

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2018] SGHCF 7

Divorce (Transferred) No 522 of 2014

Between

UKA

... Plaintiff

And

UKB

... Defendant

ORAL JUDGMENT

[Family Law] — [Matrimonial assets] — [Division]

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**UKA
v
UKB**

[2018] SGHCF 7

High Court — Divorce (Transferred) No 522 of 2014
Debbie Ong J
19 July; 28 December 2017

28 December 2017

Debbie Ong J:

1 The Plaintiff is referred to as the “Wife”, and the Defendant is referred to as the “Husband”. The parties were married in October 1986. The Interim Judgment of divorce was granted on 5 August 2014. The Husband moved out of the family home in mid-2012. Theirs was a long marriage of almost 28 years. They have four children, all above the age of majority. The Wife is not seeking maintenance for herself or for any of the children. The only issue concerns the division of the matrimonial assets.

Agreed assets and liabilities

2 The parties agree that the following assets held in the sole name of the Wife are matrimonial assets with a total value of \$452,334:

| Asset | Agreed Value (\$) |
|-----------------------|--------------------------|
| NTUC Insurance Policy | 19,004 |
| SingTel Shares | 5 |
| CPF Account | 433,325 |
| <u>Total</u> | <u>452,334</u> |

3 The parties agree that the following assets held in the sole name of the Husband are matrimonial assets with a total value of \$779,617:

| Asset | Agreed Value (\$) |
|---------------------|--------------------------|
| CPF Account | 603,298 |
| OCBC Accounts | 32,545 |
| POSB Account | 18,031 |
| Shares | 8,776 |
| Unit Trusts | 104,427 |
| Car | 12,540 |
| <u>Total</u> | <u>779,617</u> |

4 Thus the parties agree that the total value of these assets in their names is \$1,231,951.

Disputed assets and liabilities

Assets and liabilities collectively owned by parties

5 The parties' asset of highest value is [QZ] Engineering Pte Ltd (the "Company"), which manufactures and sells air-conditioning ventilation systems

and ducts. The Company was incorporated by the parties in December 1986, shortly after their marriage in October 1986. They each hold a 50% share in the Company. The value of this family company submitted by each party is not far from the other; they are as follows:

| Asset (Liability) | W's Value (\$) | H's Value (\$) |
|--------------------------|-----------------------|-----------------------|
| Company | 24,400,000 | 25,400,000 |

6 At a case conference on 11 August 2016, the parties agreed to appoint a joint valuer to value the Company and to abide by the valuation produced by it. RSM Corporate Advisory Pte Ltd, subsequently appointed as the joint valuer, reported that the fair value of 100% of the share capital of the Company as at 30 September 2016 was \$26,500,000. This figure of \$26,500,000 was calculated on the basis that loans of \$2,073,000 allegedly due from the Husband are recoverable by the Company. The joint valuer added that if any part of the \$2,073,000 could not be recovered by the Company, the value of the Company (*ie*, \$26,500,000) should be reduced to that extent.

7 The Wife submits that “any amounts owing by the Husband to the Company should not be taken into consideration when valuing the Company” because “the Company should be the party to decide if it would go after the Husband for the debt”.

8 The Husband admits owing the Company approximately \$790,000. He adds that a further \$155,000 is recoverable from the Wife. He submits that the value of the Company should thus be reduced by only \$945,000 and not \$2,073,000. He submits that the remainder is not recoverable because it had been used for household expenses.

9 The Company, built up and thus acquired during the marriage, is a matrimonial asset; it does not belong to either the Husband or the Wife exclusively but is liable to be divided upon divorce (see *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520). Just as a transfer of property between spouses does not take such property out of the pool of matrimonial assets, so too a transfer of property between groups of assets. The spouses ultimately own the aggregate of the matrimonial assets (and liabilities) collectively.

10 It is not disputed that the \$2,073,000 has been disbursed by the Company. It is also not disputed that the \$2,073,000 has not been returned to the Company. The value of the Company as it stands today in the pool of matrimonial assets should *exclude* this sum of \$2,073,000. However, the proceeds of the \$2,073,000 that remain in the hands of the parties will have to be accounted for – I shall address this aspect below when I consider the assets in the possession of the Wife and of the Husband.

11 I find that the Company has a value of \$24,427,000, which is the difference between the joint valuation of \$26,500,000 and the disbursement of \$2,073,000.

Assets in sole name/possession of Wife

12 There are nine disputed categories of assets in the sole name of the Wife, including the proceeds of the loan from the Company received by her:

| Asset (Liability) | W's Value (\$) | H's Value (\$) |
|----------------------------|-----------------------|-----------------------|
| Loan Proceeds from Company | - | 155,000 |
| Hillview Property | - | 1,800,000 |
| Thomson Property | - | 650,000 |

| | | |
|-------------------------|---------|-----------|
| Cars | - | 131,992 |
| OCBC Accounts | - | 239,870 |
| POSB Accounts | - | 283,156 |
| UOB Account | - | 61,241 |
| Citibank Account | - | 27,224 |
| Luxury Goods Collection | 175,000 | 2,500,000 |

13 I deal first with the proceeds of the loans from the Company that were received by the Wife, and then with the assertion of the Wife that all eight of the remaining disputed assets in her sole name/possession (referred to as the “Ring-fenced Assets”) fall outside the pool of matrimonial assets.

Loan proceeds from Company

14 The Wife admits to receiving \$155,000 from the Company around April 2012 by way of two payment vouchers for \$77,500 each, drawn on the Directors’ Drawing Account of the Husband. The Wife submits that the \$155,000 should not be included in the pool of matrimonial assets because it represented her “half-share (with interests) of the \$300,000 that the [Husband] had caused the [C]ompany to lose” by investing in another company, [HH].

15 It is not disputed that the \$155,000 was received by the Wife. She has not explained how the monies have since been applied. Even if the \$155,000 had, as the Wife claims, been paid to her as compensation, it remains a matrimonial asset. I find that the \$155,000 is a matrimonial asset that stands to the account of the Wife.

Ring-fenced Assets

16 The Wife points to a post-nuptial document dated 1 July 2011 (the “1/7/11 Document”) in support of her claim that those assets are excluded from the pool of matrimonial assets. I set out the contents of the 1/7/11 Document, which was signed before two independent witnesses.

Marriage Agreement

I, [Husband], acknowledge on 1st July 2011, that all of the following belongs to [Wife]. In the event of separation or divorce in the future, I shall not pursue any of them.

1. Real estate property

- ... Hillview [Property]
- ... Thomson [Property]

2. Car

- C180 Mercedes-Benz ...
- Honda-[Jazz] ...

3. Jewellery and branded handbags

4. Apart from the joint account between me and [Wife], I will not go after any other accounts.

I acknowledge and agree to sign this agreement under a clear and good state of mind.

17 The Wife adds that the Hillview Property and the Thomson Property were held on trust by her for the four children, which trusts (the “Trusts”) had been formed pursuant to the 1/7/11 Document. She argues further that she “had bought over the Husband’s share of the Hillview [P]roperty during the course of the marriage ... via an arms-length transaction.”

18 The Husband submits that the 1/7/11 Document should be accorded little weight, and that the Ring-fenced Assets are subject to division because they had been purchased with funds from the Company. He submits that the 1/7/11

Document had been signed by him under duress. Its terms were also manifestly unfair.

19 The Husband adds that the Wife had created the Trusts “within weeks of [his] leaving the matrimonial flat”, and that her primary purpose for creating the Trusts was to “deprive [him] of his rights in relation to” the Hillview Property and the Thomson Property. He argues further that his transfer of his share of the Hillview Property to her in 2008 was a sham “to prevent the property from being obtained by [his] creditors.”

20 It is not disputed that all the Ring-fenced Assets were acquired during the marriage by either or both parties. This position is not changed by the submission of the Wife that some of the monies used to purchase the Ring-fenced Assets represented “income from her side business of buying and selling bags” and her winnings from “str[iking] lottery a number of times as well”. The Wife offers little explanation or documentary evidence to bear these claims out. More importantly, the Wife accepts that “ultimately [she] had bought the [Ring-fenced Assets] with her share of the monies received from the Company”.

21 Section 112(2)(e) of the Women’s Charter (Cap 353, 2009 Rev Ed) (“WC”) provides that the Court, in exercising its discretion to divide matrimonial assets, must have regard to “any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce”. The Court is not bound to enforce any such agreement, but will determine the weight to ascribe to the agreement considering all the circumstances of the case (*TQ v TR and another appeal* [2009] 2 SLR(R) 961). The Court will be cognisant of any pressure exerted by one spouse on the other - I quote some relevant considerations from *Surindar Singh s/o Jaswant Singh v Sita Jaswant Kaur* [2014] 3 SLR 1284 at [53], citing

Ormrod LJ made in the context of a separation agreement in *Edgar v Edgar* [1980] 1 WLR 1410 at 1417:

... Under pressure by one side, exploitation of a dominant position to secure an unreasonable advantage, inadequate knowledge, possibly bad legal advice, an important change of circumstances, unforeseen or overlooked at the time of making the agreement, are all relevant to the question of justice between the parties ...

22 In *AQS v AQR* [2012] SGCA 3, the husband (but not the wife) had signed a memorandum in the following terms:

I, [the husband], hereby certify that, in case of a divorce between my wife [the wife], and me, the paramount decision on dividing assets is the future wellbeing of our children, [C] and [B].

Therefore, I will commit to leaving 70% of our common assets at the time of divorce at the disposal of my wife and my children.

The Court of Appeal accorded this memorandum little weight because the memorandum seemed “dubious” both in form and substance (at [35]).

... we were of the view that the 5 April 2006 Memorandum should be accorded little weight because it seemed dubious. Its form was somewhat unusual: it was not really an agreement between both parties in the usual form but a unilateral declaration of intent signed by the husband with the heading, “To Whom it May Concern”, without further elaboration as to what the context of such a unilateral memorandum was. Furthermore, the wife’s inherently incredible explanation of how the memorandum came about (*ie.* that it was made pursuant to the parties’ agreement prior to marriage) did seem to suggest that the only possible conclusion was per the husband’s version of events *ie* that he had only signed the memorandum under some sort of duress.

23 More recently, the High Court of Australia in *Thorne v Kennedy* [2017] HCA 49 (“*Thorne*”) set aside two agreements made in contemplation of divorce on grounds of undue influence and unconscionability. The majority in the High

Court suggested six factors that could have prominence in assessing agreements made in contemplation of divorce (at [60]):

In the particular context of pre-nuptial and post-nuptial agreements, some of the factors which may have prominence include the following: (i) whether the agreement was offered on a basis that it was not subject to negotiation; (ii) the emotional circumstances in which the agreement was entered including any explicit or implicit threat to end a marriage or to end an engagement; (iii) whether there was any time for careful reflection; (iv) the nature of the parties' relationship; (v) the relative financial positions of the parties; and (vi) the independent advice that was received and whether there was time to reflect on that advice.

24 *Thorne* was decided in the context of Part VIIIA of the Family Law Act 1975 (Cth). Thereunder, s 90K expressly provides that an agreement made in contemplation of divorce may be set aside if it is “void, voidable, or unenforceable” or where the conduct of a party to the agreement was “unconscionable” - whether a financial agreement is valid, enforceable or effective “is to be determined by the court according to the principles of law and equity that are applicable in determining the validity, enforceability and effect of contracts and purported contracts” (*Thorne* at [21]). In contrast, s 112(2)(e) of the WC does not oblige the Singapore Court to apply contractual principles in assessing agreements made in contemplation of divorce. Nevertheless, the considerations in *Thorne* are useful to bear in mind.

25 I now consider the effects of (a) the 1/7/11 Document; (b) the transfer of the share of the Husband in the Hillview Property to the Wife; and (c) the Trusts declared by the Wife on the Hillview Property and the Thomson Property.

(1) 1/7/11 Document

26 I place little weight, if any at all, on the 1/7/11 Document.

27 The 1/7/11 Document benefits only the Wife. It is undisputed that, at the material time, the Wife controlled the finances of the Company as its Accounts and Finance Manager, and that the Company could not make any payments without her approval. The Husband deposed that the Wife had exploited her control of these finances at the material time by threatening to disrupt the operations of the Company and to force its closure, that the Wife would “berate [him] to no end for days” and make life difficult for him if he did let her have her way. The Wife does not appear to deny these contentions directly. She submits only that (a) the 1/7/11 Document had been witnessed by two independent persons, including a close friend of the Husband; (b) the 1/7/11 Document states that it had been “signed under a clear and good state of mind; and (c) “the Husband took no steps whatsoever to disavow this document before divorce proceedings were filed in 2014.” These submissions do not address the nub of the complaint of the Husband: that the Wife had exploited her position of dominance (and his concomitant vulnerability) to compel him to sign the 1/7/11 Document. Ultimately, the evidence of the Husband of his haplessness in the face of the demands of the Wife, has gone substantially unchallenged.

28 Reinforcing this conclusion is the objective evidence of a series of at least nine one-sided documents in favour of the Wife that were signed by the Husband before and after the 1/7/11 Document. Many of these documents were, like the 1/7/11 Document, signed in circumstances where the Wife took advantage of her control of the finances of the Company by threatening to force the closure of the Company if the Husband did not sign the documents. I set out the nine one-sided documents:

- (a) 1 August 1995: that in the event of a divorce, the Husband had to transfer his interests and rights in the Hillview Property to the Wife without any monetary consideration, and then to reimburse his CPF

monies utilised in the acquisition of the Hillview Property together with accrued interest.

(b) 25 April 1997: that the Husband could not return to his hometown in Malaysia, and that if he did so “all of [his] assets, including the factories in Malaysia and Singapore, shall be given to [the Wife]”.

(c) 25 March 1998: that the Husband “had made a mistake” and that the Wife was free to “do whatever [she] wish[ed] to do.”

(d) 13 December 2002: that the Wife had the authority to give orders to the employees of the Company, and that in the event of conflicting instructions between the Husband and the Wife, the instructions of the Wife were to prevail.

(e) 9 March 2005: that the Husband was to purchase 400,000 shares in the Company from the Wife for \$800,000, payable within two weeks, and to return the shares to the Wife for no consideration if he failed to effect full payment on time. On the uncontested evidence of the Husband, the Wife had “instigated the sale ... knowing full well that [he] did not have the money to pay for the shares.”

(f) 7 May 2007: that the Husband had from March 2006 to April 2007 taken five loans for a total of \$2,100,000 from the Wife “to finance the operations of [the Company]”, that the loans were repayable upon written demand by the Wife, and that the Husband would indemnify the Wife against any claims in the event of the insolvency of the Company insolvency. The Husband deposed that he never received the \$2,100,000 from the Wife. The Company has no records of four of the five loans. Most importantly, it is inexplicable given the state of the relationship

between the parties at the material time that the Wife had made the loans to the Husband and not to the Company if the loans were to finance the operations of the Company.

(g) 2 July 2008: that the Husband was to purchase 100,000 shares in the Company from the Wife for \$268,500, payable within two weeks, and to return the shares to the Wife for no consideration if he failed to effect full payment on time. On the uncontested evidence of the Husband, the Wife had “instigated the sale ... knowing full well that [he] did not have the money to pay for the shares.”

(h) 1 August 2013: that the Husband was to comply with a list of 14 “conditions” (the “1/8/13 Document”). These 14 “conditions” included the following, the breach of any of which would require the Husband to transfer 5% of his shares in the Company to the children and attract the imposition of “new conditions”:

- (i) that the Husband was “not allowed to go through all historical statements of [the Company]”;
- (ii) that the Husband was “not allowed to purchase any house in any country, including Singapore and Malaysia”;
- (iii) that the Husband was “not allowed to apply for new bank account or bank loan”;
- (iv) that the Husband was to provide his personal banking passwords, and deliver up his bank token every two weeks “for the printing of bank statement” for the Wife;
- (v) that the Husband was to hand over his Singapore passport to the Wife; and

(vi) that the Husband was not allowed to provide money to any of his Malaysian relatives.

(i) 2 September 2013: that the Wife was authorised to withdraw \$30,000 every month from the Company “for household use”.

29 Notably, the 1/8/13 Document was preceded by an exchange of text messages between the parties, in which the Husband pleaded with the Wife to relent her demands because her refusal to approve the purchase of a “Gi coil”, which was needed for the operations of the Company, was damaging the Company.

... The [contract] conditions are not fair to me. If I refuse to sign, you will interfere with the company operation, refuse to approve 1 Gi coil 0.5 1.0 1.2. Yesterday [A] called me, saying the work outside would be affected. 5 minutes ago you called [B] at Holiday Inn, that the “Vds” contract would not be continue after 15th. If we stop tomorrow, how will this affect the work progress? If we receive no money during the end of the period, we will be sued. Since you have been with [QZ] for twenty years, I believe you don't want to see this happen. Let us find a time, sit down, and settle all the differences between us...

30 The Wife did not relent, and insisted that she would “never compromise”, “not consider any consequences”, and “not bother to tidy up the mess”.

... My contract is fair, as it has to be obeyed by both parties. It is only unfair if the rules only apply to you. My children believe that what I am doing is right and is protecting their interests. After all, all my assets and properties belong to my four children, it is very fair ... In short, I appreciate your twenty years of sacrifices and effort in managing and growing [QZ] and do hope that [QZ] will continue to grow. But you know me very well as a person and aware of my work style. *I will never compromise. Once you have pissed me off, I will not consider any consequences. I will not bother to tidy up the mess, worst comes to worst we just break off and let the sky fall.* 1. All four of my children have grown up and can take care of themselves. 2. My assets and properties have been equally divided to all four

children. I am financially secured. 3. *For the past few years I have tried everything, from jewelry, watches, real estate, cars, to first-class air travel and hanging out with stars.* 4. *I have no regret in life.* If I die now I would have no regret at all. One more day on earth is additional blessing for me to see my eldest and youngest sons getting married and having babies. Finally I do hope that you will sign the two contracts. Let us keep [QZ] together and grow it stronger. If you think your 5k salary is insufficient you can discuss with me, but I will not change the requirement in the two contracts

[emphasis added]

31 The Husband eventually relented and signed the 1/8/13 Document.

32 The evidence from the time around the signing of the 1/7/11 Document paints a picture of the Wife “exploit[ing] a dominant position to secure an unreasonable advantage”. I accord only minimal weight to the 1/7/11 Document, and this does not suffice to take the Ring-fenced Assets out of the pool of matrimonial assets.

(2) Transfer of share in Hillview Property

33 I find that the transfer by the Husband to the Wife of his share in the Hillview Property in 2008 does not take the Hillview Property out of the pool of matrimonial assets. Property transferred from one spouse to the other during the course of the marriage remains within the pool of matrimonial assets.

34 The Hillview Property remains a matrimonial asset despite the sale by the Husband of his share in it to the Wife. The consideration received by the Husband from the transaction, such as cash payments and the refund to his CPF account, likewise remains in the pool of matrimonial assets.

(3) Trusts of Hillview Property and Thomson Property

35 I hold that the Hillview Property and the Thomson Property remain matrimonial assets notwithstanding the Trusts declared by the Wife.

36 The Trusts were declared by the Wife on 13 July 2012. This was around the time when the Husband had moved out from the matrimonial home. The Wife submits that she had created the Trusts pursuant to the “clear intention of the parties”, as expressed in the 1/7/11 Document, that the Hillview Property and the Thomson Property “would not form part of the pool for division”... “[t]his being the clear intention of the parties, the Court should give effect to parties' intention and exclude the properties held on trust for the children from division.” As I have explained earlier, I have given little weight to the 1/7/11 Document.

37 More importantly, I agree with the Husband that the Trusts were created by the Wife around the time when the Husband moved out from the matrimonial home in an attempt to remove the Hillview Property and the Thomson Property from the pool of matrimonial assets.

38 Professor Leong Wai Kum, in *Elements of Family Law in Singapore* took this view (LexisNexis, 2nd Ed, 2013) at p 584:

Where no irrevocable trust has been made, the court will have full powers to order as it sees fit of this matrimonial asset ... Where an irrevocable trust is made to benefit some other person, the value of the policy will be among the other assets in the basket of ‘matrimonial assets’ but again in its consequential order to achieve the proportions of division, the court will ensure that the spouse policy holder will obtain this asset so that she will then take whatever steps she sees fit with regard to whether to change or terminate the trust created ...

39 Here, the Hillview Property had been purchased in 1997 and the Thomson Property in 2010. The Trusts were created by the Wife in July 2012, only after the Husband had left the matrimonial home. Coupled with the protracted series of attempts by the Wife to put assets out of the reach of the Husband, I infer that the Wife had created the Trusts with at least a predominant intention to take the Hillview Property and the Thomson Property out of the pool of matrimonial assets.

40 The Hillview Property and the Thomson Property are included in the pool of matrimonial assets. As the Trusts are irrevocable, the net value of the properties shall be included in the pool of matrimonial assets, and in the consequential order to achieve the proportions of division, the Wife shall receive these assets the values of which shall be counted towards the Wife's entitlement.

(4) Conclusion on Ring-fenced Assets

41 For the reasons above, I find that the Ring-fenced Assets remain within the pool of matrimonial assets that are liable to division between the parties.

42 The parties are in agreement on the values of all of the Ring-fenced Assets, except for the collection of luxury goods. The value of the Ring-fenced Assets save the collection of luxury goods is \$3,193,483.

43 The Wife claims that her collection of luxury goods has a value of \$175,000. She adds that she had been in the business of purchasing luxury goods for resale to her friends, which business explains her higher expenditure on luxury goods. She accepts that there are "no receipts and/or invoices to support [her] version of events", but points to a bank statement showing a \$1,017,000

deposit into one of her bank accounts as a deposit of the proceeds from such business.

44 The Husband replies that the collection of luxury goods of the Wife has a value of \$2,500,000. He points to the admission of the Wife that she is “the VVIP for many of the prestigious brands (such as Cartier/Hermes/Birkin etc) and [has] exclusive privileges with them.” He adds that the credit card statements of the Wife record spending of \$4,794,449 on luxury goods across January 2009 to December 2012, including \$556,909 between November 2009 and January 2010 on her Takashimaya Platinum American Express credit card alone. It is inconceivable that the value of her collection of luxury goods today is just \$175,000. Further, the Wife has not disclosed specific luxury items in her possession (such as the 5-carat diamond referred to in a television interview).

45 I accept the Husband’s submissions and evidence that the Wife had purchased at least \$4,794,449 of luxury goods during the marriage. The Wife does not directly deny this claim, and asserts only that she had resold the luxury goods to her socialite friends for profit. However, the Wife does not offer documentary evidence to bear out these claims. There are, by her own admission, “no receipts and/or invoices to support [her] version of events.” Nor are there records of the correspondence between the Wife and her alleged customers. This absence of documentation is surprising given the sums involved.

46 The Wife relies on a concession by the Husband that “it is impossible to ascertain the exact value of the luxury items which the Wife has failed to disclose” in support of her argument that her luxury goods collection cannot be worth \$2,500,000. However, such impossibility in the ascertainment of the value of the luxury goods renders it likewise difficult to accept the value of

\$175,000 put forward by the Wife. In light of the undisputed evidence that the Wife spent over \$4,794,449 on luxury goods, I prefer, on balance, the submission of the Husband that the Wife has a collection of luxury goods with a value of \$2,500,000. This is a reasonable, and arguably conservative, estimate of the value of the Wife's luxury goods.

Conclusion on assets of Wife

47 For the reasons above, I find that the value of the assets belonging to the Wife is \$6,300,817, including the assets the value of which the parties are in agreement, as stated earlier.

Assets and liabilities in sole name of Husband

48 There are two disputed assets and two disputed liabilities in the name or possession of the Husband, including the proceeds of the loan from the Company received by him:

| Asset (Liability) | W's Value (\$) | H's Value (\$) |
|--------------------------------|-----------------------|-----------------------|
| Loan Proceeds from Company | 2,073,000 | 945,000 |
| Proceeds of Malaysian Property | 30,000 | 11,671 |
| (SCB Loans) | (112,840) | (112,840) |
| (ANZ Loans) | (80,167) | (80,167) |

Loan proceeds from Company

49 The Wife submits that the Husband is liable to repay all \$2,073,000 of the loans in his name from the Company. The Husband accepts that he received approximately \$790,000 from the Company, and admits that such sum is

recoverable by the Company against him. He argues, however, that the Wife received \$155,000 of the loan proceeds, which proceeds I have found to stand to the credit of the Wife. He submits, however, that the remainder of approximately \$1,100,000 that was borrowed from the Company in his name had been spent on household expenses. The Wife does not directly deny that the \$1,100,000 has been spent on household expenses. She makes no submission on whether and how the proceeds of these loans have been applied.

50 The uncontested evidence of the Husband is that, of the \$790,000 he borrowed from the Company, \$600,000 was invested in shares while \$190,000 was invested in [GG] and [HH]. Neither party gave evidence on the value of these investments since. But since the Husband admits that he remains liable to repay the \$790,000 to the Company, I add \$790,000 to the assets in the name of the Husband that are liable to division on divorce.

Sale proceeds from the Malaysian Property

51 The Husband accepts that he received \$60,000 from the subsequent sale of his 25% share in the Malaysian property. He submits, however, that he had deposited \$30,000 of these monies into the account of the Company and then applied a further \$18,329 to settle the other debts of the Company.

52 The Wife accepts that the Husband deposited \$30,000 into the account of the Company. She disputes, however, his claim of paying another \$18,329 to settle the other debts of the Company, because there was no corresponding deduction in the accounts of the Company.

53 As there is a lack of documentary proof of the further payment by the Husband of \$18,329 on behalf of the Company, I add \$30,000 to the pool of

matrimonial assets on account of the sale proceeds of the Malaysian Property that remain in the hands of the Husband.

SCB Loans

54 The Wife submits that the SCB Loans, which total \$112,840, are not matrimonial liabilities. These loans were taken out by the Husband after she had filed for divorce in March 2014, and there is no evidence to show that the loans were taken out for the benefit of the family.

55 The Husband replies that SCB Loans were taken out to pay off earlier loans and the monthly instalments on such loans, as well as to pay for daily living expenses. The Wife had blocked his access to the matrimonial assets. He had no choice but to borrow to meet his financial obligations.

56 I accept the account of the Husband that he had taken out the SCB Loans to meet his living expenses. The Wife does not deny that she had at the material time blocked off the access of the Husband to his bank accounts. Nor does she deny that the Husband had to resort to selling off scrap metal from the Company to make ends meet. The Wife has not shown that the SCB Loans were not for the benefit of the family.

57 I recognise that some of the SCB Loans were taken only in September 2014. This is a month after Interim Judgment of divorce was granted on 5 August 2014. Nevertheless, I find that those loans are so proximate to the time when the marriage subsisted, and were taken in some part to discharge earlier loans taken during the marriage, that it is just and equitable to treat them as matrimonial liabilities.

58 Thus I deduct \$112,840 from the matrimonial assets in the name of the Husband on account of the SCB Loans.

ANZ Loans

59 The Wife contends that the ANZ Loans, which total \$80,167, are not matrimonial liabilities because they were, like the SCB Loans, taken out by the Husband after the relationship between the parties had broken down. She adds that the Husband has not provided any evidence to show that the ANZ Loans were for the benefit of the family.

60 The Husband submits that the ANZ Loans were, like the SCB Loans, taken out after the Wife had blocked his access to the matrimonial assets in order to pay off earlier loans and the monthly instalments on such loans, as well as to pay for daily living expenses.

61 As with the SCB Loans, I accept the account of the Husband that he had taken out the ANZ Loans to meet his living expenses. I find also that the Wife has not shown that the ANZ Loans were not for the benefit of the family.

62 I deduct \$80,167 from the matrimonial assets in the name of the Husband on account of the ANZ Loans.

Conclusion on assets of Husband

63 For the reasons above, I find that the value of the assets belonging to of the Husband is \$1,406,609, including the assets the value of which the parties are in agreement (see [3] above).

Dissipation by Wife

64 The Husband submits that the Wife has been unable to satisfactorily explain an estimated \$8,000,000 fall in her bank balances: from \$8,684,504 in August 2009 to \$611,495 in January 2015. He focuses on 41 withdrawals for a total of \$3,437,189, and disputes the claim of the Wife that they were “likely used to cover the household expenses / [her] personal expenses / the [Husband’s] expenses or passed to the [Husband]”. The expenses of the family were only around \$16,600 per month. Across 2009 to 2014, this would add up to approximately \$1,200,000, which is far less than \$3,437,189.

65 The Wife submits first that all the monies in her bank accounts came from the Company, and that the Husband had as director signed off the transfers from the Company to those bank accounts and approved the financial statements of the Company that reflect those transfers. Hence, the Husband can have no complaint about her use of the proceeds of the transfers.

66 The Wife denies, in any event, the allegations made by the Husband as to the fall in her bank balances between August 2009 and January 2015. She submits that the Husband had reached the figure of \$8,684,504 by aggregating the balances in her bank accounts at different dates, and that this is misleading because it disregards the transfers of funds between the different bank accounts. In effect, there has been double counting of the balances in those bank accounts.

67 The Wife accepts that her bank balances fell from \$3,448,890 in December 2012 to approximately \$650,000 at the time of Interim Judgment in August 2014. She attributes the decrease to: (a) spending \$32,000 per month on “her household expenses and her personal expenses”; (b) passing \$1,500,000 in cash to the Husband settle an action brought by him against her; and (c) using

\$450,000 to cover her own personal expenses. She asserts that she had attempted to recall her spending with the sums withdrawn to the best of her abilities, and that it is impractical to require her to account for every transaction that she had made.

68 At the outset, I do not accept the submission of the Wife that the Husband can have no complaint at all about her use of the monies that had been transferred out of the Company and into her bank accounts. The monies of the Company are matrimonial assets, and remain so even if transferred into the bank accounts of the Wife, which bank accounts I have found to be matrimonial assets. Accordingly, the Wife is liable to account for the proceeds of these transfers, the use of which proceeds I will consider in two tranches: (a) September 2009 to December 2012; and (b) January 2013 to August 2014.

September 2009 to December 2012

69 Based on the bank statements that the Wife was ordered to disclose, her bank balances fell from \$8,379,616 in September 2009 to \$3,448,890 in December 2012. This is a net outflow of \$4,930,726.

70 In my judgment, this net outflow is explicable by the expenditures of the Wife between September 2009 and December 2012. Based on the credit card statements of the Wife, I have found that she spent \$4,794,449 on luxury goods from January 2009 to December 2012. Based on the same credit card statements, I accept that the Wife spent approximately \$4,486,317 on luxury goods between September 2009 and December 2012.

71 I note the submission of the Wife that her monthly expenditures were \$16,000 for herself and over \$16,000 per month for the household. Over the 39 months from September 2009 to December 2012, this amounts to a total of

approximately \$1,248,000. Adding this sum to the \$4,486,317 spent by the Wife on luxury goods gives a total of \$5,734,317, which appears to more than account for the net outflow of \$4,930,726 from the bank accounts of the Wife between September 2009 to December 2012.

72 However, the \$16,000 per month that the Wife claims to have spent on herself overlaps with the approximately \$4,486,317 that she had spent on luxury goods during the same period. Moreover, it is undisputed that at the material time, the Wife had also been receiving monies from the Company other than through the bank accounts in her name, with some of amounts paid to her in cash or through the joint account of the parties. Thus, it appears that not all of her claimed monthly expenditures of \$16,000 on herself and \$16,000 on the household are traceable to her bank accounts.

73 On balance, I find that the net fall of \$4,930,726 in the bank balances of the Wife between September 2009 and December 2012 has been accounted for.

January 2013 to August 2014

74 The parties broadly agree that the bank balances of the Wife fell by approximately \$2,800,000 between January 2013 and August 2014. However, they disagree over how the proceeds of this \$2,800,000 have been applied.

75 The Wife submits that she had spent \$16,000 on herself and \$16,000 on the household each month, which gives a total of \$608,000 across the 19 months between January 2013 and August 2014. She adds that she had passed \$1,500,000 to the Husband to settle an action brought by him against her, and had used a further \$450,000 “to cover her own personal expenses”.

76 I accept the claim of the Wife that she had spent \$16,000 on herself and \$16,000 on the household each month between January 2013 and August 2014. The Husband does not appear to directly deny these sums, and does not provide evidence to the contrary. Thus I find that the Wife has accounted for \$608,000 of the \$2,800,000 fall in her bank balances between January 2013 and August 2014.

77 I do not accept the claim of the Wife that she had passed \$1,500,000 in cash to the Husband to settle the action brought by him against her. The absence of documentary evidence to bear this transfer out is not consistent with the magnitude and circumstances of the transaction. At the relevant time, both parties were legally advised, and it is inconceivable that an alleged settlement is absent from the correspondence.

78 I also do not accept the Wife's claim that she had "used \$450,000 to cover her own personal expenses". It is incredible that she had used a sum of \$450,000 on "personal expenses" over and above the \$16,000 per month that she had been spending on herself. The Wife offers no documentary evidence to bear out this \$450,000 expenditure.

79 I find that the Wife has not accounted for \$2,192,000 of the \$2,800,000 fall in her bank balances between January 2013 and August 2014. I treat this sum of \$2,192,000 as a matrimonial asset in the possession of the Wife, and add it to the pool of matrimonial assets.

Conclusion: total value of pool of matrimonial assets

80 For the reasons above, I find that the value of the pool of matrimonial assets is \$34,326,426.

| Asset (Liability) | Value (\$) |
|-----------------------------|-------------------|
| <u>Joint names</u> | |
| Company | 24,427,000 |
| <u>Sub-total</u> | <u>24,427,000</u> |
| <u>Sole name of Wife</u> | |
| NTUC Policy | 19,004 |
| Singtel Shares | 5 |
| CPF Account | 433,325 |
| Hillview Property | 1,800,000 |
| Thomson Property | 650,000 |
| Cars | 131,992 |
| OCBC Accounts | 239,870 |
| POSB Accounts | 283,156 |
| UOB Account | 61,241 |
| Citibank Account | 27,224 |
| Luxury Goods Collection | 2,500,000 |
| Loan Proceeds from Company | 155,000 |
| Unexplained withdrawals | 2,192,000 |
| <u>Sub-total</u> | <u>8,492,817</u> |
| <u>Sole name of Husband</u> | |
| CPF Account | 603,298 |
| OCBC Accounts | 32,545 |

| | |
|--------------------------------|--------------------------|
| POSB Account | 18,031 |
| Shares | 8,776 |
| Unit Trusts | 104,427 |
| Car | 12,540 |
| Proceeds of Malaysian Property | 30,000 |
| (SCB Loans) | (112,840) |
| (ANZ Loans) | (80,167) |
| Loan Proceeds from Company | 790,000 |
| <u>Sub-total</u> | <u>1,406,609</u> |
| <u>Grand Total</u> | <u>34,326,426</u> |

Proportions of division

81 This marriage was a long one, where the parties had raised four children and built up their family business from scratch. Their family business, the Company, was the source of the other assets acquired, and the source of funds for the entire family's financial needs. Both parties played a part in the Company; the Company was a family business owned by both parties. The Husband's contributions were very substantial in the breadwinning role – in this case, largely in building and running the Company, while the Wife's most substantial contributions were in homemaking – in this case, largely in raising four children. I accept that the Husband spent long hours building up the Company, but he also supported the family by, for example, ferrying the children and taking the family out. As he spent much time and effort on his work, I accept he had less time with the children. Conversely, the Wife was the

main caregiver of four children and I find that she would have had less time for doing work for the Company.

82 This marriage was an equal partnership of different efforts and should be recognised as such in the division of assets. A just and equitable division of the matrimonial assets is for the parties to share equally in the wealth of this marriage. In reaching this decision, I am not painting a picture of a long and happy marriage where parties felt they were equals as marriage partners. Unfortunately, the evidence showed that the marital relationship had been strained and difficult for more than a decade before the divorce. I have found the Wife to be domineering and controlling. I doubt that the Husband felt as if he was an equal marriage partner, as the Wife controlled the finances so tightly that he struggled to find funds for himself. The Wife, on the other hand, has enjoyed the “high life”. But I have found that each played their roles, even if it was amidst quarrels and strained relationships. The parties married in their twenties, when neither had wealth nor high education. They journeyed together and at the end of their marriage, in their fifties, they had amassed more than \$30 million in assets. Would they have acquired more or less assets had things been different? Suppose the Husband had limited the Wife from living the high life and spending so much money on the luxury goods? Suppose the Husband had spent less time on the Company and more time with the Wife? Suppose the parties had shared more equally the control over the Company’s finances? Who knows how things might have turned out? It is impossible to tell where each party would be today if some things had been different. My point is that parties should not now focus on the alleged misconduct of the other party, suggesting that he or she would have been in a better position had the other behaved better. Life is more complex than that.

83 The structured approach in *ANJ v ANK* [2015] 4 SLR 1043 would have achieved the same result. I would have assigned the following ratio for each party's direct and indirect contributions, presented in this table as follows:

| | Wife | Husband |
|---------------------------|-------------|----------------|
| A. Direct Contributions | 20% | 80% |
| B. Indirect Contributions | 80% | 20% |
| C. Average Ratio | 50% | 50% |

Orders

84 The total pool of matrimonial assets valued at \$34,326,426 shall be divided equally between the parties.

85 Unless otherwise agreed between the parties, the Company shall be sold and the sale proceeds divided in a way that will achieve the outcome ordered. The parties are to share equally in the difference, if any, between the eventual sale price of the Company and \$24,427,000. The Wife shall obtain the Hillview Property and the Thomson Property and their assigned values shall be counted as part of her 50% share.

86 I leave parties and their counsel to work out further how to carry out this division order. Parties have liberty to apply.

Debbie Ong
Judge

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Cavinder Bull SC, Lin Shumin and Madeline Chan
(instructed counsel) (Drew & Napier LLC) and
Ling Koon Hean David (Ling Das & Partners) for the defendant.
