the assets in his or her own name.

(e) With effect from 1 November 2016, and on the first of each month thereafter, the Husband shall pay the Child \$1,500 per month as maintenance until she completes her education.

- (f) Parties have joint custody of the Child, with care and control to the Wife, and liberal access to the Husband.
- (g) Costs, fixed at \$15,000 (inclusive of disbursements), to be paid by the Husband to the Wife.
- (h) Liberty to apply.

Valerie Thean
Judicial Commissioner

Gangadharan Prasanna Devi (Prasanna Devi LLC) for the plaintiff;
Jayamani Jose Charles (Jose Charles & Co) for the defendant.
