

IN THE FAMILY COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHCF 11

Divorce Transfer No 5 of 2011

Between

UAP

... *Plaintiff*

And

UAQ

... *Defendant*

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**GROUND OF DECISION**

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[Family law] — [Matrimonial assets] — [Gifts]  
[Family law] — [Matrimonial assets] — [Division]  
[Family law] — [Matrimonial assets] — [Bankruptcy]  
[Family law] — [Matrimonial assets] — [Damages for injunction]  
[Family law] — [Maintenance] — [Wife]  
[Family law] — [Maintenance] — [Rescission or variation]  
[Family law] — [Maintenance] — [Child]  
[Family law] — [Custody] — [No orders made]

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**UAP  
v  
UAQ**

**[2017] SGHCF 11**

High Court Family — Divorce Transfer No 5 of 2011  
Valerie Thean JC  
27 October; 29 November 2016, 5 January 2017; 20, 21 April 2017.

27 April 2017

**Valerie Thean JC:**

### **Introduction**

1 Parties married on 18 October 1991, and have a son, aged 21. The plaintiff (“the Wife”) is 48 years old and the defendant (“the Husband”) is 54 years old. I dealt with their ancillary matters on 5 January 2017. Parties have appealed and I furnish my grounds of decision.

### **Background**

2 When parties first met, the Wife was a flight stewardess with Singapore Airlines (“SIA”). She left her job after the marriage, thereafter working as a teacher and venturing into various businesses between 1991 and 1995. After the birth of their son in 1996, the Wife returned to work in a government agency for close to 2 years.<sup>1</sup> Thereafter, aside from a short stint

teaching for around 3 years between 2004 and 2006, the Wife was a full-time homemaker. The Husband, formerly a Republic of Singapore Air Force (“RSAF”) pilot, was a pilot with SIA at the time of their marriage and became a SIA captain in 2003.<sup>2</sup> He also had business interests. Notably, he had a 20% interest in [M] Pte Ltd, a business involving a private jet managed by the Wife’s eldest sister, and was the sole shareholder in [P] Pte Ltd, a related business.<sup>3</sup> Both parties knew that these side-line businesses were not permitted under SIA’s employee rules.

3 On 12 July 2010, the Husband, being confronted by the Wife, confessed to having an affair with [A]. The relationship between the parties then turned incredibly sour. The Wife claimed that the Husband had in October 2010 informed that [A] could possibly be pregnant and thereafter effectively disappeared. This led to the Wife lodging various police reports as to the Husband’s disappearance.<sup>4</sup> The Husband, on the other hand, contended that the Wife had padlocked him out of the matrimonial home from October 2010.<sup>5</sup>

4 On or about 1 November 2010, the Husband became irate over the Wife’s sister’s rudeness to the Husband’s mother over a telephone conversation, and the Wife’s and son’s rudeness to him in subsequent discussions about the issue. On 7 November 2010, the Husband sent an instant message to the Wife and their son stating that he wanted a separation with effect from that same day.<sup>6</sup> On 13 November 2010, the Wife discovered that

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<sup>1</sup> Wife’s 1<sup>st</sup> Affidavit dated 3 January 2011 at paras 6-10.

<sup>2</sup> Husband’s AM Submissions at para 28.

<sup>3</sup> Husband’s AM Submissions at para 28.1.

<sup>4</sup> Wife’s 1<sup>st</sup> Affidavit dated 3 January 2011 at paras 67-68, 73.

<sup>5</sup> Husband’s AM Submissions at paras 9.1.2 and 9.1.6.

the Husband had terminated her mobile phone account.<sup>7</sup> In the same period, the Development Bank of Singapore (“DBS”) informed the Husband that the two supplementary cards held by the Wife had reached their credit limits.<sup>8</sup> The Husband also contended that the Wife withdrew large sums of money from the parties’ accounts. He therefore proceeded to terminate various ATM and credit cards held by her.

5 Matters rapidly deteriorated even further. On 18 November 2010, the Wife and the son returned home to find that the padlock she had placed there had been broken and replaced with a new padlock. They engaged a locksmith to break the new padlock. Upon entering, they discovered that the Husband had removed his personal belongings.<sup>9</sup> On that same day, their son discovered that his mobile phone account had been terminated.<sup>10</sup> The Husband contended that this was because he had an argument with the son and the son was rude to him.<sup>11</sup> At that time, a notification from the Australia and New Zealand Banking Group (“ANZ”) also indicated that the Husband had changed his residential address for his account with the bank.<sup>12</sup> On 22 November 2011, the residential telephone line for the matrimonial home was cut off by the Husband,<sup>13</sup> which he maintained was done in response to the Wife’s continued failure to apologise for her sister’s rudeness.<sup>14</sup> On that day, the Wife lodged a

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<sup>6</sup> Wife’s 1<sup>st</sup> Affidavit dated 3 January 2011 at para 75.

<sup>7</sup> Husband’s AM Submissions at para 9.1.7.

<sup>8</sup> Husband’s AM Submissions at paras 9.1.5 and 52.5.

<sup>9</sup> Wife’s 1<sup>st</sup> Affidavit dated 3 January 2011 at paras 82-84.

<sup>10</sup> Wife’s 1<sup>st</sup> Affidavit dated 3 January 2011 at para 85.

<sup>11</sup> Husband’s AM Submissions at para 52.7.

<sup>12</sup> Wife’s 1<sup>st</sup> Affidavit dated 3 January 2011 at para 87.

<sup>13</sup> Wife’s 1<sup>st</sup> Affidavit dated 3 January 2011 at para 89.

<sup>14</sup> Husband’s AM Submissions at para 52.8.

caveat over the matrimonial home, claiming that she was afraid the Husband would sell the house without informing her and their son.<sup>15</sup> The Wife further contended that on 10 December 2010, the Husband caused the supply of water and electricity to the matrimonial home to be terminated.<sup>16</sup>

6 On 3 January 2011, the Wife petitioned for divorce. While the Husband's Defence and Counterclaim filed on 10 May 2011 contained admissions of wrongdoing as to the grounds of divorce, which were reiterated in his lawyer's letter to the Wife dated 30 June 2011, the Wife rejected the Husband's invitation to seek judgment on the admissions.<sup>17</sup> After the matter was set down for a contested trial, the Husband applied for a preliminary issue to be determined as to whether his admissions were sufficient to avoid a contested trial. IJ was eventually granted on 22 July 2013 based on his admissions. The marriage thus lasted some 22 years.

7 Several other events occurred during and after this process of obtaining IJ. On the Husband's part, in the middle of 2010, he took out a second mortgage over the matrimonial property, which was held in his sole name, for \$550,000.<sup>18</sup> A third mortgage was taken out by him over the matrimonial home on 14 January 2011 for \$378,000.<sup>19</sup>

8 On the other hand, the Wife sought a series of injunctions against the Husband and related parties. On 4 January 2011, the Wife obtained, *ex parte*, an injunction against the Husband ("the 1<sup>st</sup> Injunction") restraining him from

<sup>15</sup> Wife's 1<sup>st</sup> Affidavit dated 3 January 2011 at para 97.

<sup>16</sup> Wife's 1<sup>st</sup> Affidavit dated 3 January 2011 at para 101.

<sup>17</sup> Husband's AM Submissions at para 1.2.

<sup>18</sup> Wife's 1<sup>st</sup> Affidavit dated 3 January 2011 at para 112.

<sup>19</sup> Wife's AM Submissions at para 141; Wife's 6<sup>th</sup> Affidavit dated 8 August 2011 at pp 20-23.

dealing with the matrimonial home, proceeds in two of the Husband's bank accounts, shares and securities in stipulated companies (*eg*, SIA, Singtel and Singapore Petroleum), two AVIVA insurance policies, and any wines purchased from and stored with Corndale Consultants Pte Ltd ("Corndale") ("the Fine Wine Collection").<sup>20</sup> The Husband contended that he found out about the 1<sup>st</sup> Injunction only through his then-employer, SIA, who had been informed by the Wife of the divorce petition and injunction.<sup>21</sup> He was then summoned for an urgent meeting by SIA in January 2011 because SIA had discovered, through the documents sent by the Wife, his involvement with his two jet-related side businesses, *ie*, [M] Pte Ltd and [P] Pte Ltd. During the course of investigations, SIA suspended him and put him on no pay leave. He was later dismissed by SIA from employment in May 2011.<sup>22</sup> The Husband stated that the circumstances of his dismissal made it challenging for him to find alternative employment as a commercial pilot; the injunction also made it difficult for him to continue to operate his other businesses.<sup>23</sup>

9 On 2 February 2011, a second injunction was obtained by the Wife against the Husband preventing him from terminating the water and electrical supplies to the matrimonial home ("the 2<sup>nd</sup> Injunction").<sup>24</sup> In this respect, the Husband highlighted his lawyer's letter to the Wife dated 14 February 2011 containing an undertaking that he would not terminate the water and electricity supply at the matrimonial home, which letter he alleged that the Wife had sought to suppress.<sup>25</sup> The Husband later requested in May 2011, in light of his

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<sup>20</sup> Husband's Bundle of Orders at Tab 1.

<sup>21</sup> Husband's 4<sup>th</sup> Affidavit dated 8 April 2011 at para 8.

<sup>22</sup> Husband's 19<sup>th</sup> Affidavit dated 13 October 2016 at para 8; Husband's AM Submissions at para 9.3.

<sup>23</sup> Husband's 19<sup>th</sup> Affidavit dated 13 October 2016 at paras 7-8.

<sup>24</sup> Husband's Bundle of Orders at Tab 2.

impending dismissal from SIA, that the Wife lift the 1<sup>st</sup> Injunction in respect of certain SIA securities to allow him to exercise his SIA employee share options which would expire on the date of his dismissal. This, he claimed, would help to add to the divisible asset pool. The Wife, however, refused to agree and the share options accordingly expired.<sup>26</sup>

10 In August 2011, the Wife applied *ex parte* for leave to commence committal proceedings against the Husband for failure to obey the 1<sup>st</sup> Injunction. Leave to commence committal proceedings were also sought against Corndale, [A], and the Husband's mother. None of the applications resulted in any order for committal. Proceedings against [A] were dropped. Leave to proceed against the Husband was refused by the High Court on appeal. The remaining applications were refused in the then District Court, and no appeal was lodged.<sup>27</sup>

11 On 13 September 2011, a fresh set of injunctions ("the 3<sup>rd</sup> Injunction") were sought by the Wife and granted:<sup>28</sup> (a) against [A] restraining her from disposing of \$200,000 from her bank account and her shares in [P] Pte Ltd; (b) against Corndale and the Husband's mother preventing them from disposing of the Fine Wine Collection, and (c) against the Husband's mother preventing her from dealing with the sale proceeds from certain wines amounting to \$48,560.

12 After the grant of the IJ in July 2013, a further injunction ("the 4<sup>th</sup> Injunction") was obtained by the Wife on 2 September 2013 prohibiting the

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<sup>25</sup> Husband's 4<sup>th</sup> Affidavit dated 8 April 2011 at para 86.

<sup>26</sup> Husband's AM Submissions at para 9.4.

<sup>27</sup> Husband's AM Submissions at paras 9.6-9.8.

<sup>28</sup> Husband's Bundle of Orders at Tab 9.

Husband from disposing of monies in his various CPF accounts and his investments made under CPF schemes.<sup>29</sup>

13 The Husband contended that, with the injunctions, he was unable to properly manage his business affairs and his various business debts piled up as a result. He was declared a bankrupt on 7 June 2012 after Standard Chartered Bank (“SCB”) filed a petition for bankruptcy against him. A total of more than \$7m in proofs of debt were filed against him. DBS repossessed the matrimonial home and auctioned it off on 24 April 2013 for \$2.85m.<sup>30</sup> A second bankruptcy order was obtained against the Husband on 25 February 2016, on the basis that the debts claimed therein were not provable in the first bankruptcy.<sup>31</sup> These two bankruptcy orders made against the Husband were annulled on 31 May 2016 and 21 June 2016 respectively.<sup>32</sup>

14 Interim maintenance, meanwhile, had been ordered on 18 July 2011. The Husband was ordered to pay \$2,500 for the Wife and \$1,500 for their son with effect from 1 February 2011 and on the 1<sup>st</sup> day of each month thereafter.<sup>33</sup> In addition, the interim order provided that the Husband was to transfer \$36,000 into the Wife’s and son’s joint bank account as maintenance for the period from 1 February 2011 to 1 October 2011. In this regard, the Wife maintained that only around \$32,000 was paid,<sup>34</sup> and thus applied to enforce the interim order on 20 June 2012. On 19 July 2012, a day before the parties

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<sup>29</sup> Order of Court No 7648/2014.

<sup>30</sup> Wife’s 27<sup>th</sup> Affidavit dated 17 July 2013 at p 99; Completion Account to Purchaser’s Solicitors dated 26 June 2013.

<sup>31</sup> Husband’s AM Submissions at paras 5-6 and Tab C; OA’s Further Submissions at paras 1-2.

<sup>32</sup> Husband’s AM Submissions at para 8 and Tab D; OA’s Letter dated 21 June 2016.

<sup>33</sup> Husband’s Bundle of Orders at Tab 3.

<sup>34</sup> Wife’s AM Submissions (Amended) at para 576.

were due to exchange their respective Affidavits of Evidence-in-Chief, the Husband applied to vary the maintenance order because of his bankruptcy. Subsequently, on 16 August 2012, a consent order was granted providing that (a) the Husband was to pay to the Wife \$500 per month for maintenance of their son with effect from 1 September 2012, (b) the arrears in maintenance as at (and including) August 2012 amounted to \$44,000, and (c) these arrears and the balance of \$3,500 per month payable from September 2012 onwards was to be accumulated and dealt with at the ancillary matters.<sup>35</sup> On 20 August 2014, the Husband applied to vary or rescind the two previous maintenance orders on grounds, *inter alia*, of his ailing health condition. This application, pursuant to the Husband's application on 22 January 2015<sup>36</sup> and an order of the Deputy Registrar, was on 26 January 2015 fixed to be heard together with the ancillary matters.

15 The ancillary matters were first fixed to be heard in the Family Court on 12 November 2015. Arising from the decision in *AVM v AWH* [2015] SGHC 194 ("*AVM v AWH*"), this was held in abeyance until the annulment of the second bankruptcy on 21 June 2016. After a case conference on 12 August 2016, the ancillary matters were subsequently transferred to the High Court on 16 September 2016.

### **Division of assets**

#### ***Operative date for delineation of matrimonial pool***

16 Save in one respect, I took the operative date for delineating the matrimonial pool as the IJ Date, in line with guidance from the Court of Appeal in *ARY v ARX and another appeal* [2016] 2 SLR 686 (at [31]). Parties

<sup>35</sup> Wife's Bundle of Summonses and Orders of Court at p 227.

<sup>36</sup> Husband's Letter to Registry dated 22 January 2015.

had been living separate lives by the IJ Date, if not as early as October 2010. The one exception related to the Husband's intervening bankruptcy, which I deal with below.

***Sum remaining with the Official Assignee***

17 The Husband was first made bankrupt on 7 June 2012, whereas the second annulment of his bankruptcy order was on 21 June 2016. IJ Date was in the interim on 22 July 2013. The Wife requested that the pre-bankruptcy pool of assets be used for division. The Husband submitted that the sums paid out by the Official Assignee ("OA") must be taken to be legitimately spent. I agreed with the Husband that, in respect of the assets that had been taken by the OA, their valuation must be taken as at a time *ex post* the OA's adjudication and distribution.

18 To explain the context, after the Husband's bankruptcy, the parties' matrimonial home, which was held in the Husband's sole name, was repossessed and auctioned off on 24 April 2013 for \$2.85m. A part of this sum was refunded to the Husband's CPF account and a part was taken by the mortgagee in discharge of mortgages taken out over the matrimonial home. The OA thereafter took some \$996,116.78. Using this amount, the OA paid off \$729,076.94 owed by the Husband to various banks and two individuals, Mr Choo and Mr Liang.<sup>37</sup> After deducting various expenses incurred by the OA, including fees and taxes, there remained \$111,618.54 with the OA as at 13 July 2016.<sup>38</sup> These monies were in the OA's possession and were liable for division as matrimonial assets once the Husband's bankruptcies were annulled.

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<sup>37</sup> Husband's AM Submissions at Annex F, p 110.

<sup>38</sup> Husband's AM Submissions at Annex F, p 110.

19 The Wife submitted that the original sum taken by the OA of \$996,116.78 should be attributed to the matrimonial pool because the debts in respect of which the OA made payments had been dissipations by the Husband. The Wife did *not*, however, adduce any evidence to show that the debts incurred, which were then discharged during the bankruptcy, were dissipations by the Husband or could be attributed solely to him. Given that these sums had been paid out by the OA, whose proper conduct of the matter was not in question before me, there was no reason to hold that the underlying debts paid off were falsely or wrongly incurred. Further, in light of the High Court's decision in *AVM v AWH*, it was the annulment of the Husband's bankruptcy orders that paved the way for parties' ancillary matters to be dealt with under s 112 of the Women's Charter (Cap 353, 2009 Rev Ed) ("WC").<sup>39</sup> Accordingly, only the sum of \$111,618.54 which remained in the hands of the OA was added to the matrimonial pool.

***The Husband's alleged dissipation***

20 In the present case, both parties made numerous allegations of dissipation against the other party. I start with the Wife's contentions.

*Sale of [P] Pte Ltd shares*

21 A central dispute between the parties was with regards to the Husband's ownership of shares in [P] Pte Ltd. It was not disputed that the Husband, at one point of time prior to 6 January 2011, owned all 300,000 issued and paid-up ordinary shares in the company.

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<sup>39</sup> See Submissions of the OA in Husband's AM Submissions at Tabs B and C.

22 In January and February 2011, three agreements were executed which, on the face of them, accounted for a transfer of 100% of the Husband's shareholding in [P] Pte Ltd to a business associate, [B]:<sup>40</sup>

(a) On 6 January 2011,<sup>41</sup> the Husband transferred 49% of his shares to [B] in consideration for US\$100,000. In cl 3.1 of the sale and purchase agreement, the Husband acknowledged receiving S\$130,000 (around US\$100,000) from [B] on or before the execution of this agreement.

(b) On 16 February 2011,<sup>42</sup> the Husband transferred 39% of his shares to [B] in consideration for around US\$87,000. Similarly, in cl 3.1 of the agreement, the Husband acknowledged receiving a payment of S\$30,000 (around US\$23,000) as a deposit for the execution of that agreement. It was also provided that a further US\$64,000 would be transferred by [B] to [P] Pte Ltd on or before 23 February 2011.

(c) On 28 February 2011,<sup>43</sup> the Husband transferred the last 12% of his shareholding to [B] in consideration for US\$30,000. Like the previous two agreements, cl 3.1 provided that the Husband acknowledged receiving a payment of US\$30,000 from [B] on or before the execution of the agreement.

Therefore, based on the transaction documents, the Husband had ostensibly transferred to [B] for valuable consideration all his shares in [P] Pte Ltd.

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<sup>40</sup> Husband's Response Submissions dated 27 October 2016 at paras 46-51.

<sup>41</sup> Wife's Core Bundle Vol 4 at p 383.

<sup>42</sup> Wife's Core Bundle Vol 4 at p 329.

<sup>43</sup> Wife's Core Bundle Vol 4 at p 388.

23 Several aspects of this narrative, however, were amiss. The Accounting and Corporate Regulatory Authority of Singapore (“ACRA”) records of [P] Pte Ltd showed that on 14 April 2011, [A] held 117,000 shares, [B] held 117,000 shares, and the Husband himself held 66,001 shares in the company.<sup>44</sup> A further set of ACRA records showed that as at 2 August 2011, the Husband owned 1 share, one James Ong owned 117,000 shares, and [A] owned 183,000 shares.<sup>45</sup> These objective records were entirely incongruous with the transaction documents produced by the Husband, or at least demonstrated the incompleteness of such documents.

24 Crucially, the Wife also adduced a set of meeting minutes contained in an email drafted by a lawyer on 24 March 2011, addressed to the Husband, [A], and [B], which reflected their discussion at a meeting between the 4 of them the previous day.<sup>46</sup> In that email, it was noted that the Husband was going through an acrimonious divorce and expected certain huge contracts to come into [P] Pte Ltd. Further, it was stated that the Husband wanted to finalise his divorce so that the Wife would not get a share of those contracts. The email then continued:

[The Husband] – [the Husband’s] wife started drawing on [the Husband’s] accounts from Sept 2010 leaving [the Husband] with no money. She max-ed out his credit cards leaving him without credit on his credit cards. As a result, [the Husband’s] had to sell 49% of [P Pte Ltd’s] shares to [B] for US\$100k in Dec 2010...

... [B] did not get a valuation of the worth of the 49% shares as he was satisfied with [the Husband’s] representations and explanations. [B] paid [the Husband] US\$100k based on trust and friendship.

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<sup>44</sup> Wife’s Core Bundle Vol 2 at p 50

<sup>45</sup> Wife’s Core Bundle Vol 2 at p 53

<sup>46</sup> Wife’s Core Bundle Vol 2 at p 66.

[A] – we did not get around to discussing [A] although I did mention that the timing of her obtaining [the Husband’s] shares in [P Pte Ltd] would be subject to great scrutiny if the matter is litigated.

[The Husband] also mentioned that the share transfer agreement signed between [the Husband] and [B] was for [B] “or his nominee” and through this avenue, [B] transferred 10% of the 49% to [A].

25 Near the end of the email, the lawyer who drafted it wrote:

[The Husband] is anxious to end the divorce proceedings expeditiously as [P Pte Ltd] has several large contracts in the works and he does not want his wife to get any share of the fruits of those contracts. [The Husband] is also concerned that his wife may soon uncover his having siphoned a significant amount of matrimonial assets in the last few month.

26 In July 2011, [B] filed an affidavit on behalf of the Wife stating that he signed all three sale and purchase agreements on the same day but did not in fact transfer any monies to the Husband notwithstanding what was stated on the agreements.<sup>47</sup> He also admitted that he did not purchase any [P] Pte Ltd shares from the Husband.<sup>48</sup> In response, the Husband contended that [B] and he had a falling out over an Indonesian business deal and that [B]’s affidavits were in retaliation against that falling out, such that [B] could not be believed.<sup>49</sup>

27 The Wife submitted that the totality of the evidence showed that the Husband had transferred away his shares in [P] Pte Ltd to prevent the Wife from laying a rightful claim to these shares in the matrimonial proceedings. In light of such dissipation, the Husband’s shares in [P] Pte Ltd should be added back into the matrimonial pool by way of an adverse inference drawn against him as there was no reasonable way to determine the value of the shares

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<sup>47</sup> [B]’s 1<sup>st</sup> Affidavit dated 6 July 2011 at paras 40–43.

<sup>48</sup> [B]’s 1<sup>st</sup> Affidavit dated 6 July 2011 at para 55.

<sup>49</sup> Husband’s Response Submissions at para 51.

concerned.<sup>50</sup> In response, the Husband submitted that the sale was genuine and part of a capitalisation exercise to keep the company afloat.<sup>51</sup>

28 Generally, there are two requirements which must be established by the party seeking to draw an adverse inference against the other in relation to, *inter alia*, undisclosed assets (see *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 at [28]; *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 at [62]): (a) there must be a substratum of evidence that establishes a *prima facie* case against that other party; and (b) it must be shown that that other party had some particular access to the information he is said to be hiding.

29 These requirements were made out in the present case in relation to [P] Pte Ltd. In particular, I found that the Husband's transfers of [A]'s shareholding in end-2010 to mid-2011 must have been in order to prevent the Wife from laying claim to her rightful share of the matrimonial assets. In this regard, I accepted [B]'s testimony that no money had in fact been paid under these agreements as they were sham transactions. This was buttressed by the fact that in the short span of time covered by the sale and purchase agreements, *ie* from January 2011 to February 2011, there was considerable fluctuation in the value attributed to the shares which lent support to [B]'s averment that the transactions were not genuine. In respect of the incriminating email, I appreciated that parties may not have been entirely truthful at the meeting either. However, when seen in context with the other objective evidence, *eg* the ACRA records which showed [A] as the owner of some shares despite the transaction documents having been executed between [B] and the Husband exclusively, it was clear that as at end March 2011, the Husband desired to put certain [P] Pte Ltd shares out of reach of the Wife. For

<sup>50</sup> Wife's AM Submissions at pars 315-330.

<sup>51</sup> Husband's 4<sup>th</sup> Affidavit dated 8 April 2011 at paras 18-24.

these reasons, I held that an adverse inference against the Husband was warranted for his conduct in relation to the shareholdings of [P] Pte Ltd, at least to the extent of [A]’s shareholding.

30 Having decided that, the means by which such an inference may be given effect to is fact-specific, including “by ordering a higher proportion of the disclosed assets to the other party, or, where possible, [by determining] the actual value of the undisclosed assets based on available information, and include[ing] such value in the pool of assets to be divided” (*Chan Yuen Boey v Sia Hee Soon* [2012] 3 SLR 402 at [21]).

31 In this case, there was no evidence, however, as to the precise value of [A]’s shares in [P] Pte Ltd. [P] Pte Ltd was a private company and there was no readily available data of the market value of its shares. The sale and purchase agreements were also not the best gauge of the value of the company’s share, as they were clearly sham transactions: no money was paid by [A] nor [B] in these various transactions. In the circumstances, I was of the view that it would be most appropriate to deal with the Husband’s conduct in relation to his shareholdings in, and share proceeds from, [P] Pte Ltd by way of an uplift to the Wife’s share of the matrimonial pool. This will be dealt with later.

#### *Fine Wine Collection*

32 It was not disputed that the Husband owned at some time prior to 25 January 2011 the Fine Wine Collection which he purchased from and stored with Corndale.<sup>52</sup> This asset was acquired during the subsistence of the marriage. The Husband’s position was that he no longer owned the Fine Wine

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<sup>52</sup> Husband’s AM Submissions at para 77; Husband’s 1<sup>st</sup> Affidavit dated 25 January 2011 at para 24.

Collection because he had transferred it to his mother as a gift in recognition of her contribution of around \$180,000 towards the matrimonial property.<sup>53</sup> The Husband's mother received 265 bottles of the Fine Wine Collection on 15 December 2010.<sup>54</sup> Less than two months later, on 7 February 2011, the Husband's mother gave a written mandate to Corndale to sell 265 bottles of wine, which must refer to the bottles that had been transferred to her by the Husband.<sup>55</sup> Thereafter, a portion of these bottles were sold for a total of \$48,560 and payment was made by Corndale to the Husband's mother.<sup>56</sup>

33 It was clear that the Husband's "gift" of the Fine Wine Collection to his mother was not genuine, but rather, an attempt to keep assets out of reach of the Wife. By December 2010 he had moved out of the matrimonial home and indeed taken several punitive steps against the Wife and the son, such as the termination of their respective mobile phone lines. The purchase of the matrimonial home was in 1999<sup>57</sup> (and the previous matrimonial home purchased even earlier) and there was no plausible explanation why the Husband's gift of gratitude to his mother came in 2010, some 10 years later, in the midst of a tumultuous period between him and the Wife. The fact that the mother may not have been in contempt of the court for injunctions issued in respect of the Fine Wine Collection did not *ipso facto* mean that the Husband had not dissipated the wines, as these involved separate inquiries.<sup>58</sup> As such, I was satisfied that the value of the Fine Wine Collection should be notionally

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<sup>53</sup> Husband's 1<sup>st</sup> Affidavit dated 25 January 2011 at para 24; Mother's Affidavit dated 31 January 2012 at paras 13-19.

<sup>54</sup> Husband's Core Bundle Volume 1 at p 352.

<sup>55</sup> Husband's Core Bundle Volume 1 at p 363.

<sup>56</sup> Husband's Core Bundle Volume 1 at pp 366-370.

<sup>57</sup> Wife's AM Submissions at para 176.

<sup>58</sup> Notes of Evidence dated 27 October 2016 at pp 22-23.

added back into the matrimonial pool. For the bottles that were sold, a sum of \$48,560 should be added. For the bottles that were not yet sold, the original purchase price was used as the only evidence of their value. Counsel for the Husband confirmed that the total figure came to around \$189,008.<sup>59</sup>

*DBS Savings Plus Account xxx-x-xx2525*

34 The Husband conceded that he withdrew \$350,000 from his personal DBS Savings Plus account on 14 January 2011. The Wife submitted that the bulk of this sum came from deposits from the third mortgage loan taken over the matrimonial home and should thus have formed part of the matrimonial pool.<sup>60</sup> The Husband explained that he gave \$220,000 to [B] and took the remaining \$130,000 to a casino at where he lost \$90,000 whilst gambling.<sup>61</sup>

35 In my judgment, it was all too convenient for the Husband to belatedly claim that he had lost money whilst gambling. While there was some evidence that the Husband spent some monies at Marina Bay Sands between 15 and 16 January 2011,<sup>62</sup> those were not the right dates and in any case did not tally with the quantum of the Husband's claim of gambling expenditure. In any event, gambling is not reasonable expenditure on the family. I therefore added back to the pool the sum of \$130,000.

36 In relation to the \$220,000 that was said to have been given to [B], the Husband claimed that [B] had approached him in August 2010 asking if he wanted to do business in Indonesia. In or around November 2010, [B] suggested that they each invest \$500,000 to fund a gold mining operation in

<sup>59</sup> Notes of Evidence dated 29 November 2016 at p 2.

<sup>60</sup> Wife's Reply Submissions at paras 11-12.

<sup>61</sup> Husband's 9<sup>th</sup> Affidavit dated 17 November 2011 at para 22.

<sup>62</sup> Husband's Core Bundle Volume 2 dated 27 October 2016 at p 500.

Indonesia.<sup>63</sup> An unsigned draft Memorandum of Understanding was tendered in evidence to show that gold mine venture was genuine.<sup>64</sup> This investment was apparently not a success and the Husband submitted that there was some finger pointing as the relationship between [B] and him soured, such that [B] was thereafter biased against him. There were also other business ventures in Indonesia that the Husband claimed that he was involved in. On the other hand, [B] affirmed that the Husband had deposited some \$200,000 with him on 17 January 2011, just 3 days after the withdrawal of \$350,000, for safekeeping and thereafter directed [B] to make certain transfers to other related parties.<sup>65</sup> To this end, the Wife tendered evidence showing that on 19 January 2011, a cashier's order was drawn up by [B] in favour of [A] for an amount of \$170,000.<sup>66</sup> A second cashier's order for \$30,000 was drawn up in favour of [P] Pte Ltd. Given the questionable transfer of money to [A], with whom [B] had no apparent direct ties except through the Husband, and the lack of reliable documentary evidence brought forth by the Husband to support his various Indonesian business ventures, I preferred the evidence of the Wife and found that the Husband had not satisfactorily accounted for the sum of \$220,000.

37 Accordingly, the entire withdrawn sum of \$350,000 was added back into the matrimonial pool for division.

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<sup>63</sup> Husband's 9<sup>th</sup> Affidavit dated 17 November 2011 at para 22.2.

<sup>64</sup> Husband's 9<sup>th</sup> Affidavit dated 17 November 2011 at pp 37–38.

<sup>65</sup> Wife's AM Submissions at paras 14-16.

<sup>66</sup> Wife's Core Bundle Volume 1 at pp 222–223.

*\$175,000 paid to and returned by [B]*

38 There was a further \$175,000 which the Wife contended the Husband had given to [B], who later returned the sum to the Husband. [B] supported this account and stated that the sum was given to him because the Wife had frozen the Husband's bank accounts.<sup>67</sup> On the other hand, the Husband affirmed on affidavit that he transferred \$175,000 to [B] on 22 February 2011, but claimed that [B] had absconded with the monies.<sup>68</sup>

39 In my judgment, the balance of evidence suggested that the Husband's transfer of the sum to [B] was, in the first place, to ensure that the sum was put out of reach of the Wife. Whether it was returned to him or not was therefore not dispositive of – if at all relevant to – the Wife's claim in this regard, as he had failed to detail its return to the marital pool. Accordingly, the sum of \$175,000 was added back into the pool for division.

*Allegations not made out*

40 In this following section, I deal with the Wife's contentions of dissipation which I disagreed with.

(1) DBS Savings Plus Account xxx-x-xx1306

41 The Wife claimed that the Husband dissipated a total of \$315,582 from this DBS Savings Plus account which was held in parties' joint names, and which had since been closed.<sup>69</sup> This was not borne out upon an examination of the evidence. I begin by noting that at the ancillary matters hearing, counsel

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<sup>67</sup> [B]'s 2<sup>nd</sup> Affidavit dated 26 January 2012 at para 18.

<sup>68</sup> Husband's 9<sup>th</sup> Affidavit dated 17 November 2011 at pp 18-19; see also Wife's Core Bundle Volume 1 at pp 210-211.

<sup>69</sup> Wife's Reply Submissions at paras 5-6.

for the Wife first claimed that the dissipation from this account was around \$976,725.25.<sup>70</sup> That figure was obviously incorrect. For one, the component sum of \$534,500, which was alleged to have been dissipated, had not been backed up with any evidence apart from bare allegations. Counsel for the Wife referred me to a bank statement in an attempt to substantiate that number, but as was pointed out to him, that statement was for an entirely different account.<sup>71</sup> In respect of the remaining sum of about \$441,000, I accepted the Husband's submission that monies from that account had either gone into [P] Pte Ltd, which was at the material time operated by the Husband as a going concern, into a failed Russian oil and gas venture,<sup>72</sup> and/or into a joint account with the Wife. Parties accepted that the second mortgage loan over the matrimonial property was deposited into this account in July 2010.<sup>73</sup> As counsel for the Husband observed, if dissipation had been the intended goal, the Husband would not have wired these monies into or through a joint account in the first place.<sup>74</sup> This being a joint account, the Wife would have had an opportunity to access the information as to, and monitor, transfers and withdrawals. Even then, she was not able to show evidence of unexplained dissipation. Further, while counsel for the Wife submitted that [P] Pte Ltd was a conduit for siphoning money, there was no evidence showing transfers from the company to undisclosed accounts or evidence of any other method of siphoning money at the material time. In fact, by the Wife's own evidence and that of [B]'s, there had been some ongoing activity in [P] Pte Ltd at the time the parties' marriage broke down. In this regard, I accepted the relatively extensive

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<sup>70</sup> See Joint Summary of Assets marked D1, D2, D2A at item 3.

<sup>71</sup> Notes of Evidence dated 27 October 2016 at pp 8-9; Wife's Core Bundle Volume 7 at pp 37-38.

<sup>72</sup> Husband's AM Submissions at para 59, Annex I.

<sup>73</sup> Wife's Reply Submissions at para 4; Husband's AM Submissions at para 57.

<sup>74</sup> Notes of Evidence dated 27 October 2016 at p 9.

evidence of the Husband's business activity in Russia during the material time between 2009 and 2011,<sup>75</sup> the existence of which the Wife had also conceded on affidavit.<sup>76</sup>

(2) DBS Autosave Account xxx-xxx473-4

42 An allegation was made that the Husband had dissipated a total of \$921,182.99 from September 2009 to November 2010 from this DBS Autosave account which was held in parties' joint names.<sup>77</sup> This account is now closed.

43 The Wife's submissions were difficult to follow because of the constant shifting of her position. Before me, counsel sought to submit that the latest figures dissipated from this account were \$935,000, even though he could only point me to *prima facie* evidence of withdrawals amounting to \$921,182.99. The Wife took the position that the whole sum was illegitimately expended and should be added back to the pool. The Husband submitted that the largest withdrawal in May 2010 of about \$257,000 was used for an abortive Russian oil and gas venture, and other withdrawals were also for legitimate purposes. He highlighted that the withdrawals here were made between September 2009 and October 2010, when there was no intention on either party's part to initiate divorce. As such, dissipation was highly implausible at that time.<sup>78</sup>

44 On the balance of evidence, I was not satisfied that the Wife made out a case of dissipation in relation to this account. For one, this was a joint

<sup>75</sup> Husband's 4<sup>th</sup> Affidavit dated 8 April 2011 at p 14.

<sup>76</sup> Wife's 4<sup>th</sup> Affidavit dated 28 April 2011 at para 175.

<sup>77</sup> Wife's Reply Submissions at para 7.

<sup>78</sup> Husband's AM Submissions at para 62.

account in both the Husband's and Wife's names, and the Wife could monitor and access information in respect of the transactions with relative ease. The Husband knew this, and would thus not have chosen the wisest of moves to make dissipations to, or from, this account.<sup>79</sup> Further, the Husband had documentary evidence of his Russian ventures and of large sums of monies being paid out for those ventures.<sup>80</sup> The Wife in her affidavit also confirmed that the Husband did confide in her about being conned into losing money in a Russian business venture, even if she did not know of the precise amounts involved.<sup>81</sup> Further, the bulk of the monies which had allegedly been dissipated were withdrawn before the Husband's adulterous relationship was discovered in July 2010. I also saw merit in the Husband's submission that there had been significant deposits into this joint account during the relevant period. The Wife focused exclusively on the withdrawals to build her case of dissipation, but she omitted to mention that the Husband had been the one depositing significant sums into this account. For instance, in June 2010 he deposited \$167,000 into the account and withdrew a similar amount.<sup>82</sup> The Wife did not get to the source of these funds, or particularise which withdrawals were suspicious; her claim in this regard was nothing more than a broad and bare allegation. Accordingly, I accepted the Husband's case that the withdrawals from this account were for his business and household expenditure.

### (3) SCB US Dollar and Singapore Dollar Accounts

45 The Wife alleged that the Husband had dissipated \$509,572.89 from the SCB E-Saver Account xx-x-xxx247-0,<sup>83</sup> US\$440,379.22 for the SCB FCY

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<sup>79</sup> Husband's AM Submissions at para 62.

<sup>80</sup> Husband's 4<sup>th</sup> Affidavit dated 8 April 2011 at pp 117–151.

<sup>81</sup> Wife's 4<sup>th</sup> affidavit dated 27 April 2011 at para 175, page 40.

<sup>82</sup> See Annex J of the Husband's AM Submissions.

Account xx-x-x711-5,<sup>84</sup> and US\$110,893.97 from the SCB FCY xx-x-xxx573-8.<sup>85</sup> Notably, the Wife later adopted a significantly lower sum of US\$58,386.36 *vis-à-vis* the SCB FCY account ending with 573-8.<sup>86</sup>

46 The Husband submitted that these allegations were only an afterthought as they were belatedly raised during the ancillary matters hearing itself, despite the proceedings having started in 2011.<sup>87</sup> The Husband further submitted that these SCB accounts were a group of US and Singapore dollar accounts used for running the varied businesses of [P] Pte Ltd. In addition, the evidence showed that he was frequently moving funds between the accounts only because he had to change profits in US dollars to Singapore dollars to pay for local business expenses and vice versa. Monies were also moved into short term fixed deposit accounts, or to [P] Pte Ltd for operational purposes.<sup>88</sup> These were therefore legitimate fund movements and not dissipations as such.

47 In my judgment, the Wife's submissions on dissipation in respect of these accounts could not be accepted. First, the Wife's approach here, similar to the approach used for the DBS Autosave account, was to trace withdrawals without accounting for deposits. This was not a sound approach, whether in quantification or in providing the court with a comprehensive contextual understanding of the relevant transaction history in order that any inference may be drawn from the presence or absence of certain facts. Secondly, these allegations were raised at the eleventh hour. Even if that were not an

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<sup>83</sup> Wife's Reply Submissions at para 28.

<sup>84</sup> Wife's Reply Submissions at para 25.

<sup>85</sup> Notes of Evidence dated 27 October 2016 at p 15; *contra*, Wife's Reply Submissions at para 27 (US\$58,386.36).

<sup>86</sup> Wife's Reply Submissions at para 27.

<sup>87</sup> Husband's Response Submissions at paras 12-17.

<sup>88</sup> Husband's Response Submissions at paras 7-10.

indication of them being an afterthought, it would mean that any lack of documentation and/or explanation by the Husband must, accordingly, be viewed with some degree of leniency. Thirdly, I accepted the Husband's evidence that [P] Pte Ltd was at the material time operating as a going concern, with valid if not robust financial turnover, and required the support of various fund transfers between currencies and account types, including of his own personal accounts. For these reasons, I did not accept the Wife's submissions in respect of the SCB accounts.

(4) Proceeds from Husband's Aviva Policy No Lxxx4380

48 The proceeds from the Husband's Aviva Policy No Lxxx4380 in the sum of \$81,747.50 had been used to pay off, through the OA, the Husband's credit card debt incurred before he was adjudged a bankrupt. The Wife argued that this amount should notionally be added into the pool because the Husband's credit card debts were self-induced. The Husband, on the other hand, claimed that the Wife had herself intentionally overspent and laid the responsibility to foot the bills at his feet. As explained, because the sum had been legitimately paid out by the OA for debts incurred by both parties for which responsibility cannot be delineated clearly between them, it should not be added to the pool.

(5) Diamond Rings

49 Based on an invoice for two diamond rings for \$28,870, the Wife contended that these were purchased for [A], but was unable to point to any evidence of this allegation. The Husband explained that he merely utilized the invoice to collect a tax refund for the wife of [B], when he and [B] were still on good terms, as his employment as a pilot allowed him to do so. Tax invoices were adduced which showed that they had been presented for a tax

refund. In light of the documentary evidence, I accepted the Husband's explanation.

***The Wife's alleged dissipation***

50 The Husband, on his part, contended that the Wife had started dissipating assets from the early part of 2010, as she had been aware of [A]'s existence for some time prior to confronting him.

***Maintenance arrears***

51 Before turning to the allegations, a preliminary issue should be addressed for context. Central to many of the Wife's explanations regarding her accounts and withdrawals queried was the submission that the Husband had failed to provide maintenance for her and their son, such that her allegedly suspicious dealings were necessary and, indeed, out-of-pocket expenses to sustain her and her son's lifestyles. As explained above, on 16 August 2012, parties had entered a consent order, amending the initial interim maintenance order and providing that the parties agreed that the maintenance arrears as at August 2012 amounted to \$44,000 and that these arrears and the balance of \$3,500 per month (payable from September 2012 onwards) would be accumulated and dealt with at the hearing of the ancillary matters.<sup>89</sup> As at January 2017, the arrears were some \$229,500. Accordingly, the issue was how the Wife's relevant withdrawals should be accounted for, given that the Husband claimed that these were grounds for an adverse inference to be drawn, while the Wife highlighted that the Husband's failure to pay maintenance necessitated these withdrawals in the first place.

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<sup>89</sup> Wife's Bundle of Summonses and Orders of Court at p 227.

52 In my judgment, as these maintenance arrears were incurred largely post-IJ, their resolution should be conceptually distinguished with the analysis on division of matrimonial assets, which pool was delineated and valued around the IJ Date. Practically, this meant that the Wife's withdrawals from various accounts, *being matrimonial assets as at the IJ date*, must be returned to, and taken into consideration as part of, the matrimonial pool. Separately, the maintenance arrears should be given effect to *post-division of assets*, by increasing any sum payable by the Husband, or reducing that by the Wife.

*UOB Account No xxx-xxx-779-4*

53 The Husband's contention in respect of the Wife's UOB Bank Account No xxx-xxx-779-4 was that a sum of \$37,000, which the Husband claimed had stemmed from the monthly matrimonial allowance given by the Husband to the Wife, had been deposited into this account by the Wife and thereafter dissipated.<sup>90</sup> The Wife claimed that she had used \$21,128.00 from that account to pay off a car loan taken in relation to a second hand car which she bought to replace her original car, which had become too expensive to upkeep, in order to ferry the son to school and other events. She also maintained that she had, or planned to, utilise the balance sum to meet the expenses of her and her son because the Husband had failed or refused to pay maintenance.<sup>91</sup> On the Husband's valuation, which was the valuation closer to the IJ Date, this UOB Account still had about \$6,489.45 left.<sup>92</sup>

54 In my view, it was sufficient to deal with this contention by taking into consideration the value of the car and the remaining sum in the UOB Account.

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<sup>90</sup> Husband's AM Submissions at para 99.

<sup>91</sup> Wife's 39<sup>th</sup> Affidavit dated 6 April 2016 at para 43.

<sup>92</sup> Joint Summary Table ("D2") at item 15.

Parties did not dispute that the car in the Wife's name was valued at around \$31,500.<sup>93</sup> The Wife argued that the remaining sum in the account should not be included in the pool as they were necessary for her to use for petrol and to maintain her and her son's standard of living. I did not accept this submission: that which was part of the asset pool as at the IJ Date ought to be included; the issue of unpaid maintenance was to be dealt with separately.<sup>94</sup>

*UOB Account No xxx-xxx-22-41*

55 The Husband claimed that the Wife had dissipated a sum of \$2,931 from this account which was held in the Wife's sole name and, by the time of the ancillaries hearing, closed.<sup>95</sup> Parties accepted that, prior to the closure, monies that were in that account were liable for division.<sup>96</sup> The closure of the account did not change this. Rather, the Wife argued that the monies were used to service a car loan and various outgoings in relation to that car, and she had to utilise this sum because the Husband defaulted on maintenance payments which were still in arrears.<sup>97</sup> As explained, maintenance arrears ought not to be conflated with the proper inclusion within the matrimonial pool of the sum of \$2,931.

*SCB Account No xxxxxx1811*

56 The Wife allegedly took \$6,000 from this joint account, which used to be the designated account of a partnership in which the Husband and Wife

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<sup>93</sup> Joint Summary Table ("D2") at item 17.

<sup>94</sup> Notes of Evidence dated 27 October 2016 at pp 16-17.

<sup>95</sup> Joint Summary Table ("D2") at item 16.

<sup>96</sup> See Wife's 1<sup>st</sup> Affidavit of Assets and Means at para 160(2); Notes of Evidence dated 27 October 2016 at p 17.

<sup>97</sup> Wife's 39<sup>th</sup> Affidavit dated 6 April 2016 at paras 26-27.

were partners.<sup>98</sup> The Wife did not dispute this, but instead claimed to have withdrawn the sum for living expenses necessitated by the Husband's failure to pay maintenance.<sup>99</sup> For reasons explained above, this sum should be added into the pool for division. Further, notwithstanding that it was a joint account, the sum should be taken notionally as the Wife's asset given that it was entirely dissipated by her.

57 Further, the Husband submitted that the Wife should account for the \$428.48 interest she received on the sums she had placed in this SCB account. Given my decision that the principal sums ought to be included in the pool, the interest was added as well.

*POSB Account No xxx-xx697-4*

58 Two large withdrawals were admitted by the Wife from this account, on 23 April and 20 August 2010 respectively. Regarding the 23 April 2010 withdrawal of \$100,000, the Wife claimed that she could not remember the exact circumstances for this withdrawal, but might have used the sum for her household expenses and monthly utilities bills.<sup>100</sup> I did not accept this. The quantum involved here was disproportionate compared to even the most exorbitant household or utilities expense, and the Wife had provided no evidence of such expenditure apart from a theorized hypothesis of so doing.<sup>101</sup> This sum was returned to the matrimonial pool.

59 The Wife also admitted to withdrawing \$190,000 on 20 August 2010. Regarding the source of funds, the Wife appeared initially to claim that

<sup>98</sup> Husband's 1<sup>st</sup> Affidavit dated 25 January 2011 at para 22.

<sup>99</sup> Notes of Evidence dated 27 October 2016 at p 16.

<sup>100</sup> Wife's 37<sup>th</sup> Affidavit dated 29 June 2015 at paras 76-77.

<sup>101</sup> Wife's 37<sup>th</sup> Affidavit dated 29 June 2015 at paras 76-77.

\$100,000 of this sum had been a gift by the Husband to her after his confession that he had been having an affair.<sup>102</sup> She explained that she transferred \$100,000 to an OCBC account and placed the remaining sum totalling around \$90,000 into two fixed deposit accounts with SCB (“SCB Fixed Deposit Accounts”).<sup>103</sup> The OCBC and SCB accounts were all held in the Wife and her sister’s joint names. However, the Wife claimed that these were not dissipations; rather, she had transferred the sums for safekeeping as she was afraid that the Husband would force her to hand over her life savings, and she wanted to make sure that the son would be financially provided for if something were to happen to her.<sup>104</sup> In a later affidavit, the Wife stated that these sums could also be used to pay back her sisters for the expenses that they had incurred for her and her son.<sup>105</sup>

60 Regardless of either party’s motivations, these sums were undisputedly part of the matrimonial pool. First, in respect of the source of the sum, even accepting the Wife’s account, it is established law that a “pure” inter-spousal gift, *ie*, a gift that does not originate from a third party gift or inheritance, should be included in the matrimonial pool as defined in s 122(10) of the WC as it involves an initial effort expended by the donor spouse in the original acquisition of the gift (*Wan Lai Cheng v Quek Seow Kee and another appeal and another matter* [2012] 4 SLR 405 at [41]). As to its withdrawal, the private motivations of the Wife were irrelevant to the sums’ qualification as matrimonial assets. To the extent that the Wife was suggesting that these sums were a gift to her sister, or a repayment of debts owed to her sister(s), I did not

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<sup>102</sup> Wife’s 39<sup>th</sup> Affidavit dated 6 April 2016 at paras 26-27.

<sup>103</sup> Wife’s 37<sup>th</sup> Affidavit dated 29 June 2015 at paras 78-83; Wife’s 39<sup>th</sup> Affidavit dated 6 April 2016 at para 34.

<sup>104</sup> Wife’s 37<sup>th</sup> Affidavit dated 29 June 2015 at paras 78-83.

<sup>105</sup> Wife’s 39<sup>th</sup> Affidavit dated 6 April 2016 at paras 33, 35.

accept that. Apart from a bare allegation, there was no evidence to support the gift and it appeared that the Wife was overstating how much she owed to her sisters given that the quantum here was not insignificant. In any event, the repayment was stated as a mere potentiality, and there was no evidence of any actual debts or repayments.<sup>106</sup> Accordingly, the whole sum of \$190,000 was an asset in the Wife's name which was liable for division.

*POSB Savings Account No xxx-xx732-7*

61 The Husband claimed that a sum of \$107,690 had been dissipated by the Wife from this account on 25 October 2010. The Wife did not dispute the quantum or the fact of the withdrawal,<sup>107</sup> but again claimed that this was for safekeeping and expenses that she had to pay her sisters in return for living with them.<sup>108</sup> For similar reasons as explained above (at [60]), I did not accept this contention. The sum involved here was large, and to repeatedly rely on undocumented debts owed to close family members appeared too convenient for the Wife. This sum was thus included as part of the matrimonial pool.

62 There was a further withdrawal of \$100,000 from this POSB account which had not yet been accounted for.<sup>109</sup> Based on the evidence and arguments, this appeared to be a sum which the Wife had withdrawn from this account on 23 August 2010, deposited in an OCBC account held in her and her sister's joint names, and thereafter on 22 September 2010 withdrawn from that OCBC account and allegedly dissipated.<sup>110</sup> Notably, this sum is distinct

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<sup>106</sup> Wife's 37<sup>th</sup> Affidavit dated 29 June 2015 at paras 123-126.

<sup>107</sup> Wife's 37<sup>th</sup> Affidavit dated 29 June 2015 at para 86.

<sup>108</sup> Notes of Evidence dated 27 October 2016 at p 18; Wife's 39<sup>th</sup> Affidavit dated 6 April 2016 at para 39.

<sup>109</sup> Notes of Evidence dated 29 November 2016 at p 4.

<sup>110</sup> Husband's AM Subs at paras 89-90; Wife's 39<sup>th</sup> Affidavit dated 6 April 2016 at paras

from the \$100,000 discussed above as a component of the dissipated sum of \$190,000 (even though the quanta and the OCBC account involved were the same), as the latter sum had only been deposited into this OCBC joint account in October 2010,<sup>111</sup> whereas the withdrawal in issue here was made from the same OCBC account on an earlier date of 22 September 2010.<sup>112</sup> This was a large sum and the Wife did not dispute withdrawing it. To the extent that the Wife suggested that this sum had been a gift to her from the Husband made in July 2010,<sup>113</sup> she appeared to have repeated this argument in respect of several large sums of money, and in any case “pure” inter-spousal gifts remain part of the matrimonial pool (at [60]). Further, the issue of maintenance should, as explained, be conceptually distinguished from the issue of dissipation: the fact that the Wife may have had reason to entrust this \$100,000 with her sister for safekeeping<sup>114</sup> therefore did not exclude this sum from the matrimonial pool.

*Allegations not made out*

(1) Sale proceeds from Nilai Springs property

63 Aside from the matrimonial home, a second property in Nilai Springs, Malaysia, was purchased during the course of the marriage. This was purchased in August 1995 and thereafter owned by the Wife solely until it was sold about two months before the IJ Date on 30 May 2013. The sale proceeds of this property amounted to \$102,234.68. The Wife accepted that the sale proceeds from Nilai Springs should constitute a matrimonial asset, but pointed out that the OA had paid over \$200,000 from the proceeds from the

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<sup>111</sup> Wife’s 37<sup>th</sup> Affidavit dated 29 June 2015 at para 100.

<sup>112</sup> Wife’s 39<sup>th</sup> Affidavit dated 6 April 2016 at paras 28-31.

<sup>113</sup> Wife’s 39<sup>th</sup> Affidavit dated 6 April 2016 at para 28.

<sup>114</sup> Wife’s 39<sup>th</sup> Affidavit dated 6 April 2016 at para 33.

matrimonial property to financiers of the Husband's legal fees, on which basis her legal fees ought also to be considered as regards the Nilai Springs sale proceeds.<sup>115</sup>

64 In my judgment, legal fees, within reasonable bounds and properly documented, are legitimate expenditure. In this case, the Husband's legal fees had been assessed and disbursed by the OA. The exclusion of both parties' relevant legal fees was thus appropriate in the circumstance. I also found that the quantum claimed by the Wife as legal fees was reasonable. Accordingly, just as the Husband's legal fees were paid out by the OA from the sale proceeds of the matrimonial home, the sale proceeds from Nilai Springs, even though notionally a matrimonial asset, were wholly set off against the Wife's legal fees.

(2) Amber Gardens

65 The Husband further claimed that the Wife had used \$98,389.22 to purchase a property situated at No xx Amber Gardens. This was the property into which the Wife and son moved after their matrimonial home had been repossessed. The Wife denied making any financial contribution towards the acquisition of this property, claiming instead that two of her sisters had paid entirely for it. The Husband pointed out that these sisters had been tasked by the Wife to safekeep large sums of monies which in fact constituted matrimonial assets. In these circumstances, he asked that an adverse inference be drawn against the Wife, who should be made to account for the matrimonial funds used to purchase the property.<sup>116</sup> I did not agree. There was no actual evidence adduced suggesting that the Wife had contributed to the

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<sup>115</sup> Notes of Evidence dated 29 November 2016 at p 3.

<sup>116</sup> Husband's AM Submissions at paras 107-110.

payment for Amber Gardens. Insofar as any funds from the sisters in fact came from the Wife, those dissipations had already been accounted for and it would be double-counting to ascribe a share of Amber Gardens to the Wife as a matrimonial asset.

(3) Sums already accounted for

66 The Husband initially contended that the Wife transferred \$50,000 to her sister on each of two occasions, *ie* 26 October 2010 and 6 November 2010 respectively, for a total sum of \$100,000.<sup>117</sup> He later accepted that these were part of the \$190,000 withdrawn by the Wife from her POSB account, which was dealt with above.<sup>118</sup> These transferred sums were thus not taken into account.

***Parties' liabilities***

67 Both parties contended they were personally indebted to others: the Husband owed US\$50,000 to one Dato Azizul Rahman, while the Wife owed her two sisters some \$334,920 for living expenses. I did not take into account any of these liabilities. Neither party showed persuasive proof of their purported debts; some were also incurred after the IJ Date.<sup>119</sup> Regarding the Wife's contention that the loans from her sisters were necessary because of the Husband's failure to provide interim maintenance,<sup>120</sup> as explained, that is a conceptually distinct issue and should be separately dealt with.

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<sup>117</sup> Husband's AM Submissions at para 95.

<sup>118</sup> Notes of Evidence dated 27 October 2016 at p 17.

<sup>119</sup> Husband's Affidavit of Assets and Means dated 23 December 2013 at para 43.1.

<sup>120</sup> Wife's AM Submissions at para 494.

68 I should mention that, just prior to the final hearing date for the ancillary matters, the Husband, by a letter dated 29 December 2016, explained that he had been served a statutory demand by one Mr Choo dated 23 December 2016. I did not take this into account. The loans referred to in the statutory demand uniformly arose after the operative date, which I had taken as the IJ Date.

***Losses suffered as a result of the injunctions***

69 In respect of the 1<sup>st</sup> Injunction that the Wife obtained against the Husband, the Husband submitted that the cross-undertaking given by the Wife as to damages should be enforced against her, because the injunction was groundless, abusive, and part of a deliberate plan by the Wife to bring financial ruin to him. These losses, he submitted, amounted to \$1,138,719.47 at the time of the ancillary matters hearing.<sup>121</sup>

70 In *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 (“*Tribune Investment*”), the Court of Appeal held that the court has a discretion as to whether or not to enforce the cross-undertaking as to damages, which is to be exercised by reference to all the circumstances of the case (at [54]). In particular, the court will consider if (a) the injunction was wrongly asked for; (b) the evidence show an arguable case that the counterparty suffered a loss falling within the terms of the undertaking; and (c) there are any special circumstances militating against the enforcement of the undertaking.

71 In the present case, however, counsel for the Husband had *not* applied specifically to enforce the cross-undertaking. He submitted that I ought instead

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<sup>121</sup> Husband’s Injunction Submissions dated 14 October 2016.

to take this in the round in assessing the just and equitable division of assets, with a view to saving costs.

72 I did not agree that any damages in respect of the cross-undertaking should be taken into consideration as part of the division process. The court's power of division under s 112 of the WC is different in nature, and involves different factual considerations. In particular, counsel did not advance or argue specific contentions as to whether the injunction had been wrongly granted. Thus, save for one exception, I was of the view that the issue of damages should be kept distinct. This exception related to the issue of the specific loss shown by the Husband in relation to his SIA share options. The 1<sup>st</sup> Injunction obtained by the Wife covered the SIA share options. Pending dismissal from the SIA, the Husband requested that the Wife consent to the SIA share options being exercised in order to realise their value, as these options would otherwise lapse on his termination of employment. The Wife declined. In my view, such conduct was unreasonable. If the 1<sup>st</sup> injunction had been temporarily lifted, the options would have been realised, and *the share proceeds would have come into and augmented the matrimonial pool prior to the IJ Date*. Because of the Wife's unreasonableness, the Husband could not exercise the share options which would have been worth \$60,917.90 at that time.<sup>122</sup> In my judgment, that value ought to be added back into the pool and held against the Wife.

### ***Table of matrimonial assets***

73 From the above, the table of assets was derived as follows.

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<sup>122</sup> Husband's Affidavit of Asset and Means dated 19 December 2013 at para 4.

<b>Wife's Assets</b>			
<b>S/N</b>	<b>Asset Description</b>	<b>Value</b>	<b>Comments</b>
1	UOB Account No xxx-xxx-779-4	\$6,489.45 <sup>123</sup>	Added.
2	Motor Vehicle SFZxxxxx	\$31,500 <sup>124</sup>	Added.
3	UOB Account No xxx-xxx-22-41	\$2,931 <sup>125</sup>	Sums taken by Wife.
4	SCB Bank Account xxxxxx1811	\$6,000 <sup>126</sup>	Asset initially in joint names but notionally considered the Wife's asset as it was dissipated by her.
5	Interest accrued in SCB Fixed Deposit Accounts	\$428.48 <sup>127</sup>	Added together with the principal sum.
6	POSB AC No xxx- xx697-4	\$190,000 <sup>128</sup>	Sums taken by Wife.
7	Monies withdrawn by Wife on 23 April 2010	\$100,000 <sup>129</sup>	Sums taken by Wife.
8	POSB Savings AC No xxx-xx732-7	\$107,690 <sup>130</sup>	Sums taken by Wife.

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<sup>123</sup> See above at [53]-[54].

<sup>124</sup> See above at [54].

<sup>125</sup> See above at [55].

<sup>126</sup> See above at [56].

<sup>127</sup> See above at [59].

<sup>128</sup> See above at [58].

<sup>129</sup> See above at [59].

<sup>130</sup> See above at [61].

9	Monies withdrawn by Wife on 22 September 2010	\$100,000 <sup>131</sup>	Sums taken by Wife.
10	SIA Share Options	\$60,917.90 <sup>132</sup>	Loss to be borne by Wife as dissipations were by her.
11	Monies in HSBC Advance AC No xxx – xxxxx3-833	HK\$3,000 (\$480) <sup>133</sup>	No dispute.
12	Wife's CPF Ordinary Account	\$32,539.93	No dispute.
13	Wife's CPF Special Account	\$11,059.49	No dispute.
14	Wife's Medisave Account	\$4,475.20	No dispute.
15	112,500 Challenger Shares	\$51,750	No dispute.
16	Manulife Policy No xxxxxx5860	\$60,129.59	No dispute.
17	NTUC Income Policy No xxxxxx6845	\$5,241.40	No dispute.
18	NTUC Income Policy No xxxxxx1959	\$11,566.47	No dispute.
19	UOB Current Account No xxx-xxx-466-9	\$5,000	No dispute.

<sup>131</sup> See above at [62].

<sup>132</sup> See above at [72].

<sup>133</sup> Notes of Evidence dated 27 October 2016 at p 16; Husband's AM Submissions at paras 105-106.

<b>Sub-Total</b>		\$788,198.91	
<b>Husband's Assets</b>			
<b>S/N</b>	<b>Asset Description</b>	<b>Value</b>	<b>Comments</b>
1	Proceeds remaining in the possession of the OA	\$111,618.54 <sup>134</sup>	Includes balance from matrimonial home and the various insurance policies which had matured.
2	Fine Wines Collection	\$189,008 <sup>135</sup>	Dissipation by Husband to his mother, inclusive of both sold and unsold components.
3	DBS Savings Plus AC xxx-x-xx2525	\$350,000 <sup>136</sup>	Dissipation by Husband and gambling claims.
4	Monies returned by [B]	\$175,000 <sup>137</sup>	Dissipation by Husband.
5	Husband's CPF Ordinary Account	\$701,539.52	No dispute.
6	Husband's CPF Special Account	\$125,296.59	No dispute.
7	Husband's CPF Medisave Account	\$42,208.69	No dispute.
<b>Sub-Total</b>		\$1,694,671.34	
<b>Total</b>		\$2,482,870.25	

<sup>134</sup> See above at [17]-[19].

<sup>135</sup> See above at [33].

<sup>136</sup> See above at [37].

<sup>137</sup> See above at [39].

**Ratio of division**

74 The Court of Appeal in *ANJ v ANK* [2015] 4 SLR 1043 (“*ANJ v ANK*”) set out a structured approach (at [17]–[30]) to determine a just and equitable division of matrimonial assets. This approach may be summarised as follows (see *ANJ v ANK* at [22]–[26], [28]; *Twiss, Christopher James Hans v Twiss, Yvonne Prendergast* [2015] SGCA 52 (“*Twiss*”) at [17]):

- (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 hereinafter be referred to as “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 may also be made taking into consideration other relevant factors under ss 112 or 114(1) of the WC.

75 The Wife claimed that she should be awarded 75% of the matrimonial assets and that the Husband should be awarded 25%.<sup>138</sup> The Husband, on the other hand, initially submitted that division should be 60% and 40% in his

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<sup>138</sup> Wife’s AM Submissions at paras 496-497.

favour.<sup>139</sup> The Husband's later submissions took a different position that a fair and just apportionment of the assets would be 70% to him and 30% to the Wife, on the basis that his financial situation had drastically deteriorated.<sup>140</sup>

### *Direct Contributions*

76 The Husband contended that he was the sole income earner and on this basis all direct contributions should be attributed to him.<sup>141</sup> The Wife claimed that she contributed 7% of the total direct contributions<sup>142</sup> because she had paid around \$80,000-\$100,000 of her own monies towards the purchase of the parties' first matrimonial home, Avila Gardens. Proceeds from the sale of Avila Gardens was thereafter used to purchase the matrimonial home,<sup>143</sup> and she should be given due credit for the ploughed-back proceeds.

77 In the circumstances, I held that the Wife's direct contribution was 5% and the Husband's direct contribution was 95%. I accepted that the Wife made some contributions to the purchase of Avila Gardens, and was indeed able to do so based on her employment income prior to and at the start of the marriage. Despite the Husband's claim that the \$80,000-\$100,000 contribution came from the Husband's mother instead, there was no objective evidence adduced to show the source of funds, and no clarity as to the nature of the mother's contribution, which could equally have been a gift to both spouses as that was at a time when the marital disputes had not yet arisen. However, the Wife's assertion of 7% direct contribution appeared to have been an exaggeration. According to her submissions, this figure was derived by a

<sup>139</sup> Husband's AM Submissions at para 123.

<sup>140</sup> Husband's Response Submissions dated 27 October 2016 at para 116.

<sup>141</sup> Husband's AM Submissions at para 121.

<sup>142</sup> Wife's AM Submissions at para 385.

<sup>143</sup> Wife's AM Submissions at para 391.

simple averaging of the parties' direct contribution ratios to 3 properties: (a) the present matrimonial home, (b) Avila Gardens, and (c) another property undisputedly purchased using funds of the Husband entirely.<sup>144</sup> This is erroneous for at least two reasons. First, by this methodology, the Wife double-counted her contributions of the same sum which were directed first to Avila Gardens then ploughed back into the present matrimonial home. Second, the simple average of ratios did not account for the difference in base quantum of each property on which that ratio was derived, *ie*, their different purchase prices and thus different weightages within the matrimonial pool. Rather, it appeared that a fairer method was to divide the Wife's undisputed contribution against the size of the matrimonial pool, which would give a figure of around 4%. Taking into consideration the proportion of growth in the valuation of the matrimonial home that must be attributed to the Wife's initial contribution to Avila Gardens, I found the direct contribution ratio of 5:95 in favour of the Husband appropriate on the facts. This is not surprising, given that it was undisputed that for most of the 22-year marriage, the Wife had primarily been a homemaker and was financially dependent on the Husband.<sup>145</sup>

#### *Indirect contribution*

78 The Wife contended that her indirect contributions should be valued at 90% while the Husband's should be valued at 10%. Throughout the duration of the 22-year marriage, she was the primary, if not sole, caregiver of the son, the Husband's aged mother, and the household. Parties only had domestic help for 1.5 years after the birth of the son.<sup>146</sup> Further, she pointed to various career and social sacrifices that she had made for the Husband and the family,

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<sup>144</sup> Wife's AM Submissions at para 395.

<sup>145</sup> Wife's AM Submissions at para 386.

<sup>146</sup> Wife's AM Submissions at para 410.

including giving up her job as a flight stewardess soon after the marriage and uprooting herself when the Husband was posted overseas for work.<sup>147</sup> These contributions and sacrifices, she maintained, allowed the Husband to concentrate on his career. In contrast, the Husband behaved irresponsibly, particularly after his affair with [A] was discovered, cutting off all financial and emotional ties with her and their son. As regards indirect financial contribution, the Wife highlighted her responsibility of paying bills and maintaining the household.<sup>148</sup>

79 The Husband, on the other hand, claimed that the indirect contributions should be 60% to 40% in favour of the Wife. As regards his indirect financial contributions, the Husband submitted that he paid for all renovations for the matrimonial home, numerous family vacations, spent \$7,000 on two new laptops for the Wife and their son before the divorce, and advised and guided the Wife on investments which turned out to be lucrative.<sup>149</sup> The Husband's list of non-financial contributions were as follows: he spent over 10 Chinese New Year reunions with the Wife's family instead of his own over the course of the marriage; until their relationship was harmed by the Wife, he had properly discharged his fatherly duties to the son; he had helped the son with his MENSA test as a result of which the son obtained outstanding results; and he personally carried out some renovations on the matrimonial home.<sup>150</sup>

80 Having regard to all the circumstances, I set the indirect contribution ratio at 80:20 in favour of the Wife. In my view, the Wife's indirect non-

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<sup>147</sup> Wife's AM Submissions at paras 397-420.

<sup>148</sup> Wife's AM Submissions at paras 421-423.

<sup>149</sup> Husband's AM Submissions at para 122.1.

<sup>150</sup> Husband's AM Submissions at para 122.2; Husband's Response Submissions dated 27 October 2016 at para 114.

financial contributions were significant. The Wife had made serious sacrifices in order to support the Husband in his overseas attachments and night classes to obtain his post-graduate degree, and to take care of the son. She had help from the Husband's mother and a domestic helper, but these were not significant in duration or extent. The Husband's focus was on his career, which entailed not only piloting but also the management of his side businesses and other ventures.

81 The Husband submitted that, in determining the appropriate indirect contribution ratio, I should take into account the Wife's unreasonable conduct in obtaining the injunctions to cripple him and his businesses, citing *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 ("*Chan Tin Sun*"). There, the Court of Appeal accepted that the court, in exercise of its powers of division of matrimonial assets under s 112(1) of the WC, may taking into consideration a spouse's misconduct (at [22]-[23]). Several principles, however, delimit the contours of this power. First, the court must be cautious not to allow the ancillary matters hearing to become another forum for parties "to dredge up accusations and allegations relating to each other's conduct", in light of the no-fault basis of divorce embodied in the WC (*Chan Tin Sun* at [25]). Secondly and relatedly, "the court only ought to have regard to conduct that is both extreme (*ie* manifestly serious) and undisputed" (*Chan Tin Sun* at [25]). Thirdly, while the court could, in principle, give effect to such misconduct by ascribing a negative value to that spouse's contributions, that was only to be done if that spouse not only failed to contribute to the marriage, but also engaged in conduct that fundamentally undermined the co-operative partnership and harmed the welfare of the other party (*Chan Tin Sun* at [27]). Even then, the court must bear in mind that the power to divide matrimonial assets "was never intended to serve a punitive function" and that all factors

“must be duly assessed and considered in a holistic manner” (*Chan Tin Sun* at [28]).

82 In my view, this was not an appropriate case to apply *Chan Tin Sun*. That case concerned a wife who “had embarked on a premeditated course of action to inflict harm on the [h]usband by poisoning him over a period of time” (*Chan Tin Sun* at [54]). In our case, the Husband’s quarrel was that the Wife had made large withdrawals from the accounts, overspent on his credit cards, obtained various injunctions against him and related parties, resulting in him losing his job and suffering severe financial losses.<sup>151</sup> True it may be that the Wife could have conducted herself in a more cooperative and constructive manner: she caused his loss of employment while previously having benefitted from his side businesses, overspent on his credit cards, withdrew various large sums from bank accounts, and was not reasonable in refusing to allow the Husband to realise his SIA options. It was pertinent to note, however, that the Husband, on his part, hardly displayed exemplary conduct himself. His own misconduct having caused the deterioration of their relationship, he sought to hide assets from the Wife, engaged in retaliatory pad-locking of the matrimonial home, and terminated many of what must in today’s society be considered as necessities, such as his utilities account with the authorities in respect of electricity and water for the matrimonial home, the Wife and son’s mobile phone lines, and the residence’s land line. The injunctions had been granted by various courts based on legal principles. There had, at that material time as assessed by the court, been a real risk of dissipation of assets – which to some extent actualised, as I explained above. In essence, both Husband and Wife were engaged in a mutually destructive exercise. The 80:20 ratio I arrived at was thus made with reference to *both* their misconduct.

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<sup>151</sup> Husband’s AM Submissions at paras 134-140.

*Weighted average ratio*

83 Assuming equal weightage between the direct and indirect contribution ratios, the final distribution ratio would be 57.5:42.5 in favour of the Husband. Of relevance here was the Court of Appeal's guidance in *ANJ v ANK* [2015] 4 SLR 1043 that an uplift to a party's distribution ratio may be relevant for the purpose of an adverse inference (at [29]).

84 In the present case, *both* parties submitted that I should draw an adverse inference against the other from the other's failure to give proper disclosure of his/her assets. I have gone through the various accounts and assets above, and where relevant, added specific sums back into the pool. That which remained to be accounted were the Husband's shares in [P] Pte Ltd, for which I held that an adverse inference was necessary. To this end, there was no figure on a specific sum that may be accurately quantified: this was a private company and it was conceded that the paper transactions over the shares were completely sham transactions. The lawyer's letter adduced by [B] suggested that the Husband was trying to prevent the Wife from laying claim to the contracts coming into [P] Pte Ltd. It was clear, however, that the Wife's conduct in taking out the injunctions against the Husband and his related parties had a material adverse impact on the company's financial status. As such, the Husband's contention was that the company was now not worth anything.

85 In my judgment, it was appropriate to adjust the final distribution ratio to 50:50 for equal division between the parties. The 7.5% uplift to the Wife came to around \$186,215.27. This was a conservative sum and it was less than the total paper value used in the three sham transactions. Equal division was also just and equitable given the parties' history with each other: they would

share in the losses they had caused by way of shrinkage of the matrimonial pool equally.

### **Mechanics as to asset division and maintenance arrears**

86 On a 50:50 division of the matrimonial assets, the Wife's half was around \$1,241,435.13. Ordinarily, the sums held in her name would be deducted. In this case, however, she had credit of \$229,500 more in maintenance arrears. Deducting the arrears from the sum held under her name (\$788,198.91) came to \$558,698.91. Deducting this derived value, in turn, from the 50% share of the matrimonial assets that she should receive (\$1,241,435.12) came to \$682,736.22. This was the sum that should be transferred from the Husband's name to the Wife's.

87 To give effect to this determination, the sum held by OA of \$111,618.54 should be transferred to the Wife. The remaining sum of \$571,117.68 was to be transferred from the Husband's CPF Ordinary Account to the Wife's Ordinary CPF account. This should allow a sufficient remainder in the Husband's CPF Ordinary and Special Accounts to maintain the minimum sum of around \$160,000 after such deduction.

### **Maintenance for the Wife**

#### ***History of the maintenance orders***

88 The history of maintenance applications and payments in this case was rather confused. Interim maintenance was first ordered on 18 July 2011, under which the Husband was to pay \$2,500 for the wife and \$1,500 for their son per month with effect from 1 February 2011. In addition, the interim order provided that \$36,000 was to be paid by the Husband to the Wife's and son's joint account for the maintenance during the period from 1 February to 1

October 2011 (9 months). In this regard, however, only \$32,000 was in fact paid. Thus, the Wife applied to enforce this order on 20 June 2012.

89 In the meantime, the Husband was declared bankrupt on 7 June 2012. On this basis, he applied to vary the maintenance order on 19 July 2012, in the midst of enforcement proceedings by the Wife. On 16 August 2012, a consent order was made, varying the initial interim order, providing that the parties agreed that the arrears as at (and including) August 2012 amounted to \$44,000, and that these arrears and the balance of \$3,500 per month payable from September 2012 onwards would be accumulated and dealt with at the ancillaries hearing. For the time being, the Husband was to continue to pay \$500 per month for the son's maintenance.

90 After the Court of Appeal released its judgment in *AXM v AXO* [2014] 2 SLR 705 ("*AXM*"), making clear that a final maintenance order could not be backdated, the Husband applied on 20 August 2014 to rescind or vary the interim maintenance order that had initially been granted on 18 July 2011 and thereafter varied on 16 August 2012 ("Rescission Application"). The Rescission Application, *vide*, MSS 380/2014, pursuant to the Husband's application on 22 January 2015 and an order of the Deputy Registrar, was on 26 January 2015 fixed to be heard together with the ancillary matters. At that time, parties envisaged a hearing on their ancillary matters in the Family Court. Subsequently, after hearing dates had been fixed at the Family Court on 8 August 2016, the Wife's solicitors asserted that the pool of assets exceeded \$5m. The ancillary matters were thus transferred to the High Court by direction dated 12 August 2016. The Rescission Application did not appear to have been transferred with the rest of the case to the High Court, even though the High Court may, based on s 2(a) of the WC, hear matters under Part VIII of the WC. Nevertheless, I had power under s 12(2) of the Family Justice Act

(No. 27 of 2014) (“FJA”) to deal with the Husband’s Rescission Application, and did so exercise accordingly.

91 In terms of the substance of the Rescission Application, the Husband sought a rescission of the interim maintenance order as amended, and further relied on *AXM* for the court’s power to backdate such a rescission order made under s 118 of the WC. In contrast, the Wife took a curious factual position in her submissions that the Rescission Application had been withdrawn after a mediation session between the parties.<sup>152</sup> This was not borne out on the court’s records.

*The proper reading of AXM*

92 In *AXM*, the Court of Appeal made clear that a final maintenance order granted under s 113(1)(b) could not be backdated to override the effect of an interim maintenance order granted under s 113(1)(a) as there would no longer be a subsisting order under s 113(a) once a final maintenance order under s 113(b) has been made. The Court of Appeal went on to state, however, that *if a summons had been filed under s 118 of the WC*, which allows a court to vary or rescind any existing order for maintenance, that could be used to rescind or vary the interim order under s 113(a), and there was “no reason in language, principle, or logic why the variation of a maintenance order made pursuant to either limb of s 113 could not be made to apply retrospectively” (at [26]).

93 In the present case, after first obtaining the amendment to the interim maintenance order by consent on 16 August 2012, the Husband applied to rescind the interim maintenance order on 20 August 2014, and thereafter sought to defer the hearing of the Rescission Application until the substantive

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<sup>152</sup> Wife’s AM Submissions at para 584.

ancillaries hearing. This was necessary, according to the Husband, because the proper interaction between interim and final maintenance orders only became clear post-*AXM*. Until *AXM*, the Husband had thought that any interim maintenance order which was entered into by consent could be superseded by the final maintenance order that would eventually be made – his objective had thus been for the ancillary matters court to *backdate* its maintenance order at that end point and override the prior interim orders. Post-*AXM*, he hoped to achieve the same objective by the Rescission Application, and *effectively preserve* his ability to raise, at the ancillaries hearing, his intervening bankruptcy as a ground for variation or rescission of the interim orders.

94 While, on a literal reading, *AXM* did not expressly preclude the Husband from pursuing this line of argument, the Husband in this case had used it to cleverly forestall conclusive enforcement of the interim maintenance order (as amended by their consent order) for over 50 months. This was clearly not the intention of *AXM*. Section 118 of the WC provides a mechanism for the variation or rescission of the maintenance order on narrowly defined conditions; it is not a bookmark that parties may place on any interim maintenance order made under s 113(a) so that they may later revisit it. As such, applications under s 118 should generally be heard without undue delay. If there has been a change of circumstances, the applicant ought to prove its extent. In this case, the Husband's deferral of the Rescission Application left the Wife and the son in an undesirable state of limbo. In these circumstances, it would be too prejudicial to the Wife and the son to rescind or vary now the 16 August 2012 interim maintenance order. The better approach would be to take into consideration the intervening bankruptcy when making a decision as to the final maintenance orders going forward under s 113(b) of the WC, which I did as explained below.

***Quantum of maintenance to be ordered***

95 The Wife sought a lump sum maintenance of \$2.3m,<sup>153</sup> on the basis of a monthly \$7,000 with a multiplier of 27.95 years. She has been employed as a Personal Assistant since April 2013 to date, with a salary of around \$2,400 per month. While the Husband's bankruptcy had been annulled, he adduced evidence that he had trouble finding gainful employment. He was blacklisted by most local airlines when he was terminated by SIA in 2011. In mid-2013, he acquired a glucose tolerance deficiency (a precursor to diabetes) and suffered from a cervical disc disease affecting the vertebrae around the neck area, which caused pain and numbness in his left thumb and index fingers.<sup>154</sup> In August 2016, his condition exacerbated into borderline type 2 diabetes.<sup>155</sup> At the time of the hearing, he was an Uber driver and lived in a rental flat in Tampines.<sup>156</sup>

96 In my view, a no maintenance order was appropriate on the facts of this case for several reasons. First, as I have explained, rather than rescind or vary the interim maintenance sum, the better approach in this particular case is for the court simply to take the intervening circumstances into consideration in deciding the final order. This should be done in the following way. Parties agreed that as at January 2017, the maintenance arrears stood at \$229,500. If a court had considered the issue of variation/rescission in a timely manner after the Husband's Rescission Application was filed, it would likely have ordered a downward variation rather than a total rescission under s 118 of the WC. Taking this at half the sum, the remainder half sum would have been a

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<sup>153</sup> Wife's AM Submissions at para 589.

<sup>154</sup> Husband's AM Submissions at paras 30-31.

<sup>155</sup> Husband's 19<sup>th</sup> Affidavit dated 13 October 2016 at para 6.

<sup>156</sup> Husband's 19<sup>th</sup> Affidavit dated 13 October 2016 at paras 9, 13.

sufficient lump sum maintenance for the Wife, allowing her to weather the transition of divorce. Second, the history of the interaction and litigation between the parties in this case, as well as the current employment and financial status of the Husband, suggest that it would be best if they were able to have a clean break. Third, I was of the view that this order, coupled with the orders as to division of matrimonial assets, provide, in the round, sufficiently for the Wife. The court's power to order maintenance is supplementary to the court's power to divide matrimonial assets (see *ATE v ATD and another appeal* [2016] SGCA 2 at [31]–[33]). The cash sum from the OA will ease the transition period immediately following my orders, and the CPF sum will look to her longer term financial security. The evidence also showed that she had withdrawn almost \$500,000 prior to IJ and would have had the benefit of the use of those sums in the intervening years. In the circumstances, I ordered no further maintenance for the Wife.

### Orders for the son

97 Counsel for both parties agreed that the son was 20 years old at the time of my order. In fact, oral submissions as to the child-related orders were made on the day of the judgment itself.<sup>157</sup> I realised in the course of writing these grounds, however, and regrettably, that at the time of the judgment, the son was two days past his 21<sup>st</sup> birthday. In view of s 122 of the WC, these orders ought not to have been made. On the basis that the son was 20, I preferred a no custody order for the son, over a joint custody order, in line with guidance from the Court of Appeal in *CX v CY (minor; custody and access)* [2015] 3 SLR 690 (at [18]–[19]). This was because the son was serving in National Service and was, *ex hypothesi*, close to the age of majority. Care

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<sup>157</sup> Notes of Evidence dated 5 January 2017 at pp 4-5.

and control was ordered for the Wife, with liberal access to be arranged directly between the son and the Husband.

98 Regarding maintenance, \$500 per month for the son's maintenance was ordered to continue until the son finishes his tertiary education. As the son had not yet decided on his college choice between the two local universities for admission in 2018, a specific sum for his tertiary education was too remote at present. It was envisaged that counsel would make a future application, and he was to ascertain whether and how a CPF order might be made in due course for the Husband's CPF to be utilised for the son's tertiary education fees. In the circumstances, while maintenance may be ordered in respect of a child over the age of 21 who is serving full-time National Service, in view of the approach of the Court of Appeal in *Thery Patrice Roger v Tan Chye Tee* [2014] SGCA 20 (at [48]-[50]), other recourse is necessary and the son should consider making an application under s 69 of the WC.

### **Costs**

99 In this case, both Husband and Wife asked for costs. In view of the multiple contentions of dissipation and web of fund transfers, an accountant would have been useful but neither party wanted to expend the extra cost.<sup>158</sup> While both parties made numerous allegations that the other party had dissipated funds, only a proportion was borne out on each side. Having regard to the equally uncooperative conduct on both sides, no order was made on costs.

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<sup>158</sup> Notes of Evidence dated 27 October 2016 at pp 8-9.

**Rule 427 FJR**

100 After judgment was delivered on 5 January 2017, counsel for the plaintiffs discovered that an incorrect sum had been furnished to the court earlier as being held by the OA: it should have been \$111,618.54 rather than \$111,709.48. The OA requested rectification of the numbers. At the same time, despite the figures having been checked by both counsel prior to judgment, the summation of the assets held in the Wife's name (which should be \$788,198.91 rather than \$727,281.01) and total amount of maintenance arrears (which should be \$229,500 rather than \$220,000) were inaccurate, causing arithmetical errors in the calculations relevant to the asset allocation. These clerical errors were rectified under Rule 427 of the Family Justice Rules (S 813/2014) (see *Singapore Civil Procedure 2017, Vol 1* (Sweet & Maxwell, 2017) at para 20/11/1, which deals with O 20 r 11 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), a provision that is *in pari materia* with Rule 427). Parties had no objection to this approach. These grounds of decision reflect the rectified sums as indicated above.

**Conclusion**

101 In conclusion, the relevant orders were as follows:

- (a) OA to pay the Wife sum of \$111,618.54 currently held to the Husband's account.
- (b) Sum of \$571,117.68 to be transferred from the Husband's CPF Ordinary Account to the Wife's CPF Ordinary Account as part of asset division.
- (c) Save as provided in (b), each party to keep the assets held in his or her own name.

- (d) No custody order for the son, care and control to the Wife, liberal access to the Husband to be arranged directly between the Husband and the son. Counsel for Husband and Wife to write to each other with the relevant mobile phone numbers.
- (e) No maintenance order for the Wife.
- (f) No order on MSS 380/2014.
- (g) With effect from 1 February 2017, the Husband to pay the son \$500 per month, and on the 1<sup>st</sup> of each month thereafter, until he finishes his first degree. Counsel for the Wife is to supply the account number of the son for such transfers.
- (h) No order on costs.
- (i) The outstanding injunctions under summonses 39/2011, 923/2011, 14479/2011, and 10214/2013 to be discharged.
- (j) Liberty to apply.

Valerie Thean  
Judicial Commissioner

Low Peter Cuthbert, Christine Low & Elaine Low (Peter Low LLC)  
for the plaintiff;  
Randolph Khoo, Veronica Joseph, Ho Wei Jing, Tricia  
(Drew & Napier LLC) (16 September 2011 – 5 February 2017), and  
Lim Poh Choo (Alan Shankar & Lim LLC) (from 6 February 2017)

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for the defendant.