

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2019] SGHCF 8

HCF/Divorce (Transferred) No 3783 of 2017

Between

UTS

... Plaintiff

And

UTT

... Defendant

JUDGMENT

[Family Law] — [Matrimonial assets] — [Division] — [Long single income marriage]

[Family Law] — [Maintenance] — [Wife]

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UTS

v

UTT

[2019] SGHCF 8

High Court (Family Division) — Divorce (Transferred) No 3783 of 2017
Tan Puay Boon JC
27 December 2018

23 April 2019

Judgment reserved.

Tan Puay Boon JC:

Introduction

1 The Plaintiff (“Wife”) was born in 1948, and turns 71 this year. The Defendant (“Husband”) was born in 1939, and turns 80 this year. They (collectively “Parties”) were married in 1973 in Singapore, and have three children. The eldest daughter was born in 1975 and the second daughter was born in 1977. They and their families now live in Europe and North America, respectively. The youngest son was born in 1987 and now lives in Singapore.

2 The Parties started leading separate lives in 2012, including sleeping in separate bedrooms. They were then married for around 39 years. In August 2017, the Wife filed for divorce on the basis of four years’ separation, and Interim Judgment was granted in April 2018 on an uncontested basis, some 44 years into the marriage. The ancillary matters were adjourned to chambers.

Matters in dispute

3 The contested ancillary matters to be decided are the division of the matrimonial assets (which include the matrimonial home) and maintenance for the Wife.

Division of matrimonial assets

The legal principles

4 The power of the court to divide matrimonial assets, and the matters that it has to have regard to are set out in s 112 of the Women’s Charter (Cap 353, 2009 Rev Ed) (“WC”). These matters include those which are relevant for the assessment of maintenance for the wife set out in s 114 of the WC.

5 The Parties submitted that the matrimonial assets should be pooled and divided.¹ Since this is not a case where there are multiple classes of assets to which the parties had made different contributions (the Husband was responsible for acquiring the assets as the Wife did not work), the “global assessment methodology” is the appropriate methodology to be used here. This involves the identification, assessment, division and apportionment of these assets: *NK v NL* [2007] 3 SLR(R) 743 (“*NK v NL*”) at [31].

Identification and Assessment of the matrimonial assets

6 Generally, the default date for the identification of matrimonial assets is at the date of the Interim Judgment (*ARY v ARX* [2016] 2 SLR 686 at [31]), and the assessment of their values is at the date of the ancillary matters hearing: *TND*

¹ Wife’s skeletal submissions at para 56 and Husband’s written submissions at para 76(a).

v *TNC and another appeal* [2017] SGCA 34 at [19]–[20]. The Parties do not seek to depart from the default dates.

7 The Parties have signed a joint summary of relevant information, which they updated on 4 January 2019. This summary sets out all their assets which are jointly or individually owned. Since this was tendered after the hearing before me, I consider it to reflect the Parties’ latest positions. While there is no dispute as to whether any asset is a matrimonial asset, the values of some of the assets are disputed. I will deal with these in turn.

Agreed Assets

8 The matrimonial assets with agreed values are set out in the table below:

| S/No. | Description | Value (\$) |
|-------------------------|---------------------------------------|--------------|
| Joint Assets | | |
| 1. | Matrimonial home | 6,500,000.00 |
| | Sub-total (A) | 6,500,000.00 |
| Wife’s Assets | | |
| 2. | Shares | 585.20 |
| 3. | Unit Trusts | 98,337.66 |
| 4. | Central Provident Fund (“CPF”) monies | 7,938.88 |
| | Sub-total (B) | 106,861.74 |
| Husband’s Assets | | |
| 5. | Shares with Standard Chartered Bank | 89,549.75 |

| S/No. | Description | Value (\$) |
|-------|---|---------------------|
| 6. | Bank Accounts (disclosed in the Husband's affidavit of assets and means) | 68,729.30 |
| 7. | AIA Regional Equity Fund | 2,774.00 |
| 8. | Stockbroking accounts (disclosed in the Husband's ancillary affidavit dated 15 October 2018) | 46,913.69 |
| 9. | Bank Accounts (disclosed in the Husband's ancillary affidavit dated 15 October 2018) | 5,972.20 |
| 10. | Bank Accounts (disclosed in the Husband's ancillary affidavit dated 15 October 2018) (AUD 1,629.42) | 1,629.42 |
| 11. | Bank Accounts (disclosed in Husband's ancillary affidavit dated 15 October 2018) (MYR 2,100.59) | 692.66 |
| 12. | CPF monies | 24,797.00 |
| | Sub-total (C) | 241,058.02 |
| | Total [(A) + (B) + (C)] | 6,847,919.76 |

Assets with disputed values

9 Set out in the table below are assets where the values are disputed by the Parties:

| S/No. | Description |
|-------|---------------------|
| | Joint Assets |

| S/No. | Description |
|--------------|---|
| | Joint Assets |
| 1. | European car |
| 2. | Korean car |
| 3. | Singapore country club membership |
| 4. | Johor country club membership |
| | Wife's Assets |
| 5. | Prudential Limited Pay insurance policy |
| 6. | Prudential Vantage insurance policy |
| 7. | Bank Accounts |

10 I will deal with these in turn.

(1) European car

11 The Husband values the car at \$35,000 while the Wife values it at \$28,000.² Since neither party has tendered any documentary evidence to substantiate their positions, and as their positions are not poles apart, I will adopt the average value of \$31,500.

(2) Korean car

12 The Husband values the car at \$10,000 while the Wife has not taken a position on the value of this car, even though she appears to disagree with the Husband's valuation.³ In the absence of any other evidence, I adopt the Husband's value of \$10,000.

² Joint summary at p 3.

(3) Singapore country club membership

13 The parties agree that the market value of this membership is \$190,000. However, the Husband submits that this is not a “true representation of the value of the membership”; the transfer fee payable to the country club (\$32,100) in the event of a transfer of this membership should be deducted to arrive at an accurate value of this membership.⁴ The Wife disagrees and submits that the transfer fee should not be deducted since the Husband wishes to retain the membership.

14 The Husband cites two cases in support of his submissions, the first of which is *Wee Beng Choo v Er Sye King* [2003] SGDC 57, where the district judge deducted the transfer fee from the values of the club memberships: at [26]. However, it is unclear from the judgment whether the deduction of the transfer fee was in dispute in that case. The second case is the decision of the High Court in *Fong Wai Har v Seah Boon Chai and another* [2016] SGHCF 4, where the judicial commissioner accepted the husband’s argument “that the transfer fee ... ought to be deducted from [the country club’s valuation], given that any transfer would necessarily incur that expense”: at [11]. However, it is unclear from the judgment whether the husband was seeking to retain the country club membership.

15 In the present case, the Husband has stated unequivocally that he is “unwilling to sell the [country club] membership as it is [his] main source of entertainment and exercise”.⁵ The Wife does not object to the Husband’s retention of his membership. Since the Husband does not wish to transfer the

³ Joint summary at p 3.

⁴ Joint summary at p 4.

⁵ Husband’s affidavit of assets and means at p 14.

membership to someone else, I see no reason to deduct the transfer fee from the value of the membership.

16 I also note that when a party retains property (such as a house) in his or her own name in the event of a divorce, fees that are usually incurred in a potential future sale (such as conveyancing fees) are not typically deducted from the value of that property. Further, where real property (such as the matrimonial home) is transferred from one party to another, it is typically the transferee who bears the cost of any future transfer. Thus, by analogy, I find it reasonable for the Husband, who will continue to retain the benefits of the membership, to solely bear the notional cost of transfer as the membership is already in his own name. I thus adopt the Wife's valuation of \$190,000.

(4) Johor country club membership

17 The Wife values this membership at \$6,666 while the Husband values this membership at \$4,333. The difference between the values of this asset given by the Parties is again the transfer fees. For the same reasons given in ascertaining the value of the Singapore country club membership, I hold that the value of this asset is \$6,666.

(5) Wife's Prudential Limited Pay insurance policy

18 This is an insurance policy taken out in the Wife's name. The Wife values it at \$33,000 while the Husband values it at \$34,764.99. The Wife's valuation is based solely on the participating assured sum, and the Husband's valuation consists of that as well as the total guaranteed bonus as at 31 December 2016 and the 2017 guaranteed bonus.⁶

⁶ Joint summary at pp 3–4. Wife's affidavit of assets and means at p 33.

19 In my judgment, the bonuses should not be included in the value of the policy. When valuing insurance policies, the courts generally take the surrender value of the policies as the date of the ancillary matters hearing, or any other date agreed by the parties. In other words, the courts do not take into account any increase in the value of policies after the divorce proceedings. Returning to the facts of this case, the bonuses which the Husband has included are payable on claims or maturity only.⁷ These are events which may or may not happen in the future; in other words, the bonuses do not represent the *present* value of the policy. Accordingly, I adopt the Wife's value of \$33,000.

(6) Wife's Prudential Vantage insurance policy

20 This is another insurance policy taken out in the Wife's name. The Wife adopts the net cash surrender value of \$26,156.37. The Husband adopts the indicative current value of \$32,709.34.⁸ It appears from a statement that the indicative current value is payable only upon the Wife's death.⁹ For the reasons set out in the previous paragraph, I adopt the Wife's value of \$26,156.37.

(7) Wife's bank accounts

21 The Husband adopts the value of \$73,226.47 while the Wife adopts the value of \$70,084.12. The difference is attributable to the Wife's exclusion of certain accounts which she claims she does not operate, and which she submits should be listed under the Husband's assets.¹⁰ Besides the relatively small difference between the two values, as will become apparent below, it is not necessary to determine each party's precise direct financial contributions. Thus,

⁷ Wife's affidavit of assets and means at p 34.

⁸ Joint summary at p 5.

⁹ Wife's affidavit of assets and means at p 38.

¹⁰ Joint summary at p 5.

it is also unnecessary to determine whether the difference in value should be under the Husband’s or the Wife’s name. I will adopt the Husband’s value of \$73,226.47.

22 In summary, for the assets with disputed values, I set out in the table below the values which the Wife and Husband submitted, and the values which I have found:

| Asset | Wife’s Value (\$) | Husband’s Value (\$) | Court’s Value (\$) |
|---|------------------------------|-------------------------------------|-------------------------------|
| Joint Assets | | | |
| European car | 28,000.00 | 35,000.00 | 31,500.00 |
| Korean car | | 10,000.00 | 10,000.00 |
| Singapore country club membership | 190,000.00 | 157,900.00 | 190,000.00 |
| Johor country club membership | 6,666.00 (MYR 20,000) | 4,333.00 (MYR 13,000) | 6,666.00 (MYR 20,000) |
| Sub-total (A) | | | 238,166.00 |
| Wife’s Assets | | | |
| Prudential Limited Pay insurance policy | 33,000.00 | 34,764.99 | 33,000.00 |
| Prudential Vantage insurance policy | 26,156.37 | 32,709.34 | 26,156.37 |
| Bank Accounts | 70,084.12 | 73,226.47 | 73,226.47 |

| Asset | Wife's Value (\$) | Husband's Value (\$) | Court's Value (\$) |
|-------------------------|------------------------------|-------------------------------------|-------------------------------|
| Sub-total (B) | | | 132,382.84 |
| Total [(A) +(B)] | | | 370,548.84 |

23 The total value of the pool of matrimonial assets is \$7,218,468.60, as set out below:

| Class of Assets | Value (\$) | Reference |
|-----------------------------|---------------------|------------------|
| Assets with agreed values | 6,847,919.76 | [8] above. |
| Assets with disputed values | 370,548.84 | [22] above. |
| Total | 7,218,468.60 | - |

The appropriate division ratio

24 In *ANJ v ANK* [2015] 4 SLR 1043 (“*ANJ v ANK*”) the Court of Appeal laid out a structured approach for the division of matrimonial assets. That structured approach was succinctly summarised in *TIT v TIU* [2016] 3 SLR 1137 at [21] as follows:

- (a) express as a ratio the parties’ direct contributions relative to each other, having regard to the amount of financial contribution each party made towards the acquisition or improvement of the matrimonial assets (“Step 1”);

(b) express as a second ratio the parties' indirect contributions relative to each other, having regard to both financial and nonfinancial contributions ("Step 2"); and

(c) derive the parties' overall contributions relative to each other by taking an average of the two ratios above (the derived ratio shall be referred to as "the average ratio"), keeping in mind that, depending on the circumstances of each case, the direct and indirect contributions may not be accorded equal weight, and one of the two ratios may be accorded more significance than the other. Adjustments could also be made in respect of other relevant factors under s 112 or s 114(1) of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Charter") ("Step 3").

25 However, in *TNL v TNK* [2017] 1 SLR 609 ("*TNL v TNK*"), the Court of Appeal cautioned that the structured approach in *ANJ v ANK* should not be applied to single-income marriages: at [46]. This is because the working spouse would be "accorded 100% (or close to 100%) of direct contributions" and would "also be accorded a substantial percentage under Step 2 solely on the basis of his or her indirect financial contributions ... even if he or she made little or no non-financial contributions". The non-working spouse is therefore "doubly and (severely) disadvantaged": at [44]. Thus, in single income marriages, the court should tend towards equal division. In *UBM v UBN* [2017] 4 SLR 921, it was clarified that a single-income marriage includes a marriage where one party was primarily the breadwinner and the other primarily the homemaker.

26 This approach has been applied in a number of cases. In *UMU v UMT and another appeal* [2019] 3 SLR 504, the parties were married for 22 years. Although the Wife worked for a number of years, her monthly income was only \$650 to \$900, a sum so low that she was unable to make any direct financial contribution to the acquisition of matrimonial assets. In the circumstances, the High Court recognised that the husband was the primary breadwinner and the wife a primary homemaker, which resulted in the wife receiving 45% of the assets (before taking into account an adverse inference drawn against the

husband). Another similar case is *UKA v UKB* [2018] 4 SLR 779, where the parties were married for almost 28 years. The husband's contributions were "very substantial in the breadwinning role", in building and running a company which was the source of the family's wealth. Conversely, the wife's most substantial contributions were in homemaking, largely in raising four children. And while the Wife helped out in the company and the Husband also spent time with the children, the High Court found that the marriage "was an equal partnership of different efforts and should be recognised as such in the division of assets", and ordered that the assets be divided equally.

27 In my judgment, the present case involves a quintessential long single income marriage. The Parties were married for 39 years before they started leading separate lives: [2] above. The Wife was a homemaker throughout the entire marriage. The Husband's career took him to many countries: between 1973 and 1980, he was posted to Indonesia, Africa and the United States of America. The Wife followed him overseas, where the children spent their initial years. I recognise that it was not easy for the Wife to care for young children, especially when the family was living in Khartoum, Sudan from 1975 to 1978, when the daughters were still babies. There, the family experienced times of food and petrol shortages. As the Husband accepted, it was a difficult posting which he contemplated abandoning when he first arrived.¹¹ I also note that that was before a time where one could easily communicate across borders with smart devices and social media. Thus, the Wife's efforts in caring for the family, particularly in the early years of the marriage, were substantial. This was all the more the case as she did not always have domestic help. On the other hand, I accept that the Husband played his part at home whenever he could. However, the reality was that a substantial proportion of time was spent on his career.

¹¹ Husband's ancillary affidavit dated 15 October 2018 at para 55.

Nevertheless, it was through his efforts that the Parties were able to amass more than \$7 million worth of assets.

28 Although each party attempted to accentuate their contributions while downplaying that of the other party, this marriage is in my judgment “an equal partnership of different efforts”. Applying the approach in *TNL v TNK*, I am of the view that the pool of assets should be divided equally. Each party is therefore entitled to \$3,609,234.30 worth of assets.

Adverse inference

29 The Wife appears to suggest on affidavit that the Husband’s belated disclosure of certain assets shows that he had failed to make full and frank disclosure of his assets. She also suggests that the Husband may be earning undeclared income.¹² However, she did not request this court to draw an adverse inference against the Husband in her written submissions or at the hearing before me.

30 In any event, I would have declined to do so. Mere suspicion is not enough to ground an adverse inference: *BOR v BOS and another appeal* [2018] SGCA 78 at [75]. Belated disclosures alone are also insufficient, because “parties to a functioning marriage do not keep records of their transactions with a view to building a case should a divorce occur”: *TXW v TXX* [2017] 4 SLR 799 at [46].

Distribution of matrimonial assets and consequential orders

31 The Parties should work out the consequential orders. If they are able to agree on the consequential orders, they may send a draft to the court for

¹² Wife’s ancillary affidavit dated 17 October 2018 at paras 8–16.

approval, indicating their consent, before extracting the orders. For the avoidance of doubt, if the Parties wish to sell the matrimonial home, any refund to Parties' respective CPF accounts required under the relevant CPF provisions shall be made by each Party from his or her own share of the net proceeds of sale. The Parties are to have liberty to apply within three months of the date of this judgment in the event that they require further directions on the sale of the matrimonial home.

Maintenance for the Wife

32 The power of the court to order maintenance for former spouses is set out in s 113 of the WC, while the factors relevant to determining the quantum of maintenance are stated in s 114. As for the applicable principles, the Court of Appeal held in *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506 at [13]:

The overarching principle embodied in s 114(2) of the Act is that of **financial preservation**, which requires the wife to be maintained at a standard, which is, to a reasonable extent, commensurate with the standard of living she had enjoyed during the marriage. [emphasis added in bold]

33 Nevertheless, s 114(2) must be applied in a “commonsense holistic manner that takes into account the new realities that flow from the breakdown of a marriage”: at [16].

34 In the present case, the Husband turns 80 this year and has been retired for around 20 years. Although he remains a consultant for what appears to be a building company, a document printed with the company's letterhead and signed by a manager from the company confirms that the Husband receives no salary and only CPF contribution of around \$150 a month.¹³ The Wife does not challenge the authenticity of this document. And while the Husband also

¹³ Husband's ancillary affidavit dated 15 October 2018 at p 23.

receives dividends of about a few thousand dollars a year from the shares which he owns,¹⁴ his present income is relatively insubstantial compared to the assets which the Parties have amassed. I also note that the Wife will receive \$3,609,234.30 worth of assets. In my view, this is sufficient for her to live comfortably, especially since, on her own evidence, her expenses amount to \$3,000 a month.¹⁵

35 Considering these circumstances in the round, I order that there be no maintenance for the Wife. In coming to this decision, I also note the Wife's assertion on affidavit that:¹⁶

... my claim for lump sum maintenance is founded not on my dependence on the [Husband], but in seeking some recognition to my sacrifice of my career as a wife and mother in this long marriage.

36 However, this is not consistent with the purpose of maintenance, which is financial preservation. Indeed, the High Court has recognised that "maintenance is based on need and not on parties' contributions to the marriage": *BUX v BUY* [2019] SGHCF 4 at [55].

Other issues

37 In his written submissions, the Husband points out that the Parties had in 2009 agreed to split household expenses equally following the sale of an apartment where each party received an equal share of the sale proceeds. He highlights that the Wife has only reimbursed him for her share of the household expenses up to March 2018. He seeks an order that:¹⁷

¹⁴ Husband's affidavit of assets and means at p 4.

¹⁵ Wife's affidavit of assets and means at p 8.

¹⁶ Wife's ancillary affidavit dated 17 October 2018 at para 78.

¹⁷ Husband's written submissions at paras 73–75.

- (a) the Wife is to make payment for the reimbursement claims for the months of April 2018 to September 2018;
- (b) the Parties continue to share household expenses equally between them as per their previous agreement up until the sale of matrimonial home; and
- (c) such sums shall be deducted from the Wife's share of the proceeds from the sale of the matrimonial home should the Wife fail to make the reimbursement payments.

38 At the hearing, counsel for the Husband informed me that the Parties are attempting to resolve this issue between themselves, but sought liberty to apply in the event that they could not do so. I decline to grant such an order. The claimed expenses for the month of April 2018 amounted to only \$1,063.42.¹⁸ Thus, the total claimed expenses is unlikely to be large, and will be insignificant relative to the size of the pool of assets. I encourage them to come to an agreement, failing which they would have to resolve their dispute at a forum where the costs incurred will be commensurate with the amount involved.

Conclusion

39 Although the Parties' marriage was not always smooth-sailing, their efforts led them to raise three children (all of whom excelled in sports at the national level) while amassing considerable wealth. I hope that what the Parties will understand from this judgment on how the matrimonial assets are divided would provide both of them with some measure of closure, and enable them to enjoy their golden years without further acrimony.

¹⁸ Husband's affidavit of assets and means at pp 32–33.

40 I encourage the Parties to agree on the issue of costs, including considering the option of each of them bearing their own costs. If there is no agreement, they are to file and exchange submissions on the issue of costs (limited to five pages) within 14 days from the date of this judgment.

Tan Puay Boon
Judicial Commissioner

Malathi d/o Das (Joyce A Tan & Partners LLC) for the plaintiff;
Gooi Chi Duan and Cheryl Tsai (Donaldson & Burkinshaw LLP) for
the defendant.
