Wan Lai Cheng *v* Quek Seow Kee
[2011] SGHC 9

Case Number : DT No 3449 of 2007

Decision Date : 14 January 2011

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Luna Yap (Luna Yap & Co) for the plaintiff; Randolph Khoo and Chew Ching Li (Drew & Napier LLC) for the defendant.

Parties : Wan Lai Cheng — Quek Seow Kee

Family law – Matrimonial assets – gifts

Family law – Maintenance – Statutory Interpretation

[LawNet Editorial Note: The appeals to this decision in Civil Appeals Nos 17 and 21 of 2011 were allowed in part by the Court of Appeal on 31 July 2012. See [2012] SGCA 40.]

14 January 2011 Judgment reserved.

Kan Ting Chiu J:

1 This is the concluding chapter of a long marriage which ended in an acrimonious divorce with the division of matrimonial assets and the maintenance for the plaintiff/wife to be dealt with.

2 The parties are 62 years old and have been married for 36 years. The defendant/husband came from a wealthy family and was self-employed. The plaintiff was a teacher until she retired. They have two sons, Darren and Daniel, both in their 30s, for whom no provisions have to be made in the divorce.

3 On the division of matrimonial assets, there was a sub-issue whether shares registered in the plaintiff's name in three companies, Hawick Property Investment Pte Ltd ('Hawick"), Kelso Property Investment Ptd Ltd ("Kelso") and Skeve Investment Pte Ltd ("Skeve") belonged to her beneficially, or were held by her on trust for the defendant. This was a significant issue because the plaintiff is the registered owner of the 40% of the shares in Hawick and Kelso, and 10% of the shares of Skeve, and each of these companies owned a unit of valuable residential property.

4 On the division of the matrimonial assets, the parties agreed that the division of the matrimonial home at No. 2 Draycott Park #03-01 Hampton Court, Singapore was to be dealt with separately from the division of the rest of the matrimonial assets.

The shares in Hawick, Kelso and Skeve

5 These three companies are family companies of the parties and were under the control of the defendant. The plaintiff became a shareholder and director of Kelso and Hawick in 1992 and of Skeve in 1983. [note: 1] The defendant deposed that that was done on the advice of consultants, [note: 2] but he was reticent about the advice he received. He did not disclose the content of the advice or the person who rendered it. Indirectly, there was some information on this because an affidavit was

deposed by Wong Cecil Vivian Richard ("Cecil Wong") who was a partner of the accountancy firm Ernst & Young ("E&Y") till his retirement in 1985 stating that:

> 7. ... The Defendant approached E&Y for *corporate structuring and financial planning advice*. I was personally involved in providing such advice along with a Mr Graham Clark, who was the tax principal at the material time.
>
> 8. It was decided amongst the Defendant and his family members that a number of apartments to be built at Hampton Court were to be shared out between the Defendant and his 2 younger brothers. The remaining units were to be held by the holding company, Hampton Property Investment Pte Ltd.
>
> 9. One specific aspect of the corporate structuring and *financial planning advice* sought by the Defendant concerned *estate duty planning* for him and his brothers. The Defendant and his brothers were advised to set up individual companies to hold each of their allotted units in Hampton Court.
>
> [emphasis added]

6 As the Kelso and Hawick shares were issued to the plaintiff in 1992, and Cecil Wong retired from E&Y in 1985, the extent of his input and knowledge of the advice was not clear, but this was the best evidence of the advice there was. He only deposed that the defendant and his brothers were advised to set up individual companies to hold each of their allotted units in Hampton Court. While there was no reference to any advice about issuing shares in the company to the wives as part of the corporate structuring, financial planning advice and estate duty planning advice, there was no issue that such advice would come within that ambit. The plaintiff also recalled that shares were issued to her under professional advice, although she remembered it as solicitors' advice. She may have made the mistake as the advice was rendered to the defendant and not to her directly and she may also have confused this with the subsequent wealth plan proposed by solicitors, which will be dealt with in a later part of this judgment.

7 Accepting that the defendant issued the shares to the plaintiff on the basis that the shares were issued on E&Y's advice for estate duty planning purposes, the question still remained whether those shares were to be held by the plaintiff beneficially, or as a trustee for the defendant as he contended. I raised this with counsel during the hearing. I pointed out that the court should be slow to find that Cecil Wong or E&Y had advised the defendant to evade estate duty by arranging for shares to appear as the plaintiff's shares when he was the beneficial owner, under a secret trust. I made the point because if the advice was the disputed shares in the family companies were to fully held by the plaintiff, that would result in a legitimate reduction in the estate duty payable on the defendant's estate. However, if the advice was to issue the shares to the plaintiff without transferring the beneficial ownership of the shares a question arises over the probity of the advice.

8 The plaintiff's solicitors had captured the issue and stated the plaintiff's position when it submitted that:

> The question is whether the Defendant acted on such advice by creating a *sham shareholding* in favour of the Plaintiff, to maintain his hold on assets during his lifetime, or that he truly intended to effect a gift to the Plaintiff of the Disputed Shares. The Defendant respectfully submits that *the former position was the true situation*. [note: 3]
>
> [emphasis added]

(The sham shareholding-or-gift analysis is apt and relevant to the question whether these shares are matrimonial assets).

9 It was plain that the critical issue was not over the creation of the shareholding, but the shareholding created was a sham shareholding. When Cecil Wong was asked to depose on the advice given to the defendant and his brothers, that would be an important point of his evidence, but Cecil Wong made no mention of that, and the defendant did not follow up on that with him or Graham Clark who was also involved in giving the advice, or E&Y to confirm or comment on the sham shareholding.

10 There is more on this issue. The ownership of the shares was the subject of serious discussion again. In March 2007, the defendant wanted to create a wealth plan for the family to save on estate duty. His lawyer, Tan Hin Tat, proposed a plan which involved the setting up of the Wen-Ping Trust and for all shares in Hawick, Kelso and Skeve to be owned by a new company, Great Hampton Pte Ltd. At that time, the marriage between the parties was already strained. The plaintiff believed that the defendant was having an extra-marital affair, and was suspicious of his motives. When Tan Hin Tat and his colleagues explained the wealth plan to the plaintiff, she declined to put her shares in the companies into the proposed trust.

11 Tan Hin Tat confirmed in an affidavit that when he explained the wealth plan to the plaintiff, he was not aware that she was holding the shares on trust for the defendant; neither the defendant nor the plaintiff had informed him of that. It would have been reasonable for the defendant to have informed Tan Hin Tat of the circumstances and manner under which the plaintiff came to own the shares, and of the alleged advice of E&Y on the "sham shareholding" when he instructed Tan Hin Tat on the wealth plan.

12 When the defendant came to know that the plaintiff and their sons had reservations over the wealth plan, he did not take it kindly. His anger and frustration was luminous in his email to them of 16 April 2007 –

> I Do Not Know, What to Do any more???.
>
> DARREN AND DANIEL
>
> Your Trust is at Stake, I may go my Way and Do Nothing!!
>
> My Last Warning to Those ARE Against Me,, WatchOUT!!
>
> I Am NO FOOL!!
>
> SO NO MORE NONSENSE OR MOVE ON !!
>
> THAT IS FINAL !!!
>
> THAT INCLUDES YOU, ... AND ALL THE WANS,
>
> DO YOU THINK YOU CAN ... AROUND MY DOORSTEPS<WHEN I GET BACK<THERE WILL BE CHANGES, BETTER MOVE OUT NOW!!

13 But while he was unhappy with the plaintiff he did not remind her that she was only holding the shares in trust for him, and that she should do at his bidding. Although he gave notice that there will be changes, he did not follow that up by revoking the trusts and having the shares returned to him.

14 Subsequently, he cooled down and the parties were able to communicate over the wealth plan more calmly. On 9 July 2007, the plaintiff wrote to the defendant:

> I refer to your lawyers' letters dated 13 June 2007 which I received from Darren on 18 June 2007 after I returned from China.
>
> Early this year you arranged for me to meet your lawyer, Mr Tan Hin Tat ("Mr Tan") at his office. During the meeting at Mr Tan's office which you also attended, Mr Tan informed me that his plan was for us to transfer each of our respective shares to a New Zealand trustee.
>
> I had informed you previously that I was not satisfied with Mr Tan Hin Tat's explanation of the wealth plan.
>
> There were not enough details. I do not understand why you want both of us to transfer each of our shares to a trust or 3rd party.
>
> Mr Tan then sent me an email telling me to meet his other colleagues who would explain the wealth plan again. After meeting with his colleagues, I was still not satisfied with the explanation of the wealth plan and I told Mr Tan's colleagues that I would not want to sign away my shares.
>
> You subsequently informed Darren that you were extremely angry at my refusal to sign away my shares. You also told Darren that I was no match for you and that you would issue more shares in the Companies to dilute my stake in each of the Companies.
>
> I am saddened by your actions. You may recall that these shares were given to me in 1992. You told me then that the shares were mine and that "**you owned 40% of my companies**". You had assured me that Darren, Daniel & myself were precious to you and that we were a family.
>
> Until today, I have not been provided good reason why I should transfer my shares. Why do you hate me so much? I will hold on to what is mine.
>
> I have asked Jamie, the Companies' auditor for the bank statements of the Companies as well as other documents. Jamie has however informed me that you have instructed her that such documents may not be handed to me and that I have to request them from you.
>
> I do not understand your actions. Why do you forbid me from looking at those documents? I have a right to them.
>
> Whatever you dislike about me should be confined between us. Please do not drag Darren or Daniel into the picture.
>
> [emphasis in original]

and the defendant responded on 18 July 2007 that:

> I am very sad reading your letter. You, Darren and Daniel are precious to me and I have always, and will always, have your interests in my heart.
>
> You have misunderstood my wealth plan maybe because of all the legal mumbo jumbo. If I die with the shares of Kelso, Hawick, and Skeve in my name (plus the shares in the company with my brothers), the estate duty payable will be in the millions. You will also have to pay a huge estate

duty. All this estate duty will reduce the value of the property we give to our sons.

Tan Hin Tat is not only my lawyer, he is also a friend. I went to him for help to lower our estate duty, and to allow smooth passing of our property to our sons. Hin Tat will also help our sons to deal with their uncles, if necessary. THE RESULT OF HIN TAT'S ADVICE IS THE WEALTH PLAN, with you and me as equal participants, for the sake and benefit of you and our two sons.

So you see, I never had bad intentions and *I never wanted to TAKE away anything from you*. This wealth plan is for the family. From what I heard from Hin Tat and his colleagues, you decided, already, that you will not participate, and you did not care what I do.

That said, the initial wealth plan had you as a beneficiary as well. And it is only after you told Hin Tat's colleagues that you will NOT participate in the wealth plan, and will make provisions for your sons in your own way, that the revised wealth plan will not include you.

If you need more explanation, all you have to do is ask. But you should have an open mind and not think I am trying to take anything away from you. Wealth planning is legitimate, and all it does is help keep more of the wealth of the family instead of paying to the government upon our demise.

[emphasis in bold in original, emphasis in italics added]

15 The defendant did not dispute the plaintiff's plain assertion that he told her that the shares given to her in 1992 (the shares in Kelso and Hawick) were hers and that she owned 40% of the companies. He was not uneducated, inarticulate nor diffident, and was the dominant spouse. If the plaintiff was mistaken over her ownership of the shares, his passivity is hard to understand.

My finding

16 It is common ground that (i) the defendant controlled the companies and had managed them to the exclusion of the plaintiff, (ii) that the plaintiff did not pay for the shares, and was never in physical possession of the share certificates, and (iii) it was also not disputed that when dividends were paid by Hawick and Kelso, the payments were paid to the defendant (probably on his instructions).

17 Insofar as the shares were issued to the plaintiff at the initiative of the defendant without any payment from the plaintiff, a resulting trust can subsist over the shares in his favour, but all the relevant circumstances must be considered. If it is assumed that Cecil Wong and E&Y had acted properly, they would have advised the defendant to make genuine transfers of the shares to the plaintiff. In the absence of clear and credible evidence, a court will be slow to find that reputable and established professionals and firms like Cecil Wong and E&Y would advise their clients to create sham shareholdings, particularly when Cecil Wong and E&Y had not been notified of the defendant's allegation, and had not been given the opportunity to respond to it. Independent of the professional advice, the defendant's conduct was inconsistent with his claim that the disputed shares were his shares held by the plaintiff as his trustee. He did not inform Tan Hin Tat of that when he engaged him to put up the wealth plan, and he did not assert his beneficial ownership when the plaintiff rejected the plan. He also did not deny that he had told her that the shares were hers, and did nothing to assert his ownership till he was confronted with the division of matrimonial assets.

18 On the conclusion of a review of the facts, I find that the defendant had transferred the disputed shares to the plaintiff as gifts upon professional advice as part of a financial and estate duty

planning exercise, and not as a sham transaction. In the circumstances, the presumption of a resulting trust is displaced by the presumption of advancement in favour of the plaintiff/wife, and my finding of fact that the shares were transferred to the plaintiff absolutely.

19 Under s 112(10) of the Women's Charter (Cap 353, 2009 Rev Ed):

> "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.

On a plain reading of the provision, the disputed shares are the plaintiff's assets, and are not matrimonial assets.

20 However, there is a view that inter-spousal gifts are matrimonial assets. Professor Leong Wai Kum's *Elements of Family Law in Singapore* (LexisNexis 2007) states at p 602:

> Gift between spouses
>
> The Court of Appeal in *Yeo Gim Tong Michael v Tianzon Lolita* [[1996] 1 SLR(R) 633 ("*Tianzon*")], even under the former section 106 of the Women's Charter, decided that when a property is given by one spouse to the other *it should not be regarded as a gift* but should be liable to division, unless it were given to the spouse as a highly personal gift or its value were so low as to be *de minimis*. This decision is rational because a gift between the spouses depletes the wealth of the marital partnership so that in fairness significant gifts ought to be returned to the pool and be liable to be divided.
>
> [emphasis added]

21 *Tianzon* was commenced in 1993, and the judgment of the Court of Appeal was delivered on 26 March 1996. The former s 106 which applied over the division of matrimonial assets made no reference to gifts. The Court of Appeal in *Tianzon* referred to a *dicta* in *Soon Geok Hong v Ong Yeow Tiong* [1995] SGHC 78 that when a gift is made between spouses, it must be implied that the donor will not seek to be entitled to any share in them if the marriage is dissolved. The Court of Appeal held at [12] that:

> Whatever might be the intention of the spouses as regards a gift between them at the time the gift was made, upon their divorce the criteria for division of their assets including the gift under s 106 do not depend on or take into account their intention, express or implied: Wang Shi Huah

Karen v Wong King Cheung Kevin [1992] 2 SLR(R) 172 at [13]. In considering the issue of a gift in the division of matrimonial assets under s 106, the starting point is whether the subject matter of the gift is property originally acquired during the marriage through the sole effort of the donor or the joint efforts of the donor and his or her spouse, the recipient. If the property was so acquired during the marriage, it falls within sub-s (1) or (3) (as the case may be) of s 106, and depending on the circumstances would be taken into account in the division of matrimonial assets, notwithstanding that it was a gift from one spouse to the other.

22 From a reading of this passage, the Court of Appeal did not rule that the property involved should not be regarded as a gift. The Court's ruling was that although the asset was a gift, it was also a matrimonial asset. The importance of this distinction can be seen in the next paragraphs.

23 The provisions on the division of matrimonial assets have been amended after the decision in *Tianzon*. The former s 106 has been replaced by s 112 in 1996, and s 112(10) states specifically that "matrimonial asset" –

> ... 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.

(There was a minor amendment in 2006 which did not affect the definition).

24 If an inter-spousal gift is not regarded as a gift, then it falls outside the exemption under s 112(10), and it is a matrimonial asset. But when it is regarded as a gift, then it comes under the exemption, and it is not to be included as a matrimonial asset.

25 When amendments to the Women's Charter were under consideration in 1996, Professor Leong presented a paper to the Select Committee on the Women's Charter (Amendment) Bill [Bill No.5/96] dated 21 May 1996, after the delivery of the judgment in *Tianzon*. The paper advocated that inter-spousal gifts be included as matrimonial assets. Professor Leong put forward a definition of "matrimonial asset":

> (1) "matrimonial asset" includes:
>
> (a) the matrimonial home;
>
> (b) an asset acquired by either party or both parties during their marriage;
>
> (c) an asset acquired by either party or both parties before marriage which has been used by both parties or the parties and their children as an asset of the household or which has been substantially improved during the marriage by the party who had not acquired it or by both parties;
>
> (*d*) *an asset which was acquired by one party as a gift from the other*; and
>
> (e) an asset which was acquired by one party as a gift or an inheritance which has been used by both parties or the parties and their children as an asset of the household or which has been substantially improved during the marriage by the party who had not acquired it or by both parties.
>
> [emphasis added]

but her proposed definition was not adopted, and the definition in its current form was enacted.

26 The Law Reform Committee of the Singapore Academy of Law also presented its views to the Select Committee on the definition of matrimonial asset. It also proposed that a distinction be made between an inter-spousal gift and a third-party gift, and suggested that matrimonial asset be defined to mean:

> (a) any asset acquired before the marriage by one party or both parties to the marriage and which:
>
> (i) has become the matrimonial home; or
>
> (ii) 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 *(other than a gift by one party to the other during the marriage)* 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]

but the suggestion was not taken up.

27 In the result, it can be seen that attention was drawn by Professor Leong and the Law Reform Committee to the possibility of drawing a distinction between inter-spousal gifts and third-party gifts, but the definition of matrimonial asset enacted did not reflect these views. It cannot be supposed that the Select Committee or Parliament overlooked and did not consider the views of authoritative parties as Professor Leong and the Law Reform Committee. It is much more probable that the views were considered, but were rejected. If that was the case, the rejected definitions should not be applied to the enacted provision.

28 In the circumstances, I do not think that inter-spousal gifts are matrimonial assets under s 112(10). I come to this conclusion because:

> (i) the law before the enactment of the amendment, as stated in *Tianzon*, was that inter-spousal gifts are gifts and are matrimonial assets;
>
> (ii) the definition did not change the Court of Appeal's ruling that inter-spousal gifts are gifts; and
>
> (iii) the definition changed the Court of Appeal's ruling that inter-spousal gifts are matrimonial assets by stating that a gift (which would include an inter-spousal gift) is not a matrimonial asset.

29 Should the definition be construed such that a gift should be read as a gift other than an inter-spousal gift *ie* a third-party gift? I do not think that such a construction is justified because:

(i) although a distinction between an inter-spousal gift and a third-party gift was made in *Tianzon*, the definition enacted made no distinction between such gifts;

(ii) the proposed definitions of Professor Leong and the Law Reform Committee were not adopted, and the enacted amendment excluded all gifts as matrimonial assets; and

(iii) there is nothing in the parliamentary records and other material within s 9A(3) of the Interpretation Act (Cap 1, 2002 Rev Ed) which suggests that the definition should not bear its clear and unambiguous meaning, and should be given a restricted meaning.

30 As there was no claim or evidence that the defendant or the parties had substantially improved the value of the shares, the shares are not subject to division as matrimonial assets. This does not, however, mean that the plaintiff will have the advantage of keeping the shares for herself, without this being taken into account in the division of the matrimonial assets.

31 Section 112(2)(h) requires a court ordering a division of matrimonial assets to have regard to, *inter alia*:

the matters referred to in section 114(1) so far as they are relevant.

and s 114(1)(a) provides that:

the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;

As the disputed shares are the plaintiff's property, they are to be taken into consideration in determining her share of the matrimonial assets.

Division of the matrimonial home

32 The matrimonial home is held in the name of the defendant. This was a unit in Hampton Court, a high-end housing development consisting of 12 units undertaken by the defendant, his mother and brothers on land inherited from his father and his grandfather. The plaintiff acknowledged that she made no financial contributions to the acquisition of the property, but she relied on her contributions as the homemaker when the parties and their sons resided in the property.

33 There is no agreement on the value of the property. The plaintiff had obtained a valuation at $12.5m, but that was not accepted by the defendant. In the written submissions in the hearings before me, he argued that "not more than 35% of the market value of the matrimonial home" should go to the plaintiff. [note: 4] The plaintiff, on the other hand, claimed 40% share of the net asset value of the property as at 31 July 2007. [note: 5] (The 31 July 2007 date was probably used as it was the last day of the month following 27 July 2007, the date when the divorce proceedings were filed.)

34 It was pointed out during the hearing that the matrimonial home cannot be divided by reference to its market value because the property was mortgaged to secure financial facilities. Counsel was quick to see that, and revised the defendant's offer to 35% of the net asset value of the property, without identifying the point of time at which the net asset value is to be taken. The time element is significant in this case because the encumbrances on the property which stood at $533,428.18 on 31 July 2007 had increased to about $4.1m at the time of the hearing. [note: 6]

35 Having regard to the facts, the plaintiff had been content to let the defendant manage the matrimonial assets including the matrimonial home in the normal course of the marriage. In the circumstances she cannot complain over the encumbrances on the property created when the marriage was running smoothly. However, once divorce proceedings are commenced and the likelihood of the issue of the matrimonial assets arises, the single and non-consultative control by the defendant cannot continue without justification, and he cannot use his control to diminish the asset value of the property by using it as security for facilities used for his own benefit.

36 In the present circumstances, as the starting point, the time of commencement of proceedings should be used to determine the net asset value of the property, but if the defendant can show that the encumbrances on the property had increased in value after that date which were for the benefit of both parties, these additional subsequent amounts can be taken into account. As there is no claim or evidence of that, the asset value of the property should be taken as at 27 July 2007, or rounded off to 31 July 2007 if it does not prejudice the defendant.

37 What should be the plaintiff's share of the matrimonial home? The plaintiff claims 40%, and the defendant offers 35%. The plaintiff referred to one case – *Chen Siew Hwee v Low Kee Guan* [2006] 4 SLR(R) 605 where Andrew Phang Boon Leong J awarded the wife 35% of the matrimonial assets acquired with no financial contribution from her in a 17 year childless marriage.

38 The defendant justified his 35% offer by referring to two cases. In *Ong Chen Leng v Tan Sau Poo* [1993] 2 SLR(R) 545, the Court of Appeal awarded a wife 35% of the matrimonial property paid for by the husband in a 23-year marriage with 3 children. In *Kwok Wai Leng v Chan Sooi Hong* [2004] 2 SLR(R) 386, a wife was awarded 35% of the matrimonial flat in a 37-year marriage during which the wife's contribution towards the acquisition amounted to 16.7%.

39 Taking into account the fact that the plaintiff had not contributed financially in the acquisition of the matrimonial home, I award her 35% of its net asset value.

The other matrimonial assets

40 The assets that are subject to division in a divorce are set out in s 112(10). In the present case, after dealing with the matrimonial home separately, the matrimonial assets would be the assets acquired separately by each party, as there were no assets acquired by their joint efforts.

41 The plaintiff's case was that she would accept a 40% share of the most valuable of these assets, which was a residential unit at 9 Rhu Cross #10-08 Costa Rhu ("the Costa Rhu property") which was acquired by the defendant, and forego any division of the other matrimonial assets. The defendant offered the plaintiff a 20% share of the matrimonial assets. Unfortunately there was insufficient information before me to determine the composition and value of these assets although it was clear that the majority of them in terms of value were acquired by the defendant. I have to deal with the matter in terms of percentile division without setting down specific amounts.

42 There are omissions in the presentation of the plaintiff's proposal. When she took the position that she was restricting the claim to a share of the Costa Rhu property and was waiving claims over the defendant's other assets, she overlooked that her assets were also matrimonial assets, and were liable to division. Her waiver was not as simple as she had put it; the defendant had not agreed to exclude her assets from division.

43 Without the agreement of the defendant, the plaintiff's proposal to use the Costa Rhu property only for division cannot be implemented. The assets to be divided will include all the matrimonial

assets, except the matrimonial home which has been dealt with separately.

44 I took into account the effect of the divorce proceedings on the financial position of the plaintiff. By these proceedings, she has 35% of the asset value of the matrimonial home, and obtained confirmation of her ownership of the 40% of the shares of Hawick and Kelso and 10% of the shares of Skeve, making her an effective part-owner of two other units in Hampton Court and another property, 20 Upper Circuit Road #24-06 The Riverwalk owned by Skeve, as well as the Costa Rhu property. As the plaintiff has acquired property of considerable value as a result of the divorce proceedings, I find that she should receive 25% of the other matrimonial assets.

45 As I have noted, there is insufficient material before me to work out the actual amounts, and I direct that the amounts be determined by a Registrar. For the purpose of clarity, I find that:

(i) the asset value of the Costa Rhu property should be taken at the time of the division, deducting any amount of any loan secured on the property as at the time of the commencement of the divorce proceedings,

(ii) the bank balances of each party are also to be taken as at that date,

(iii) the boat "Delightful Dream" registered in the name of the defendant and held in trust for Skeve is not to be included in the division, and

(iv) the Renault car registered in the name of the defendant and given as a wedding present to Daniel is not to be included in the division.

46 After the values of the plaintiff's assets and the defendant's assets are ascertained, the amount due to the plaintiff can be worked out. I will explain how this is to be done. I will refer to the value of the defendant's assets as *A*, and the plaintiff's assets as *B*, and the total of *A* and *B* as *C*. The defendant's share is *D* (75% of *C*) and the plaintiff's share is *E* (25% of *C*). As the plaintiff is keeping her assets, a sum representing *E* – *B* is due from the defendant to her.

Follow-up matters

47 My findings on the division of the matrimonial assets are only the start of the division process. The two properties affected, *ie* the matrimonial home in Hampton Court and the Costa Rhu property, have to be valued and there is the possibility of one party buying out the share of the other party. The parties should try to work these matters out between themselves. If they are unable to do that, then they are to revert to me for directions to be given, *inter alia*, on the valuers to be appointed, the conduct and manner of sale or buy-out

48 The process of working out the plaintiff's share could be painstaking and contentious. It would be in the best interests of the parties to try to come to an agreement on the overall amount, or on as many of the components thereof as possible, and I hope that they will make a serious attempt to do that.

Maintenance for the plaintiff

49 The plaintiff wanted a lump sum payment on the ground of the defendant's intention to make his future in China, and she worked out $432,000 at $4500 a month for eight years. The defendant disagreed with the monthly figure and contended that it should be $2668, and objected to any lump sum payment.

50 The Court of Appeal have set out the guidelines for lump sum maintenance payments in *Lee Puey Hwa v Tay Cheow Seng* [1991] 2 SLR(R) 196 at [9]:

> [T]he court's power to order a lump sum payment, as an alternative to periodical payments, makes it possible for a husband, who has the means to make a lump sum payment, to achieve a clean break, and is clearly a method which should be taken advantage of whenever this is feasible. In deciding whether to order a lump sum payment, the court should consider the individual circumstances of the parties, particularly the needs of the wife and the obligations and responsibilities of the husband, in addition to his assets, his earning capacity and other available resources. In any case, an order for a lump sum should not be made if the husband does not have adequate cash or other capital assets which can be readily disposed of, or if the lump sum payment or the disposal of assets will effectively cripple his earning power.

If the plaintiff can show that there is a reasonable risk that the defendant would refuse to comply with an order to make periodic payments of maintenance, a lump sum order may be made, but I am not persuaded on the evidence that there is a real risk that the defendant will settle in China and evade paying maintenance to the plaintiff. He is born and bred in Singapore and has substantial links and properties here. It is unlikely and impractical for him to uproot himself from Singapore to evade paying monthly maintenance which is within his ability to pay. He should pay maintenance in the normal way, by monthly payments.

51 Section 114 sets out the circumstances to be considered in determining the amount of maintenance. The first two circumstances are of particular relevance in the present case:

> (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
>
> (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

52 Both parties are 62 years old, and have considerable assets to live on. The plaintiff would have to pay for alternative accommodation if the matrimonial home is sold or her share in it is bought over by the defendant, and this is a financial need that should be taken into account under s 114(1)(b). Nevertheless, the defendant should not have to pay for all the plaintiff's financial needs, and she should contribute towards them out of her own assets. Taking all the matters into consideration, I order the defendant to pay the plaintiff monthly maintenance of $2000.

Costs

53 As both parties have brought up real issues that needed to be determined, and neither had been entirely correct on the positions they took, each party shall bear its own costs.

[note: 1] Defendant's affidavit 31/8/2009 paras 7 and 9

[note: 2] Defendant's affidavit 10/11/2008 para 4.3.1, 4.4.1 and 4.5.1

[note: 3] Defendant's Supplementary Submissions for Ancillary Hearing, para 6.3

[note: 4] Defendant's Submissions for Ancillary Hearing, para 30

[note: 5] Plaintiff/Wife's Further Submissions, para 6

[note: 6] Plaintiff/Wife's Further Submissions paras 6–8