

ARV v ARW
[2015] SGHC 72

Case Number : Divorce Transfer No 6172 of 2011
Decision Date : 16 March 2015
Tribunal/Court : High Court
Coram : Aedit Abdullah
Counsel Name(s) : Loh Wai Mooi, Ho Shiao Hong (Bih Li & Lee) for the plaintiff; The defendant in person.
Parties : ARV — ARW

Family Law – Matrimonial Assets – Division

Family Law – Maintenance

16 March 2015

Judgment reserved.

Aedit Abdullah:

Introduction

1 The plaintiff, the wife in the marriage (“the Wife”), and defendant, the husband (“the Husband”), came before me on the issue of the division of the matrimonial property, as well as maintenance for the Wife and the three children of the marriage. Much of the arguments in this case, as well as the affidavits, centred on the inclusion and valuation of assets for which there was insufficient evidence provided by the party best able to do so: the Husband. This affected the determination of what was just and equitable in the circumstances. In the end, a rough and ready allocation is ordered, with an adverse inference drawn against the Husband.

Background

2 The parties were married in 1992, and divorce proceedings were commenced at the end of 2011. Interim judgment was given on 17 January 2012. There are three children to the marriage: a 21-year-old daughter, one 19-year-old son, and a 16-year-old son. The parties have joint custody, with care and control given to the Wife.

3 The potential pool of assets consists primarily of real property, interests in businesses and trusts. There are also some insurance policies and money in bank accounts. The difficulty in this case is that the value of a significant number of assets is uncertain. The Husband maintained that a number of these, especially the businesses and trusts have low, negligible or no value. The Wife for her part contended that there had not been proper disclosure of the value of these assets.

4 The Husband and Wife disputed their respective amounts of contributions. The Husband appears to have primarily been an entrepreneur with many different business interests, but who now apparently has no fixed employment. The Wife earns most of her income providing training in the People’s Republic of China. There is also rental from one of the apartments owned in Singapore ([A] Apartment (“the Matrimonial Home”)), though part of that is claimed by the Husband. She also disclosed a small sum received as royalties. She sought \$1,000 per month as maintenance, but

factored on an eight year basis.

5 In respect of the maintenance of the children, one son is in a polytechnic, finishing in 2015, while the other son would have just sat for the Singapore-Cambridge General Certificate of Education (Ordinary Level) Examination ("O-Level"). The oldest child, the daughter, has an accounting diploma, but is now attending a legal studies course, with a view to possibly pursuing a degree in law.

The Wife's case

6 The Wife contended that she should be awarded two Singapore apartments, namely, the Matrimonial Home, [B] Apartment ("the Second Apartment"); one apartment in the People's Republic of China ("the Chongqing Apartment"); a company, [F] Company; and other miscellaneous assets. The Wife's estimate of the value of these assets was \$2,456,178.13 out of a total value of about \$5.8m for all the assets in the hands of the Husband and Wife.

7 Her position was that as the Husband had not given full and frank disclosure, it was difficult for a proper ascertainment of division to be made. She pointed to lack of information about the various companies and trusts, and also the difficulties in getting the Husband to clarify his stand on such disclosure which he has given. She thus asked that a presumption be drawn against the Husband, and accordingly that she should be given the assets she has asked for, which by her calculation amounted to only about 42% of the matrimonial assets. As for maintenance, the Wife sought maintenance for the education of the oldest child, beyond 21. She also sought maintenance for the remaining two children's tertiary education leading to their first degree. In addition, she sought \$2,350 for each of the three children, giving a total of \$7,050 per month. She also sought \$1,000 per month for eight years as maintenance for herself.

The Husband's case

8 The Husband did not file submissions, supposedly because he wanted to save costs in these proceedings. He relied on his Declaration of Matrimonial Assets and his Fact and Position Sheet. The Husband specified various assets, which he indicated as being more than \$1.5m in total. These included properties in Singapore being the Matrimonial Home and the Second Apartment, properties in New Zealand, the Chongqing Apartment, insurance policies, bank accounts, Central Provident Fund ("CPF") accounts, various personal items, club membership, and monies given. Liabilities identified by him were the mortgage loans for the Singapore and New Zealand properties, an overdraft account, a debt owed by the Wife to her mother, the Husband's loan from his mother of \$1.2m, awards made against him in New Zealand and various other debts of small or unknown amounts.

9 His position as to division, essentially, as it came out during oral arguments was to hold the First and Second Apartment until a possible en-bloc sale took place, for equal division thereafter; that other properties in New Zealand were to be sold with sharing of profits or shortfall; and similarly in respect of the property in China. He also proposed to transfer rights and interests in various companies to the Wife. At least one of these transfers would leave the wife with an interest in a New Zealand property. Other assets were to be left in the names of the respective parties. Of other property, including interests in companies, as well as insurance policies, the Husband proposed primarily to retain all personal items, account balances, and insurance policies. He also cited a number of liabilities that were to be accounted for. These were a \$1.2m dollar loan from his mother; \$100,000 lent to the Wife by his father and about \$70,000 that was taken from an overdraft account by his Wife.

10 At various points during oral arguments, the Husband tendered various documents.

Subsequently, counsel for the Wife, Ms Loh Wai Mooi ("Ms Loh"), indicated that she would have to take issue with most of these. As it was, the Husband chose to withdraw these documents, and they were not therefore available to the court in its determination.

The Decision

11 I have decided that an adverse inference should be drawn in favour of the Wife. Had there been proper disclosure, the ascertainment of the direct contributions made by the two parties to the various matrimonial asserts could have been more straightforward. As it was, however, the Husband's failure to give full and frank disclosure of his assets meant that any proper accounting of the direct financial contributions was not possible. A broad-brush approach had to be used, though whenever possible I have taken into account the parties' direct financial contributions.

12 After considering the evidence and arguments, I have decided to order the division of assets giving the Wife what she had sought, namely, the couple's interests in the Matrimonial Home and the Second Apartment, as well as the Chongqing Apartment, and the interest in [F] Company. This gives her above 40 odd per cent of the whole pool, so far as can be ascertained with any confidence in this case. I however decline to award her the maintenance she has sought. I do not think that an award of \$1,000 per month is made out based on the relative positions of both parties. I do award the maintenance of the children as she has sought.

13 In coming to my decision, I bore in mind that the Husband was a litigant-in-person. I have been careful to consider the evidence and submissions. At the same time, I have been mindful that I should not give such leniency and tolerance to the Husband to the extent that I would be acting unfairly to the Wife or her counsel, Ms Loh.

The Division of the Matrimonial Property

14 The primary approach in division of property under s 112 of the Women's Charter (Cap 353, 2009 Rev Ed) ("Women's Charter") is a broad-brush one, taking into account both direct and indirect contributions: *BCB v BCC* [2013] 2 SLR 324 ("*BCB*") and *NK v NL* [2007] 3 SLR(R) 743 ("*NK v NL*"). Though *BCB* was not cited in argument, that case reiterated principles laid down in other cases. As noted in *BCB* (at [\[10\]](#)):

The broad-brush approach is particularly apposite because, in the nature of things, an approach that is rooted in the forensic search for the actual financial contributions of the parties towards the acquisition of the assets will inevitably fail to adequately value the indirect contributions made towards the other expenses that are incurred in the course of raising a family and will also be a heavily fact-centric exercise. ...

The Court of Appeal went on to note that contemporaneous records often would not be available to assist in the resolution of the claims. The Court of Appeal then underlined the general approach (at [\[10\]](#)):

... [S]uch a broad yet principled approach enables us to strike a balance between the search for a just and principled outcome in each case and the need to remain sensitive to the nuances of each fact situation we are confronted with. ... [T]his court has held that there is no starting point, presumption or norm of an equal division of matrimonial assets, a holding that is wholly consistent with the legislative background which resulted in s 112 and its concomitant broad-brush approach. ...

15 One general approach to the division of matrimonial property has been what was described in *NK v NL* as the first methodology. This requires identification of all the matrimonial assets, the assessment of the net value of that pool, the determination of a just and equitable division, and how the division should be satisfied. The other approach noted in *NK v NL* is for distribution by classification. Either approach fulfils the requirements of the law. In the present case, the Wife has adopted the first approach. I agree with that, as the second approach, while theoretically permitted, is not feasible in the present case.

16 The complication in the present proceedings is that there is incomplete information about the pool of matrimonial assets. Most of the uncertainty concerned the value of companies and interests in trusts; however the uncertainty also touched on some other properties. With that uncertainty, classification of the assets would not achieve much purpose. The step-by-step methodology allows at least for a best effort to be made with what information is actually available before the court.

17 There was a lack of information because the Husband had not fully disclosed everything that constitutes the pool of matrimonial assets. He justified this at various points on the basis that he did not wish to prolong proceedings; at other points he contended that the Wife should know what the position with respect to the assets was and what their value should be. While the Husband is a litigant-in-person, and some latitude could be given to such litigants, the indulgence shown by the court could not extend to excusing him from the consequences of his failure to give full and frank disclosure. His failure to do so has in fact prolonged the proceedings, and made the determination of the case more difficult. As will be discussed below, I have ultimately determined that an adverse inference should be drawn against the Husband.

18 I had considered adjourning the matter further to allow more evidence to come in but did not consider that much would be gained by an adjournment given that multiple affidavits have been filed by each side. The Husband has had ample opportunity to give his evidence fully.

The matrimonial assets

19 What constituted the matrimonial property was in some doubt. The Wife contended that the Husband had not given full disclosure, and should therefore be presumed against in the division of the assets that were known. The Husband for his part denied withholding anything, alleging that he had only not included assets that were not worthwhile or which the Wife would have known about. What came from the Husband came out in dribs and drabs at the hearing. It may be that some of these assets are truly not worth substantial sums, or maybe entangled in claims or ownership by other parties. Whatever the actual reason, it was evident that there had not been full and systematic disclosure.

20 The assets for which there was clear information will be examined first, ahead of the assets for which what was available was insufficient.

Clear matrimonial assets

21 The assets as to which there was clear evidence were the Matrimonial Home, the Second Apartment and the Chongqing Apartment. The valuations for these properties came primarily from the Wife. The Husband did not provide figures that differed significantly from those from the Wife, but in any event, I prefer her evidence as she had generally been more open. The estimated values of the various properties are as follows:

- (a) The estimated value of the Matrimonial Home is about \$1.7m. It is currently tenanted with

rental at \$4,000 per month. It is in the joint names of the parties. There was some dispute between the parties about their respective financial contributions.

(b) The Second Apartment is owned by the Wife and her mother as tenants in common of half-share each. The value of the Wife's half-share is approximately \$789,516.63. The circumstances of the Wife's mother's half-share was in dispute.

(c) The Chongqing Apartment is a property in China. The value of the property is estimated to be \$300,000. It has been fully paid-up. There was a dispute between the parties as to the distribution of this property.

The evidence in respect of the assets came largely from the Wife; the Husband disputed a number of matters in respect of these assets, but there was at least some material before the Court to allow determination of the contributions of the parties, and the value of these assets.

Questionable assets

22 The Wife contended that these assets belonged to the Husband, and properly speaking should be part of the pool of matrimonial assets subject to division. However, the value, if any, and whether the Husband controlled the whole of each asset was not entirely clear from the evidence before the court. This uncertainty led the Wife to propose that the award to her include those assets which had clear values only. The Husband for his part contended that some of these assets were not really his to dispose of, or that their values were minimal.

23 The disputed assets include property, various trust holdings as well as interests in a number of companies and trust companies as follows:

- (a) properties in New Zealand;
- (b) interests in the following companies: [G] Company, [H] Company, [I] Company, [J] Company, [K] Company, [L] Company, [M] Company, [N] Company, [O] Company, [P] Company, [Q] Company, [R] Company, [S] Company and [T] Company (collectively, "the Companies"); and
- (c) interests in the following trusts and/or trust companies: [U] Trust, [V] Trust, [W] Trust, and [X] Trust ("collectively, "the Trusts"). The Wife pointed out that the evidence in respect of these interests was lacking.
- (d) income;
- (e) various trust interests highlighted above;
- (f) shares, especially in [Y] Company;
- (g) club memberships;
- (h) a yacht;
- (i) race horses;
- (j) interests in companies and New Zealand properties; and
- (k) bank accounts.

It was also contended that the Husband must have more bank accounts than those that were disclosed, especially given the time which he has spent overseas. This would include the likelihood of him having bank accounts in New Zealand.

24 Some of these assets should be excluded in the determination of the pool of matrimonial assets. In respect of [I] Company, the Wife contended that there was no information provided on the details of the sale of the Husband's shares and when this was done, the Husband only disclosed that he obtained \$300,000 for these shares. There was little information provided about the yacht, or race horses previously owned by the family. The Wife mentioned them, but again highlighted that the Husband had not made any disclosure about these assets or what has become of them. Given the lapse of time since their ownership, in the circumstances, the conclusion must be that they were disposed of and any proceeds not extant. As for the club memberships, it does seem that the Husband eventually disclosed his memberships; the complaint then is really of late disclosure.

(1) Income

25 Though this would be relevant to the issue of maintenance rather than the ascertainment of the asset pool, it is more convenient to deal with it at this point together with the questionable assets. The question of his income is a live one, and has a significant impact on the outcome of the proceedings. The Husband claimed that he had no income, except for a half-interest in the rental coming in for the Matrimonial Home. The Wife as noted above contended that this could not be true, given his dealings over the years. While the Wife might have her suspicions, I could not find that the evidence before me was such that an adverse inference could be derived from the absence of income. There is a suspicion that he may have other means, through his other assets, but that does not necessarily mean that he has other sources of income besides the rental: he could be living off his capital.

(2) Trust interests

26 In oral argument, the Husband maintained that the trusts had no value, and offered these to the Wife. This offer I could not take as a *bona fide* one in the circumstances; the value of these assets is uncertain, and it is not clear what activities or property interests these trusts have been engaged in. Against the vacuum of information, any offer to transfer these trusts as such would be empty. As noted by the Wife in her submissions, it is unclear why there is a web of trust interests, trust companies and other companies.

27 Taking two trusts and trust companies addressed by the Wife in submissions, the [U] Trust, and the [W] Trust, it was evident that the Husband failed to make adequate disclosure in terms of both trusts. In respect of the [U] Trust, the Husband refused to provide information and contended that the Wife should be aware of this information, being an equal trustee. Eventually, the Husband disclosed that this Trust was controlled by another company, [T] Company. The Wife is named as a director of [T] Company, but she is clearly not in control of the management and direction of that company. Similarly, insufficient disclosure was given in respect of the [W] Trust. All that the Husband offered, as noted by the Wife, was to transfer these trusts and other interests to the Wife. It was also not always entirely clear whether the trusts were trusts properly speaking or trust companies.

28 In the absence of any explanation of the interests making up this web, I conclude that the Husband has given insufficient disclosure.

(3) Share interest

29 The Wife contended there was a value of about \$105,000 for the shares, which are in a company known as [Y] Company. The Husband in his affidavit admitted ownership, but contended that they were of questionable value. There was nothing about these shares in his Declaration of Value of Matrimonial Assets, and his Fact and Position Sheet. The Wife's valuation was based on a statement of account dated 31 January 2012. In the circumstances, I accept the Wife's valuation, but that does not mean that the Husband should escape the consequences of the lack of full disclosure. He should have disclosed this fully, and his attempt to discount the value without more calls into question his overall credibility.

(4) Companies

30 The Husband's claimed that the interest in the Companies were of little or no value, and that the Trusts were generally not worth much either. The Wife was unable to give a value for these companies or trust interests. The Husband has given little by way of documentary support for his assertion that the Trusts and the Companies were of little or no value. There were for instance, few tax returns, companies' accounts or trust accounts exhibited by him. He exhibited the report for a company called [Z] Company, but that is not one of the companies relevant to this dispute. He referred on occasion to a desire to save costs, but it still behoved him to adduce evidence as the possible value of these interests. In the circumstances therefore, I can only find that his failure to adduce the supporting evidence of the value of these assets goes to show that these assets are worth something and are not valueless. Unfortunately, nothing further can be usefully said by the court given the paucity of evidence: the Wife was unable to assist in ascribing a value to these assets.

31 The Husband failed to give proper disclosure of his interests in, the value of or pertinent details about, the Companies and the Trusts. Some of these interests are apparently being held by various persons in Singapore and New Zealand. However, there were strong indications that the Husband still has a beneficial interest in these companies. For instance, in relation to [Q] Company and [R] Company, the owner, [AA], appears to hold property on trust for the Husband. As for [S] Company, this is, according to evidence from the Wife, owned by [T] Company, which in turn is owned by the Husband only. The Husband did not deny this.

32 Given this, the Husband should have given further information on his holdings, charting them clearly, disclosing his ultimate interest and ownership, and given clear evidence of the financial position, assets owned, and worth of the various companies. Furthermore, while the Husband contended that some of these companies, for instance, [Q] Company, are not worth anything, this is not sufficient. Again, he should have provided some information about the details of these companies so that a proper assessment could be made. Given his failure to do so, the finding must be that there is thus probably some value in at least some of these companies and trust interests.

(5) Properties

33 As for the properties, particularly the New Zealand properties, the Husband gave incomplete evidence of their value and ownership. He maintained that the properties are owned by others, or jointly owned with others, without giving much evidence of these interests beyond his assertions and without quantifying through documentary evidence the value of the shares or interests that he did admit owning.

34 Two of the New Zealand properties have had their values ascribed by the Husband: [C] Property, Auckland ("the Auckland Property") at \$435,840 and [D] Property, Queenstown ("the Queenstown Property") at \$321,600. Both of these are supposed to be owned by [S] Company. As

noted above, the Husband had not given sufficient disclosure about the ownership of [S] Company, and that would have an impact ultimately on the interests in these two properties.

35 The Wife alleged insufficient disclosure of details surrounding the property at [E] Property, Auckland ("the Second Auckland Property") which she estimated to be worth about NZ\$1,941,288. In his affidavit, the Husband claimed that there was no value to this property, as he claimed that it had been pledged by others. He also claimed that caveats were lodged that indicated claims by others. I find that the claims by the Husband that the property has been pledged to third parties, and that others have lodged caveats, cannot be accepted without a full picture being given of the relationship between those involved. I accept the evidence of the Wife that there are suspicious circumstances surrounding the pledge and caveats.

36 The Husband denied owning any interest in the other property in China, being [AB] Apartment ("the Second Chongqing Apartment"), as alleged by the Wife. There was a dispute about the use of funds to pay for that property, and whether the Husband has an interest in it. The Wife contended that he had bought an interest in it. I do not find in this case that there is sufficient *prima facie* evidence before the court for a determination that this property is owned by the Husband, and should be part of the pool of assets.

Liabilities

37 There were three main contentions by the Husband on liabilities in respect of the assets. The first was a supposed loan of \$1.2m owing from him to his mother. The Husband's submissions on whom the loan was made to and whom the money was from changed in the course of the proceedings. There was also another supposed loan of \$100,000 from the Husband's father to the Wife. Finally, there was an amount of \$70,000, relating to the purchase of the Chongqing Apartment.

38 For all of these, my main concern was to determine whether these liabilities could be accepted as true. The purpose and use of these supposed loans were not clear and were not established on the facts.

39 There were a number of other liabilities claimed by either side: these were either of a smaller amount, or I am not persuaded that they should be factored in determining the net asset value, as they may have been incurred for general expenses. An exception would be the Wife's liability of \$250,000 in the form of an overdraft as this would reduce the balance in her bank account accordingly.

(1) The \$70,000

40 The \$70,000 amount was supposedly taken from an overdraft account by the Husband help pay for the Second Chongqing Apartment. There was some issue about what this was used for. The Wife pointed to what she contended was evidence of the use of the \$70,000; the Husband responded that these were instances of double-counting by the Wife. I cannot find based on the evidence before me that there was any purchase of the Second Chongqing Apartment. In the circumstances, the use of the \$70,000 cannot be ascertained as well, and I cannot find that this is a liability that exists and should be taken into account in the determination of the net matrimonial assets.

(2) The \$1.2m loan

41 The Husband contended that the \$1.2m loan to him from his mother to him should be taken into account. However, as noted by the Wife, the evidence about this loan is suspect. In his first

affidavit, the Husband relied on an acknowledgement of debt signed by him, dated 6 April 2009. There was little detail given in this acknowledgement of debt, and the fact that it was signed by him alone means it cannot be taken at face value. Then, the Husband contended that the loan was instead from his father. Finally, he reverted to the version that this was owed by him to his mother. There were also significant differences as to whether the loan was to him alone or to the couple. Given these inconsistencies, I accept the Wife's contention that there was a significant amount of inconsistency regarding this supposed loan of \$1.2m. I therefore exclude this amount from consideration.

(3) The \$100,000 loan

42 There was also a supposed loan of \$100,000 given by the Husband's father to the Wife. The Wife denied this. Though the father has provided an affidavit in support, as noted by the Wife, there was nothing given as to repayment. The Wife maintained that this was a gift. In the circumstances, given the absence of any indication of repayment terms, I accept the Wife's contention that this is to be construed as a gift and not a loan. This sum was apparently used to provide for the maintenance of the Wife and children, and was not used in acquiring any asset.

Conclusion as to the pool of assets

43 From the above, the matrimonial assets comprise the following:

- (a) the matrimonial property at \$1.7m (with about \$288,958.73 in mortgage payments due);
- (b) a half-share of the Second Apartment (valued at about \$789,516.63)
- (c) the Chongqing Apartment (valued at \$300,000);
- (d) the Wife's CPF of about \$70,339.16;
- (e) the Husband's CPF of about \$72,465.58;
- (f) the Wife's insurance policies of a total of about \$120,850.61;
- (g) the Husband's insurance policies of (leaving aside surrendered amounts, and educational insurance policies) approximately \$35,294.55;
- (h) the Wife's bank accounts (with a \$250,000 overdraft in one account);
- (i) the Husband's bank accounts (with a value of \$16,931.06, although this is incomplete as accounts are not known (see above at [\[24\]](#));
- (j) the Husband's CPF investments (valued at \$44,000);
- (k) the Husband's shares in [Y] Company (valued at \$105,270) (here, the shares in [I] Company are excluded. It is also not known whether the Husband has shares in other companies);
- (l) various company, trust company holdings or trust holdings (values of which are unknown);
- (m) the Auckland Property (valued at about \$435,840);
- (n) the Queenstown Property (valued at about \$321,600); and

(o) the Second Auckland Property (valued at about \$1,863,636.48, though ownership of this property is uncertain).

Of the clear assets with known values, namely (a), (b), (c), (d), (e), (f), (g) and (j), there is a total value of \$2,970,248. If the other assets (including (o)) are factored in with ascribable values, there is a total value of \$5,696,595 or more. I note that the Wife had submitted that there was a total of about \$4,436,681.53 worth of matrimonial assets, which was a result of the Wife leaving out some values. The range of figures from \$2.9m to \$5.6m or more indicates the difficulties of this case.

Contributions by the parties

44 The next stage of the analysis is the determination of the parties' contributions. This will be considered in three parts: direct contributions to specific assets, indirect financial contributions, and indirect contributions of other kinds. In weighing the contributions, I am mindful of the guidance of the Court of Appeal in *BCB*, that there should not be a sterile focus on financial contributions, neglecting the overall approach envisaged under the Women's Charter.

Contributions to specific assets

45 Direct contributions can only be ascertained with respect to certain assets, namely, the Matrimonial Home, the Second Apartment and the property in Chongqing.

(1) The Matrimonial Home

46 In respect of the Matrimonial Home, there is a question of how the proceeds from the previous matrimonial home should be allocated. The parties had used the sale proceeds of two units at Normanton Park ("the Normanton Properties") to fund the purchase of the Matrimonial Home. The Wife contended that the net sales proceed from the previous units should be ascribed to both of them equally, as the Normanton Properties were purchased by gifts made by the Husband's family to both the parties. On this basis, the Wife claimed, taking into account her slightly larger CPF contributions, a proportion of 50.7% to her and 49.3% to the Husband.

47 The Husband in oral arguments argued that the Normanton Properties could not have been in joint names as the Normanton Properties belonged to the Singapore Armed Forces ("SAF"). The Husband further claimed that the purchase of the Matrimonial Home was possible because of an earlier gift made by his parents, which allowed the purchase of an apartment at Normanton Park, which could only have been transferred to his name then, as he was in military service then. There was no evidence before the court on the restrictions that might have been applicable to the Normanton Properties when the couple first purchased a property then. As it is however, even if there was a gift by the parents of the Husband, and even if the Normanton Properties were only in the name of the Husband, in the absence of any evidence to the contrary, I find that the gift was to the couple, and that any proceeds from the sale of the Normanton Properties used in the purchase of other property cannot then be simply be attributed to the Husband alone. In any event, the division will be conducted on a broad-brush approach, taking into account non-financial contributions as well. In the circumstances therefore, I am of the view that I should proceed on an equal allocation between the parties, and that the quantification for the Wife is broadly accurate.

(2) The Second Apartment

48 In respect of The Second Apartment, the Husband claimed he had to contribute \$300,000 to bail out his in-laws, the Wife's parents. The Wife in turn said her Husband forced the \$300,000 overdraft on her parents, at an undervalue. I am of the view that the proposition that the \$300,000 was a bailout of the in-laws was against the inherent probabilities of the situation. If indeed such a bailout was necessary, it is odd that there was no indication of any negotiation about the value of the property and how much would be secured against the value of the interest in the Second Apartment. Nor was there any evidence, as submitted by the Wife, of any payment by the Husband into the overdraft. The property was transferred only to the Wife and not to the both the Wife and the Husband. In the circumstances, I find no direct contribution by the Husband to this property.

The Chongqing property

49 In respect of the Chongqing Apartment, the evidence was clear that the contribution has come primarily from the Wife.

Various indirect financial contributions

50 The Husband claimed a number of indirect financial contributions, aside from those considered above:

- (a) a \$100,000 wedding gift from the Husband's grandfather;
- (b) a gift of \$20,000 for each of the children from the Husband's grandfather;
- (c) a \$100,000 gift from the Husband's grandfather in 1995;
- (d) a \$200,000 gift from the Husband's father; and
- (e) a NZ\$457,000 gift from the Husband's father to him.

51 I accept the arguments of the Wife that there was little evidence of these, and that in any event, even if proven, the presumption would be that any gift is to the Husband would be a gift to the parties equally: *ANZ v AOA* [2014] SGHC 243 at [\[14\]](#). As for the gift to the children, this would not be matrimonial property, even if I accepted that the gift was made.

Non-financial contributions

52 The non-financial contributions were made over a period of 19 years or so, from the marriage in 1992 until these proceedings were commenced in 2011. The Husband contended that the Wife did not really provide for the family. He contended that he was a full-time father, while the Wife was at work. The Wife for her part contended that she worked at the various enterprises at the behest of the Husband. Some of these, especially those in the Middle-East, required her to sacrifice time with the family. Her evidence was that she had been in various businesses over the years, starting with pharmaceuticals, then in education, aluminium parts for construction, solar energy, and a spa

business. There was little quantification of the amount that she contributed through her efforts in this regard. But in any event, the focus here is not on the financial contributions that she might have gleaned from these efforts, but that these were contributions to the life of the family. The Wife contended that even when she was working overseas, she would travel back to Singapore, communicate with the children, and spend time with the children on important occasions. She claimed to have guided them in various activities and in school.

53 The Husband appeared to have had more time with the children of the marriage during the years when the Wife was away working overseas. However, I do not find that this was ultimately that substantial when weighed against the fact that her time abroad was primarily for work for the benefit of the family, and as she has deposed, at the behest of the Husband.

54 While it may be that she did make an effort to spend time with the children, I could not find that this meant that she had the more dominant role in looking after the children throughout the marriage. There were times when her contact with the children would have been much less. That said though, given that it was her work that took her away from more time with the children, I find that her contributions to the family life were significant and outweighed that of the Husband.

55 I am satisfied that overall, the Wife gave more over the 19 years of the marriage than the Husband did. She looked after the children directly except for the years when she was abroad. Even at such times, she was involved in pursuing work for the benefit of the family, even if there might have been little lasting direct contribution to the financial assets of the family. In comparison, while the Husband claimed that he looked after the children at various times, his contribution was as a whole to my mind less significant than that of the Wife's, especially when her contributions abroad are considered. As for the contributions of the parents of the parties, I am of the view that these were not material in the context of weighing the contributions of the parties themselves.

Adverse inference for failure to disclose assets and value of assets

56 As noted above, the Wife pointed to non-disclosure by the Husband as to his income, the trusts, the shares in [Y] Company, club memberships, a yacht, race horses, interests in the Companies and the Trusts. The Husband's primary contention was that these assets are of little or no value, or where there is value, that he does not own the whole of the interest. The Husband argued that the Wife was fully aware of a number of matters. The Wife however denied this. For instance she denied signing documents relating to the trusts. The Husband further contended that he does not have fully ownership of these assets – his assertion was that these are in the hands of others.

57 As seen in the discussion, the Husband's position makes it difficult to assign a value to the matrimonial property in his hands. It may be that some of these assets are of little or no value, but it is difficult to reach this conclusion on the scant evidence before the court. The lack of evidence about valuation also makes it difficult to determine the distribution of assets between the Husband and Wife, as the pool, the value of the assets, and financial contributions of the parties are largely unknown. Faced with this absence of evidence, I can only proceed on the basis of what was put before me.

58 It would have been ideal if further information was gleaned about these assets, however that would likely have taken much more time and expense. The effort would certainly have prolonged these proceedings. On what was before me I was doubtful that much would be gained from further inquiry. Additionally, the Wife was also content to press her claim primarily in respect of the known assets.

59 I accept the submissions of the Wife that the division of assets should proceed on the basis of

a presumption against the Husband of both the scope of the matrimonial pool and its value. In *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21, the Court of Appeal noted (at [27]) that for an adverse inference to be drawn, there should be:

- (a) a substratum of evidence that establishes a *prima facie* case against the other party; and
- (b) that person must have had some particular access to the information he is said to be hiding.

In the present case, I am satisfied that the Wife has raised a *prima facie* case by pointing out areas in which the Husband has not given full evidence. The various interests in the Companies and the Trusts, and other properties, as pointed out by the Wife, called for an explanation from the Husband as to the nature, extent and value of his interests in these assets so that it can be assessed whether they should be part of the pool available for division, and how these assets should be divided. Contrary to the arguments of the Husband that they are just as known to the Wife, I find, from what has been adduced by the Wife, that information about these assets is in the hands of the Husband, as is evident by the bits of information he has released at various points. His excuse that he did not want to prolong proceedings is not a justification or a reason for not providing the information sought. Even the information that he gave was often vague, as can be seen in his explanation with respect to the circumstances of the sale of the [I] Company shares (see [24] above). Furthermore, on a number of occasions, when pressed, the Husband was able to give more extensive evidence about the questionable assets – for instance, he exhibited a valuation of the Auckland Property, though as noted above, there remained the issue of what his ownership rights are through the company that is listed as owning it.

60 The effect of all these is that an adverse inference may be drawn against the Husband that:

- (a) the questionable assets are of some value.
- (b) where he disclaimed or downplayed his ownership rights, these are likely to be more extensive than what he owned up to; and
- (c) there may be other assets that have not been disclosed.

61 In practical terms, the consequence that follows is that the court may give a higher proportion of known assets where full disclosure has not been given. A broad-brush approach giving an additional uplift to represent the undisclosed assets is permissible: *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 at [66]. That case however also recognised that a higher proportion of the known assets may be given to compensate for the failure to disclose. This was done in *NK v NL*.

62 In the present case, given the uncertainties, I am of the view that the more appropriate solution would be to provide the Wife a higher proportion of the known assets. As will be seen subsequently, this results in the Wife having the whole of the ascertained assets, which are primarily the assets in her hands. Though depending on the unknown true value of some of the asset this may ultimately award her more than 42% strictly speaking, I am satisfied that the approach adopted is sound given the state of the evidence before me.

63 In passing, I should note that the Wife had not given a value for a business claimed by her, [F] Company. I do not find that there has been any failure on her part to provide information as to this as this asset is not currently owned by her. In any event, the Husband did not contest this asset.

Conclusion as to the division of matrimonial assets

Assets that were claimed by the wife

64 As noted above, the Wife made a claim on the following assets, asking that they be transferred to her:

- (a) the whole of the Matrimonial Home (valued at \$1,411,041.27);
- (b) the half-share in the Second Apartment (the other half share belonging to the Plaintiff's mother) (valued at \$789,516.63);
- (c) the Chongqing Apartment (valued at \$300,000);
- (d) the insurance policies and other assets totalling \$44,379.77; and
- (e) [F] Company (for which no value was attached).

65 Had I before me all relevant evidence about the assets, and if I could have concluded with confidence about both the extent of the pool of matrimonial assets as well as the contributions given, I would probably have leaned towards a split of the assets, 60% in favour of the Wife and 40% in favour of the Husband, taking into account the indirect financial and non-monetary contributions of the parties. In the present case however, while I have no doubt that the Husband was a busy entrepreneur at various points in the marriage, I accept the evidence of the Wife that she spent a considerable amount of effort in all the joint business enterprises, and that this did not significantly detract from her non-financial contributions to the family. I find on the evidence before me that the Wife contributed more to the life of the family than the Husband did, though perhaps not overwhelmingly so.

66 As it was however, in light of the lack of information about the assets, an order giving 60% or so would not be practical. The Wife was also content to press her case only in respect of the ascertained assets, which by her calculations and estimation of the value of the pool, would give her about 42%. I therefore accordingly award her the assets she sought.

67 On the basis of the calculation of assets I derived above, including those with incomplete information (see [\[44\]](#) above), she would then have about 44% of the assets. I am satisfied that this represents a just and equitable division and allocation in the circumstances of this case.

68 I should mention that if I only took into account the ascertainable assets, her share would be a very high 85%. However, that would not be an accurate reflection of her actual share; such a calculation of the total matrimonial assets would have left out questionable assets for which the Husband bore responsibility to disclose. Furthermore, most of the ascertainable assets were those disclosed by the Wife, made up largely of the real property in her hands.

Allocation to the Husband

69 This approach does mean that the Husband is left with primarily with the unknown assets, namely the Companies, the Trusts and the properties in New Zealand. This is not unfair to the Husband as these assets are not worthless – there is some value, but it is not possible for the court to determine conclusively what their value is.

Maintenance of the Wife

70 The Wife claimed maintenance of \$1,000 per month, for eight years, giving a total of \$96,000. The basis of this was a discount on the usual formula applied in cases such as *Wan Lai Cheng v Quek Seow Kee and another appeal and another matter* [2012] 4 SLR 405. It was contended that the Husband has the means to support the Wife, whose income is relatively low, with proceeds of about \$3,000 from the rental of the matrimonial home, and about \$7,500 per month from her work in China. She also has a very small amount coming in as royalties. Though there was no direct evidence of the Husband's means, the Wife argued that the court should infer that he has a substantial income, given his interests in the United States, New Zealand, and his various business activities.

71 The Husband contended that no maintenance should be given to the Wife. He also stated that she should be satisfied with his offer that she keeps [F] Company.

72 I find that the means of the Husband are unclear. As noted above, there was little disclosed. However, nothing would be gained from awarding the Wife maintenance through a further interest in the matrimonial assets. As noted above, the distribution of property, effectively giving the Wife all the assets whose value is certain, has already attributed to her more than 40% on a best estimate of the overall value of the matrimonial assets, and a significantly higher proportion of the ascertainable assets. There is no room there to give her any meaningful figure to reflect lump sum maintenance.

73 While there was little evidence from the Husband, and an adverse inference should be drawn against him, I am also mindful of the need to ensure that any maintenance order is not disproportionate to his means, uncertain and unknown as they are. In the circumstances, given the sorry state of evidence before me, and in light of the other orders I make, including the asset distribution and the maintenance for the children, I do not think it is appropriate for me to order at this time more than a nominal figure of \$100 per month.

Maintenance of the three children

74 There are three children to the marriage: the daughter, and two sons. Of the sons, one is currently studying in a polytechnic and the other would have just finished secondary school. The Wife sought a total maintenance of \$7,050 for the three of them, representing about half of the \$14,133.14 which she estimated as being their total expenses. She would bear the other half.

75 The Husband on the other hand, proposed that he would maintain the daughter, while the Wife would maintain the sons. The tertiary education of the children would be borne on an equal basis after using a supposed \$100,000 given to the Wife by the Husband's father. The \$100,000 has been dealt with above (see [\[42\]](#)). In brief, I do not accept that this gift was made in the circumstances described by the Husband. Furthermore, the Husband's proposal is not consonant with the obligations of parents.

76 The factors which a court should take into account when ordering maintenance are defined in s 69(4) of the Women's Charter. That provision stipulates that maintenance ordered for a child should take into account, *inter alia*, the financial needs of the child, any income or financial resources of the child, the age of the parties and the duration of the marriage, the standard of living enjoyed by the child before any maintenance was neglected, the manner in which the child is expected to be educated, and the conduct of the parties to the marriage. As noted by Professor Leong Wai Kum, in *Elements of Family Law* (LexisNexis, 2nd Ed, 2013), while the Women's Charter does not specify the objectives of maintenance, it is likely that the most significant factors are the financial needs of the child and the ability of the parent in question to meet those needs. In the present case, therefore,

the objective of this part of the decision is to ascertain the maintenance needs of each child, consider the respective abilities of each parent to provide for the children, and make orders effecting the appropriate level of maintenance in a way that is fair and just between the parties. In doing so, the court should generally, in my view, lean towards each parent providing at least part maintenance for each child of the marriage; that is, the court should not normally order against a parent maintenance for only one out of several children, splitting as it were the maintenance obligations between the parents by reference to the needs of specific children.

77 The daughter was 21 years old at the time of the hearing, and will turn 22 this year. Maintenance of children generally ends at 21, save where s 69(5) of the Women's Charter is applicable. Under s 69(5)(c) of the Women's Charter, an order may be made in favour of a child beyond 21 years if the maintenance is necessary because the child will be receiving instruction at an educational establishment or undergoing training for a profession. In the daughter's case, she is pursuing a legal studies course, with a view to possibly reading law later. Such studies qualifies as "instruction" under s 69(5)(c).

78 The Wife has adduced evidence of the living needs of the children, which works out to \$5,326.38 for the daughter, \$4,273.88 for the middle child, and \$4,532.88 for the youngest child. The total is calculated to be about \$14,133.14 per month, of which the Wife asked that the Husband should bear about half, or \$7,050 or so. The Wife further sought that the Husband should pay for the tertiary education of the younger children.

79 In coming to my decision, I note that there is no evidence other than that of the Wife before me as to the children's expenses. As for the relative means, there is little direct evidence of the Husband's means at present. However, for the reasons I have stated above, I am satisfied that he has assets which should be worth a sufficient sum, and that the resources are greater than those of the Wife. At \$7,050 per month, his yearly exposure from maintenance of his children will not be more than \$84,600. I am satisfied that this sum can be met by him, from the evidence before me. Similarly as for the education of the children, I note that based on that division of property, he again probably has the better means overall to pay for their education, and accordingly so order him to bear the costs of their tertiary studies, including specifically the daughter's further tertiary education, if she pursues her degree.

Other orders

1 A consequential order that needs to be made is the removal of the caveat in respect of the Matrimonial Home, which I have ordered allocated to the Wife. I should note in passing that an issue between the parties concerning the Singapore Swimming Club membership has been resolved.

2 As to costs, the Wife has asked for costs for both the divorce and the ancillaries. I make no order for costs for the divorce. I will hear parties on the costs to be awarded for the ancillaries.

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