

**IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE**

**[2018] SGCA 78**

Civil Appeal No 215 of 2017

Between

**BOR**

*... Appellant*

And

**BOS**

*... Respondent*

Civil Appeal No 223 of 2017

Between

**BOS**

*... Appellant*

And

**BOR**

*... Respondent*

In the matter of Divorce Transfer No 1757 of 2012

Between

**BOR**

*... Plaintiff*

And

**BOS**

*... Defendant*

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## JUDGMENT

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[Family Law] — [Maintenance] — [Wife]  
[Family Law] — [Maintenance] — [Child]  
[Family Law] — [Matrimonial assets] — [Division]

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**BOR**  
**v**  
**BOS and another appeal**

**[2018] SGCA 78**

Court of Appeal — Civil Appeal Nos 215 and 223 of 2017  
Steven Chong JA, Belinda Ang J and Quentin Loh J  
6 August 2018

21 November 2018

Judgment reserved.

**Steven Chong JA (delivering the judgment of the court):**

1 In *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 (“*TNL v TNK*”) at [53], this court affirmed that it would not readily interfere with orders made by a court below pertaining to the division of matrimonial assets, as these are squarely within the trial judge’s discretion. In order to warrant appellate intervention, the trial judge’s decision must be shown to be clearly inequitable or wrong in principle.

2 The present case is one where appellate intervention is necessitated by several computational errors and omissions by the High Court Judge (“the Judge”) to consider issues which, though raised by the parties, were not actively pursued during the oral hearings. It is unfortunate that the Judge did not receive adequate assistance from counsel, and that despite the Judge’s directions, counsel did not clearly set out their positions on several issues which arose in the course of the proceedings. As a result, various points which would otherwise

have had a significant influence on the ultimate division of the matrimonial assets were overlooked. The difficulties are further compounded by the fact that by the time the appeals came before us, both parties had engaged new sets of counsel who were not in a position to fully explain why certain admissions, concessions and omissions were made in the court below.

3 This case thus underscores the need for counsel to do their part to assist the court in achieving a just outcome in each case. Particularly in complicated matrimonial litigation where there are myriad issues pertaining to the accounting and valuation of assets, counsel have a crucial role to play in apprising the court of their clients' positions and the supporting evidence on all key issues. Where multiple rounds of submissions and affidavits have been filed, and the parties' respective positions may have evolved over the course of the hearing, counsel should, at the appropriate time, update the court of any changes in their clients' positions. This includes informing the court of the points which remain live issues between the parties, and the points which have been abandoned.

### **Facts**

4 The parties were married on 10 October 2001. The wife ("the Wife") is 42 years old and is a homemaker. The husband ("the Husband") is 53 years old and works as a business consultant.<sup>1</sup> They have two sons from the marriage, [T] and [J], presently aged 14 and 12, respectively (collectively, "the Sons"). The Sons reside with the Wife in Singapore. The Husband relocated to China for work sometime in January 2008,<sup>2</sup> and has permanently resided there since.

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<sup>1</sup> Record of Appeal ("ROA") Vol III(B), p 179.

<sup>2</sup> Appellant's Amended Core Bundle ("AACB") Vol I, p 31 (Oral Judgment at [33]).

5 The Wife commenced divorce proceedings on 11 April 2012 on the basis that the parties had been separated for a continuous period of four years. Interim judgment was granted on 4 February 2013.<sup>3</sup> Thus, the length of the marriage was about 11 years and four months.

6 Prior to August 2012, the Wife and the Sons lived together with the Husband's mother and his two daughters from a previous marriage at a property in Sea Breeze Avenue ("the Sea Breeze Property"). In August 2012, however, the Wife and the Sons moved out of the Sea Breeze Property into a rented apartment at Amber Road ("the Amber Apartment").

### **The decision below**

7 The ancillary matters were heard in two tranches in May and July 2017. The Judge delivered a detailed oral judgment on 13 November 2017 ("the Oral Judgment").<sup>4</sup> In summary, the Judge made the following orders:

- (a) With regard to custody, control, and care of the Sons, the parties had agreed to share joint custody, with the Wife having care and control and the Husband having reasonable access (Oral Judgment at [3]–[4]).
- (b) With regard to the division of matrimonial assets, after taking into account the assets which were found to be in the possession of the respective parties, the Husband was to pay the Wife a sum of S\$18,000.
- (c) With regard to maintenance, there would be no maintenance for the Wife. As for the Sons, the Husband was to pay monthly maintenance of S\$3,500 for each child.

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<sup>3</sup> AACB Vol I, p 20 (Oral Judgment at [1]).

<sup>4</sup> AACB Vol I, pp 20–38.

8 The orders with regard to the division of matrimonial assets and maintenance are the subject of these appeals. We thus set out the relevant parts of the Judge’s reasoning in more detail.

***The Judge’s decision as to division of the matrimonial assets***

9 The Judge noted that the parties had “broadly agree[d] on the identity and quantum of the assets and liabilities that constitute the pool of matrimonial assets, as set out in their Joint Summary of Relevant Information [(“JSRI”)]” (Oral Judgment at [5]). These included two properties in Singapore (namely, “the Sea Breeze Property” and “the Telok Kurau Property”), several bank accounts and securities accounts, CPF monies, an insurance policy, and a car. However, the parties disagreed over the value of seven categories of assets, six of which were in the name of the Husband and one of which was in the name of the Wife (Oral Judgment at [6]). The Judge’s findings on the six categories of assets in the Husband’s name have not been challenged on appeal and it is unnecessary to discuss them in any detail. On the other hand, both parties have appealed against the Judge’s findings in relation to the category of assets in the Wife’s name: namely, bonds which the Judge found to be worth S\$11,000,000 (“the Bonds”).

10 In this regard, the Judge noted that the Wife had admitted through her counsel to receiving bonds worth “at least” S\$11,000,000 from the Husband between June 2008 and November 2011. As to what had become of these Bonds or the proceeds from the liquidation or maturity of these Bonds, the Wife took the position that she had “used up” S\$11,000,000 on the expenses of the household after the Husband left the family in 2008. These expenses included the following (Oral Judgment at [29]):



- (a) the Wife's alleged expenditure of S\$55,320 per month on herself, S\$25,000 per month on the Sons, and S\$13,500 per month for the rental of the Amber Apartment; and
- (b) the Wife's expenditure on the Husband's mother and his two daughters, as well as the upkeep of the Sea Breeze Property.

11 With regard to the amounts referred to at [10(a)] above, the Judge found that the individual items of expenditure which the Wife used to substantiate her expenditure were “grossly excessive” (Oral Judgment at [32]). According to the Wife, a transfer of S\$1,529,040 which she received from the Husband on 31 October 2011 was reimbursement for expenses she incurred on behalf of the family from 2008 to 2011. Using this figure, the Judge estimated that the Wife had a total monthly expenditure of about S\$33,979 (this being S\$1,529,040 divided by 45 months from January 2008 to October 2011). The Judge then added to this figure a further sum of S\$13,500 in monthly rental for the Amber Apartment. The Judge further found that the Wife was spending additional sums of about S\$7,500 per month on the Husband's mother and daughters, as well as the upkeep of the Sea Breeze Properties since January 2008. Based on these findings, the Judge concluded that the Wife would have spent about S\$5,690,043 since 2008 (Oral Judgment at [33]).

12 However, the Judge reasoned that this estimate was “overly generous” because the Bonds, which were of significant value, would have generated interest income or investment returns which the Wife should account for (Oral Judgment at [33]). Taking this into consideration, the Judge found that only about S\$4,500,000 could be accounted for as the Wife's expenditure on herself and the family. This meant that S\$6,500,000 was unaccounted for out of the S\$11,000,000 worth of Bonds that the Wife had admitted to receiving from the

Husband (Oral Judgment at [34]). This amount was taken as assets remaining in the Wife's possession (Oral Judgment at [44]).

13 The Judge also addressed several other issues, such as alleged liabilities which were disputed between the parties, which are not the subject of these appeals. Having dealt with those points, the Judge set out her conclusions on the matrimonial assets within the pool and their respective values in tabular form ("the Table") as follows (Oral Judgment at [42]):

	<b>Asset (Liability)</b>	<b>Value (S\$)</b>
<b>Joint Names</b>	Sea Breeze	7,219,864
	Telok Kurau	1,570,317
	Merrill Lynch WM Account	0
	UBS Investment Account	0
	OCBC Easisave Account	807
	UBS Trading Account	0
	(OCBC Housing Loan)	(29,682)
	(UBS Time Loan)	(4,504,068)
	(UBS Time Loan)	(521,207)
	<b>Sub-total for assets in joint names</b>	<b>3,736,032</b>
<b>Wife's Name</b>	Vehicle SJU[XXXX]	90,000
	NTUC Income Policy	38,485
	CDP Securities Account	28,550
	UOB Current Accounts	36,895
	UBS Investment Account	2,109,255

	CPF Account	5,973
	Bank of China Account	0
	([IT] Loan)	0
	(UBS Time Loan)	(1,005,934)
	<b>Sub-total for assets in Wife's name</b>	1,303,226
	Unaccounted value of S\$11m Bonds	6,500,000
	<b>Sub-total for assets in Wife's name including unaccounted bonds</b>	7,803,226
<b>Husband's Name</b>	Bank of Singapore Accounts	66,139
	UOB Current Account	1,608
	UOB Savings Account	166
	UOB Global Currency Account	2,710
	CDP Securities Account	98,775
	UOB Bullion and Futures Account	30,699
	OCBC Account	6,491
	ICBC Account	9,176
	Bank of China Multi Currency Account	1,084
	Hebei Condominium	333,000
	Xinjiang Qiangte	1,379,507
	CPF Account	121,237
	USD Fixed Income Account	0
	China Construction Bank Account	1,040,427

	Shijiazhuang Qiangte	0
	OCBC Safe Deposit Box	0
	Bank of China Account	1,011,598
	([LLR] Loan)	0
	([WHP] Loan)	0
	<b>Sub-total for assets in Husband's name</b>	4,102,618
<b>Total Pool</b>	<b>Grand Total</b>	<b>S\$15,641,875</b>

14 As will be seen, several aspects of the Judge's calculations are challenged in these appeals.

15 Having determined that the total value of the pool of matrimonial assets was S\$15,641,875, the Judge turned to address the appropriate proportions for division. As this was a single income marriage, the Judge did not apply the structured approach in *ANJ v ANK* [2015] 5 SLR 1043 ("*ANJ v ANK*"). Instead, she noted that this was a marriage of moderate length, and that the Wife's indirect contributions were significant, given that the Husband had been living in China for many years, leaving the Wife to care for the Sons and the Husband's other family members in Singapore. She noted that the trend in cases with similar facts was towards equal division, reflecting the ideology that marriage was an equal partnership of different efforts (Oral Judgment at [43]).

16 Applying an equal division of the matrimonial assets, each party was to receive assets worth S\$7,820,938. The Judge noted that while the Wife had declared assets worth S\$1,303,226 in her own name, she had not accounted for some S\$6,500,000 worth of the Bonds which were also in her name. Thus, the

Wife had a total of S\$7,803,226 worth of assets. To make up the difference between this and the Wife's proportional share of S\$7,820,938, a sum of S\$17,712 was due to the Wife from the pool. Rounding this figure up, the Judge ordered the Husband to transfer S\$18,000 to the Wife (Oral Judgment at [44]).

### ***The Judge's decision as to maintenance***

17 The Judge found that since the Wife had at least S\$7,820,938 worth of assets in her possession, the Wife did not require maintenance for herself. If she managed the assets well, they should generate sufficient income for her future maintenance. She therefore declined to order maintenance for the Wife (Oral Judgment at [45]).

18 As for the Sons, the Judge found that taking into account their ages and the Husband's financial resources, the Husband should pay a monthly sum of S\$3,500 for each son. He should also pay for any necessary medical treatment that is not covered by insurance (Oral Judgment at [46]).

### **The parties' cases on appeal**

#### ***The Wife's case***

19 In Civil Appeal No 215 of 2017 ("CA 215/2017"), the Wife appeals against the Judge's orders in relation to the division of matrimonial assets and the issue of maintenance for her and the Sons.

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

20 With regard to the division of matrimonial assets, the Wife challenged two aspects of the Judge's decision: first, the Judge's valuation of certain assets, in particular the value of the Bonds in her possession; and second, the Judge's

omission to draw adverse inferences against the Husband with respect to various dissipation of assets and unexplained liabilities totalling a substantial sum of S\$38,874,429.95. In her written submissions, the Wife initially also argued that the Judge erred in ordering an equal division of the matrimonial assets. She asserted that she should be entitled to “at least 60%” of the total pool.<sup>5</sup> However, at the hearing of these appeals, counsel for the Wife, Ms Peggy Yee (“Ms Yee”), informed the court that the Wife would not be proceeding on this ground of appeal.

### *Maintenance*

21 The Wife contends that the Judge was wrong not to have ordered the Husband to pay her maintenance, because a 50% division of the matrimonial assets “fails to even out the financial inequalities between the spouses, taking into account [the] economic prejudice suffered by the Wife”.<sup>6</sup> She further submits that a lump sum maintenance award is appropriate, given that it would not financially cripple the Husband – who is a man of means – and that the Husband has defaulted in making maintenance payments since 2013 and will likely continue to default.<sup>7</sup> She seeks a lump sum maintenance award of S\$323,239.80 for herself.<sup>8</sup>

22 Finally, the Wife submits that the Judge was wrong to have ordered the Husband to pay only S\$3,500 in monthly maintenance for each of the Sons. She argues that her children are accustomed to a very high standard of living and that the Husband should be ordered to pay monthly maintenance of S\$7,371 for

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<sup>5</sup> Appellant’s case for CA 215/2017, para 100.

<sup>6</sup> Appellant’s case for CA 215/2017, para 103.

<sup>7</sup> Appellant’s case for CA 215/2017, para 110.

<sup>8</sup> Appellant’s case for CA 215/2017, para 114; Wife’s skeletal arguments, para 39.

[T] and S\$6,060 for [J].<sup>9</sup> Again, she submits that maintenance ought to be paid in a lump sum, given that the Husband has not been compliant with maintenance orders thus far. Including maintenance arrears, the Wife seeks a lump sum payment of S\$1,310,930 for the Sons.<sup>10</sup>

### ***The Husband's case***

#### *Division of matrimonial assets*

23 In Civil Appeal No 223 of 2017 (“CA 223/2017”), the Husband challenges two key aspects of the Judge’s decision with regard to the division of matrimonial assets: First, the Husband argues that the Judge understated the value of the Bonds and failed to take into account the interest income which the Wife would have earned therefrom. The Husband also submits that the Judge underestimated the value of the Bonds which remained unaccounted for by the Wife. Secondly, the Husband argues that the Judge erred in awarding the Wife an equal share of the pool of matrimonial assets. In response to the Wife’s contentions, the Husband argues that no adverse inference should be drawn against him.

24 Significantly, the Husband does not dispute that the Judge made computational errors in relation to the Wife’s UBS Investment Account<sup>11</sup> as well as the Telok Kurau and Sea Breeze Properties. The Husband argues that the Wife has not adduced a sufficient substratum of evidence to justify the drawing of any adverse inference against him. He emphasises that some of the dissipations alleged by the Wife are being raised for the first time on appeal, and the court should not entertain her submissions on these.<sup>12</sup> He also seeks

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<sup>9</sup> Appellant’s case for CA 215/2017, paras 118–119.

<sup>10</sup> Appellant’s case for CA 215/2017, para 133.

<sup>11</sup> Respondent’s case for CA 215/2017, para 22; Husband’s skeletal arguments, para 3.

leave to adduce further evidence, in Summons No 74 of 2018 (“SUM 74/2018”), to demonstrate that some of the alleged dissipations were simply withdrawals into another account which he then used to pay off short term loans in connection with foreign exchange trading and investments.

### *Maintenance*

25 The Husband submits that the Judge was right not to order maintenance in favour of the Wife, and that the Judge awarded sufficient maintenance for the Sons.

26 With regard to the maintenance for the Sons, the Husband stresses that the total amount of maintenance awarded by the Judge for the Sons – S\$7,000 per month – was already much more than the S\$2,500 in interim monthly maintenance ordered by the District Judge. The Husband also argues that the Wife’s estimates of the Sons’ expenses are unreasonable and excessive. In any event, the Wife has substantial assets in her own name and should also contribute to the Sons’ expenses.<sup>13</sup>

### **Issues arising for determination**

27 The following issues arise for determination with regard to the division of matrimonial assets:

- (a) What is the correct value of the pool of matrimonial assets?
- (b) Should any adverse inference be drawn against the Husband?
- (c) What is the appropriate ratio of division?

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<sup>12</sup> Respondent’s case for CA 215/2017, para 67.

<sup>13</sup> Respondent’s case for CA 215/2017, paras 98–99.



28 With regard to maintenance, the issues to be determined are as follows:

- (a) Should the Wife receive maintenance and if so, should such maintenance be awarded in a lump sum?
- (b) Should the Husband be ordered to pay more maintenance for the Sons and should such maintenance be paid in a lump sum?

### **Division of matrimonial assets**

#### ***Valuation of matrimonial assets***

29 We turn, first, to the valuation of the matrimonial assets and begin our analysis with three computational errors which can be dealt with quickly.

#### ***Undisputed computational errors***

30 There is no serious dispute between the parties that the Judge made the following errors of calculation in relation to three assets:

- (a) With regard to the Telok Kurau Property, the net value of this asset is S\$1,570,317.89, this being the agreed gross value of the property *less* the parties' outstanding liability under the OCBC Housing Loan (that is, S\$1,600,000 less S\$29,682.11). The Judge ought not to have made a further deduction of S\$29,682.11 as she did in the Table.
- (b) With regard to the Sea Breeze Property, the net value of this asset is S\$7,219,864.82, this being the agreed gross value of the property *less* the parties' outstanding liabilities under a UBS Time Loan (that is, S\$11,700,000 less S\$4,480,135.18). The Judge erroneously made a further deduction of S\$4,504,068 (which she rounded to the nearest dollar from S\$4,504,067.73) in the Table. Of this amount, she ought not

to have deducted S\$4,480,135.18 to account for the UBS Time Loan, as this had already been taken into account. However, the Wife does not dispute that the Judge was correct to have deducted the remaining sum of S\$23,932.55 to account for a negative cash deficit in the UBS account against which the Time Loan was taken.<sup>14</sup> We will provide for this negative cash deficit separately from the value of the Sea Breeze Property.

(c) With regard to the Wife's UBS Investment Account, the accurate value of this asset is the agreed value stated in the JSRI: S\$2,019,225 instead of S\$2,109,255 as stated in the Table.

31 We should however add that the Judge was not entirely at fault for having made these errors. At the second ancillary matters hearing on 19 May 2017, she gave specific instructions to the parties regarding the tabulation of the "Liabilities" section of the JSRI.<sup>15</sup>

Ct: If there are liabilities that are attached to specific assets please deduct them from the respective assets to get net value of the asset. So please match and aim for net value of each asset. *Leave liabilities in this category only if it is a general one which is not attached to a specific asset.*

[emphasis added]

32 Regrettably, notwithstanding these instructions, when the parties filed the final version of the JSRI on 4 September 2017, the first two items reflected in the "Liabilities" section were the OCBC Housing Loan taken out in respect of the Telok Kurau Property and the UBS Time Loan taken out in respect of the Sea Breeze Property.<sup>16</sup> This was despite the fact that these were "liabilities that

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<sup>14</sup> Appellant's case for CA 215/2017, para 14.

<sup>15</sup> Respondent's Supplementary Core Bundle in CA 215/2017 ("RSCB"), p 20 (lines 18–22).

are attached to specific assets”, which the Judge had specifically directed the parties *not* to reflect in this section of the JSRI. We further note that when the Judge delivered her decision on 13 November 2017, neither party mentioned that she had made these computational errors. And in the days that followed, during which time the parties would have had the opportunity to examine the Oral Judgment more closely, neither party wrote to court to request further arguments or to highlight the errors and invite the Judge to correct them. This is somewhat disturbing given that it is now common ground between the parties that there was clear double counting of the outstanding liabilities in respect of the Telok Kurau and Sea Breeze Properties, and a typographical error regarding the value of the Wife’s UBS Investment Account. Again, we would underscore the importance of counsel providing suitable assistance to the court in complicated matrimonial litigation; and this includes complying with the court’s directions on how relevant information should be presented. In an appropriate case, counsel should, where possible, inform the judge of any clear, uncontroversial errors in his or her decision, so that the judge can correct such inadvertent errors before the decision is appealed.

### *The Bonds*

33 Having dealt with the undisputed computational errors, we turn now to the main asset whose value is hotly contested between the parties – the Bonds. The Judge found that the Wife had received “approximately” or “at least” S\$11,000,000 worth of Bonds (Oral Judgment at [29]). She may well have taken S\$11,000,000 as a conservative valuation of the Bonds because the Husband himself had variously described the value of the Bonds as “more than S\$11 million worth”,<sup>17</sup> “about S\$11.3 million”<sup>18</sup> and “S\$11.55 million”<sup>19</sup> at various

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<sup>16</sup> AACB Vol II, p 220.

<sup>17</sup> ROA Vol IV(B), p 137 (Husband’s skeletal submissions for 14 July 2017 hearing).

points in the proceedings. On appeal, however, the Husband's position is that he transferred S\$11,944,858.05 worth of Bonds to the Wife. The Wife's position is that the correct value of the Bonds, leaving aside those which were converted into other Bonds when they matured or were liquidated, is S\$7,335,605.16.<sup>20</sup> However, before turning to examine the correct value of the Bonds which the Wife ought to account for, we first address whether the Wife is entitled to dispute the value of the Bonds on appeal, given the concessions that were made by her former counsel in the proceedings below.

- (1) Whether the Wife is entitled to dispute the value of the Bonds on appeal

34 As the Husband has stressed, the Judge's decision was made on the basis of the Wife's former counsel's concession that the Wife had received S\$11,000,000 worth of Bonds, and further sought to argue that the Wife had spent whatever funds she obtained from the Bonds on herself and the family.<sup>21</sup> A preliminary question thus arises as to whether the Wife is now entitled to argue otherwise on appeal.

35 The Husband submits that the Wife "should be estopped from making a submission which was contradictory to the position taken at the hearing below".<sup>22</sup> However, the submissions do not flesh out the precise estoppel which is being invoked, or how it may have arisen. There is no merit in this estoppel argument, not least because we cannot see any reliance placed by the Husband on the Wife's former counsel's concession. There is no suggestion that in

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<sup>18</sup> AACB Vol II, p 208 (JSRI filed on 4 September 2017).

<sup>19</sup> ROA Vol III(B), pp 239 and 256.

<sup>20</sup> Wife's skeletal arguments, para 14.

<sup>21</sup> RSCB, pp 25 (line 27) – 26 (line 32).

<sup>22</sup> Respondent's case for CA 215/2017, para 26.

reliance on the concession, the Husband elected not to adduce evidence or make any argument which he might otherwise have made if he knew that the Wife would dispute having received S\$11,000,000 worth of the Bonds. It bears mention that the unfortunate concession was made at a relatively late stage of the proceedings – *ie, during* oral arguments at a hearing on 14 July 2017. There is nothing to suggest that the Husband’s then-counsel was expecting the concession by the Wife’s counsel. It follows that up to this stage, the parties would have prepared their arguments and evidence with respect to the value of the Bonds without reference to, or reliance on, any such concession.

36 There is, strictly speaking, no legal impediment against an appellant raising new points on appeal, even if those points contradict its pleaded case (*Grace Electrical Engineering Pte Ltd v Te Deum Engineering Pte Ltd* [2018] 1 SLR 76 (“*Grace Electrical*”) at [36]). Rather, the court would carefully consider whether to grant leave to an appellant under O 57 r 9A(4)(b) of the Rules of Court (Cap 322, R 4, 2014 Rev Ed) to introduce new and even contradictory points on appeal, having regard to the following factors (*Grace Electrical* at [38]):

... (a) the nature of the parties’ arguments below; (b) whether the court had considered and provided any findings and reasoning in relation to the new point; (c) whether further submissions, evidence, or findings would have been necessitated had the new points been raised below; and (d) any prejudice that might result to the counterparty in the appeal if leave were to be granted.

37 In our judgment, the Wife is entitled to argue on appeal that she did not receive S\$11,000,000 worth of the Bonds from the Husband, notwithstanding her former counsel’s concession in the proceedings below. The following three points are worth noting:

(a) First, the Wife’s assertion that some of the Bonds which the Husband claimed to have transferred to her were actually converted into other bonds is *not* an entirely new point. The Wife had stated in her third affidavit of assets and means, dated 15 August 2016, that she liquidated the General Electric (“GE”) Capital Bonds and used the proceeds to pay off a loan which she had taken out to purchase the Lloyds Notes.<sup>23</sup> She also stated that when the Development Bank of Singapore Bonds (“the DBS Bonds”) matured, she used US\$1,000,000 of the cash proceeds to pay for US\$750,000 units of Kasikornbank Public Company Limited Bonds (“Kasikornbank Bonds”).<sup>24</sup> As will be seen, these are the same points which she makes on appeal.<sup>25</sup>

(b) Second, the Wife has not sought to adduce any new evidence in the appeals but is relying on evidence and information which is already before the court to support her arguments (see *Grace Electrical* at [37]).

(c) Third, for the reasons we have explained at [35] above, we find that permitting the Wife to raise this point on appeal would not cause any prejudice to the Husband.

(2) The value of the Bonds which the Wife received

38 The Bonds which the Husband claims he transferred to the Wife are set out in his second affidavit of assets and means filed on 27 April 2016 (“the Husband’s Bond Table”).<sup>26</sup> In that affidavit he claimed that the total value of the Bonds was S\$11.55 million.<sup>27</sup> However, in the Wife’s written submissions for

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<sup>23</sup> AACB Vol II, p 53, paras 9–10.

<sup>24</sup> AACB Vol II, p 53, para 11.

<sup>25</sup> Appellant’s case for CA 215/2017, paras 30–31.

<sup>26</sup> AACB Vol II, pp 113–114.

CA 215/2017, she has adapted the Husband's Bond Table, but proffered her own calculations of the value of the Bonds in Singapore dollars as at 2013 (as the Bonds were denominated in various foreign currencies). According to these calculations, the total value of the Bonds which the Husband claimed he transferred to the Wife is S\$11,944,858.05.<sup>28</sup> The Husband has adopted the Wife's calculations in support of his submission that he transferred S\$11,944,858.05 worth of Bonds to the Wife. Since the parties are in agreement as to both the value of the Bonds in Singapore dollars, and that the value of the Bonds should be taken as at 2013, we shall also adopt the values of the Bonds as reflected in the Wife's calculations, where appropriate.

39 The Bonds which the Husband claims to have given to the Wife, and their respective agreed values as at 2013, are set out in the following table:

	<b>Bonds (in different currencies)</b>	<b>Approximate value in Singapore dollars as at 2013</b>
(a)	A\$2,000,000 units of GE Capital Bonds	S\$2,607,500.77
(b)	US\$2,500,000 units of DBS Bonds	S\$3,861,752.12
(c)	A\$820,000 units of Lloyds Notes	S\$1,060,727.08
(d)	A\$1,500,000 units of Lloyds Notes	S\$2,012,546.56
(e)	US\$750,000 units of Kasikornbank Bonds	S\$1,076,659.66
(f)	A\$500,000 units of BNP	S\$640,098.26

<sup>27</sup> AACB Vol II, pp 111 and 113.

<sup>28</sup> Appellant's case for CA 215/2017, para 26.

	Paribas Bonds	
(g)	A\$500,000 units of Morgan Stanley Bonds	S\$685,573.60
	<b>Total</b>	S\$11,944,858.05

40 The Wife’s position is that the GE Capital Bonds and the DBS Bonds (*ie*, items (a) and (b) in the above table) should not be included in the total value of the Bonds because the proceeds from the GE Capital Bonds were used to purchase the Lloyds Notes at items (c) and (d), while part of the proceeds from the DBS Bonds were used to purchase the Kasikornbank Bonds at item (e).

#### THE GE CAPITAL BONDS

41 The Wife’s account of how the GE Capital Bonds were “converted” into A\$820,000 units and A\$1,500,000 units worth of Lloyds Notes, is essentially that she liquidated the GE Capital Bonds and used the proceeds to pay off a loan she had taken out against the parties’ joint UBS Account No [xxxxxx] (“Joint Account X”) to purchase the Lloyds Notes. The relevant transactions, as well as the supporting evidence which the Wife relies on, may be summarised as follows:<sup>29</sup>

(a) On 11 June 2008, the Husband transferred the GE Capital Bonds from Joint Account X to the Wife’s UBS Investment Account.

(b) On 24 March 2011, the Wife took out a loan of A\$2,319,710 against Joint Account X to purchase A\$820,000 and A\$1,500,000 worth of Lloyds Notes. The Wife asserts that this is evidenced by a statement for Joint Account X showing that there was a negative balance of

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<sup>29</sup> Appellant’s case for CA 215/2017, para 30.



A\$2,319,710, and the purchases of the relevant units of Lloyds Notes on 24 March 2011.<sup>30</sup>

(c) On 29 March 2011, she liquidated the GE Capital Bonds which were in her personal account, and thus acquired A\$1,969,620 in cash. The Wife asserts that this is evidenced by a statement of the Wife’s UBS Investment Account for March 2011 showing that she sold her GE Capital Bonds on 24 March 2011, yielding A\$1,969,620 in cash (in two lots of A\$984,810.00 each).<sup>31</sup>

(d) In early April 2011, she paid off the A\$2,319,710 loan which she had taken out against Joint Account X on 24 March 2011 using, *inter alia*, the proceeds of A\$1,969,620 following the liquidation of the GE Capital Bonds. The Wife asserts that this is evidenced by a slip titled “Internal Account Transfer” showing that A\$2,319,710 was transferred from the Wife’s UBS Investment Account to Joint Account X on 1 April 2011.<sup>32</sup> She then transferred the Lloyds Notes from Joint Account X into the Wife’s UBS Investment Account.

42 The Husband’s response is that the Wife’s account is not borne out by the evidence, and that the Wife has failed to explain how she paid for the difference of about A\$350,000 between the price of the Lloyds Notes (A\$2,319,710) and the smaller amount which she received from liquidating the GE Capital Bonds (A\$1,969,620). The Husband also argues that the Wife has failed to provide full disclosure of evidence that would allow the court to

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<sup>30</sup> AACB Vol II, pp 185–186.

<sup>31</sup> AACB Vol II, p 71.

<sup>32</sup> AACB Vol II, p 72.

ascertain the true source of the funds which she used to purchase the Lloyds Notes.

43 In our judgment, the evidence supports the Wife's position on this point. The various transactions referred to at [41(a)]–[41(d)] occurred in quick succession, within a span of about a week. This close proximity in time and similarity in transaction values suggests that the transactions were indeed related and that the overall design of the transactions was to enable the Wife to use the funds from liquidating the GE Capital Bonds to pay off the loan which she had taken against Joint Account X to purchase the Lloyds Notes. Significantly, the Husband has offered no explanation as to why the Wife would have transferred *exactly* A\$2,319,710 – the very purchase price for the Lloyds Notes – from her UBS Investment Account to Joint Account X, if she were not intending to effectively pay for the Lloyds Notes. Moreover, as the Husband has stressed in these appeals, he was the family's sole breadwinner, while the Wife was a homemaker without any independent source of income. As the Husband explained in his second affidavit of assets and means, "whatever [the Wife had], she got them from [him]".<sup>33</sup> It is telling that there is no suggestion by the Husband that *he* separately gave her the A\$2,319,710 needed to pay off the loan for the Lloyds Notes.

44 As mentioned, the Husband also argues that there is no evidence as to how the Wife paid for the shortfall of A\$350,000 between the proceeds from the GE Capital Bonds and the purchase price of the Lloyds Notes. In our judgment, this is neither here nor there. The Wife obtained A\$1,969,620 from liquidating the GE Capital Bonds. If the evidence supports a finding that these proceeds were subsequently used to pay for the Lloyds Notes, then the GE

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<sup>33</sup> AACB Vol II, p 109.

Capital Bonds would have been accounted for and ought not to be included in the pool of matrimonial assets. The fact that the proceeds from the GE Capital Bonds may have been used *in combination* with funds from another source to pay for the Lloyds Notes is ultimately of no consequence.

#### THE DBS BONDS

45 The Wife's position is that the DBS Bonds were "converted" into US\$750,000 units of Kasikornbank Bonds and cash of S\$1,500,000. Her account is elaborated below:<sup>34</sup>

(a) On 11 June 2008, the Husband transferred the DBS Bonds from Joint Account X to the Wife's UBS Investment Account.

(b) On 16 May 2011, the DBS Bonds matured and the Wife received US\$2,500,000 in cash. This is evidenced by a statement showing the securities transactions in the Wife's UBS Investment Account for May 2011.<sup>35</sup>

(c) On 13 June 2011, the Wife transferred US\$1,000,000 of the proceeds she received from the DBS Bonds into the parties' joint UBS Liabilities Account No [xxxxxx] ("Joint Account Y") to pay off an existing loan. This is evidenced by a statement for Joint Account Y showing that on 13 June 2011, there was an "incoming payment" of US\$1,000,000 from the Wife which was used (together with another source of funds) to make a "loan repayment" of US\$1,894,122.14 from the same account.<sup>36</sup>

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<sup>34</sup> Appellant's case for CA 215/2017, para 30.

<sup>35</sup> AACB Vol II, p 75.

<sup>36</sup> AACB Vol II, p 77.

(d) That same day (*ie*, 13 June 2011), the Wife transferred the Kasikornbank Bonds from Joint Account X to her own UBS Investment Account as consideration for paying off the loan.<sup>37</sup> She later sold these Kasikornbank Bonds.

(e) The remaining US\$1,500,000 of the proceeds from the DBS Bonds were spent on household and various other expenses such as a donation of RMB8,000,000 to a Buddhist Institute in Taiwan.

46 The Husband's position is that the Wife has not furnished her full bank statements for her UBS Investment Account and that this has made it impossible to verify her claims.<sup>38</sup>

47 In our judgment, the conclusion to be drawn from the various transactions is that out of the US\$2,500,000 in proceeds which the Wife obtained from the DBS Bonds, she has satisfactorily accounted for US\$1,000,000 as an amount which she used to pay off the parties' existing loan through Joint Account Y. It may well be that it is not possible to conclude, at least on the evidence before us, that the proceeds which she received from the DBS Bonds were directly applied towards repayment of the US\$1,800,000 loan, but this does not affect our finding. After all, cash is fungible. Cast another way, the Wife could have listed this US\$1,000,000 as an "expense" incurred by her towards loan repayment, alongside her personal expenditure and expenditure on the Sons and the household, and the result would have been no different. On either view, US\$1,000,000 ought to be deducted from the value of the Bonds which were found to be in her possession.

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<sup>37</sup> AACB Vol II, p 188.

<sup>38</sup> Respondent's case for CA 215/2017, para 31.

48 For completeness, there is nothing to suggest that the US\$1,000,000 which the Wife transferred from her UBS Investment Account into Joint Account Y to repay the US\$1,800,000 loan ultimately came from a fresh transfer of funds from the Husband, or from any third party source. We note that the Husband has suggested that the Wife may have unilaterally taken the money from him to pay off the US\$1,800,000 loan. He also argues that the Wife might have had “other deposits and/or sources of funds in light of the Wife’s history of withdrawal from parties’ joint account(s) and Husband’s sole account”.<sup>39</sup> We find this argument unpersuasive. If the Wife had indeed obtained the funds to make this payment of US\$1,000,000 from the parties’ joint accounts or the Husband’s accounts, the Husband would have had no difficulty adducing evidence to establish this. In fact, the Husband has separately highlighted that the Wife made three withdrawals of S\$1,530,000, S\$150,000 and S\$150,000 from Joint Account X between 6 April 2011 and 6 January 2012, and has argued that the Wife should account for these withdrawals in addition to the Bonds.<sup>40</sup> If the Wife had drawn the US\$1,000,000 which she transferred to Joint Account Y from the parties’ joint accounts or from the Husband’s accounts, the Husband would no doubt have highlighted this and drawn our attention to the evidence.

49 As for the remaining US\$1,500,000 in proceeds from the DBS Bonds, the Wife has submitted that she spent this sum on household and various other expenses including a donation of RMB8,000,000 to a Buddhist Institute.<sup>41</sup> Although the Wife has adduced sufficient evidence to prove that she made this donation,<sup>42</sup> we note that this was done in June 2012, almost a year *after* the DBS

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<sup>39</sup> Respondent’s case for CA 215/2017, para 31.

<sup>40</sup> Respondent’s case for CA 215/2017, para 35; Husband’s skeletal arguments, para 8; AACB Vol II, pp 112–113.

<sup>41</sup> Appellant’s case for CA 215/2017, para 30(d); AACB Vol II, p 161.

<sup>42</sup> ROA Vol III(F), p 115.

Bonds matured. Given this lapse of time, it is not possible to conclude that the Wife used the proceeds of the DBS Bonds to make this donation. We consider that the appropriate approach is to treat this US\$1,500,000 as being unaccounted for and thus to be included in the matrimonial pool. However, we shall take the donation of RMB8,000,000 into account as an item of the Wife's expenditure, which goes towards explaining generally what became of the Bonds which the Wife received (see [62] below).

50 To conclude, we find that the GE Capital Bonds and the DBS Bonds in items (a) and (b) of the table at [39] above should not have been included in the pool of matrimonial assets because they had matured or were liquidated in 2011 and the proceeds arising therefrom or part thereof have been used to purchase the Lloyds Notes and Kasikornbank Bonds. The Bonds which the Wife had to account for are set out in the following table:

<b>Bonds (in different currencies)</b>	<b>Approximate value in Singapore dollars as at 2013</b>
A\$820,000 units of Lloyds Notes	S\$1,060,727.08
A\$1,500,000 units of Lloyds Notes	S\$2,012,546.56
US\$750,000 units of Kasikornbank Bonds	S\$1,076,659.66
A\$500,000 units of BNP Paribas Bonds	S\$640,098.26
A\$500,000 units of Morgan Stanley Bonds	S\$685,573.60
<b>Total</b>	<b>S\$5,475,605.16</b>

51 In addition, US\$1,500,000 of the proceeds from the DBS Bonds remains unaccounted for (as the Wife herself has acknowledged).<sup>43</sup> In essence, this court

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<sup>43</sup> Wife's skeletal arguments, para 13.

is drawing an adverse inference that she received this sum but has failed to disclose it, and that this adverse inference should be given effect to by including this sum of US\$1,500,000 in the matrimonial pool (see *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 at [66]). In our view, it is appropriate to apply the US-Singapore dollar exchange rate as at the time of the ancillary matters hearing (ie, 2017). Applying the yearly average exchange rate for 2017 (US\$1 = S\$1.380662), US\$1,500,000 is equivalent to S\$2,070,993. This should be added to the sum of S\$5,475,605.16 shown in the table above, yielding a total of S\$7,546,598.16. In our judgment, this is the value of the Bonds (including the unaccounted proceeds from the DBS Bonds) which the Wife received.

#### *Interest earned from the Bonds*

52 In addition to the Bonds, we agree with the Husband that the Wife should also account for the interest which she would have received from those Bonds. We note that the Judge sought to take this interest into account by reducing her assessment of the Wife's expenditure from S\$5,690,043 to a lower figure of S\$4,500,000 (Oral Judgment at [33]). It is unclear how the Judge decided on this approach, which effectively assigns a value of S\$1,190,043 to the interest from the Bonds; yet if the Judge's approach was imprecise, it was, in all likelihood, partly contributed by the lack of assistance from counsel as regards the quantification of the interest. The Husband had shifted his position several times and variously claimed that the Wife would have received S\$2,300,000 in interest from 2008–2013,<sup>44</sup> S\$35,000–S\$45,000 per month,<sup>45</sup> or S\$67,380 per month.<sup>46</sup> Unhelpfully, no breakdown of supporting figures was provided. On the Wife's part, she simply took the position that the Husband had

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<sup>44</sup> AACB Vol II, p 109.

<sup>45</sup> AACB Vol II, p 111.

<sup>46</sup> AACB Vol II, p 208 (item 6).

failed to provide the necessary supporting evidence.<sup>47</sup> She offered no competing estimate or account of how much interest she had earned even though such information is within her knowledge.

53 On appeal, the Husband alleges that the Wife would have earned S\$3,000,000 in interest on the Bonds, this time with reference to a tabular breakdown provided in his written submissions.<sup>48</sup> The Wife's response, again, is that the Husband's figures are unsubstantiated because his table does not set out the time frame in which the Wife was earning interest on each of the individual Bonds.<sup>49</sup> We agree that the Husband ought to have set out such a time frame to substantiate his calculations. On the other hand, we found the Wife's response entirely unsatisfactory. It was not her position that she did not receive interest on the Bonds. She clearly did. Further, it was her position that she had sold some of the Bonds on various dates, while others had reached maturity and she then used the proceeds to purchase other Bonds. It follows that any information on the periods she held each of the Bonds and the amount of interest she earned during those periods was entirely within her control. On that basis, she ought to have produced an alternative computation of the interest that she received. It was simply not open to her to complain that the Husband's estimates were insufficiently substantiated without offering any alternative quantification.

54 In our judgment, even accepting the appropriateness in adopting a broad-brush approach for the division of matrimonial assets (see *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 at [81]), the court must nonetheless come to at least some approximate quantification of the interest that the Wife would have earned from the Bonds in order to adequately address the

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<sup>47</sup> AACB Vol II, p 208.

<sup>48</sup> Respondent's case for CA 215/2017, para 33.

<sup>49</sup> Appellant's reply for CA 215/2017, para 12; Wife's skeletal arguments, para 19(b).



unaccounted interest. The Husband did not explain how he derived some of the figures in his tabular breakdown, which makes it necessary for this court to arrive at its own estimates on the best available evidence. Our findings as to the approximate interest which the Wife would have earned on each of the Bonds are set out in the following table. Since the exact terms of the Bonds are unknown, the calculations *conservatively* assume that the Bonds yielded simple and not compound interest, that such interest was paid annually and that the Wife only received interest for every *full* year-long period that she held the Bond, and not for any part thereof.

	<b>Bond</b>	<b>Period held for</b>	<b>Interest per annum</b>	<b>Estimated interest earned</b>
1	A\$2,000,000 units of GE Capital Bonds	11 June 2008 to 29 March 2011 (date of sale by the Wife) <sup>50</sup>	Rate: 6% per annum <sup>51</sup>  A\$120,000	A\$240,000
2	US\$2,500,000 units of DBS Bonds	11 June 2008 to 16 May 2011 (date on which Bonds matured) <sup>52</sup>	Rate: 7.125% per annum <sup>53</sup>  US\$178,125	US\$356,250
3	A\$820,000 units of Lloyds Notes	1 April 2011 to 4 April 2013	Rate: 5.21% per annum <sup>55</sup>	A\$85,444

<sup>50</sup> Appellant's case for CA 215/2017, para 30(c), AACB Vol II, p 71.

<sup>51</sup> RSCB, p 76

<sup>52</sup> Appellant's case for CA 215/2017, para 34(b); AACB Vol II, p 75.

<sup>53</sup> RSCB, p 76.

<sup>54</sup> Appellant's case for CA 215/2017, para 30(d); AACB Vol II, p 192.

<sup>55</sup> AACB Vol II, p 191.

<sup>56</sup> ROA Vol III(L), p 794; AACB Vol II, pp 35 and 193.

		(date of sale by the Wife) <sup>54</sup>	A\$42,722	
4	A\$1,500,000 units of Lloyds Notes	1 April 2011 to August/October 2014 (the Wife sold A\$500,000 units worth of these Bonds in August 2014, while October 2014 is the date on which the remaining Bonds matured) <sup>56</sup>	Rate: 7.5% per annum <sup>57</sup>  A\$112,500	A\$337,500
5	US\$750,000 units of Kasikornbank Bonds	13 June 2011 to February 2013 (date on which the Wife claims to have sold these Bonds) <sup>58</sup>	Rate: 8.25% per annum <sup>59</sup>  US\$61,875	US\$61,875
6	A\$500,000 units of BNP Paribas/Australia Bonds	4 November 2011 to 24 May 2016 (on the assumption that these Bonds were held to maturity as the Wife has not suggested that they were sold)	Rate: 7% per annum <sup>60</sup>  A\$35,000	A\$140,000

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<sup>57</sup> RSCB, p 75.

<sup>58</sup> Appellant's case for CA 215/2017, para 34(e).

<sup>59</sup> RSCB, p 75.

<sup>60</sup> RSCB, p 62.

<sup>61</sup> Appellant's case for CA 215/2017, para 42.

7	A\$500,000 units of Morgan Stanley Bonds	4 November 2011 to 3 March 2016 (the Wife has stated that these Bonds were held to maturity) <sup>61</sup>	Rate: 7.625% per annum <sup>62</sup>  A\$38,125	A\$152,500
<b>Total (rounded to the nearest dollar)</b> (Exchange rate: A\$1 = S\$1.058455)  (Exchange rate: US\$1 = S\$1.380662)				A\$955,444 (S\$1,011,294)  US\$418,125 (S\$577,289)

55 Using these conservative estimates, the amount of interest unaccounted for is A\$955,444 and US\$418,125 (rounded to the nearest dollar). Applying the same reasoning at [51] above, it is appropriate to apply the yearly average exchange rates as at 2017. On this basis, the estimated quantum of the unaccounted interest in Singapore dollars would be at least S\$1,588,583.

56 To summarise our findings so far, the Wife received S\$7,546,598.16 worth of the Bonds, and at least S\$1,588,583 in interest on those Bonds. The total value of the Bonds and interest is therefore S\$9,135,182.

*How much the Wife has accounted for*

57 The Wife claims that she has accounted for the Bonds with reference to (a) her household and personal expenditures; and (b) S\$2,019,225.47 worth of bonds which she currently holds.

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<sup>62</sup> RSCB, p 63.

(1) Sums allegedly spent on household and personal expenditures

58 The Judge found that the Wife's expenditure between January 2008 and October 2017 amounted to S\$5,690,043, but having arrived at this figure, she then made a downward adjustment to S\$4,500,000 to account for the interest earned on the Bonds. Since we have accounted for the interest instead by adding the amount of interest to the value of the Bonds (see [56] above), the downward adjustment applied by the Judge is rendered unnecessary. The question, then, is whether the Judge was right to have estimated the Wife's total expenditure at S\$5,690,043. The Husband argues that the Judge's analysis contained several double counting errors:

(a) The Judge estimated the Wife's monthly expenditure to be about S\$33,979 based on the assumption that a cash payment of S\$1,529,040 which the Wife received from the Husband was reimbursement for her expenses from 2008 to 2011. She then proceeded with her calculations on the basis that this figure of S\$33,979 *did not include* any additional expense which the Wife was incurring in taking care of the Husband's mother and daughters, as well as the upkeep of the Sea Breeze Property. She therefore added an extra monthly sum of S\$7,500 to account for these expenses between 2008 and August 2012, in the period before the Wife moved out of the Sea Breeze Property.

(b) The Husband contends the approach in (a) was wrong because between 2008 to 2011, the Wife was already paying for the care of the Husband's mother and his daughters, as well as the upkeep of the Sea Breeze Property. Thus, the reimbursement of S\$1,529,040 from the Husband would have covered all these expenses as well. The Judge ought to have computed the Wife's total expenditure on the basis that the Wife would have spent S\$33,979 monthly between January 2008

and August 2012, but thereafter her monthly expenditure would have decreased by S\$7,500 to S\$26,479 per month when she stopped looking after the Husband's mother and his daughters.<sup>63</sup> On these assumptions, the Wife's expenditure was S\$4,381,522 rather than S\$5,690,043.<sup>64</sup>

59 The Husband further submits that the Judge did not consider the fact that out of this total expenditure, S\$1,829,040 would have already been paid for through the three transfers of S\$1,529,040, S\$150,000 and S\$150,000 to the Wife from Joint Account X between 6 April 2011 and 6 January 2012.<sup>65</sup> Thus, although the Wife's expenditure was S\$4,381,522, only a portion of this expenditure could have come from the value of the Bonds.

60 The Wife accepts that there was indeed a double counting error as described in [58(a)]–[58(b)] above on the Judge's part, and that S\$4,381,522 is the accurate figure based on the Judge's assumptions.<sup>66</sup> However, with regard to the sum of S\$1,829,040 which she received from April 2011 to January 2012, the Wife's position is that she spent these sums *in addition to* the Judge's estimate of S\$4,381,522.<sup>67</sup> In other words, her position is that her true expenditure from 2008 to 2017 was not only S\$4,381,522, but something in excess of S\$6.2 million. In this regard, Ms Yee stressed in her oral argument that the Wife's monthly expenses were very high because the parties were accustomed to a rather lavish lifestyle.

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<sup>63</sup> Respondent's case for CA 215/2017, para 37 (item 2).

<sup>64</sup> Respondent's case for CA 215/2017, para 38.

<sup>65</sup> Respondent's case for CA 215/2017, para 35.

<sup>66</sup> Wife's skeletal arguments, para 16.

<sup>67</sup> Wife's skeletal arguments, para 18.

61 In our judgment, the Judge took a reasoned approach in estimating the Wife's expenses on herself and the family (double counting errors aside). For the reasons which were highlighted in the Oral Judgment (at [32]), we agree that the Wife's assertions that she spent S\$55,320 per month on herself and S\$25,000 per month on the Sons were incredible and inconsistent with her own evidence. The Judge was right to have rejected these figures and to have used the transfer of S\$1,529,040 as a basis for gauging the Wife's realistic expenses instead. We would add that this approach adequately took into account the very high standard of living enjoyed by the Wife and the Sons. Even with adjustments to correct any double counting errors, the Wife is taken to have spent about S\$26,500 per month on herself and the two Sons alone, and this excludes purchases of luxury items and beauty treatments which were charged to supplementary cards paid for directly by the Husband (Oral Judgment at [32(b)]). In our view, this was a suitably generous estimate which adequately reflected the parties' lifestyle.

62 It is not in dispute between the parties that had it not been for the double counting errors, the Judge would have found the Wife's expenditure to be S\$4,381,522. We adopt this figure, subject to one further adjustment. The Wife has adduced proof that she made a one-time donation of RMB8,000,000 (about S\$1,607,200, applying the monthly average exchange rate for June 2012 of RMB1 = S\$0.2009) to a Buddhist Institute in June 2012 and, as stated earlier, this should be added to her expenditure (see [49] above). Thus, her total expenditure for 2008 to 2017 was S\$5,988,722.

63 However, that is not the end of the matter. We agree with the Husband that S\$1,829,040 in cash which the Wife received between April 2011 and January 2012 (see [59] above) would have covered some of her expenses, and this sum should be offset against the Wife's total expenditure. S\$1,829,040

should thus be deducted from S\$5,988,722, yielding a figure of S\$4,159,682 as the value of Bonds and interest income which the Wife is able to account for by reference to her expenditure.

(2) The bonds which the Wife currently holds

64 The Wife submits that out of the total value of the Bonds, she has “already accounted for S\$2,019,225.47 which was declared as part of her assets”.<sup>68</sup> She essentially claims that when the Lloyds Notes and the Morgan Stanley Bonds (items (c), (d) and (g) of the table at [39] above) were sold or reached maturity, she utilised the proceeds to purchase other bonds. Of these bonds, some remain in the Wife’s current UBS Investment Account, and some were sold in order to purchase yet other bonds which, in turn, are reflected in the Wife’s current UBS Investment Account.<sup>69</sup> Since the Lloyds Notes and the Morgan Stanley Bonds were worth S\$2,698,120.16 as at the date of interim judgment, the Wife says that this amount should have been deducted from the value of the Bonds and interest which she was required to account for.<sup>70</sup>

65 Distilled to its essence, this was an argument that the Wife had accounted for A\$1,500,000 worth of the Lloyds Notes, as well as the Morgan Stanley Bonds because she had spent the proceeds on purchasing other bond investments. We accept this submission. Upon a close examination of the evidence, the Wife’s account statements from late 2014 to 2016 suggest that she had a practice of liquidating or redeeming her existing bonds, and then re-investing the proceeds by purchasing other bonds shortly thereafter. For example:

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<sup>68</sup> Appellant’s case for CA 215/2017, para 43(b).

<sup>69</sup> Appellant’s case for CA 215/2017, para 42.

<sup>70</sup> Appellant’s case for CA 215/2017, para 45.

(a) A\$1,000,000 worth of the Wife's Lloyds Notes matured on 1 October 2014,<sup>71</sup> and shortly thereafter, A\$1,000,000 worth of UBS Australia Call Notes were reflected in her UBS Investment Account statement as of 31 December 2014.<sup>72</sup> Though it is not clear when exactly she purchased the UBS Australia Call Notes, it is clear that the purchase occurred sometime between June 2014 and December 2014, since they were not reflected in the statements for this account as of 31 May 2014.<sup>73</sup> The proximity in time between the maturity of the Lloyds Notes and the purchase of the UBS Australia Call Notes supports the Wife's submission that she used the proceeds from the Lloyds Notes to purchase the UBS Australia Call Notes.

(b) The Wife sold A\$500,000 worth of Lloyds Notes on 15 August 2014, and received A\$513,365 in proceeds.<sup>74</sup> Shortly thereafter, on 26 August 2014, she purchased A\$29,761.905 worth of ACMBernstein Bonds for A\$505,000.<sup>75</sup> Again, the proximity in time between these two transactions, and the similarity of the sums involved, supports the Wife's position that she used the proceeds from the sale of the Lloyds Notes to purchase the ACMBernstein Bonds. As stated in the JSRI, it is not in dispute that when the ACMBernstein Bonds matured, the Wife received S\$465,946.76 and these in turn were used to purchase S\$423,120.78 worth of UniCredit Bonds which are presently in her portfolio.<sup>76</sup>

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<sup>71</sup> AACB Vol II, p 193.

<sup>72</sup> ROP Vol III(L), p 889.

<sup>73</sup> ROA Vol III(L), p 791.

<sup>74</sup> ROA Vol III(L), p 200.

<sup>75</sup> AACB Vol II, p 194.

<sup>76</sup> AACB Vol II, pp 213–214 (items 6 and 7).



(c) Shortly after A\$500,000 worth of Morgan Stanley Bonds in the Wife's UBS Investment Account matured on 3 March 2016,<sup>77</sup> A\$500,000 worth of National Australia Bank Bonds were reflected in the Wife's UBS Investment Account Statement as of 30 April 2016.<sup>78</sup>

66 We recognize that there are gaps in the evidence. For example, the Wife claims that she sold the UBS Australia Call Notes mentioned in [65(a)] above and used the proceeds to then purchase the ANZ Banking Group Bonds and the Westpac Banking Bonds which are currently in her portfolio,<sup>79</sup> but there is no evidence concerning when the UBS Australia Call Notes were sold, and when exactly the ANZ Banking Group Bonds and Westpac Banking Bonds were purchased.

67 Notwithstanding these gaps in the evidence, we are satisfied that the Wife did purchase the bonds currently in her UBS Investment Account using the proceeds from the Bonds which she received during the course of the marriage. Crucially, it should be noted that the Wife is a homemaker and it has not been suggested that she has any source of income (see [43] above). That being the case, it is reasonable to infer that she must have acquired the money to purchase her more recent bond investments by re-investing the proceeds which she obtained from liquidating or redeeming the Bonds which she formerly held. We therefore agree that the Wife has satisfactorily accounted for the Lloyds Notes and the Morgan Stanley Bonds.

68 To summarise our findings so far, the total value of the Bonds and interest which the Wife received is S\$9,135,182. Of this sum:

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<sup>77</sup> ROA Vol III(L), p 197.

<sup>78</sup> ROA Vol III(B), p 57.

<sup>79</sup> Appellant's case for CA 215/2017, para 42[\*].

(a) The amount which the Wife has accounted for with reference to her expenditure (excluding that already covered by cash of S\$1,829,040), is S\$4,159,682.

(b) The amount which the Wife has accounted for as the Bonds which she “converted” into her current portfolio of bond investments is S\$2,698,120.16.

69 Accordingly, the remaining amount unaccounted for by the Wife is S\$2,277,379.84.

#### *Adverse inferences against the Husband*

70 The Wife submits that several adverse inferences should be drawn against the Husband for his failure to account for S\$38,874,429.95 worth of matrimonial assets.<sup>80</sup> We note, however, that the Judge did not make any findings on this point. This may well have been caused by the parties’ omission to set out their arguments on adverse inferences in tabular form notwithstanding the Judge’s specific instructions on 4 September 2017 for the same to be done.<sup>81</sup> The Wife had previously set out her arguments on the Husband’s alleged dissipation of assets in a table contained in her earlier set of submissions filed on 1 January 2017,<sup>82</sup> but her former counsel unfortunately did not bring this to the court’s attention. In this regard, we would re-iterate the points made at [3] above concerning the need for counsel to assist the court by keeping the judge updated of their clients’ positions through the course of protracted and convoluted matrimonial litigation.

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<sup>80</sup> Appellant’s case for CA 215/2017, para 53.

<sup>81</sup> ROA Vol IV(B), pp 158–176.

<sup>82</sup> AACB Vol II, pp 198–201.

71 The Wife claims that the Husband has failed to account for the following:

- (a) withdrawals from the parties' joint bank and/or investment accounts;
- (b) proceeds from the sale of shares and rights;
- (c) unexplained liabilities incurred between the date of interim judgment and the ancillary matters hearing; and
- (d) proceeds from the sale of matrimonial properties.

*Withdrawals from the parties' joint accounts*

72 In the appellant's case for CA 215/2017, the Wife initially alleged that there were a total of 16 withdrawals from the parties' joint accounts in respect of which adverse inferences should have been drawn against the Husband. She has since accepted that two of these had been satisfactorily accounted for,<sup>83</sup> and we therefore say no more on them.

73 Before we analyse the remaining alleged dissipations from the parties' joint accounts, it should be noted that the Husband made an application in SUM 74/2018 to adduce further evidence in connection with certain alleged withdrawals from Joint Account Y. The further evidence sought to be adduced took the form of bank statements for two other joint accounts of the parties. These statements would allegedly show that the monies said to have been dissipated from Joint Account Y were instead transferred into these two other joint accounts, and used to pay off short term loans in connection with foreign exchange trading.

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<sup>83</sup> Appellant's case for CA 215/2017, paras 59–60; Wife's skeletal arguments, para 22.

74 We dismissed the application because we found that the Husband had not satisfied the requirements for adducing further evidence, as set out in *Ladd v Marshall* [1954] 1 WLR 1489 (see the decision of this court in *Mykytowych, Pamela Jane v V I P Hotel* [2016] 4 SLR 829 at [47]). Crucially, the bank statements which the Husband sought to adduce did not constitute evidence which could not have been obtained with reasonable diligence for use in the proceedings below. In fact, when the Wife requested discovery of these very bank statements, the Husband refused to furnish them on the ground that these were joint accounts and that the Wife could obtain the statements herself. In the light of these facts, we saw no reason why the Husband should be allowed to introduce these bank statements into evidence belatedly. This evidence, thus, did not feature in our analysis. As we shall explain below at [79], however, this is of no consequence because we see no reason to draw an adverse inference against the Husband in respect of these withdrawals from Joint Account Y in the first place.

75 Turning to our analysis proper, the law on adverse inferences is well-established. The court should not draw an adverse inference unless (a) there is a substratum of evidence which establishes a *prima facie* case against the person against whom the inference is to be drawn; and (b) that person has some particular access to the information he is said to be concealing or withholding (*Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 at [28]). As for the first of these requirements, there must be some evidence which suggests on its face that the party in question has deliberately sought to conceal or deplete some assets which would otherwise be available for division.

76 Not every unexplained withdrawal or decrease in value in a bank account over time will be sufficient to raise a *prima facie* case of dissipation. In this regard, we agree with the observation of Lee Kim Shin JC in *Tan Yen Chuan*

(*m.w.*) v *Lim Theam Siew* [2014] SGHC 110 (“*Tan Yen Chuan*”) at [33] that withdrawals of money which may legitimately be explained as personal expenditures should generally be disregarded. To this, we would add that in the appropriate case, withdrawals which might be legitimately explained as genuine expenditures on business or investments ought similarly to be disregarded. In *Tan Yen Chuan*, the court considered it appropriate to disregard the movement of sums falling “anywhere between several hundreds of dollars to a couple of thousands” (at [33]), but there is no hard and fast rule as to the quantitative threshold at which the court will find that a withdrawal of money does or does not call for an explanation. Rather, this is necessarily a fact-sensitive matter and the court will consider the evidence in the context of the parties’ habits, lifestyles, business activities, and amount of the withdrawal(s) in relation to the total value of the matrimonial assets in question.

77 In this case, three factors had a bearing on our analysis. First, it is common ground that the parties led lavish lifestyles. The Wife has herself stated on affidavit that during the marriage she purchased over 70 luxury handbags costing up to S\$20,000 per piece, over 20 luxury watches costing between S\$40,000 to S\$130,000 per piece, as well as clothing, shoes and jewellery from high-end luxury brands. These items were paid for using supplementary credit cards provided and paid for by the Husband.<sup>84</sup> The Husband, too, would have had personal expenses of his own. Secondly, the parties were savvy investors who regularly took out loans and moved sums of money between numerous bank accounts in order to finance the purchase of bonds and other investments. Thirdly, the Husband was a businessman who would have had to meet the costs and expenses of his business activities.

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<sup>84</sup> ROA Vol III(E), p 13.

78 Seen in this context, the mere fact that the Husband has not explained exactly why and for what purpose he withdrew sums between S\$4,096 to €230,000 (approximately equivalent to S\$492,361) does not, in our judgment, call for an adverse inference to be drawn against him. Ten such withdrawals took place between July 2008 and November 2011:<sup>85</sup>

	<b>Date</b>	<b>Account</b>	<b>Amount withdrawn</b>
1	22 July 2008	Joint Account Y	€150,000 (approximately S\$323,100)
2	25 July 2008	Joint Account Y	€230,000 (approximately S\$492,361)
3	6 October 2008	Joint Account Y	US\$50,000 (approximately S\$73,470)
4	11 November 2008	Joint Account Y	S\$20,440.53
5	4 December 2008	Joint Account Y	US\$50,003.67 (approximately S\$76,220.59)
6	6 January 2009	Joint Account Y	€30,000 (approximately S\$59,157)
7	14 February 2009	Joint Account Y	S\$150,000
8	22 July 2010	Joint Account X	HK\$23,200 (approximately S\$4,094.80)
9	18 October 2011	Joint Account Y	S\$60,623
10	30 November 2011	Joint Account X	US\$236,000 (approximately S\$302,599.20)
<b>Total</b>			<b>S\$1,562,066</b>

<sup>85</sup> See Appellant's case for CA 215/2017, paras 57 and 58.

79 In our view, the frequency of these withdrawals and the amounts that were withdrawn do not support an inference that the Husband had any intention to dissipate the parties' assets with respect to those withdrawals. If the Husband had intended to siphon off funds, he could simply have made a one-time withdrawal of a lump sum, or a few large withdrawals from the joint accounts. Instead, there were ten withdrawals of varying amounts over a period of three years. Many of the amounts withdrawn were not round figures but very specific sums of money (down to the cent) which suggests that the Husband was likely withdrawing these sums to pay for particular expenditures or to pay off specific loans. On the whole, the timing and amounts of these withdrawals do not support the inference of an orchestrated design to remove funds from the parties' joint accounts. It also bears mention that the above ten withdrawals add up to a total of S\$1,562,066 withdrawn between July 2008 and November 2011, and this, incidentally, is only slightly more than the S\$1,529,040 which the Wife claims she received in October 2011 as reimbursement for personal and household expenses from 2008 to 2011 (see [11] above).

80 Having disposed of these ten smaller withdrawals, we turn to address four substantial withdrawals (or alleged withdrawals) which the Wife claims the Husband has not satisfactorily accounted for.

81 First, the Wife complains of a so-called "withdrawal" of S\$2,963,745.19 from Joint Account X between 31 July 2008 and 28 February 2013.<sup>86</sup> In our view, however, it was misleading for the Wife to characterise this as a *withdrawal* when in truth her only point was that, on a comparison of the account balance over these two dates, the account balance had dropped by S\$2,963,745.19.<sup>87</sup> We fail to see how this could provide the necessary

<sup>86</sup> Appellant's case for CA 215/2017, para 57 (item 4).

<sup>87</sup> AACB Vol II, p 155.

substratum of evidence to disclose a *prima facie* case of dissipation against the Husband. The fact that the account balance had dropped by close to S\$3 million over a period of four years and eight months did not, in and of itself, suggest that the Husband had siphoned off any money from the account. The parties may well have drawn down on this account to pay for their personal and other expenses. Again, it must be borne in mind that the parties led a rather expensive lifestyle and frequently incurred large expenditures.

82 As a matter of fact, the Wife herself received S\$1,529,040.42 in her own UBS Investment Account from Joint Account X on 31 October 2011 (see [11] above),<sup>88</sup> and this transfer alone would account for almost half of the total decrease in the account balance. We would add, by way of an aside, that most of the withdrawals from Joint Account X discussed in [78] above took place within this very time period, and they would have contributed to the decrease in the account balance between these two dates. Seen in that light, it was disingenuous of the Wife to argue that an adverse inference should be drawn in respect of *both* those individual withdrawals *and* the overall drop in the account balance between January 2008 and February 2013. That approach, had we accepted it, would clearly amount to double counting.

83 The second large “withdrawal” complained of was the alleged removal of S\$6,276,998.91 between 31 May 2008 and 31 July 2008 from Joint Account X. Once again, this was not actually *a* single monolithic withdrawal. Rather, the Wife’s basis for alleging there was such a withdrawal is a decrease of US\$13,133,363 (approximately S\$17,963,813.91) in the account over these two dates. Of this decrease, the Wife accepts that the Husband has accounted for HK\$67,050,000 (approximately S\$11,686,815) as an investment

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<sup>88</sup> AACB, Vol II, p 114 (para 21, item 7).



expenditure, which leaves S\$6,276,998.91 unaccounted for.<sup>89</sup> In contrast to the drop in the account balance of S\$2,963,745.19 over almost five years (see [81]–[82] above), this was a movement of a much larger amount over a much shorter period of about two months. Ordinarily, we would agree that such a large drop in the balance of an account over a short span of time would call for an explanation.

84 The Husband’s explanation is simple. He says that this drop in value coincided with the purchase and transfer of A\$2,000,000 units of GE Capital Bonds and US\$2,500,000 units of DBS Bonds to the Wife between 31 May 2008 and 31 July 2008.<sup>90</sup> In our view, this explanation accords with the evidence. The value of the assets held in Joint Account X as at 31 May 2008 included the GE Capital Bonds (which, according to the account statement, had a market value of US\$1,516,684) and the DBS Bonds (which had a market value of US\$2,675,000).<sup>91</sup> Applying the prevailing exchange rates at the time (US\$1 = S\$1.3677), this would have been equivalent to about S\$5.7 million. The transfer of the GE Capital Bonds and the DBS Bonds to the Wife, which took place on 11 June 2008, thus accounts for a large portion of the drop in the account balance.<sup>92</sup> We accept this explanation and decline to draw an adverse inference in respect of the decrease of S\$6,276,998.91 in balance in Joint Account X between 31 May 2008 and 31 July 2008.

85 We also decline to draw an adverse inference in respect of a so-called “withdrawal” of S\$600,082.59 from Joint Account X between August 2006 to May 2008.<sup>93</sup> We re-iterate that an adverse inference will only be drawn if the

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<sup>89</sup> Appellant’s case for CA 215/2017, para 57 (item 2).

<sup>90</sup> Respondent’s case for CA 215/2017, para 43.

<sup>91</sup> RSCB, p 76.

<sup>92</sup> RSCB, p 55.

person against whom it is sought has some *particular access* to the information he is said to be concealing. Here, the information which the Husband might possibly be “hiding” is information (such as the full account statements) which would show in greater detail the transactions and withdrawals from Joint Account X and how the decrease in the account balance came about. Yet this is a *joint* account and the Wife has full access to its statements (see *UAP v UAQ* [2018] 3 SLR 319 at [41]). In this light, the Wife cannot simply point to a fall in the account balance over a period of almost two years and claim that it calls for an explanation from the Husband. Further, in our view, given the parties’ lifestyles, investment activity and habits, a decrease of S\$600,082.59 in account balance over a period of 15 months may well be legitimately explained as part of the parties’ ordinary expenditure. Thus, there is no substratum of evidence which discloses any *prima facie* case against the Husband with regard to this sum.

86 Finally, the Wife submits that an adverse inference should be drawn against the Husband in respect of a withdrawal from a Merrill Lynch Account in the amount of approximately A\$1,208,343 on 25 August 2011.<sup>94</sup> There is clear evidence that there was a transfer of this amount from the parties’ joint Merrill Lynch Account into the Husband’s sole account with NAB ING Asia Private Bank,<sup>95</sup> and we agree with the Wife that this does call for an explanation. In contrast to the other alleged dissipations by the Husband, any information in relation to this transfer of such a large sum of money to himself on 25 August 2011 *is* within his particular access. As the Husband has not offered any explanation for the withdrawal, we agree that an adverse inference should

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<sup>93</sup> Appellant’s case for CA 215/2017, para 57 (item 1).

<sup>94</sup> Appellant’s case for CA 215/2017, para 59.

<sup>95</sup> AACB Vol II, p 163.

be drawn against him. For the reason discussed at [51] above, it is appropriate to apply the 2017 exchange rate (A\$1 = S\$1.058455). Accordingly, a value of S\$1,278,976.69 should be added back to the pool.

87 To conclude on this point, of the fourteen “withdrawals” which the Wife claims the Husband has not satisfactorily accounted for, we find that an adverse inference should only be drawn against the Husband with regard to the transfer of A\$1,208,343 (approximately S\$1,278,976.69) from the parties’ joint Merrill Lynch Account into his sole account.

*Proceeds from the sale of shares and rights*

88 The Wife submits that the Husband has failed to account for the proceeds of five sales of shares and rights and that an adverse inference should be drawn against the Husband in respect of these transactions. Two of these transactions were sales of shares or rights belonging to the Wife which the Husband executed on her behalf. The three other transactions were sales of the Husband’s own shares.

(1) Sales on the Wife’s behalf

89 The two transactions in question are a sale of RMB13,000,000 worth of shares in a company called High Peace International (“HPI”) to one [HZJ] and a sale of the Wife’s creditor’s rights over a company called Hebei Gaohe to one [LHZ] for RMB18,390,000.

90 As regards the sale of the Wife’s shares in HPI to HZJ, the Wife claims that the Husband effected the sale on her behalf pursuant to a power of attorney which she had granted to him at his behest,<sup>96</sup> and subsequently collected the

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<sup>96</sup> Appellant’s case for CA 215/2017, para 63.

proceeds on her behalf without her agreement.<sup>97</sup> The Husband denies having received the Wife's sale proceeds.<sup>98</sup>

91 It is not in dispute that the Wife's shares in HPI *were* sold to one HZJ.<sup>99</sup> In the Wife's third affidavit of assets and means, she asserted that the Husband had effected this sale under a power of attorney, but the supporting documents which she relied on related only to the sale of the Wife's creditor's rights to LHZ, and not to the sale of the HPI shares to HZJ.<sup>100</sup> Given the lack of information as to how the sale was effected, we do not think that there is a sufficient substratum of evidence to raise a *prima facie* case against the Husband. We therefore decline to draw any adverse inference in relation to this sale.

92 In contrast, we find that there is a sufficient substratum of evidence to disclose a *prima facie* case against the Husband with regard to the sale of the Wife's creditor's rights over a company called Hebei Gaohe to LHZ. There were, in evidence, several supplemental agreements and a document titled "Notes on Payment" in relation to this transfer of the Wife's creditor's rights. Those documents list the Husband as the "authorized party" or "authorized representative" for the Wife.<sup>101</sup> They were also signed by the Husband. Crucially, two of the documents state that the Wife had received a deposit of RMB4,000,000 which LHZ had procured a third party to pay.<sup>102</sup> In light of this evidence we do not think that the Husband could simply deny ever having

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<sup>97</sup> AACB Vol II, p 59, para 33.

<sup>98</sup> Respondent's case for CA 215/2017, para 63.

<sup>99</sup> ROA Vol III(B), p 240.

<sup>100</sup> ROA Vol III(B), pp 149–156.

<sup>101</sup> ROA Vol III(B), pp 151 and 154.

<sup>102</sup> ROA Vol III(B), pp 153–154.

received the sale proceeds on the Wife's behalf. It is clear that this transaction was effected entirely through him as the Wife's representative and that if there is any information concerning the whereabouts of the proceeds, he would have particular access to it. We therefore agree that an adverse inference should be drawn against the Husband in respect of this transaction. Applying 2017 exchange rates (RMB1 = S\$0.2043; see [51] above), RMB 18,390,000 is equivalent to S\$3,757,077.

93 For completeness, we note the Husband has argued that the Wife had pursued an action in the Chinese courts to enforce her creditor's rights and was "simply trying to place the burden of recovering the said debt on the Husband".<sup>103</sup> We are unable to make sense of this argument. The Chinese proceedings in which the Wife had apparently sought to enforce her creditor's rights appear to have been commenced in respect of a debt which fell due on 1 May 2011, *before* the transfer of those creditor's rights to LHZ which was apparently effected on 21 May 2011.<sup>104</sup> It is therefore unclear to us what precise point the Husband was attempting to make, or how it could provide a satisfactory answer to the Wife's claim in respect of the proceeds from the sale of her creditor's rights.

(2) Sales of the Husband's own shares

94 We turn, then, to the three sales of the Husband's own shares which the Wife says he has not satisfactorily accounted for. We can deal with one of these transactions quickly – a sale of HPI shares to one [WF] for RMB5,000,000. The document which the Wife cites in support of her argument is an untranslated document in Mandarin. The court is not in position to translate this document or

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<sup>103</sup> Respondent's case for CA 215/2017, para 63.

<sup>104</sup> RSCB pp 67–68 and ROA Vol III(B), pp 151 (para 1) and 154.

to speculate its contents. In the circumstances, we decline to draw any adverse inference against the Husband in respect of this alleged sale.

95 We next address the sale of the Husband's shares in HPI to one [LY] for the sum of HK\$8,004,000 on or about 17 January 2011, and the sale of the Husband's shares in HPI to LHZ on or about 25 July 2011 for RMB42,200,000. The first of these transactions is evidenced by a Sold Note and Bought Note,<sup>105</sup> while the second transaction is evidenced by contractual documents.<sup>106</sup> It is not in dispute that the Husband received the proceeds from these transactions.

96 The Husband claims that no adverse inference should be drawn against him because he has ploughed these sums back into his businesses,<sup>107</sup> or spent them on the various items such as bonds, arbitration fees and legal costs, a condominium in Hebei province in China, account receivables which he purchased from a trade debtor, and as an investment of S\$2,500,000 in Xinjiang Qiangte of which he is a 71% shareholder.<sup>108</sup> Of these expenses, we find that the Husband's expenditure of RMB700,000 on Chinese government bonds is supported by documentary evidence,<sup>109</sup> and it is not in dispute that the Husband spent RMB1,500,000 (approximately S\$333,000) on a condominium in Hebei (see Oral Judgment at [8]).

97 The other expenses are unsupported by any documentary evidence whatsoever. Although the Husband had asserted on affidavit that he would adduce evidence in the proceedings below to explain how he had spent the

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<sup>105</sup> ROA Vol III(B), p 157

<sup>106</sup> ROA Vol III(B), p 149.

<sup>107</sup> Respondent's case for CA 215/2017, para 62.

<sup>108</sup> Respondent's case for CA 215/2017, para 64.

<sup>109</sup> ROA Vol III(D), pp 231–236; RSCB p 51.

proceeds of the sale of his HPI shares,<sup>110</sup> it appears that this was not done. Nevertheless, we bear in mind that earlier in this judgment, when dealing with the Wife's accounting for the Bonds, we were prepared to find that the Wife would have spent about S\$4,381,522 from 2008 to 2017 on herself, the Sons, and the Husband's mother and daughters from a previous marriage. This was despite the absence of clear documentary evidence. Similarly, here, although the Husband did not have to pay for household and family expenses unlike the Wife, he would have other expenses to cover. For example, it is not in dispute that he *was* involved in litigation, which meant that he would have had some legal fees and costs to cover. We also note that the Judge did not appear to have difficulty with his claim that he had invested a total of about US\$3,000,000 in Xinjiang Qiangte (Oral Judgment at [9]), S\$2,500,000 of which he asserted was drawn from the proceeds of the sale of his HPI shares to LHZ.

98 Taking the circumstances in the round, and adopting a broad-brush approach, we think it is fair to proceed on the basis that the Husband would likely have spent about S\$3,000,000 of the sale proceeds of his HPI shares on his personal expenditure, his investments in Xinjiang Qiangte, and other expenses such as his legal costs and arbitration fees. This is in addition to and separate from other sums of money which we have made allowances for in the Husband's favour so far, such as the withdrawals totalling S\$1,562,066 between July 2008 and October 2011 (see [79] above).

99 Thus, of the sale proceeds of HK\$8,004,000 and RMB42,200,000, we find that the Husband has accounted for the following sums:

- (a) RMB7,000,000 spent on Chinese government bonds;<sup>111</sup>

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<sup>110</sup> RSCB, p 52.

<sup>111</sup> ROA Vol III(D), pp 231–236; RSCB, p 51.

- (b) RMB1,500,000 spent on the purchase of a condominium in Hebei; and
- (c) S\$3,000,000 for various other personal and business expenses including his investments in Xinjiang Qiangte.

100 The remaining amount unaccounted for in proceeds from the sales of the Husband's shares is therefore S\$5,303,109.66, according to calculations set out in the following table:

Sales of Husband's shares	Amounts received by Husband
Sale of HPI shares to LY	HK\$8,004,000
Sale of HPI shares to LHZ	RMB42,200,000
Less: Purchase of Chinese government bonds	(RMB7,000,000)
Less: Purchase of Hebei condominium	(RMB1,500,000)
<b>Total</b> (applying 2017 exchange rates – see [51] above)	HK\$8,004,000 (HK\$1 = S\$0.177186) + RMB 33,700,000 (RMB1 = S\$0.2043) = S\$8,303,106.74
Court's estimate of Husband's personal expenses, investments in Xinjiang Qiangte and other expenses	(S\$3,000,000)
<b>Grand total</b> <b>(amount unaccounted for from</b>	<b>S\$5,303,106.74</b>



<b>proceeds of Husband's shares)</b>	
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*Unexplained liabilities incurred*

101 Although this point was not raised in the proceedings below, the Wife seeks to introduce a new submission on appeal that an adverse inference should also be drawn against the Husband for some S\$2,718,380.42 worth of time loans which were taken out against the Sea Breeze Property after the date of the Interim Judgment.<sup>112</sup> The adverse inference she urges the court to draw is that the Husband incurred these loans for his personal benefit and not for the benefit of the family, and thereby wrongly depleted the matrimonial assets. She argues that the Judge ought not to have regarded these as joint liabilities, and that insofar as they were deducted from the pool of matrimonial assets, they should be added back to it.<sup>113</sup>

102 The Husband's response is that the Wife has not even adduced any evidence to establish that these loans were taken out by him, and further argues that these would likely be a rollover of earlier time loans taken out on the same account.<sup>114</sup>

103 We agree with the Husband that there is insufficient evidence to disclose a *prima facie* case of dissipation. In our view, the Judge did not err in treating these loans as joint liabilities, there being no evidence that they were taken out by him, let alone for his sole benefit.

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<sup>112</sup> Appellant's case for CA 215/2017, para 65.

<sup>113</sup> Appellant's case for CA 215/2017, para 66.

<sup>114</sup> Respondent's case for CA 215/2017, para 68.

*Proceeds from the sale of matrimonial assets*

104 Finally, the Wife submits that an adverse inference should be drawn against the Husband for failing to account for S\$2,793,402.10 in proceeds from the sale of two matrimonial properties at Harvey Crescent (“the Harvey Crescent Properties”), which were sold in March and May 2007. She argues that the Husband has provided no evidence to support his claim that he used the sale proceeds for the purchase of another property (“the Bayshore Property”) and to finance the purchase of the Sea Breeze Property. The Wife stresses that the Bayshore Property and Sea Breeze Property were purchased in 2000 and 2002, and thus it “cannot be” that the proceeds from the sales of the Harvey Crescent Properties in 2007 were used to purchase them.<sup>115</sup>

105 In response, the Husband emphasises that he had instead used the proceeds of the sale of the Harvey Crescent properties to pay off the *mortgage* on the Sea Breeze Property and the Bayshore Property. Thus, the fact that he sold the Harvey Crescent Properties some time after he purchased the Sea Breeze and the Bayshore Properties does not create any logical problems with his explanation. He further emphasises that he sold the Harvey Crescent Properties in 2007, prior to the breakdown of the marriage.<sup>116</sup>

106 In *TNL v TNK*, this court declined to draw an adverse inference against a wife in respect of proceeds from the surrender of two insurance policies, for which the wife had allegedly failed to provide a satisfactory explanation. In coming to this decision, the court accepted the wife’s argument that she had surrendered the insurance policies three to six years before the commencement of the divorce proceedings, and thus found that the proceeds were “likely to

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<sup>115</sup> Appellant’s case for CA 215/2017, para 68; Wife’s skeletal arguments, para 29.

<sup>116</sup> Respondent’s case for CA 215/2017, para 71.

have been amalgamated with other funds and dealt with accordingly in the ordinary course of the family's life" (at [19]). There was no evidence that divorce proceedings were contemplated at those dates, and there would have been no reason for the wife to dissipate the funds.

107 Similarly, the Harvey Crescent Properties were sold five years before the commencement of divorce proceedings. There is nothing to suggest that the parties had contemplated a breakdown of their relationship at the time. Whether or not any clear link can be shown between the sale proceeds of the Harvey Crescent properties and the purchase of the Sea Breeze and the Bayshore Properties, it is likely that the proceeds were "amalgamated with other funds and dealt with... in the ordinary course of the family's life". There being no substratum of evidence which discloses any *prima facie* case against the Husband, we do not draw any adverse inference against him with regard to these sale proceeds.

108 To conclude on this topic of adverse inferences, we find that the Husband has failed to satisfactorily account for the following:

- (a) The transfer of A\$1,208,343 (approximately S\$1,278,976.69) from the parties' joint Merrill Lynch Account into his sole account (see [86] above);
- (b) The proceeds of the sale of the Wife's creditor's rights over Hebei Gaozhen to LHZ for RMB18,390,000 (amounting to S\$3,757,077) (see [92] above); and
- (c) S\$5,303,106.74 in proceeds from the sale of the HPI shares (see [100] above).

109 Thus, a total of S\$10,339,160.43 should be added back to the matrimonial pool and attributed to the Husband.

***Ratio of division***

110 We have dealt with the issues pertaining to the identity and value of the assets in the matrimonial pool, and turn now to the appropriate ratio for division. This being a single-income marriage, the structured approach laid down in *ANJ v ANK* did not apply. The Judge instead considered the precedents and found that “in a marriage with *similar* factual matrix”, the trend was towards equal division (Oral Judgment at [43]). She thus applied an equal division of the matrimonial assets.

111 We disagree with this aspect of the Judge’s reasoning. In *TNL v TNK*, this court observed that the trend in *long* single-income marriages had tended towards an equal division of matrimonial assets, but *different considerations* may attach to short single-income marriages (at [48]). To give some context to the terms “long” and “short”, *TNL v TNK* itself involved a marriage of some 35-years. The cases which the court referred to as relevant precedents involved marriages of between 26 to 30 years.

112 The marriage in the present case lasted about 11 and a half years, much shorter than the examples which the court discussed in *TNL v TNK*. Different considerations apply to such mid-length marriages. As we stated in *ANJ v ANK* at [27] (albeit in the context of discussing the structured approach), as a general rule, the longer the marriage, the more weight is given to the parties’ indirect contributions. Conversely, the shorter the marriage, the less weight will be ascribed to indirect contributions.

113 We find that the precedents are generally consistent with this principle. Thus, in *ATT v ATS* [2012] 2 SLR 859 at [18], we observed that the trend in “moderately lengthy marriages” was towards awarding the homemaker wife about 35% to 40% of the matrimonial assets. It would appear from the examples discussed that what was meant by “moderately lengthy” was a period in the range of around 15–18 years. For marriages of shorter duration (around 10–15 years), the trend appears to be towards awarding the non-income earning party about 25% to 35% of the matrimonial pool. Thus in *UGG v UGH (m.w.)* [2017] SGHCF 25, which involved a marriage of 12 and a half years, a Wife who had made minimal direct financial contributions was awarded 31.35% of the pool of matrimonial assets. In *ABX v ABY and others* [2014] 2 SLR 969, which involved a marriage of nine years, the homemaker wife was awarded 25% of the pool of the matrimonial assets.

114 In the present case, the marriage was on the shorter end of this 10 to 15-year range. On the other hand, however, the Wife was not a typical homemaker in a single income family. Rather, she became *solely* responsible for caring for the family, and particularly the Sons, after the Husband left for China in 2008. We also take into account the fact that she had the assistance of domestic helpers, but even allowing for this, her indirect contributions should be given considerable weight. She had cared not only for the Sons, but also for the Husband’s aged parents and daughters from a previous marriage while he was overseas. In the circumstances, we find that the appropriate apportionment is for the Husband to receive 65% of the assets, while the Wife receives 35%.

### ***Conclusion on division of matrimonial assets***

115 In the light of our findings above, the net value of the pool of matrimonial assets is set out in the following table:

	<b>Asset (Liability)</b>	<b>Value (\$, rounding off to the nearest dollar)</b>
Joint Names	Sea Breeze Property	7,219,865
	Telok Kurau Property	1,570,318
	Merrill Lynch WM Account	0
	UBS Investment Account	(23,933) <sup>117</sup>
	OCBC Easisave Account	807
	UBS Trading Account	0
	UBS Time Loan	(521,207)
	<b>Sub-total of assets in the parties' joint names</b>	8,245,850
Wife's Name	Vehicle SJU[XXXX]	90,000
	NTUC Income Policy	38,485
	CDP Securities Account	28,550
	UOB Current Account	36,895
	UBS Investment Account	2,019,225
	CPF Account	5,973
	Bank of China Account	0
	UBS Time Loan	(1,005,934)
	<b>Sub-total of assets in the Wife's name</b>	1,213,194
	Unaccounted value of	2,277,380

<sup>117</sup> See Appellant's case for CA 215/2017, paras 12, 13 and 15.

	Bonds, interest and cash withdrawals (see [69] above)	
	<b>Sub-total of assets in the Wife's name including unaccounted sums</b>	3,490,574
Husband's Name	Bank of Singapore Accounts	66,139
	UOB Current Account	1,608
	UOB Savings Account	166
	UOB Global Currency Account	2,710
	CDP Securities Account	98,775
	UOB Bullion and Futures Account	30,699
	OCBC Account	6,491
	ICBC Account	9,176
	Bank of China Multi Currency Account	1,084
	Hebei Condominium	333,000
	Xinjiang Qiangte	1,379,507
	CPF Account	121,237
	USD Fixed Income Account	0
	China Construction Bank Account	1,040,427
	Shijiazhuang Qiangte	0

	OCBC Safe Deposit Box	0
	Bank of China Account	1,011,598
	<b>Sub-total of assets in the Husband's name</b>	4,102,617
	Assets unaccounted for (see [109] above)	10,339,160
	<b>Sub-total of assets in Husband's name including unaccounted sums</b>	14,441,777
<b><u>Grand Total of assets in the matrimonial pool</u></b>		26,178,201

116 Out of the total value of the pool of matrimonial assets at S\$26,178,201, the Wife is entitled to 35%, that is, S\$9,162,370. Thus, she ought to receive S\$5,671,797 worth of assets from the Husband, in addition to retaining her current assets of S\$3,490,574.

### **Maintenance**

117 We turn then to the issues of maintenance for the Wife and the Sons.

#### ***For the Wife***

118 It is well-established that the court's power to order maintenance is supplementary to its power to order a division of matrimonial assets. Thus, courts regularly take into account each party's share of the matrimonial assets when assessing the appropriate quantum of maintenance to be ordered (see *ATE v ATD and another appeal* [2016] SGCA 2 at [31] citing *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506 at [26]). In *TNL v TNK* at [63], we held that if,



from the division of matrimonial assets, there is a sum which, if invested properly, would be sufficient to maintain the wife, then the award of maintenance should be no more than necessary to allow the wife to weather the transition of the divorce.

119 In this case, the Wife has been awarded assets worth over S\$9 million. We agree with the Judge that if the Wife manages these assets properly, they should yield an income sufficient for her maintenance. We thus dismiss her appeal as to maintenance in respect of herself.

***For the Sons***

120 The Wife further submits that the Judge’s award of S\$3,500 in monthly maintenance for each of the Sons was too low. She points to the fact that she had initially stated that [T]’s monthly expenses cost over S\$14,000 while [J]’s monthly expenses cost over S\$12,531, and that she has already adjusted her claim downwards “given the new realities of the divorce”. In our view, the Judge’s decision that the Husband should pay S\$3,500 for each Son was reasonable, having regard to their ages, lifestyles, and the Husband’s financial resources. If circumstances change in future, the Wife is at liberty to apply to have the maintenance order varied.

121 Having said that, we agree with the Wife that the Husband ought to pay maintenance for the Sons in a lump sum. As noted by this court in *AYM v AYL and another appeal* [2014] 4 SLR 559 at [18(c)], lump sum payments may be especially suitable where there is reason to believe that defaults may be likely. Here, there is ample reason to believe so. The Husband is in arrears in maintenance, and permanently resides in China, where it would be difficult for the Wife to enforce any monthly maintenance order.

122 With regard to the appropriate quantum of the lump sum, as at July 2018, [T] and [J] are entitled to 70 and 96 monthly maintenance payments of S\$3,500 respectively before they turn 21 years old. The Husband ought to pay a lump sum payment of S\$581,000 in addition to the arrears of S\$188,000, thus totalling a lump-sum payment of S\$769,000.

### **Conclusion**

123 For the foregoing reasons, we allow both appeals in part and order that the Husband transfer assets worth S\$5,671,797 to the Wife within six months of this judgment. The parties are at liberty to decide how this transfer of assets should be effected. If parties are unable to come to an agreement regarding the transfer of assets within six months of this judgment, they are at liberty to apply to the Judge for further orders to implement our order as to the division of matrimonial assets. We also order the Husband to pay a lump sum of S\$769,000 in maintenance for the Sons within six months of this judgment. Finally, we order each party to bear their own costs of the appeals in CA 215/2017 and CA 223/2017, as well as of the related application in SUM 74/2018.

Steven Chong  
Judge of Appeal

Belinda Ang  
Judge

Quentin Loh  
Judge

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