

Lim Ngeok Yuen v Lim Soon Heng Victor
[2006] SGHC 83

Case Number : D 602645/2003

Decision Date : 23 May 2006

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Marina Chin (Tan Kok Quan Partnership) for the petitioner; Richard Ang (Ramani G H & Partners), Troy Yeo (K K Yap & Partners) for the respondent

Parties : Lim Ngeok Yuen — Lim Soon Heng Victor

Family Law – Matrimonial assets – Division – Wife having more success in career than husband and having acquired substantially more assets – What constituting fair and equitable distribution of matrimonial assets between parties

23 May 2006

Judith Prakash J:

Introduction

1 The hearing of the ancillary matters relating to these divorce proceedings took place before me in January and February this year. The matters in issue concerned only the division of the matrimonial assets as the wife was not asking for maintenance and the only child of the marriage had long before attained his majority and was independent. On 13 February 2006, I made the following orders:

(1) 335 Bukit Timah Road #13-02 Wing On Life Garden ("Wing On property") shall be divided between the parties as follows:–

(a) 60% to Petitioner (Wife);

(b) 40% to Respondent (Husband).

(2) The Petitioner shall be entitled to retain the rentals received from the Wing On property up to December 2005 but shall account to the Respondent for 40% of all rentals received from 1 January 2006 less expenses and taxes (excluding personal income tax).

(3) The Petitioner shall retain for herself all her interest in the property known as 261 Arcadia Road #03-04 ("Arcadia property") and all sums in her CPF account.

(4) The Respondent shall retain for himself all his interest in his funds in his CPF account and all other assets disclosed in these proceedings.

(5) All other current assets already held by the Petitioner as disclosed shall be divided [by giving] 80% [of the value thereof] to the Petitioner and 20% to the Respondent provided that:–

(a) Before undertaking the division, the Petitioner shall be entitled to deduct:–

(i) \$25,500.00 representing the tenant's rental deposit;

(ii) \$36,630.24 representing the income tax payable by the Petitioner in relation to

her retirement fund for the year of assessment 2005;

(iii) The income tax payable by the Petitioner in relation to her retirement fund for the year of assessment 2006;

(iv) \$223,822.46 representing the amount paid, inclusive of expenses, to redeem the mortgage on the Arcadia property.

(b) The Petitioner shall not be obliged to exercise any of the stock options currently vested in her. However, if she chooses in her discretion to do so, then she shall at such time transfer 20% of the proceeds received (less expenses and taxes if any incurred) to the Respondent.

(6) The Respondent shall at his own expense open the necessary accounts to take all such other necessary steps to enable the Petitioner to effect transfers of shares in companies (whether local or foreign), units trusts and monies (whether in local or foreign currencies) to the Respondent. The Respondent shall bear all expenses related to the transfers.

(7) After taking into account the deductions referred to in Clause 5(a) of this Order, the amounts in terms of monies and shares to be transferred to the Respondent are as follows:

1.	USD103,646.71
2.	EURO 17,367.61
3.	GBP 29,234.11
4.	AUD 70,109.80
5.	USD 3,042.62
6.	HKD 704.03
7.	HKD 10,343,46
8.	HKD 8,783.54
9.	S\$16,243.83
10.	S\$44,893.63
11.	9,353.31 units in the Enhanced Income Fund

12.	6,835.27 units in the Shenton Income Fund
13.	S\$1,454.71
14.	S\$20,030.68
15.	S\$1,391.80 in relation to Avaplas shares
16.	Brilliant Manufacturing – 2,000 shares
17.	CapitalComm – 360 shares
18.	CapitaLand – 1,800 shares
19.	CapitalMall – 5,500 shares
20.	Cerebos Pac – 1,000 shares
21.	China Av oil – 1,000 shares
22.	S\$2,803.49 in relation to City Dev Shares
23.	DBS – 1094 shares
24.	S\$6,243.24 in relation to Hyflux shares
25.	S\$315.40 in relation to Mediaring shares
26.	S\$3,664.90 in relation to Semb Log shares
27.	SFI – 1000 shares
28.	Singtel – 1896 shares
29.	SPH – 400 shares
30.	UOB – 600 shares
31.	CNOOC – 10,000 shares

32.	S\$4,188.91 in relation to the petitioner's retirement fund
-----	---

(8) Wing On property shall be sold in the open market. The sale shall be conducted in accordance with the following terms:-

(a) The parties shall jointly appoint a valuer to conduct a new valuation of the Wing On property and the reserve price for the sale shall be the sum of the value so determined and \$100,000.

(b) The sale shall be conducted by an agent [who has been] jointly appointed [by the parties].

(c) If no other matching or higher price than the reserve price is received by 31 May 2006, the parties may agree to accept the highest offer, but if this course is not acceptable to both, then both parties shall be entitled to put in a sealed bid for the property on or before 7 June 2006, and the property shall be sold to the higher bidder provided such bid is above the highest offer received from a third party.

(d) If neither party is interested in purchasing the property, they shall proceed to sell it by public auction.

(9) Liberty to both parties to apply.

(10) No order as to costs.

2 The respondent, whom I shall hereafter refer to as the "husband", has appealed against all of the above orders. The petitioner, whom I shall hereafter refer to as the "wife", is almost equally dissatisfied and has appealed against all the orders except orders (3), (4) and (8).

The background

3 The parties were married in September 1975. The marriage took place in London as the wife, an accountant, was then working in the London office of an accountancy firm. She had been with that firm since 1971. At the time of the marriage, the husband was a sales manager with a firm selling construction and engineering equipment. Both parties had been working since the early 1970s.

4 Shortly after the marriage, the wife returned to Singapore and rejoined the Singapore office of the same firm. In August 1976, their son, Darren, was born.

5 These divorce proceedings were commenced by the wife in August 2003 on the ground of the parties having lived separately and apart for four years. The husband responded by filing an answer and cross-petition on the basis of the alleged adultery of the wife with the party cited and unreasonable behaviour. Eventually, the decree *nisi* was granted in August 2004 on both the petition and the cross-petition. Neither party contested the other's petition in the end. The ancillary matters were, however, more strongly disputed.

6 This was an uncommon case in that the wife had been more successful in her career than the husband and had, thus, acquired substantially more assets than he had. The usual positions found in divorce proceedings were therefore reversed and here it was the husband who was fighting for a

larger share of the matrimonial assets ostensibly belonging to the wife and the wife who was trying to limit his claim. There was no real dispute over the fact that the assets in the parties' respective names were matrimonial assets in the sense that they had been acquired after the marriage. There was only one exception to this and that related to certain stock options that the wife had been given by Shell that were not vested in her until after the date of the decree *nisi*. The main issue I had to determine was what would be a fair and equitable distribution of the assets between the parties.

The real properties acquired

7 In 1976, the parties acquired their first matrimonial home, a semi-detached house at 155 Tanah Merah Kechil Road ("the Tanah Merah property"). They held it as joint tenants. The purchase price was \$140,000 and the total acquisition cost including stamp fees, legal fees, additional work and mortgage insurance premium came up to \$151,200. The parties paid \$31,200 in cash and the remaining \$120,000 was financed by a bank loan. Subsequently, when the wife joined Shell in 1977, the loan was refinanced by a Shell-sponsored bank loan at a preferential interest rate. The husband claimed that he had paid most of the cash outgoings of \$31,200 and that since the wife was paying the monthly mortgage instalments from her salary, he had paid most of the household and other family expenses. The wife, for her part, was prepared to assume that each party had contributed equally to the cash outlay of \$31,200. She disputed that the husband had paid the household expenses and said that she had paid the bulk of these.

8 In 1983, the husband started a business called Comana Engineering Pte Ltd ("Comana"). The company was involved in the construction industry.

9 In 1986, the Tanah Merah property was sold for \$395,000. The net proceeds after settlement of the loan and the expenses of the sale including rental and utility charges for temporary accommodation came to \$289,958.48. From this sum, an additional amount of \$150,000 was paid to DBS Bank Ltd ("DBS") as "redemption money". The wife claimed that this was to discharge the husband's liability to DBS as guarantor for the debts of Comana. The husband did not deny that he had guaranteed Comana's debts though he did not remember this payment. He said that even if a loan had been taken on Comana's behalf, that was meant for the business and it entitled him to a decent salary to support the family including the purchase and upkeep of the Tanah Merah property. Whatever was left over from the sale of the Tanah Merah property was kept by the wife. She took the view that it was her entitlement as she had paid 83% of the cost of that property and the husband, because of the settlement of the debt to DBS, had overdrawn his share of the sale proceeds.

10 The next property purchased by the parties was a bungalow at 33 Olive Road ("the Olive Road property"). This was a bungalow bought in 1986 for \$980,000. The Olive Road property was held by the parties as tenants-in-common with the wife having a 90% share and the husband a 10% share. At that time, Comana was not doing well. The wife wanted the Olive Road property clearly divided based on a ratio that would reflect how the financial burden for the acquisition of the property would be undertaken. The total cost of the property including various fees was \$1,017,435.40. The parties also spent moneys on renovation costs. The wife estimated these to be a minimum of \$130,000 and produced invoices establishing at least \$90,000 was incurred. She estimated the cost of other items to be at least \$40,000. The purchase was financed by way of Central Provident Fund ("CPF") contributions (\$170,000 from the husband and \$250,000 from the wife), a Shell-sponsored loan of \$225,000 from DBS and another commercial loan of \$275,000 also from DBS. These sums totalled \$920,000 and the wife contended that the shortfall was funded by her in cash.

11 The husband contended that the shortfall had come from the sale proceeds of the Tanah

Merah property. He also said that as he was in the construction business, some of the minor renovations were directly paid for by him to the contractors. Additionally, he paid most of the general household expenses including property tax, utilities and telephone charges, provisions and marketing, the maid's expenses and the cost of the gardener. All these costs added up to at least \$2,000 a month. The wife disputed this as well. She asserted that in 1986, he lost his job with Comana which had ceased business and that he received no remuneration after 1986. Therefore, he was not able to pay the household expenses and she had been the main contributor towards these.

12 The Olive Road property was sold in 1990. The sale price was \$1.88m and the net outgoings amounted to \$439,536.45. After the moneys taken from the CPF accounts were reimbursed, the surplus in hand was approximately \$817,456. The husband again had to pay debts in relation to Comana and so \$40,085 was paid to Banque Indosuez. The balance of the sale proceeds was retained by the wife. She took the view that they belonged to her as she owned 90% of the Olive Road property and that the husband's share of 10% (after refund to the wife of the cash contributions and mortgage instalments paid by her) had been consumed by the indebtedness that he had acquired in relation to Comana. Indeed, by the wife's calculation, the husband was still overdrawn by some \$89,097 after the sale of the Olive Road Property had been settled.

13 In December 1989, the parties moved to Brisbane, Australia. A house was purchased at 2 Seacrest Court, Brisbane ("the Seacrest property"). This property was held solely in the wife's name. She claimed that this was because she was the sole financier of the property. The husband's version was that the parties had decided that in the event that he went into business, it was safer that the property be only in the wife's name so as to avoid creditors in case the business failed. From his point of view, the property was purchased with joint funds as the moneys emanated from the sale proceeds of the Olive Road property. The husband found a job as a salesperson with an Australian housing developer. The wife was a full-time housewife and mother.

14 In 1991, the wife returned to Singapore and rejoined Shell. There are two versions of this story. The wife says that it was the husband's suggestion because he was uncertain about his Australian job prospects and thought he might want to return to Singapore. He knew that she was the one who could command a better salary. At the same time, the wife was keen to return to work as she was increasingly worried about the financial position of the family. She thought that the husband showed off and was inclined to spend extravagantly without due regard for the future. The husband, on the other hand, said that in 1991 the wife was offered a job in Shell as a senior manager in the finance department. Initially, he was not enthusiastic about her returning to Singapore but the wife was driven by her career and was adamant about going back to Singapore. For her happiness, he relented when she promised to shuttle often between the two cities. The husband remained in Australia to look after the son.

15 The parties then purchased a fourth property in Singapore. This was the Wing On property, an apartment in Bukit Timah, acquired in 1993. They became tenants-in-common with an 80% share going to the wife and a 20% share going to the husband. The total acquisition cost of the property as estimated by the wife was \$1,420,000 and this included renovation costs of \$142,000. The wife contributed \$566,071 from her CPF account and the husband contributed \$250,000 from his CPF account. They took a loan of \$609,000 and the balance of \$192,000 was paid in cash. The wife said that the cash portion came from her savings while the husband maintained that he had a share in those savings as well as they came from the sale of the Olive Road property.

16 In late 1994, Shell posted the wife to London. The husband remained with the son in Brisbane. The Wing On property was rented out. In 1997, the husband joined the wife in London. He found work there as director of a company called Euromas UK Limited, owned by his brother, in the

supermarket business.

17 At the end of 1997, the wife returned to Singapore and was appointed the finance director of the Shell group of companies here. The husband remained in London to complete his work there and only returned to Singapore in January 1999. He then moved in to stay with the wife in a rented apartment. The marriage ended for all intents and purposes when the wife moved out of the flat in May 1999. She continued to work with Shell until her retirement in August 2003. The husband found employment here back in the construction industry and at the time of the hearing was working as a project manager for a company called Poly Line Pte Ltd.

18 In the meantime, in March 1998, the Seacrest property had been sold for A\$487,000. The wife retained all of the sale proceeds.

19 In December 2002, the wife purchased the Arcadia property, an apartment to which she moved and in which she is still residing. She did not disclose exactly what she paid for it but said that the purchase had been partially financed by way of a mortgage loan.

20 At the time of the divorce, therefore, there were two immovable properties owned by the parties and acquired during the marriage. The Wing On property was valued at approximately \$2.4m on 17 May 2005. It was free from encumbrances, the mortgage loan having been fully discharged in June 2004. A desktop valuation of the Arcadia property made on behalf of the husband in May 2005 estimated its market value to be between \$530,000 and \$580,000. The wife estimated its value at around \$600,000. This property was bought with the aid of a bank loan and as at 31 October 2004, the outstanding balance of the loan was \$251,519.62. The wife subsequently paid \$223,822.46 to redeem the mortgage.

Other assets

21 The wife owned and disclosed substantial assets. As at November 2004, she had deposits in bank accounts and unit trusts totalling approximately \$2.5m. She also had shares worth approximately \$436,000, share options from Shell, CPF savings of approximately \$251,000 and a sum of \$219,767, net of tax, from the Shell retirement fund. The wife confirmed that she had collected rental from the Wing On property over the years and this had come to \$1,130,964 in total. She had used this rental to pay property tax, interest on the mortgage loan, management fee and other expenses related to the property. She had also paid the income tax attributable to the rental out of it and that portion of the mortgage loan repayments that had been made in cash. The balance of the mortgage loan repayments had been made from her CPF account.

22 The husband's assets were worth considerably less. He had 100,000 shares in Euromas UK Pte Ltd. He had no idea of the value of the shares. He owned an Alfa Romeo car on which the outstanding loan amounted to \$50,000. He did not give the market value of the car. He had a bank account with HSBC in Hong Kong containing about A\$10,000 and another with DBS in Singapore containing about \$40,000.

Contributions made by the parties to the welfare of the family

23 The husband asserted that throughout the marriage, he had contributed both financially and otherwise towards the welfare of the family. When they first returned from London, he drove the wife to work and back and when the parents were looking after the son, he paid his parents for the expenses of the family. From the time they lived at the Tanah Merah property, the wife was already obsessed with her career and hardly did any housework. That was done by maids. The wife left home

early and returned at about 8.00pm for dinner. The husband had a more flexible schedule as he was in sales and he had the time to take the child to school and to attend other activities. The husband returned home early in the evening and helped to look after the child and his needs. He organised birthday parties for the son, enrolled him in school and took him for walks in the park and other outdoor activities. This pattern continued while the parties resided at the Olive Road property. The husband also maintained that he took charge of the food of the household and managed the marketing and cooking since he had a passion for food. He often cooked for parties that were thrown to help the wife in her career and entertained her colleagues and guests.

24 The husband asserted that he had paid for most of the running costs of the Tanah Merah property, the child's education and personal expenses, the running costs of the car, and the maids' and gardener's salaries. These expenses had been borne by him while the parties lived in Singapore. Once they moved to Australia, he was the sole breadwinner. After the wife returned to Singapore, while continuing with his job, he also looked after the son and the home. When the wife first left Australia, Darren was 15 years old and the husband spent a great deal of time taking care of him. He ferried the son to and from school (about 35km each way), helped him in his work and took care of his other needs. He also cooked for the son. Whilst the wife's sister and family lived in Brisbane, he said that he had still been the person responsible for the son's welfare and who bore the main brunt of the son's care while they were in Australia. If he had not stayed in Brisbane to look after the family and allowed the wife to return to Singapore, the opportunities that she had of advancement in her career would not have been available to her. He asserted that he had sacrificed his career for his family and for the wife's career.

25 The husband said that throughout the years of the marriage, the family had led "a quality life". This included many holidays (mostly paid for by the wife), birthday presents for the wife including the purchase of a pearl necklace for \$13,000 and a piano for \$28,250 for her 50th birthday (the wife returned the money to him when the marriage soured). The husband insisted that he was devoted to the family and was shattered when the wife moved out and he subsequently discovered that she had had an affair with the party cited.

26 The wife portrayed her role and that of the husband quite differently. She said that he was extravagant and irresponsible. She had suffered financially by reason of the husband's failed business venture in Comana. Additionally, she asserted that while he was at Comana between 1984 and 1986, the husband had had an affair with a woman in Hong Kong. She did not agree that he had paid the car expenses of about \$1,000 a month and the household expenses of about \$2,000 a month incurred while the family lived in the Tanah Merah property. She pointed out that by his own account, his salary at that time was about \$5,000 a month and she could not understand how after the CPF deductions were made and he paid his income tax and other personal expenses, he would be able to afford car and household expenses totalling \$3,000 a month. Instead she said she had paid the bulk of the expenses. Once the parties moved to the Olive Road property, his ability to pay the expenses was even more reduced as he was out of a job when Comana failed and could not even afford a car. The truth was that she had been the consistent and major contributor towards the household expenses.

27 The wife also said that she was the parent who helped the son with his homework, sat through music classes and helped with the enormous amount of school project work that he had. After the son and husband went to bed, she had to attend to her own work that she had brought back from the office to complete. On weekends the husband was seldom at home as he often went on day-long fishing trips. When the son was young, the wife took him on holidays that she paid for. The husband did not join them until December 1985.

28 The wife said the main reason for the move to Australia was so that the son could pursue his

higher education in Australia. She gave up a senior position in Shell with a salary of \$150,000 per annum. She did not agree that the parties had moved so that she would be less stressed and the family could enjoy a better quality of life as the husband had asserted. When they moved, she was a housewife for two and a half years and devoted herself to the family. Whilst the husband was working, he bought expensive cars and was extravagant. It was because of her concern about their financial position that she returned to Singapore to take up employment with Shell again. She alleged that the husband frequently visited the casino in Queensland after she left.

29 The wife also said that the son did not require much care when she left Australia as he was already over 15 years old. The husband had taken him to school because it was on the way to work. As he was then holding a full-time job he could not have been a househusband. Her sister and family lived only two doors away from them and both the son and husband often had meals at her sister's home. Once the son turned 17 in 1993, he obtained his driving licence and from then on was fully independent, driving himself to university each day and often had his meals out with his friends. After being posted to London in 1994, she visited Australia on business or annual leave in order to see her son and also arranged for him to visit her in London at least once a year. She paid for most, if not all, of the holiday expenses particularly for destinations outside London like New York and Vancouver.

30 The wife's version was that the husband had suggested in 1991 that she return to Singapore and work for Shell again because he was uncertain about his own job and income prospects. His income then, she thought, was enough to keep him and support his indulgences but not enough to support the whole family. She started to remit money to him in Australia in May 1992 and in the seven years between then and 1998, she remitted a total of A\$64,465.24 towards the living expenses of the son and the husband. She also pointed out that the husband was unemployed in Australia from mid-1996. For the year ending June 1994, the husband's earnings after tax had been only A\$22,000 so in that year, the wife had remitted more than A\$14,000 to him. After he lost his job in mid-1996, she sent him A\$18,000 and in 1997, she remitted A\$13,000 to him. The husband's move to London was, the wife contended, because he could not get a job in Australia and his brother had presented him with the opportunity of being involved in the supermarket business in England. There again, he had not been very successful as the business had failed and he had had to return to Singapore in 1999 which had not been his original intention.

The parties' arguments

31 The wife submitted that over the years, she had been the principal provider. The husband had not exercised financial responsibility especially with regard to the family. He had not made any significant contributions to pay for the houses purchased and to pay for the family's other basic expenses. He loved to show off and squandered his money on unnecessary items like a big car and a driver. Nor could the husband claim to have contributed in any significant way in non-financial aspects. Though not as successful as the wife, he did hold various full-time jobs throughout the years. Hence, he was in no way a househusband. He could not have contributed more than the wife in non-financial ways. In fact, his love for boating and fishing saw him taking day-long trips during weekends for his hobby. Further, as the mother, she had played the more significant role in the daily upbringing and care of the son.

32 In respect of the Wing On property, the wife said that the parties' respective holdings of 80% and 20% reflected their respective financial contributions towards the property. Using this ratio for division would be consistent with s 112(2)(a) of the Women's Charter (Cap 353, 1997 Rev Ed) ("the Act") which refers to the extent of the monetary contributions made by each party towards acquiring the matrimonial assets. The wife suggested that the purchase in 1993 was when the husband was in Australia and could not be relied on to contribute more than his CPF moneys given his unstable career

path through the years. The wife had to ensure that she had sufficient funds for the acquisition costs of \$1.6m (including renovation cost) and she undertook this burden. It would not be just and equitable for the husband to have more than his 20% stake since his actual financial contribution was much less than 20%. During the time he was in Australia, the wife had remitted at least A\$64,000 to him for the living expenses of the husband and the son. The wife had little choice but to return to Singapore because of the husband's extravagant lifestyle and uneven earnings situation and therefore the husband should not profit from the fact that he lived in Australia with the son from the end of 1991. The husband's contribution to the son's welfare was not great since he was in full-time employment and could not have spent that much time with the son. Also, the wife's aunt was very involved with the boy's daily needs. The husband's claims of bearing household expenses were grossly inflated and the income statements that he was compelled to produce established that he could not have been the provider he claimed to be.

33 As for the rental that the wife had earned from the Wing On property, the wife said that she remained ready to account to the husband for it. She exhibited an account of the rental collected and the outgoings in a statement annexed to her submissions. It showed that the mortgage on the property had been redeemed for \$169,333 in 2004. It had been agreed that the redemption amount and the legal fees would be divided between the parties based on the apportionment of the property by the court. In the account, she had done an apportionment based on the tenancy-in-common ratio of 80:20. The apportionment also covered the remittances she had made to Australia. At least A\$64,000 (\$72,000) was remitted and the wife wanted to deduct 50% of this from the rental income on the basis that she should be reimbursed for what she had paid towards the husband's expenses. She was willing to bear the other 50% as representing the son's expenses.

34 The wife also stated that after the Wing On property had been purchased, the husband had never asked for his share of the rental. He had left it to the wife to manage and to pay for all things related to the tenancy, including the increased income tax attributable to the rental. She argued that obviously, he did not consider himself as having a big stake in the property and consistent with that attitude, he deserved no more than the 20% share that he had as a tenant-in-common. She wanted the property to be sold and the proceeds divided in the same ratio as the parties held the property.

35 As for the Arcadia property, the wife had bought it in her sole name in December 2002 and lived there with her son. By December 2002, the son was already 26 years old and the husband and wife had lived apart continuously for at least three and a half years. The husband had not contributed to the Arcadia property financially or otherwise. This property was in her sole name because it was acquired through her sole effort, post-separation at that, and it would not be just and equitable to grant the husband any share in it.

36 The wife also argued that it would not be fair to reward the husband by giving him any share in the stock options that she had been granted by Shell in so far as these had vested in her before the date of the decree *nisi* (23 August 2004) and thus constituted matrimonial assets. This was because the husband had not contributed at all to the acquisition of these assets as these options were granted to her after the parties started living apart. Similarly, the other assets of the wife had been accumulated by reason of her sole effort and hard work. It could not be just and equitable for the husband to have a share in these assets when he had already been fortunate enough through the years to have had a spouse who could foot most of the bills. Further, without the wife the husband would not have been able to purchase the Olive Road and the Wing On properties.

37 The wife concluded by saying that save for a few months in the second half of 1997 in London, the parties had effectively lived in different countries for about eight years, *ie*, from late 1991 to 1999. Hence, they worked independently of each other. They operated separate bank

accounts throughout the entire period of their marriage with the exception of a joint account which had to be opened before DBS would grant a loan for the Wing On property. The wife said that she was not asking for any share in the husband's assets and by the same token he should not have any share in her assets. The only asset to be divided would be the Wing On property which was jointly owned. The court should also take into account the fact that the wife had retired as of August 2003 whereas the husband was gainfully employed and had earned \$120,000 in 2004 and was expected to earn at least \$200,000 in 2005. The wife also had recurring medical problems and her expenses on these totalling about \$30,000 per year had to be taken into account. The wife needed enough money to look after herself in old age.

38 The husband's submissions emphasised that the marriage had lasted some 29 years and that during most of those years, the husband had been more involved in the family than the wife. He stressed the various contributions he said that he had made towards the care of the son and the household including the cooking and maintenance work that he did. He also maintained that he had contributed financially towards the parties' lifestyle both in Singapore and in Australia. His primary role in the welfare of the family was especially evident when they lived in Australia. The husband had worked to support the family and was the sole breadwinner for the first two and a half years. He drove the son to school and back and remained in Australia to look after him when the wife returned to Singapore. He also arranged for his money to be paid to the family company, Gateway, so that the wife would receive something from there as well. He paid for the son's upkeep and looked after the home and took the son to and from various other activities. He was there for the son as father, friend and counsellor. All these were done for the sake of the family and at the expense of the husband's career as he had sacrificed continuing to work during the booming construction industry in the 1990s in order to move to Australia for the sake of the son. He had to live in Australia while the wife was furthering her career in Singapore and elsewhere.

39 It was the wife who managed the finances. This meant that she kept the net realised assets after the sale of each property. The husband had, however, contributed towards each acquisition and the household expenses. For the Olive Road property, his direct contribution was at least 14.8%. This was in addition to his dealing with the contractors and other workers and paying for some of the work done on the house and the garden. It was not right for the wife to assert that she had paid solely for the Seacrest property and not admit that these moneys must have come from the net proceeds of the Olive Road property. As for the Wing On property, the husband's direct contribution was \$250,000 and the loan was repaid substantially from the rental received. The sum of \$192,000 that was spent on this property over and above its purchase price must have come from the net proceeds of the Olive Road property and in addition, the husband had paid for some of the fittings and renovations. As for the rental that the wife had received, she should not deduct the sum of \$72,000 from this as that money had been her contribution towards the son's expenses in Australia. Of that sum, \$20,189.10 had gone in part payment of the purchase price of the son's car (the balance of the \$40,000 purchase price being paid for by the husband) but when the car was sold, the wife had kept all the sale proceeds. Another \$2,317.20 had been given to Darren, \$9,500 had been paid to Gateway, the family company. The balance had been used for household expenses and taxes. The wife had not computed moneys that the husband had spent from 1989 onwards after they had moved to Australia. All in all, the husband submitted that for his direct and indirect contributions to the family, he should be given 50% of the Wing On property, 50% of the rental earned from that property, 35% of all the wife's other assets apart from the options and as for the options he left it to the court to decide how much his share should be.

My decision

40 In *Yow Mee Lan v Chen Kai Buan* [2000] 4 SLR 466 ("*Yow Mee Lan*") at [32], I observed that

in the light of the legislative changes that had been made to ss 112(1) and 112(2) of the Act, the court's task was to consider the marriage before it as a whole and also the role played by each of the parties in the physical and emotional care of the family and in their financial dealings in order to arrive at a fair division of the assets. Thus, I said, a party's financial contributions to the acquisition of any particular matrimonial asset could not be principally determinative of how it was divided and the court was free to give as much weight or more to other non-financial contributions.

41 In this case, the parties had a long marriage. There were disagreements and dissatisfactions over the years but the parties maintained their marriage for the good of the child and also, most likely, for their own good. Whilst the husband's affair must have caused the wife a great deal of unhappiness, she decided to continue with the marriage and there was evidence that thereafter, she did still care for the husband and appreciated his good qualities. She was willing to leave the son in Australia and return to Singapore to work. As a good mother she would not have done this had she thought it would have an adverse effect on the son. Obviously, therefore, she knew that the boy would not be in bad hands and that his relationship with his father was reasonably good. Whilst she might have relied to some extent on her sister to provide care for the son, she would have known that the father would have been the most direct and important influence in his life and thus would not have left her son alone with him if she had thought that the boy would suffer thereby. The wife may have complained about the husband's extravagance but some of this was directed towards her in the sense that he bought her expensive birthday presents and such actions on his part evidenced that he still had strong feelings for her after many years of marriage. The wife may have rejected his last birthday present by returning the cash he had given her for the grand piano but this action on her part cannot nullify the fact that his willingness to spend money on her even though his resources were less extensive than hers showed that he believed all was still well in the marriage.

42 There was no doubt that throughout the marriage, the wife earned more than the husband did. There was also no doubt that the husband's business ventures were sometimes unsuccessful and the parties suffered financially because of this. But, as the wife herself admitted, the husband did work throughout the marriage and, at the end of it, he continued to be gainfully employed. Whilst he did not earn as much as she did and may have squandered some of his earnings, he continued throughout the marriage to make an effort to earn his keep and did not rely totally on her. The wife made much of the remittances that she had sent to Australia between 1992 and 1997. The total sum of A\$64,000 included A\$20,000 as part payment towards the son's car and the balance of A\$44,000 would not have been enough to support both the son and the husband throughout this period. Obviously, the husband made financial contributions during this time as well even though there were periods when he was out of job and needed more support from the wife. From my point of view, what the wife did in this respect was in discharge of her duty to support the family, including, but not only, the son, to the best of her ability and she should not have claimed reimbursement of that amount. That claim on her part was, I considered, rather calculating.

43 I also found the wife to be calculating in the way that she totted up the contributions that she and the husband had made towards the Tanah Merah property and then decided the proportions in which they owned that property so that when the husband's debts had to be settled from the proceeds of sale, she was able to claim that he had overdrawn his share of the proceeds. At that stage, the parties were living together in a family and in that situation, it should not be the norm that each party should have to account to the other for every cent spent. Amounts derived from joint assets and spent settling debts incurred should not be strictly allocated to one party's or the other's account while the parties are still in a family relationship. Relationships conducted on such a basis do not thrive. In this case, there was no evidence that at the time the debts were incurred and paid, the wife told the husband that settling these debts had eaten up his share of the sale proceeds of both the Tanah Merah property and the Olive Road property and that he had overdrawn on his share

to the extent that she later claimed he had. There is no evidence that she told him to repay her such overdrawings. Instead, the parties went on to live together as a family for many years thereafter and continued to acquire properties together. This indicated to me that, at the time, the wife did not make such calculations and it was only after the relationship ended and she was faced with the division of matrimonial property that she deconstructed the previous transactions in an effort to claw back some assets. I therefore considered that it would not be correct to take the balance of the proceeds of sale of the Tanah Merah property and the balance of the proceeds of sale of the Olive Road property as belonging entirely to the wife. Thus, the husband would have had some share, though it was difficult to work out exactly how much, in the Seacrest property and in any savings that were used for the acquisition of the Wing On property.

44 I was mindful that the wife had contributed to the care of the family both financially and otherwise. I accepted that she had looked after the son and had spent time with him both when she was working in Singapore and when she was a housewife in Australia. She had also taken pains to maintain that relationship after she returned to work in Singapore. While both parties made contributions, however, on the whole it would appear that the husband had more time to spend with the son as his working hours were less regimented than the wife's and also there were periods of time when he was out of work. There were also the years in Australia when he was the one looking after the son alone on a day-to-day basis. Although the wife questioned the husband's ability to help the son with his homework, the husband was able to provide a wealth of convincing detail relating to how he looked after the son and the household affairs.

45 In this case where it was the wife who had the more steady and lucrative career but where both parties did contribute towards the family and the assets, I thought it would be wrong to do as the wife suggested and deprive the husband of any share in the matrimonial assets except for the Wing On property which he had helped finance. There have been many cases in Singapore where a wife who has made no financial contribution at all to the family has, on the dissolution of the marriage, received more than 30% of the assets in recognition of her non-financial contributions. In *Yow Mee Lan*, I also stated (at [43]) that whilst parties to a marriage often have unequal abilities whether as parents or as income earners, as between them this disparity of roles and talents should not result in unequal rewards where the contributions are made consistently and over a long period of time. The husband used this observation as one of his bases for substantiating his arguments on the proportion he said should be given to him. However, taking into account the fact that the husband's failures in business had reduced the assets of the family, that he had also not fully disclosed what had happened to the amounts he said he had earned (in particular, a settlement sum of A\$100,000 he had received after the termination of one of his jobs in Australia) and that the paucity of the assets he disclosed after a lifetime's work could also indicate high spending levels on his part, I considered that the correct division of the assets would be to give him a 20% share in the wife's assets (to the extent that these were matrimonial assets) while allowing him to retain his own assets for his own benefit. I exempted the wife's interest in the Arcadia property from the division since she had bought this property sometime after the parties had separated and after the husband had ceased to make contributions to the family, although technically it did form a matrimonial asset. As for the options, I ordered division of those that had been vested in her before the date of the decree *nisi* subject to such division taking place only if and when the wife decided to exercise the options.

46 As far as the Wing On property was concerned, the husband's legal interest in it was 20% as agreed by the parties at the time the property was registered. When it was first purchased, the wife had contributed \$566,071 from her CPF account and the husband had contributed \$250,000 from his CPF account. If only the CPF moneys are looked at, the husband's contribution amounted to 30.6% of the total sum of \$816,071 taken from the CPF. In addition, a sum of \$192,000 had been paid towards the initial acquisition cost and the renovations and fittings. This had come from the wife's savings.

Assuming, as she contended, that the savings belonged totally to her, this would mean that she had contributed \$758,071 as against the husband's \$250,000 which would mean the husband's share of the total initial cost was 24.8%.

47 Over the years, the wife had paid the instalments on the loan partly from her CPF and partly from the rental gained from the property. From the rental, she had paid \$390,258 towards the housing loan instalment and \$169,333 towards the redemption of the loan. Since the rental belonged to the parties in the same proportions as which they had contributed to the purchase, these payments did not change those proportions. However, as stated, the wife had also paid sums totalling \$278,337.96 from her CPF account towards the monthly instalments. If those sums had been added to her contributions to the house, then her total contributions to the acquisition cost would have been \$1,036,408.90. The rental collected by the wife for the period starting 1994 when the Wing On property was first rented out until 31 December 2005, had totalled \$1,226,964 and after all the expenses relating to the house, tax and cash loan repayments and the mortgage redemption sum had been deducted from the same, she still had \$230,034 in her hands. I considered that she could apply that sum of \$230,034 towards reimbursement to herself of the loan instalments she had paid from her CPF account. That sum of \$230,034 would be apportioned to the credit of both parties in the manner stated earlier. That meant that in fact the wife would get credit for the extra \$48,303.96 (\$278,337.96 – \$230,034) that she had paid from her CPF and could not recover from the rental. Adding this amount to the wife's other contributions of \$566,071 and \$192,000 meant her total contributions (excluding the loan repayments from rental) were \$806,374.96 and as against the husband's contributions of \$250,000 (again excluding his portion of the loan repayments from rental), this meant that the wife had paid 76% of the cost whereas the husband had paid 24% of the cost. I held that as part of the moneys attributed to the wife had come from savings some part of which may have been derived from the parties' earlier purchases of the Olive Road and the Tanah Merah properties and as the husband should also be given credit for his non-financial contributions to the family, the husband should be entitled to a 40% share in the Wing On property. The other orders I made in relation to this property and the rental were consequential.

Copyright © Government of Singapore.