IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 30

Civil Appeal No 93 of 2018

Between

BOI

… *Appellant*

And

BOJ

… *Respondent*

In the matter of HCF/Divorce Transfer No 6179 of 2013

Between

BOI

… *Plaintiff*

And

BOJ

… *Defendant*

JUDGMENT

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

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Andrew Phang Boon Leong JA, Belinda Ang Saw Ean J and Woo Bih Li J
1 April 2019

2 May 2019 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

Background

1 This is an appeal by the wife ("the Appellant") against the judgment of the High Court judge ("the Judge") on the ancillary orders in divorce proceedings.

2 The appeal involved a marriage of 23 years. The Appellant is currently 55 years old while the husband ("the Respondent") is currently 63 years old. The parties have two children who are 22 years old and 20 years old, respectively.

3 The main ancillary orders made by the Judge which the Appellant appealed against relate to the order on division of matrimonial assets and the

order on maintenance of the Appellant. The Judge's orders on these matters may be summarised as follows:

(a) Division of matrimonial assets: the matrimonial assets valued at $9,317,449 are to be divided in the proportion of 42% to the Appellant and 58% to the Respondent.

(b) Maintenance for Appellant: there be no order for maintenance for the Appellant.

4 The Appellant claimed that the matrimonial assets should have been divided in the ratio 80:20 in her favour. She claimed that she was responsible for 95% of the indirect contributions. In addition, she submitted that a greater proportion of the direct contributions should have been attributed to her, based on the following principal submissions:

(a) The Respondent's monthly deposits of $8,300 from 2002 to 2012 into the parties' DBS joint account should be attributed to the Appellant because there was an agreement between the parties that the money was for the Appellant's sole use, as it constituted a reimbursement to her ("the agreement").

(b) A $1.25m lottery win, which was principally used to repay the mortgage loans for the matrimonial home, should be attributed to the Appellant because, contrary to the findings of the Judge, she was the one who had won the lottery. Alternatively, given the fortuitous nature of a lottery winning, the direct contributions to the matrimonial home from the lottery winnings should be attributed 50:50 between the parties and should not have been attributed entirely to the Respondent.

Our findings

5 Having carefully considered the parties' written as well as oral submissions, we agree with the reasons as well as decisions arrived at by the Judge on the various issues on appeal (subject, however, to one significant point which we will elaborate upon below). We agree with, amongst others, (a) the Judge's findings that the Respondent's monthly deposits into the DBS joint account should be attributed to the Respondent solely and not the Appellant (save for the portion derived from rental income which was attributed equally) as the existence of the agreement was not proved; (b) her findings on the appropriate ratio for indirect contributions; and (c) her order that there be no maintenance for the Appellant. In our view, the Judge had not erred in law or exercised her discretion wrongly. She also had not taken into account irrelevant considerations or failed to take into account relevant considerations. This was a case which was very fact-centric and the Judge had examined each issue in meticulous detail before arriving at her decision.

6 However, there is, as just alluded to, one point which merited further consideration. This relates to the issue of the lottery winnings and our decision on it might have a substantive effect on the ultimate outcome in so far as the division of the pool of matrimonial assets is concerned. In this regard, two closely related sub-issues arise. The first is whether or not such winnings (here, to the tune of $1.25m won in 2002) are part of the pool of matrimonial assets to be divided between the parties pursuant to s 112 of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Act") in the first place. The second is, assuming that the answer to the first question is in the affirmative, how the court should attribute the winnings for the purposes of determining the respective parties' contributions to the pool of matrimonial assets to be divided between the parties.

Whether lottery winnings constitute matrimonial assets under s 112(10)

7 Turning to the first sub-issue, the key question that needs to be answered, in our view, is whether lottery winnings constitute a "matrimonial asset" within the definition of the same contained in s 112(10) of the Act ("s 112(10)"), which reads as follows:

> (10) In this section, "matrimonial asset" means —
>
> (*a*) any asset acquired before the marriage by one party or both parties to the marriage —
>
> (i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or
>
> (ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and
>
> (*b*) any other asset of any nature acquired *during* the marriage by one party or both parties to the marriage,
>
> but does *not* include any asset (not being a matrimonial home) that has been acquired by one party at any time by *gift* ***or*** *inheritance* and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.
>
> [emphasis added in italics and bold italics]

8 We note that the parties in this case did not consider this particular sub-issue and merely assumed that the lottery winnings (from a Singapore Pools 4-D bet) constituted a "matrimonial asset" that formed part of the pool of matrimonial assets to be divided between them. This is likely due to the fact that in this case, the lottery winnings were used to acquire the parties' matrimonial home and would, *prima facie*, fall outside the exception under s 112(10) for a gift or an inheritance. As we shall see, even leaving aside the fact that in this case the lottery winnings were used to acquire the matrimonial

home, the parties' assumption was correct. However, we now take the opportunity to explain why, as a matter of *legal principle*, this assumption was indeed well-founded. This will also ensure that this particular issue – as a matter of law – is clarified for parties in future cases.

9 In this case, as the lottery winnings were received during the marriage, they *prima facie* constitute a "matrimonial asset" within the meaning of s 112(10)(*b*) of the Act. However, this particular provision is subject to the exclusion in the concluding words of s 112(10) as set out at [7] above. In this regard, it is clear that lottery winnings are *not* a "gift" within the meaning of the exclusion; neither do they constitute an "inheritance" within the meaning of the same. It could be argued that a "gift" as well as an "inheritance" constitute windfalls and that because lottery winnings could (from at least one perspective) also be viewed as a windfall, lottery winnings should not be construed as constituting a "matrimonial asset" within the meaning of s 112(10). Such an argument is flawed however, for at least a couple of reasons.

10 First, as we have already noted, lottery winnings do not even come within the meaning of "gift" or "inheritance" in the exclusion in s 112(10). Secondly, whilst, from a layperson's point of view, the winnings from a winning lottery ticket might justifiably be viewed as a windfall, the ticket itself had to be purchased. The winnings only appear to be a windfall because of the ***disproportionality*** between the price paid for the ticket on the one hand and the amount of winnings on the other. However, this does not detract from the fact that the lottery ticket concerned is not, strictly speaking, a windfall in the same manner as a "gift" or an "inheritance" is. Hence, just based on a plain reading of the material parts of s 112(10) (*viz*, s 112(10)(*b*) and the exception contained at the end of s 112(10)), it is clear that lottery winnings *do* constitute a "matrimonial asset" within the meaning of s 112(10) and therefore form part of

the pool of matrimonial assets for the purposes of division between the parties (pursuant to s 112(1) of the Act ("s 112(1)")).

11 In addition to the plain (and we might add, commonsensical) reading of the material parts of s 112(10), there is also support in ***both*** the ***case law and legal literature*** for the view that lottery winnings constitute a "matrimonial asset" that therefore forms part of the pool of matrimonial assets to be divided. We would like to turn to the latter (*viz*, legal literature) first. Whilst this might appear unusual, we adopt this approach because at least one significant case relies on the relevant legal literature. We also note that the relevant legal literature is by the leading scholar on family law in Singapore, Prof Leong Wai Kum. In particular, we refer to the following paragraphs in the latest edition of her leading textbook on family law in Singapore (see Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) ("*Leong*") at paras 16.062−16.063, commenting on the Singapore High Court decision of *Ng Sylvia v Oon Choon Huat Peter and another* [2002] 1 SLR(R) 246 ("*Ng Sylvia*"), where it was held that a property purchased with lottery winnings could be included in the pool of matrimonial assets for division between the parties):

> [16.062] … A property acquired as a windfall presents challenges to its inclusion as matrimonial asset. The Women's Charter section 112(10) does exclude "any asset … that has been acquired by one party … by gift or inheritance" from "any … asset of any nature acquired … during the marriage" as matrimonial asset. It is possible to argue that a purposive reading of "gift or inheritance" would also exclude, by analogy, property acquired by other sorts of windfall including lottery winnings.
>
> [16.063] … The point that lottery winnings may be equated with "gift or inheritance" was not argued before the Judge. The author suggests that the decision is supportable. If one bears in mind that matrimonial assets are the material gains of the marital partnership it is not necessary to exclude the entire of property acquired by windfall. … If marriage is truly an equal

> co-operative partnership of different efforts for the spouses' mutual benefit, why should they not share their good fortune?

12 We have dealt with the possible analogy of "gift" and "inheritance" in s 112(10) with lottery winnings by way of the concept of a windfall and do not think that it is an apt one (*cf*, *Leong* at para 16.062, reproduced in the preceding paragraph). However, Prof Leong's view with regard to the fact that lottery winnings may be viewed as being for the spouses' mutual benefit is a persuasive one (see *Leong* at para 16.063) and buttresses our interpretation of the express language of s 112(10) as set out above (at [9]). Indeed, this approach is consistent with Prof Leong's concern (and, indeed, hope) that the ambiguities be resolved in favour of including rather than excluding properties that are acquired through windfalls (see *Leong* at para 16.064).

13 Indeed (and turning now to the relevant case law), the paragraphs we have quoted from Prof Leong's work (above at [11]) were also quoted by Debbie Ong J in the Singapore High Court decision of *UMU v UMT and another appeal* [2019] 3 SLR 504 ("*UMU*") at [10]. Indeed, Ong J also referred (at [7]) to this Court's decision in *NK v NL* [2007] 3 SLR(R) 743 (at [20]) where it was observed, *inter alia*, that "[t]he division of matrimonial assets under the Act is founded on the prevailing ideology of marriage as an equal co-operative partnership of efforts". The learned judge also proceeded to observe thus (at [11]):

> Thus lottery winnings already present challenges to their inclusion as MAs [*ie*, matrimonial assets] despite the possible connection between lottery winnings and the key characteristics of MAs (see [8] above). It could be argued that some utilisation of effort and matrimonial funds for the purchase of lottery tickets arise in the acquisition of lottery winnings. On the other hand, there is no element of effort in respect of damages received as compensation for the victim of a tort for his personal suffering. Lottery winnings could also be said to be part of the good fortune to be shared by both spouses

> in a marital partnership, while tortious damages are personal to the injured spouse.

14 We pause at this particular juncture to note that Ong J's observations on lottery winnings in *UMU* were *obiter dicta* since, as is evident from the passage from her judgment cited in the preceding paragraph, what was directly in issue before her in that case was the legal status of damages received by one spouse as compensation for being the victim of a tort and for his personal suffering. Indeed, the learned judge was contrasting the nature of lottery winnings with that of the damages just referred to. Nevertheless, Ong J's observations are also consistent with part of the reasoning of this court (at [12] above).

15 Lottery winnings also played a role (albeit a somewhat different one) in *Ng Sylvia*, to which reference has already been made. In that case, the winning lottery ticket had been purchased by the husband. The winnings from that ticket were utilised to purchase an apartment which was registered in the husband's name. The wife claimed that the entire apartment constituted a matrimonial asset that therefore constituted part of the pool of matrimonial assets for division between her and her husband. However, the evidence (which Lee Seiu Kin JC (as he then was) accepted) was that there was a loose family arrangement whereby the husband and his siblings would pool their money to purchase a bunch of tickets for various lotteries (including the Singapore Sweep, 4-D draws and Toto) and that there was an understanding that any prize money would be shared equally among the husband and his siblings. Lee JC therefore held that the husband was only entitled to a one-quarter share of the apartment, the rest being owned by his siblings, and correspondingly only one quarter of the apartment constituted a matrimonial asset. Although there was no express pronouncement as such, the underlying premise was that lottery winnings could – and did – constitute a "matrimonial asset" within the meaning of s 112(10).

16 Finally, we would refer briefly to the Singapore High Court decision of *LV v LW (divorce: ancillary matters)* [2006] SGHC 50 ("*LV*"), where it was also assumed by the judge that lottery winnings could – and did – constitute a "matrimonial asset" within the meaning of s 112(10).

17 However, we also note the English High Court decision of *S v AG (Financial Remedy: Lottery Prize)* [2011] EWHC 2637 (Fam) ("*S v AG*"), where Mostyn J observed as follows (at [15]):

> In my judgment, Mance LJ [in *Cowan v Cowan* [2001] 3 WLR 684] was right to warn against an uncritical acceptance of the Australian approach, which focuses on an analysis of contributions and where the concept of equal sharing is generally eschewed. As I have stated, the result is highly fact specific, and does not depend centrally on the origin of the trifling amount to purchase the ticket. If the parties are in effect operating a syndicate, whether formal or informal, where both are aware that tickets are being bought and where both have agreed tacitly or expressly to their purchase, then it is easy to see the prize as a joint venture and therefore as matrimonial property, normally to be equally shared. *On the other hand if one party is unilaterally buying tickets, from his or her own earned income, without the knowledge of the other party, then it is equally easy to see the prize as a receipt by that party alone akin to an external donation, and therefore as non-matrimonial property.* This case will be fortified if the party in question is buying the ticket as part of a syndicate with others, and more so if the marriage has become troubled and unhappy with the parties drifting into separate lives socially and economically (as I will find to be the case here). [emphasis added]

To the extent that *S v AG* suggests a different approach to that adopted in this judgment, we would respectfully differ from it – not least because of the plain language of s 112(10) as well as the general reasoning that has been set out above.

18 To summarise, for the reasons set out above, lottery winnings ***do***, in our view, constitute a "matrimonial asset" within the definition of the same contained in s 112(10) of the Act and therefore form part of the pool of

matrimonial assets to be divided between the parties pursuant to s 112(1). Before turning to the second sub-issue, there is one other question that we need to consider.

19 What would the legal position be if the spouse concerned purchased the winning lottery ticket with the intention of keeping any winnings that might result for himself or herself? Would *that* particular intention result in such winnings being *excluded* from the pool of matrimonial assets to begin with? We think that the better view is that this particular issue should be dealt with under the *second* sub-issue (which relates to how the court should *attribute* the winnings for the purposes of determining the respective parties' contributions to the pool of matrimonial assets to be divided between the parties). This is because, regardless of the relevant spouse's intention, the winnings themselves were received during the marriage itself and fall within the plain language of s 112(10). Indeed, what we have termed the exception in the concluding words to s 112(10) makes it clear that only a "gift" or an "inheritance" is excluded, and as we have already explained (at [9]–[16] above), lottery winnings do *not* fall within the exception. This would be an appropriate juncture at which to consider the second sub-issue.

Attribution of lottery winnings between parties

20 In so far as the second sub-issue is concerned (*viz*, how the court should attribute the winnings for the purposes of determining the respective parties' contributions to the pool of matrimonial assets to be divided between the parties), it appears that the Judge had only taken into account one factor – *who* had *purchased* (*ie*, provided the funds for) the winning ticket. In this regard, she was faced with two diametrically opposed accounts, and decided that it was the Respondent who had in fact purchased the said ticket. On that basis, the Judge

held that the Respondent *alone* had contributed the lottery winnings to the pool of matrimonial assets. With respect, we are of the view that whilst who purchased the winning ticket is one of the factors that ought to be taken into account, given the *sui generis* nature of lottery winnings, in particular, the fortuitous manner in which they are obtained as well as the disproportionality between the amount paid for the winning lottery ticket and the amount of the winnings themselves (see [25] below), the more important point where lottery winnings are concerned is *the intention* with which that ticket was purchased. If, therefore, the Respondent had purchased the ticket *for the family, with the accompanying intention that the family as a whole should benefit should it prove (as was in fact the case here) to be the winning ticket*, then we think that he should *not* be regarded as being the *sole* contributor of the lottery winnings to the pool of matrimonial assets. This approach is, in fact, entirely consistent with the concept of marriage as an equal co-operative partnership of efforts (see also above at [13]).

21 It is true that, if such an approach were adopted, it would be *extremely difficult* for the spouse purchasing a winning lottery ticket to argue that he or she was the *sole* contributor of the lottery winnings to the pool of matrimonial assets. However, by framing the approach the way we have, we nevertheless leave open the possibility that a spouse who purchases a winning lottery ticket might, on the precise facts and circumstances of a particular case, be able to demonstrate that he had *not* purchased that ticket for the family, with the accompanying intention that the family as a whole should benefit should the ticket prove to be the winning ticket.

22 Indeed, on the facts of the present case, it is clear that the Respondent did not purchase the winning lottery ticket in 2002 with the intention of keeping the winnings for himself. On the contrary, he deposited the winnings into the

parties' DBS joint account and utilised these winnings to pay down the mortgage and this is a strong (albeit not conclusive) indication that he had purchased the winning lottery ticket with the intention of benefitting the family instead of merely himself alone.

23 Could it, however, be argued that by paying down the mortgage, the Respondent was in a similar position as if he had utilised *his own* resources to do so – in which case it could be further argued that he had contributed directly to the matrimonial pool of assets? This is, so the argument goes, not unlike, for example, the Respondent utilising his Central Provident Fund ("CPF") savings to pay down the mortgage. In this last-mentioned situation, it would be accepted that the Respondent had in fact made a direct contribution – wholly by himself – to the pool of matrimonial assets. Such an argument, whilst persuasive at first blush, is nonetheless flawed. Let us elaborate.

24 The *fact* that the Respondent has paid down the mortgage in both situations referred to in the preceding paragraph does *not* ***necessarily*** mean that both situations are *the same*. In the latter situation (where the Respondent has utilised his CPF savings to pay down the mortgage), the CPF savings *clearly belong to him – and him alone*. *However*, in the former situation, the *ownership* of the lottery winnings is *precisely the issue that presently confronts us*. Put simply, there is *an anterior or threshold question* that must first be answered. Looked at in this light, it will be seen that the *lottery winnings* ought ***not*** to be *equated with* the *CPF savings*. Whilst the CPF savings *clearly belong* to the Respondent, the status of the lottery winnings stands on more ambiguous ground because of its unique nature (see [25] below). *Even if* we assume that the Respondent utilised *his* funds to purchase the winning lottery ticket, the next question that arises is (as already alluded to above) the ***intention*** *with which he purchased the said ticket*. This last-mentioned question does *not*, *ex hypothesi*,

arise with the status of *the CPF savings* (which clearly and unquestioningly belong to the Respondent). Returning to the intention with which the winning lottery ticket was purchased, if it can be shown that the Respondent purchased the ticket *with a view that any winnings would be for the benefit of the family*, then it could be said that that ticket was *not* purchased with the *intention* that any winnings resulting therefrom would belong to the Respondent – and the Respondent alone.

25 As we have alluded to above (at [20] and [24]), a party's intention is relevant where lottery winnings are concerned because of the *sui generis* nature of lottery winnings. First, unlike CPF savings which are the fruits of one's own labour, lottery ticket winnings are realised as a matter of luck or stroke of good fortune. A second – and extremely closely related – point is that there is *a radical* ***disproportionality*** between the amount paid for a winning lottery ticket (or even a number of tickets which includes the winning ticket) and the amount of the winnings themselves. In our view, this particular fact (unique to the situation of a lottery ticket) makes the *source* of the funds for the purchase of the winning ticket (which was a factor which weighed heavily with the District Judge in the Family Court decision of *UFI v UFJ* [2017] SGFC 102, especially at [58]) *much less important* than it would otherwise be (reference may also be made to *S v AG* at [11] and [15]). These two points simultaneously impact (*negatively*) any argument from *skill* in so far as the Respondent is concerned (and in this last-mentioned regard, the fact that the Respondent was an inveterate gambler who may claim to have developed some sort of system is one that is not susceptible of proper verification and is, in any event, one that does not guarantee positive results but may well have the *opposite* effect, as the Respondent's gambling *losses* demonstrate). Indeed, at this particular juncture, it can be seen that the attempted analogy with CPF savings breaks down

entirely. Hence, the mere fact that the Respondent in this case purchased the winning lottery ticket is *not* as legally significant as might appear at first sight. Indeed, the fact that he used his own funds to purchase the ticket is, having regard to the two reasons just canvassed, not really legally significant at all.

26 However, much would of course depend on the precise facts and circumstances of the particular case. If, for example, the spouses had an arrangement whereby resources were pooled in order to purchase lottery tickets on a regular basis, then it would clearly be the case, based on the positive objective evidence, that each party would be taken to have contributed any lottery winnings *equally* to the pool of matrimonial assets.

27 Finally, the following observations by Choo Han Teck J in *LV* (at [8]) might be usefully noted:

> Lottery prizes are just what they are – matters of luck. I do not think that any sensible formula can be made to apportion such assets, and accordingly, the prize-money must be shared equally after deducting the sum used to redeem some of the mortgage liabilities of the marriage.

28 Whilst we would *not* go so far as the learned judge in laying down a blanket rule that lottery winnings must *always* be shared equally between the spouses, his focus on the luck or stroke of good fortune involved is consistent with our analysis above (at [25]).

29 To summarise, lottery winnings constitute a "matrimonial asset" within the definition of the same contained in s 112(10) and therefore form part of the pool of matrimonial assets that are to be divided between the parties pursuant to s 112(1). In so far as the issue of attribution of lottery winnings with regard to contributions to the pool of matrimonial assets is concerned, there is a presumption that both spouses contribute *equally* to that pool (for the reasons

set out above) ***unless*** the spouse who purchased the winning lottery ticket can show that he or she purchased that ticket with a view to only benefitting himself or herself and not with a view that the family as a whole should benefit from such winnings should they materialise (see, for example, the Full Court of the Family Court of Australia decision of *Elford & Elford* [2016] FamCAFC 45 ("*Elford*") (where the parties kept their assets and finances separate throughout) as one possible situation)). On the contrary, if (as noted, in fact, at [26]) the evidence demonstrates that *both* spouses had an arrangement whereby they had *pooled* resources to purchase lottery tickets (and *cf Ng Sylvia*), such a presumption would not even be necessary to begin with – although the ultimate result would be the same.

30 We pause to note, briefly, that the position in Australia on lottery winnings appears to be somewhat similar in that lottery winnings are usually treated as joint contributions, albeit through the application of a slightly different approach. In the Full Court of the Family Court of Australia decision of *In the Marriage of R M and D Zyk* (1995) 19 Fam LR 797 ("*Zyk*"), it was held (at 807) that a lottery winning is not a "windfall" to be treated as a special class of assets but, rather, a "contribution" under s 79 of the Australia Family Law Act 1975 (Cth). In considering how lottery winnings should be attributed between the parties, the court was of the view (at 808) that which party purchased the ticket should not determine the issue. Rather,

> [w]here both parties are in receipt of income and where their marriage is predicated upon the basis of each contributing their income towards the joint partnership constituted by their marriage, the purchase of the ticket would be regarded as a purchase from joint funds in the same way as any other purchase within that context and would be treated accordingly …

31 Indeed, the court then proceeded to observe (at 808) that "[w]here one party is working and the other is not the *same* conclusion would ordinarily apply because that is the mode of partnership selected by the parties" [emphasis added] and that "[t]he income of the working member is treated as joint in the same way as the domestic activities of the non-working partner are regarded as being for their joint benefit".

32 Finally, the court did observe (at 808) that (*cf*, for example, *Elford*),

> [t]here may be cases where the parties have so conducted their affairs and/or so expressed their intentions that this would not be the appropriate conclusion, but in the generality of cases with which this court would normally deal this appears to us to be the correct approach and the correct outcome.

This last-mentioned qualification is similar to that which we have in fact stated at [29] above.

Application to present case

33 Turning to the facts of the present case, the Judge found, based on her assessment of the evidence, that the winning lottery ticket was purchased by the Respondent and not the Appellant. We see no reason to depart from the Judge's finding of fact as to who purchased the winning lottery ticket, although this finding is not material given the legal principles applicable to attribution of lottery winnings which we have set out above. The more important point is *the intention* with which that ticket was purchased.

34 Whilst we acknowledge the fact that the Respondent was an inveterate gambler, there is nevertheless no evidence on record which shows that when he purchased the winning lottery ticket in 2002, he had not intended that the winnings should inure to the benefit of the family as a whole. As we have

mentioned above (at [22]), on the facts of the present case, it is clear that the Respondent did not purchase the winning lottery ticket in 2002 with the intention of keeping the winnings for himself since he had deposited the winnings into the parties' DBS joint account and utilised these winnings to pay down the mortgage. The Respondent himself submitted that he had deposited the lottery winnings into the parties' DBS joint account "with the intention of acquiring the matrimonial home for the family to live in". In this regard, it did not matter that the DBS joint account was a joint-all account requiring both parties to consent to withdrawals. This fact – referred to by the Respondent in an attempt to distinguish the facts of the present case from those in *Zyk* – is of no assistance to the Respondent as it does not detract from the fact that the Respondent intended for not just himself but his family to benefit from the winnings.

35 The Respondent also referred to the fact that he was an inveterate gambler who had, throughout the course of the marriage, incurred not just winnings but losses which were not insubstantial. The suggestion was that it would be unfair for the lottery winnings to be attributed to both parties given that the losses had been borne by the Respondent alone. We are of the view that the fact that the Respondent had incurred lottery losses in addition to winnings is a fact which is neither here nor there. Indeed, it could be argued that when the Respondent utilised his funds to purchase what were ultimately *losing* positions *vis-à-vis* lottery tickets (amongst other forms of gambling), that actually *depleted* the then existing pool of matrimonial assets.

36 We therefore reverse the decision of the Judge on this particular issue and hold that the contributions with respect to the 2002 lottery winnings are to be attributed to each spouse *equally*.

37 For completeness, we would also note that aside from the 2002 lottery winnings, the Respondent had also won the following amounts between 2011 and 2013, which he deposited into his personal bank account:

(a) $201,028 in 2011;

(b) $48,210 in 2012; and

(c) $1.032m in 2013.

Likewise, the Appellant had also won $10,000 in 2010. We are satisfied that these 2010 to 2013 lottery winnings may be distinguished from the Respondent's 2002 lottery winnings. Since the tickets in relation to the former were purchased after the parties had already separated in 2004 and close to the date at which the interim judgment of divorce was granted in February 2014, it can be inferred that both parties did not intend for any winnings from these tickets to be for the benefit of the family, but instead for each of themselves only. Therefore, any contributions to the matrimonial pool from these later lottery winnings need not be attributed to each party on an equal basis. In any event, we note that the credit for and entitlement of each party to these later winnings were not in dispute between the parties on appeal.

38 As a result of our decision on the 2002 lottery winnings, the ratio of the direct contributions of each party will necessarily change and this would (in turn) impact the ultimate amount which each party receives as a result of the division of the pool of matrimonial assets. Let us elaborate. It was undisputed that the 2002 lottery winnings were deposited into the parties' DBS joint account. The Judge found that various payments towards the matrimonial home paid out of the DBS joint account soon after the lottery win in 2002 were derived from the lottery winnings. The Judge found that these payments constituted the

direct contributions of the Respondent towards the matrimonial home as he was the one who had purchased the winning lottery ticket. As a result of our finding that the 2002 lottery winnings should be attributed to each party equally, the calculation of parties' direct contributions towards the matrimonial home will change.

39 Attributing the contributions from the 2002 lottery winnings equally, and leaving the direct contributions as found by the Judge for the rest of the matrimonial assets unchanged, there would be an increase in the overall direct contributions attributed to the Appellant from 21.9% to 38.2%. The average overall ratio of the Appellant's contributions after indirect contributions are accounted for would be 49.1%, instead of 42%. The tables below set out the detailed as well as relevant calculations, as agreed between the parties.

	Appellant	Respondent
<u>Direct financial contributions to matrimonial home</u>		
Net sale proceeds of parties' first matrimonial home	$112,471	$313,556
CPF contributions	$213,000	$562,000
Lump sum redemption of $450,000 in September 2002 (paid from DBS joint account using $1.25m lottery winnings)	$225,000	$225,000
Lump sum redemption of $220,000 in September 2005 (paid from DBS joint account using $1.25m lottery winnings)	$110,000	$110,000
Renovation expenses of $496,010 (paid from DBS joint account using $1.25m lottery winnings)	$248,005	$248,005
Fixtures and fittings of $83,990 (paid from balance of $1.25m lottery winnings)	$41,995	$41,995
Fixtures and fittings of $119,079 (the Judge found that Respondent paid for $2,789 and $116,290 was drawn from the DBS joint account)	-	$2,789
	$23,258	$93,032
Assumption of payment of $100,000 for periodic mortgage payments, interest and other expenses deemed	$20,000	$80,000

	Appellant	Respondent
to be paid from DBS joint account		
Total direct contributions to matrimonial home	$993,729	$1,676,377
Absolute amount based on agreed valuation of $6.6m	[$993,729 / ($993,729 + $1,676,377)] × $6,600,000 = $2,456,311.25	[$1,676,377 / ($993,729 + $1,676,377)] × $6,600,000 = $4,143,688.75
<u>Other direct financial contributions (other joint assets and assets in each party's sole names)</u>		
DBS joint account	$1,350	$5,398
Citibank joint accounts	$140,200	$109,800
Maybank joint account	$487	$1,947
Assets in Appellant's sole name	$920,904	$0
Value of SAAB (portion funded from the DBS joint account)	$1,203	$0
Assets in Respondent's sole name	$0	$1,396,136
Tokio Marine Insurance Policy (premiums were paid from DBS joint account)	$0	$17,821
Appellant's CDP shares (portion funded from DBS joint account)	$0	$13,494
Total direct contributions to other joint assets and assets	$1,064,144	$1,544,596

	Appellant	Respondent
in each party's sole names		
Total direct financial contribution	$2,456,311.25 + $1,064,144 = $3,520,455.25	$4,143,688.75 + $1,544,596 = $5,688,284.75
Overall ratios		
Percentage of direct financial contributions	**38.2%**	**61.8%**
Percentage of indirect financial contributions	**60%**	**40%**
Average percentage	**49.1%**	**50.9%**
Parties' entitlement upon division (total value of matrimonial assets at $9,317,449)	$4,574,867.46	$4,742,581.54
Less assets in parties' sole name (to be retained by each party)	$4,574,867.46 – $952,219 = $3,622,648.46	$4,742,581.54 – $1,397,339 = $3,345,242.54
Ratio for division of joint assets	($3,622,648.46 / $6,967,891) × 100% = 52%	($3,345,242.54 / $6,967,891) × 100% = 48%

Conclusion

40 We therefore allow the appeal in part and order costs in favour of the Appellant in the sum of $20,000 (all-in). The parties are to bear their own costs in the court below and the Judge's order for costs in favour of the Respondent is therefore set aside. There will be the usual consequential orders.

Andrew Phang Boon Leong Judge of Appeal	Belinda Ang Saw Ean Judge	Woo Bih Li Judge

Linda Joelle Ong and Lim Xiao Wei Charmaine (Engelin Teh Practice LLC) for the appellant;
N Sreenivasan SC and Lim Shu Fen (K&L Gates Straits Law LLC) for the respondent.
