

Thery Patrice Roger v Tan Chye Tee  
[2013] SGHC 191

**Case Number** : Divorce Transferred No 3495 of 2010  
**Decision Date** : 27 September 2013  
**Tribunal/Court** : High Court  
**Coram** : Lai Siu Chiu J  
**Counsel Name(s)** : S Magintharan and Liew Boon Kwee James (Essex LLC) for the plaintiff; Koh Tien Hua and Rachel Gan (Harry Elias Partnership LLP) for the defendant.  
**Parties** : Thery Patrice Roger — Tan Chye Tee

*Family Law – Matrimonial Assets – Division*

*Family Law – Maintenance – Wife*

*Family Law – Maintenance – Child*

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 77 of 2013 was allowed by the Court of Appeal on 11 April 2014 with regard to the issue of the division of matrimonial assets and maintenance for the children's education. See [\[2014\] SGCA 20.](#)]

27 September 2013

**Lai Siu Chiu J:**

**Introduction**

1 The plaintiff ("the Husband") and the defendant ("the Wife") were married in Singapore on 20 July 1991. The divorce petition was filed on 14 July 2010. Interim judgment was granted on 31 May 2011.

2 The parties had two children: a son, Thery Jean-Francois Eric Edouart Loong ("Jean-Francois"), now aged 25; and a daughter, Thery Nathalie Rae Fern ("Nathalie"), now aged 23.

3 These ancillary matters came to be heard before me on 18 July 2013. They related to:

- (a) the just and equitable division of the net sale proceeds of the matrimonial home at 47 Loyang View, Singapore 507223 ("the Loyang Property");
- (b) the just and equitable division of the matrimonial assets other than the Loyang Property;
- (c) maintenance for the Wife; and
- (d) maintenance for Jean-Francois and Nathalie, for the duration of their respective university tertiary education.

4 Having heard arguments from counsel for both parties, I made the following orders:

(a) The Wife would have 90% of the net sale proceeds of the Loyang Property amounting to \$779,163.79.

(b) The Husband would be entitled to, but would not be paid the balance 10% of the aforesaid sale proceeds as the sum of \$77,916.38 would be paid as to (i) \$50,450 to Jean-Francois's bank account or to the Wife on Jean-Francois's behalf, for Jean-Francois's tertiary education; and (ii) the balance of \$19,466.38 as a partial refund to the Wife for the fees paid by the Wife for the education of Nathalie at the Royal Melbourne Institute of Technology ("RMIT") from 2010 to 2011.

(c) In lieu of periodic maintenance, the Wife was to be paid a lump sum of \$70,000 by the Husband payable in four equal monthly instalments of \$17,500 each with effect from 1 August 2013, for which the Husband would tender to the Wife four post-dated cheques bearing the dates 1 August 2013, 1 November 2013, 1 February 2014 and 1 May 2014.

(d) Each party would retain their own assets save that the Husband would reimburse the Wife \$54,475 for the shortfall in the refund of her CPF contributions utilised in the purchase of the Loyang Property, less the balance in the bank account of Sof-Sea Pte Ltd ("SOFSEA") which balance monies should be paid to the Wife.

5 By way of Civil Appeal No 77 of 2013, the Husband has appealed against the whole of my decision. I now set out the reasons for my decision.

### **Division of the net sale proceeds of the Loyang Property**

6 The Loyang Property was purchased in March 2007 for \$728,000. It was sold in August 2010 for \$1,080,000. Completion took place on 15 November 2010. At the time these ancillary matters were heard, the net sale proceeds of the Loyang Property, in the sum of \$742,687.81, were being held by the conveyancing lawyers, M/s Andrew Ee & Co, as stakeholders. Although the Loyang Property was held by the Wife in her sole name, she did not dispute that the net sale proceeds of the Loyang Property were matrimonial assets available for division by the Court.

### ***Direct Financial Contributions to the Loyang Property***

7 In these proceedings, the parties' direct financial contributions to the Loyang Property were largely attributable to their respective shares in the sale proceeds of the previous matrimonial home at 235 Tembeling Road, Katong Gardens, #01-04, Singapore 423720 ("the Katong Gardens Property"). The Katong Gardens Property was purchased by the parties in 1991 for \$590,000 and sold on 6 March 2007 for \$980,000.

8 According to the Husband, the Wife's only direct financial contribution to the Katong Gardens Property was the sum of \$87,053.78, paid from her CPF. As regards his own contributions, the Husband claimed that he had paid \$200,000 towards the down-payment for the Katong Gardens Property in March 1991. He also claimed that he alone had been servicing the mortgage repayments for the Katong Gardens Property since 1991.

9 I did not accept the Husband's claim in this regard as it was not supported by any documentary evidence, save for a Letter of Offer issued by OCBC in 2002 (when the mortgage for the Katong Gardens Property was refinanced) and two other documents from OCBC.

10 The Wife on the other hand contended that the Court should attribute the sale proceeds of the

Katong Gardens Property to the parties equally, without having regard to their actual contributions to the Katong Gardens Property. In support of this contention, counsel for the Wife referred the Court to *Tan Bee Bee v Lim Kim Chin* [2004] SGDC 67 ("*Tan Bee Bee*").

11 In *Tan Bee Bee*, the District Court, in determining the extent of the parties' direct financial contributions to the matrimonial home, attributed the sale proceeds of the former matrimonial home to the parties in equal shares without having regard to their actual contributions to the former matrimonial home. The approach in *Tan Bee Bee* was approved in *obiter dicta* by the District Court in *ACM v ACN* [2009] SGDC 411 ("*ACM*"). In *ACM* at [20]–[21], the District Judge said:

20 Counsel for the Husband relied on just and equitable principles and submitted that the Husband's present contribution must be seen in the light of past contributions. Counsel for the Wife submitted case authorities on 30 September 2008 in support of her contention that the sale proceeds for former properties must be attributed equally to both parties regardless of their actual contributions (*Tan Bee Gee v Lim Chin* [2004] SGDC 67).

21 The law is set out in Section 112 of the Women's Charter, Cap 353 and the law is trite in this regard. It is not disputed that the sale proceeds from the previous properties were not used towards the acquisition, improvement and maintenance of the matrimonial flat as there were none. I have no doubt that if there had been a profit from the sale of the condominium, both parties would have bolstered their case by relying on it. I accepted the case authorities submitted by counsel for the Wife in that the court would have regarded sale proceeds from previous properties to be attributed equally to both parties. However, on the facts of this case, the parties' dealing of the previous properties did not have a bearing on their direct financial contributions towards this matrimonial flat as there was no sale proceeds nor CPF funds channelled into its acquisition, maintenance or improvement.

12 Having considered *Tan Bee Bee* and *ACM*, I did not accept that sale proceeds from previous properties were to be attributed to the parties in equal shares in every case. To uncritically apply such a rule, would have been contrary to s 112(2) of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Women's Charter") which requires the Court to have regard to all the circumstances of the case when ordering the division of matrimonial assets. Where sale proceeds of a previous property were used to finance a later matrimonial home, I was of the view that the Court should have regard to the respective contributions (whether direct or otherwise) of the parties to the previous property.

13 In my view however, the approach taken in *Tan Bee Bee* and *ACM* could be properly applied in cases such as the present where the respective contributions of the parties to the previous property were unclear. In the circumstances of the case before me, I found that it would have been just and equitable to attribute the sale proceeds of the Katong Gardens Property to the parties in equal shares.

14 Turning then to the issue of the amount of the net sale proceeds of the Katong Gardens Property, the Wife said that the correct amount was \$375,713.48. This consisted of: (a) \$338,863.48, being the balance of the purchase price paid to the parties as vendors upon completion; (b) \$9,800, being the 1% option fee; and (c) \$27,050.50, being the 4% payment for the exercise of the option.

15 Conversely, the Husband contended the sale proceeds of Katong Gardens property was the higher amount of \$559,401. This was arrived at as follows:

<b>Sale Price</b>	\$980,000
Less	
Property tax paid	\$12.87
Sinking fund payable	\$993.39
Payment of outstanding	\$231,483.81
Repayment of parties CPF	\$185,358.43
Less disbursements (legal/housing agent fees)	\$27,050.50
<b>Net proceeds</b>	\$559,401

16 In this regard, the crux of the disagreement between the parties focussed on whether the sum of \$182,000, which was paid out of the sale proceeds of the Katong Gardens Property towards the repayment of two UOB loans obtained by the Wife, should be deducted from the sale proceeds for the Katong Gardens Property.

17 According to the Wife, the sale of the Katong Gardens Property was completed on 24 July 2007. This was more than two weeks after the completion of the purchase of the Loyang Property on 6 July 2007. As she did not have sufficient money to finance the purchase of the Loyang Property, she took out three loans with UOB. These were: (a) a UOB Hi-Plus loan for \$509,600 ("the Hi-Plus Loan"); (b) a bridging loan for \$36,400 ("the Bridging Loan"); and (c) a short term loan for \$145,600 ("the Short Term Loan"). When the sale of the Katong Gardens Property was completed, the Bridging Loan and the Short Term Loan, totalling \$182,000, were repaid out of the sale proceeds. I accepted the Wife's explanation in this regard.

18 I did not accept the Husband's contention that this sum of \$182,000 should not have been deducted from the sale proceeds of the Katong Gardens Property as it would have constituted double-counting. The repayment of the Bridging Loan and the Short Term Loan out of the sale proceeds for the Katong Gardens Property however raised other issues regarding the direct financial contributions of the parties to the purchase of the Loyang Property. I will come to these issues later in my decision.

19 Taking into account the parties' respective shares in the net sale proceeds of the Katong Gardens Property, the Wife claimed that her direct financial contributions to the Loyang Property were as follows:

<b>Item</b>	<b>Amount</b>
Half-share of the sale proceeds of the Katong Gardens Property	\$187,856.74
Payments from CPF	\$154,140
Repayment of the Hi-Plus Loan on top of the net sale proceeds of the Katong Garden Property	\$212,675.59
Renovation costs	\$22,810.45
Stamp fees	\$16,950

Legal fees	\$4,068.87
<b>Total</b>	<b>\$598,501.65</b>

20 The Wife said that in contrast, the Husband's only direct financial contribution to the Loyang Property was his half-share in the net sale proceeds of the Katong Gardens Property. This amounted to \$187,856.74. In this regard, it was also pertinent that the Husband did contend that he had contributed any additional sums towards the purchase of the Loyang Property, save for the share he had claimed in the net sale proceeds of the Katong Gardens Property.

21 I accepted the Wife's calculations as regards the parties' respective direct financial contributions to the Loyang Property. Therefore, I found that the direct financial contributions of the Wife and the Husband to the Loyang Property were in the ratio of 76.1:23.9.

22 At this juncture however, I should explain that after giving further consideration to the evidence presented to the court, I find that the Wife had misstated her case as to the extent of the parties' direct financial contributions to the Loyang Property. First, she had failed to attribute the sale proceeds of the Katong Gardens Property (in the sum of \$182,000) that were used to repay the Bridging Loan and the Short Term loan to the parties in equal shares.

23 Second, the Wife had overstated the amounts she had paid towards the repayment of the Hi-Plus Loan. When the sale of the Loyang Property was completed, the sum \$124,990.06 remained unpaid on the Hi-Plus Loan. This was at odds with the Wife's claims that: (a) all the sale proceeds from the Katong Gardens (in the sum of \$375,713.48) were ploughed into the purchase of the Loyang Property; (b) she had paid the sum of \$154,140 out of her CPF towards the purchase of the Loyang Property; and (c) she had paid the sum of \$212,675.59 towards the repayment of the Hi-Plus Loan.

24 Taking into account the amount unpaid (\$124,990.06) on the Hi-Plus Loan when the Loyang Property was sold and the sum paid out of the Wife's CPF (\$154,140), I find that only about \$230,469.94 was paid by the Wife towards the repayment of the Hi-Plus Loan. Contrary to the Wife's claim, all the net sale proceeds of the Katong Gardens Property were not ploughed back into the purchase of the Loyang Property. Rather, they were retained in the Wife's bank account and used by the Wife to service the Hi-Plus Loan.

25 As regards the amount of the net sale proceeds of the Katong Gardens Property that was used to service the Hi-Plus Loan, I would have been minded to attribute \$187,856.74 to the Husband. As I explained at [20] above, this was the Wife's own position in these proceedings. It cannot lie in the Wife's mouth to now claim otherwise.

26 In the light of [22]–[25] above, the direct financial contributions of the Wife towards the Loyang Property were as follows:

Item	Amount
Payments from CPF	\$154,140
Repayment of the Bridging Loan and Short Term Loan	\$91,000
Renovation costs	\$22,810.45

Stamp fees	\$16,950
Legal fees	\$4,068.87
Repayment of the Hi-Plus Loan	\$42,613.20
<b>Total</b>	<b>\$331,583.51</b>

27 The Wife's repayment of \$42,613.20 of the Hi-Plus loan can be seen from the following breakdown:

Item	Amount
Hi-Plus Loan	\$509,600
Less unpaid	\$124,990.06
Less CPF	\$154,140
Less Husband's contribution	\$187,856.74
	\$42,613.20

28 The direct financial contributions of the Husband towards the Loyang Property then were:

Item	Amount
Repayment of the Bridging Loan and Short Term Loan	\$91,000
Repayment of the Hi-Plus Loan	\$187,856.74
<b>Total</b>	<b>\$278,856.74</b>

29 Therefore, the direct financial contributions of the Wife and the Husband to the Loyang Property ought to have been in the ratio of 54.3:45.7 respectively.

#### ***Indirect contributions to the Loyang Property***

30 It was the Wife's case that she had made substantial financial and non-financial contributions to the welfare of the family during the marriage. These included paying for the upkeep of the Loyang Property, paying for the children's education and their expenses, paying for the family's outings and overseas trips, paying for the household expenses, being the primary caregiver to the children taking care of the Husband's child from his first marriage, paying for the Husband's cooking expenses and helping out in the Husband's business. The Wife asked that these contributions be taken into consideration in awarding her a share in the net sale proceeds of the Loyang Property.

31 The Husband's position on the other hand was that the parties had contributed equally to the welfare of the family during the marriage. The Husband claimed that his indirect contributions included paying for the children expenses, paying for the family's trips to France, cooking for the family, paying for the cooking expenses, going for outings with the children and ferrying the children to school and their other activities. Therefore, he said that the Wife should not be awarded an additional share in

the Loyang Property to reflect her indirect contributions. If the Court was minded to attribute such a share to the Wife, the Husband said that an additional share of 10% in the Loyang Property would suffice.

32 The Husband's claims in this regard were largely refuted by the evidence given by Jean-Francois and Nathalie. In these proceedings, Jean-Francois and Nathalie filed affidavits to the effect that they regarded the Husband to be an uninvolved and uninterested parent. Rather, it was the Wife who had provided for them both emotionally and financially. Both Jean-Francois and Nathalie were above the age of the majority when their affidavits were filed and were capable of independent thought. I found their evidence to be not without credence.

33 Having considered all the evidence, I was of the view that even if the Husband had made some financial and non-financial contributions to the welfare of the family during the marriage, these were greatly outweighed by the Wife's similar contributions.

### ***The just and equitable division of the net sale proceeds of the Loyang Property***

34 Taking a broad-brush approach, I was of the view that it would be just and equitable to divide the net sale proceeds of the Loyang Property between the Wife and the Husband in the ratio of 90:10. For the avoidance of doubt, I add that I reached this conclusion on the basis that the direct financial contributions of the Wife and the Husband to the Loyang Property were in the ratio of 76.1:23.9.

35 However, as I explained at [22–[29] above, I now find I had erred by accepting the Wife's contention as regards her direct financial contributions to the Loyang Property. Given my finding that the correct ratio of the Wife's and the Husband's direct financial contributions to the Loyang Property was 54.4:45.6, I would have been minded to divide the net sale proceeds of the Loyang Property between the Wife and the Husband in the ratio of 70:30 because of the court's observation in [48] below.

### ***The net sale proceeds of the Loyang Property available for division***

36 When these ancillary matters were heard, the amount of the net sale proceeds of the Loyang Property held by the conveyancing lawyers was \$742,687.81. However, the Wife said that this amount did not correspond with the amount of the sale proceeds that was available for division. Rather, she said that the amount of sale proceeds available for division was \$779,163.79. This was arrived at as follows:

<b>Net sale proceeds of the Loyang Property held by conveyancing lawyers</b>	<b>\$742,687.81</b>
Add \$10,800 being 1% option money held by the Wife	+ \$10,080
Less \$54,475.63 being the remainder of the Wife's CPF contribution over and above minimum amount refunded to Wife's CPF account	- \$54,475.63
Add \$80,151.61 being the amount outstanding on a term loan that was not a matrimonial debt	+\$80,151.61

<b>Net sale proceeds of the Loyang Property available for division</b>	<b>= \$779,163.79</b>
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37 Conversely, the Husband contended that the correct amount was the higher sum of \$965,821. This was arrived at as follows:

<b>Sale Price of the Loyang Property</b>	<b>\$1,080,000</b>
Less \$111,879.00 being minimum amount refunded to Wife's CPF account	\$111,879.00
Less \$2,300 being legal costs	\$2,300
<b>Net sale proceeds of the Loyang Property available for division</b>	<b>\$965,821</b>

38 In this respect, the Husband had sought to impugn two loans taken out by the Wife with the Loyang Property as security. The first was the Hi-Plus Loan. At the time the Loyang Property was sold, \$124,990.06 remained unpaid on the Hi-Plus Loan. The Husband contended that this amount should not be deducted from the sale proceeds of the Loyang Property as there was no need for the Wife to take out the Hi-Plus Loan. This was because the net sale proceeds of the Katong Gardens Property were sufficient to repay the Hi-Plus Loan in full. However, Wife had chosen not to do so. Instead, she kept the net sale proceeds from the Katong Gardens Property in her bank account and used it to service the Hi-Plus Loan.

39 I did not accept the Husband contentions in this regard. For one, the Husband was incorrect in contending that there was no need for the Wife to take out the Hi-Plus Loan. As I explained at [17]–[18] above, the Hi-Plus Loan was necessitated by the fact that completion of the sale of the Katong Gardens Property occurred after completion of the purchase of the Loyang Property. In the premises, I accepted that the Hi-Plus loan was a matrimonial debt. It followed that the amount unpaid on the Hi-Plus Loan was to be deducted from the sale proceeds of the Loyang Property.

40 However, I should add that having given the matter further consideration, I find that the Wife could have repaid the Hi-Plus Loan in full using the net sale proceeds of the Katong Gardens Property but had not done so. Be that as it may, I remain of the view that the Hi-Plus Loan was a matrimonial debt. As I explained at [25] above, the Wife's failure to repay the Hi-Plus Loan in full could be accounted for by making an appropriate deduction in respect of her direct financial contributions to the Loyang Property.

41 The Husband also sought to impugn a UOB term loan of \$123,000 taken out by the Wife on 12 December 2008 ("the Term Loan"). According to the Wife, the Term Loan was taken out to help her niece purchase a Housing Development Board ("HDB") flat. When the Loyang Property was sold, the sum of \$80,151.61 remained unpaid on the Term Loan. This sum was subsequently repaid out of the sale proceeds of the Loyang Property.

42 In these proceedings, the Wife accepted that the Term Loan was not a matrimonial debt. She thus agreed to notionally add the sum of \$80,151.61 back to the net sale proceeds of the Loyang Property that were available for division. In view of the Wife's concession, I did not see how the Husband had any basis to complain.



43 I also accepted the Wife's contention that the remainder of her CPF contributions to the Loyang Property should be excluded from the sale proceeds of the Loyang Property available for division. As the Wife was above the age of 55 when the Loyang Property was sold, only the minimum sum of \$111,879 was refunded to the Wife's CPF account. The balance, in the sum of \$54,475.63, formed part of the net sale proceeds of the Loyang Property.

44 Therefore, I held that the net sale proceeds of the Loyang Property available for division were \$779,163.79.

### **Division of other matrimonial assets**

45 As regards the other matrimonial assets, it was common ground between the parties that they would each keep their respective assets, save that the Wife had also asked for a 30% share in a Malaysian property known as Palmville Resort Condominium ("the Malaysian Property").

46 The Malaysian Property was acquired by the Husband in 2004 in his sole name. The purchase price was paid in full and no mortgage was taken out on it. At the time these ancillary matters were heard, the Malaysian Property was valued at RM440,000.

47 Although the Wife conceded that she made no direct financial contributions to the Malaysian Property, she asked for a 30% share in the Malaysian Property in recognition of her indirect contributions to the marriage. As I had awarded the Wife a 90% share in the net sale proceeds of the Loyang Property, I was not minded to award her any share in the Malaysian Property and did not do so.

48 It is also noteworthy that in these proceedings, the Husband did not produce any documentary evidence to corroborate his allegation that he received no income after 2003. In particular, he did not produce any income tax statements from IRAS or any foreign equivalent. The Wife on the other hand adduced evidence showing the dissipation of large sums of money from the Husband's various bank accounts between 2009 and 2010. No explanation, let alone any satisfactory explanation, was given by the Husband as to the source of this money and how he had used this money. In the light of the Husband's deliberate non-disclosures and dissipation of assets, I drew an adverse inference that he had more assets than what he had disclosed. I therefore increased the Wife's share of the known matrimonial assets as I was entitled to do since the court had no inkling of what other assets and their values thereof that the Husband had failed to disclose: see *NK v NL* [2007] 3 SLR(R) 743 at [62].

49 Granted CPF monies form part of matrimonial assets and are liable to division. However in this case I did not think it was fair to the Wife to have \$54,475.13 from her CPF funds form part of the net sale proceeds of Loyang Property merely because at her age the CPF regulations did not require that sum to be repaid to her CPF account. Consequently I ordered the Husband to refund her the sum. As for the balance of \$17,887.18 in the bank account of SOFSEA, the company belonged solely to the Wife after the Husband transferred his shares to her. In effect by deducting the bank balance of \$17,887.18 from the Husband's reimbursement to the Wife of the shortfall of \$54,475 to her CPF account, due recognition had been given to the Husband of his previous interest in the company.

### **Maintenance for the Wife**

50 The Wife asked for an additional 10% of the sale proceeds of the Loyang Property to be paid to her as lump sum maintenance. This amounted to \$77,916.38. The Wife's claim was made on the basis that she needed funds to purchase a reasonable property for herself and her children to live in. At the

time of these proceedings, the Wife and the children were living with the Wife's niece in her HDB flat.

51 Against this, the Husband contended that the Wife's claim for maintenance was vindictive and calculated to deprive him of any share in the net sale proceeds of the Loyang Property. Further, the Husband contended that the present case bore several features which militated against the payment of any maintenance to the Wife.

52 First, the Husband claimed that he suffered from various medical conditions which required him to incur medical expenses. These included: (a) hypertension; (b) high cholesterol; (c) chronic neck pain; (d) a hairline fracture of his 4<sup>th</sup> vertebrae; and (e) blood circulatory problems in his leg. As regards the Wife's claim that she too suffered from a medical condition, namely a strain of the cervical and lumbar spine, the Husband said that this was not corroborated by any medical report.

53 Second, the Husband pointed to the respective earning capacities of the parties. The Husband claimed that he was retired and unemployed since 2003. His last employment was with a company called SOFASIA where he earned a salary of \$5,000 per month. As to his present monthly income, the Husband said that this was in the sum of \$2,813.11. This consisted of: (a) a pension of \$2,459.29 per month from the French Government; and (b) CPF payments of \$353.82 per month. Further, he had limited savings and assets. The Husband said that in contrast, Wife was gainfully employed as a freelance trainer and earning a salary of about \$7,125.50 per month. She also had more savings and assets than him.

54 The Wife denied earning a salary of \$7,125.50 per month. Rather, she said that her salary fluctuated between \$4,000 and \$7,000. This was reflected in the Wife's IRAS declarations. Accordingly I accepted the Wife's evidence.

55 More pertinently, although the Wife did not dispute that the Husband was unemployed between 2003 and 2010, it was her case that he was nonetheless in the receipt of income. In this regard, the Wife said that sometime in 2004, the Husband had received large sums as commission for brokering the sale of 6 frigates to the Singapore Navy.

56 This was in fact admitted to by the Husband in his 2<sup>nd</sup> affidavit of assets and means filed on 30 January 2012. In that affidavit, the Husband said that he was promised \$1,000,000 for brokering the sale. He claimed however, that he was only paid \$350,000. In my view, little turned on whether the Husband had in fact received a smaller sum. Even if the Husband's claim that he was only paid \$350,000 was to be believed, it still contradicted his earlier assertion that he received no income between 2003 and 2010.

57 Because of the adverse inference I drew against the Husband at [48], I was of the view that the Husband had the means to and that it was appropriate to order the him to pay maintenance to the Wife. To ensure a clean-break between the parties in view of their acrimonious relationship, I ordered that a lump sum of \$70,000 be paid to the Wife in lieu of periodic maintenance. This was to be paid in four equal instalments of \$17,500 each, by way of four post-dated cheques to the Wife bearing the dates 1 August 2013, 1 November 2013, 1 February 2014 and 1 May 2014.

### **Maintenance for the Children**

58 The Wife requested that the Husband be ordered to pay maintenance to the children for the period of their respective university courses. At the time of the hearing, Jean-Francois was enrolled in an 18 month long Bachelor of Arts program at Kaplan Higher Education Institute. This was Jean-Francois' first degree. As the Wife had paid all of Jean-Francois' education expenses to date, she

asked that the Husband be made to bear all of Jean-Francois school fees and living expenses for the 18 months while he was pursuing his degree. These were estimated to be \$50,431.66.

59 Nathalie on the other hand had studied photography at the Royal Melbourne Institute of Technology between 2010 and 2011. According to the Wife, she had spent a total of \$138,908.16 on Nathalie's overseas education. This included Nathalie's university fees and living expenses whilst she was in Australia. The Wife asked that the Husband be made to pay half of this sum. This amounted to \$69,454.08.

60 The Husband objected to the Wife's claim on several grounds. First, the Husband contended that as Jean-Francois was above the age of 21 and Nathalie was almost 21 when they commenced their tertiary education, an order for their maintenance would have been inappropriate. In Jean-Francois's case, he was also gainfully employed at the time he commenced his tertiary education. Second, the Husband contended that as the children were above the age of 21 when these ancillary matters were heard, any claim for maintenance ought to have been brought by the children themselves. Third, as regards Nathalie's education, the Husband contended that the amount claimed was excessive. He also objected on the basis that the decision to send Nathalie to Australia was made by the Wife unilaterally, without having consulted him.

61 I was not persuaded by the Husband's arguments. Under s 69(5) of the Women's Charter, the Court is not precluded from making an order requiring a parent to pay maintenance to a child who had attained the age of 21 where the child was or would be receiving instruction at an educational establishment, whether or not that child was in gainful employment at the time.

62 In Nathalie's case, this was not in issue as she was below the age of 21 when she commenced her studies in Australia. In Jean-Francois's case, it was pertinent to note that he had in fact been accepted into RMIT in 2010. However, he gave up his place in the knowledge that the Wife could not afford to send both Nathalie and him overseas at the same time. In his affidavit, Jean-Francois also stated that he knew Nathalie was very talented in photography and was happy to forego his university degree for her for the time being as he felt that Nathalie would do better than him in university. Instead, he chose to work while waiting to enter university. In my view, Jean-Francois's decision to delay his university education should not be held against him.

63 Having read Jean-Francois' affidavit, I accepted that although he was gainfully employed, he lacked the means to finance his own education. I also accepted that Jean-Francois was genuinely pursuing higher education to better prepare himself for the working world. Subject to the Husband's ability to pay maintenance, it was not unreasonable to require the Husband to pay Jean-Francois school fees and living expenses for the duration of his degree. As the Wife had paid for all of Jean-Francois's previous education expenses, I was of the view that the Husband should bear the cost of Jean-Francois's degree in full.

64 As regards the cost of Nathalie's overseas education, I was of the view that the Husband had little basis to complain. In her affidavit, Nathalie said that the Husband appeared disinterested when she had attempted to share with him her plans to study in Australia. The Husband's indifference continued even after she had started studying in Australia. Nathalie's evidence in this regard contradicted the Husband's claim that he had not agreed to send Nathalie overseas.

65 The Husband's contention that any application for maintenance ought to have been made by the children themselves was tenuous at best. Section 69(3) of the Women's Charter did not require that an application for the maintenance of a child who had attained the age of 21 be made by the child himself. There was nothing improper in the Wife making the application in her own right. As

regards the cost of Nathalie's education, it was also pertinent that these were expenses that had already been incurred by the Wife.

66 I then had to consider whether the Husband had the financial means to pay the maintenance sought. As I explained at [47], given the Husband's deliberate non-disclosures and dissipation of assets, I had the discretion to and did draw an adverse inference against him as regards his ability to pay maintenance to the Wife. Similarly, I drew an adverse inference against the Husband as regards his ability to pay for the cost of the children's education.

67 I therefore ordered the Husband to pay the sum of \$50,450 into Jean-Francois' bank account or to the Wife on Jean-Francois' behalf for his tertiary education. This was to be paid out of the Husband's 10% share of the net sale proceeds of the Loyang Property that were available for division. I also ordered the balance of the Husband's 10% share, in the sum of \$19,466.38 be paid to the Wife as a partial refund for the expenses she had incurred in respect of Nathalie's education in Australia.

## **Conclusion**

68 For the above reasons, I made the orders set out at [4] above. The Husband was also ordered to pay the Wife's costs which were fixed at \$3,000 excluding disbursements which were to be paid on a reimbursement basis.

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