IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 109

Civil Appeal No 2 of 2020

Between

UZN

… *Appellant*

And

UZM

… *Respondent*

In the matter of Divorce (Transferred) No 5309 of 2014

Between

UZM

… *Plaintiff*

And

UZN

… *Defendant*

JUDGMENT

[Family Law] — [Matrimonial assets] — [Division]

UZN
v
UZM

[2020] SGCA 109

Court of Appeal — Civil Appeal No 2 of 2020
Steven Chong JA, Woo Bih Li J and Debbie Ong J
7 August 2020

30 October 2020 Judgment reserved.

Debbie Ong J (delivering the judgment of the court):

Introduction

1 The appellant ("the Wife") and the respondent ("the Husband") were married for 16 years before they were divorced in 2016. As there were no children in this marriage, the ancillary matters ("AMs") revolved primarily around the division of the matrimonial assets in accordance with s 112 of the Women's Charter (Cap 353, 2009 Rev Ed). In dividing the assets, the High Court judge ("the Judge") applied the structured approach in *ANJ v ANK* [2015] 4 SLR 1043 ("the *ANJ* structured approach") and assessed the average ratio to be 68:32 in favour of the Husband: [2019] SGHCF 26 ("the Judgment") at [76]. As the Judge found that the Husband had failed to make full and frank disclosure of his assets, he drew an adverse inference against him: the Judgment at [27]. To give effect to this adverse inference, the Judge adjusted the ratio by increasing it by 8% in favour of the Wife. The final ratio in the division order

thus resulted in the Wife receiving 40% of the assets and the Husband 60%. The present appeal by the Wife concerns whether the Judge was correct to have given effect to the adverse inference in this manner, as well as the true extent to which the Husband has failed to disclose his assets.

The facts and the decision below

2 The Husband is a practising lawyer and an equity partner of a law firm which has been referred to in these proceedings as [P] LLP. From 2010 to August 2013, the Wife worked as an administrator at [P] LLP. According to the Wife, the parties fell out around August 2013 as a result of her discovery of the Husband's adultery. Eventually, in November 2014, the Husband filed a writ for divorce and the Wife filed a counterclaim in December 2014. The interim judgment of divorce was granted on 24 March 2016 ("the IJ date").

The pool of matrimonial assets

3 The Judge valued the pool of matrimonial assets at $1,908,602.19, comprising $372,372.41 of assets in the Wife's name, and $1,536,229.78 of assets in the Husband's name: the Judgment at [57]. The matrimonial assets that were liable to be divided under s 112 of the Women's Charter were identified as at the IJ date and valued as at the date of the AM hearing (14 January 2019). The Judge made it clear that he included amongst the matrimonial assets the sums of money held in the parties' various bank accounts as at the IJ date, and not the accounts themselves: the Judgment at [9].

4 There was a dispute over how the Husband's earnings from [P] LLP ought to be reflected in the pool of matrimonial assets. It was not disputed that the Husband's income from 2010 to 2016 totalled at least $4,549,959: the Judgment at [22]. For convenience, we will refer to this sum as the Husband's

"total earnings", although it accounts only for his earnings over this seven-year period. The Wife's submission before the Judge was that the Husband's total earnings ought to be included in the pool in their entirety. On the other hand, the Husband tendered a report prepared by an accounting expert, Mr Wong Joo Wan ("Mr Wong"), to account for his expenditure of his total earnings so as to show why this large sum no longer formed part of his assets as at the IJ date. Mr Wong's analysis assumes a great deal of importance because of the way in which the parties have run their cases on appeal, and we therefore set out below his tabulation of what the Husband's cash balance ought to have been on 31 December 2016. We note that although 31 December 2016 was not the IJ date, the parties and the Judge were content to rely on Mr Wong's analysis to determine whether the Husband had any assets which he had failed to disclose, and there is no challenge with regard to the use of this date.

5 In Mr Wong's analysis, the Husband's total expenditure from 2010 to 2016 was as follows:

S/N	Item of expenditure	Amount
1	Personal taxes, CPF and Medisave	$811,451.60
2	Payments to Wife for investments	$180,271.75
3	Joint account for conveyancing department	$50,000.00
4	Down payment for car	$30,000.00
5	Down payment for the 16G and 18G Properties	$332,060.50
6	Living expenses	$2,045,000.00
7	GST for [P] LLP	$156,494.83
8	Pilgrimage trips	$120,000.00

S/N	Item of expenditure	Amount
9	Gifts to various relatives	$110,000.00
10	Traffic accident repairs	$40,000.00
11	Astrological advice	$40,000.00
12	Jewellery	$20,000.00
13	Upkeep of [P] LLP	$141,001.96
14	Legal costs for the divorce	$45,000.00
15	**Total expenditure**	**$4,121,280.64**

6 Deducting the Husband's 2010–2016 expenditure from his total earnings of $4,549,959 over this same period, Mr Wong derived a balance sum of $428,678.36. According to Mr Wong, this sum ought to have been the Husband's cash balance as at 31 December 2016.

7 The Judge observed that, according to the Husband, the total balance in all the Husband's bank accounts as at 31 August 2016 (which was the closest date to the IJ date for which this information was available: see the Judgment at [9] and [17]) amounted to less than $500. The Judge found this suspicious in the light of the Husband's considerable past earnings, as well as Mr Wong's own conclusion that the Husband should have had a cash balance of $428,678.36: the Judgment at [26]–[27]. In fact, the Judge went further and expressly rejected certain items of expenditure which Mr Wong had included in his analysis – namely, the amounts spent on pilgrimage trips, gifts to various relatives, traffic accident repairs, and astrological advice (S/N 8–11 of the table above), totalling $310,000. He also rejected the Husband's assertion that his yearly living expenses from 2010 to 2016 were between $280,000 and $320,000, adding up

to $2,045,000. Mr Wong had taken this amount of living expenses into account in his calculations (see S/N 6 of the table above) even though, on Mr Wong's own analysis, he had taken the view that only a total of $1,163,162.68 of living expenses from 2010 to 2016 could be substantiated. (To be clear, when we refer to the term "living expenses" in the remainder of this judgment, its scope follows that in Mr Wong's analysis, in contrast with the other items of expenditure incurred by the Husband outside of this category.) Given the discrepancy between the Husband's disclosed bank balances and his total earnings, the Judge drew an adverse inference against the Husband.

8 It is worth noting that the Judge also drew an adverse inference against the Wife, albeit on a significantly smaller scale: the Judgment at [41]. This stemmed from arguments over an amount of slightly over $300,000 which the Husband had placed in one of the Wife's bank accounts. The Judge found that the Wife could account for her expenditure of the entirety of this sum, except for $10,500 which she claimed had been withdrawn to pay for her legal fees in relation to the divorce. The Judge drew an adverse inference against the Wife for failing to provide documentary evidence of this expenditure. In any event, the Judge observed that legal fees incurred in the matrimonial proceedings could not be deducted from the matrimonial pool (citing *UFU (M.W.) v UFV* [2017] SGHCF 23 ("*UFU*") at [105]). He therefore returned a "rough figure" of $10,000 to the matrimonial pool (which was included in the Wife's total assets of $372,372.41 as stated at [3] above): the Judgment at [32]–[41].

The Judge's orders on the division of matrimonial assets and maintenance

9 The Judge applied the *ANJ* structured approach in dividing the matrimonial assets: the Judgment at [58]–[76]. He found the ratio of direct

financial contributions to be 86:14 in favour of the Husband. In the light of the fact that the Husband had made larger indirect financial contributions and the Wife had made more significant indirect non-financial contributions, the Judge found the ratio of indirect contributions to be 50:50. As a result, the *overall average ratio* of the parties' contributions to the marriage was 68:32 in favour of the Husband.

10 The Judge then adjusted the overall ratio by 8% in favour of the Wife to account for the Husband's undisclosed assets: the Judgment at [76]. The final ratio was therefore 60:40 in favour of the Husband. This resulted in the Wife being entitled to 40% or $763,440.88 of the pool of matrimonial assets, and the Husband $1,145,161.31.

11 The Judge further ordered the Husband to pay the Wife a monthly maintenance of $3,000 for 18 months, to account for the period of time before she was able to resume gainful employment: the Judgment at [83].

The issues on appeal

12 The Husband has not filed an appeal against the Judge's decision. The Wife raises two key issues in this appeal:

(a) First, whether the Judge was correct in his findings on the Husband's expenditure and therefore the extent to which the Husband has failed to disclose his assets.

(b) Second, how the court should give effect to the adverse inference against the Husband.

13 The Wife submits that beyond those items of expenditure which the Judge did not accept, there were other items of the Husband's expenditure in

Mr Wong's analysis which should also have been rejected. These were the purported sums of $20,000 spent on jewellery, $141,001.96 spent on the upkeep of [P] LLP, and $45,000 spent on legal costs for the divorce (S/N 12–14 of the table at [5] above). As a result, the Wife contends that the value of the Husband's undisclosed assets was even greater than that found by the Judge.

14 The Wife argues that because the amount of cash that should have been part of the Husband's assets could be quantified based on Mr Wong's analysis and whether each of the contested items of expenditure is accepted or rejected, the total value of the Husband's undisclosed assets could be determined, and the correct approach to give effect to the adverse inference against him would have been to add this sum back to the matrimonial pool. In the alternative, the Wife submits that even if the Judge's approach was correct, he should have applied a greater uplift to the ratio for the division of matrimonial assets than the 8% he adopted, which was insufficient to account for the amount of undisclosed assets.

15 In response, the Husband's primary submission is that it would be unrealistic to assess his expenditure based on whether it was supported by documentary evidence, particularly when the period in question stretched back to 2010. Instead, the Husband suggests that it is sufficient that the disputed items of expenditure were spent on undisputed activities of his and he did not need to have evidence of the amounts spent. In particular, the Husband seeks to show that his own estimated living expenses of $2,045,000 from 2010 to 2016 was justified. The Husband further submits that his conduct in the course of the marriage did not suggest that he would want to keep his assets out of the Wife's reach, and emphasises that the Wife did not succeed in showing that he had wrongfully dissipated his assets.

Drawing an adverse inference for non-disclosure of matrimonial assets

16 In the division of matrimonial assets upon divorce, the court is concerned with ensuring the just and equitable division of the material gains of the marital partnership between the spouses. "[M]arriage yields, upon its termination, a deferred community of property" (*BPC v BPB and another appeal* [2019] 1 SLR 608 ("*BPC*") at [52]). A necessary prerequisite for this endeavour is a fair assessment of the size of the pool of matrimonial assets to be divided.

17 Unlike proceedings in civil trials, the determination of the pool of matrimonial assets in family proceedings takes place in the absence of cross-examination (unless, exceptionally, cross-examination is specifically ordered by the court). As this court explained in *USB v USA and another appeal* [2020] SGCA 57 ("*USB*") at [46], these procedural constraints result in the parties' duty of full and frank disclosure taking on particular significance. Each party's discovery obligations must be strictly observed; since it is ultimately for the court to decide which of the parties' assets belong in the matrimonial pool, it is not for the parties to tailor the extent of their disclosure in accordance with their own views on what constitutes their matrimonial assets (*USB* at [58]).

Legal principles on drawing an adverse inference in AM proceedings

18 If a party fails to make full and frank disclosure in the AM proceedings, an adverse inference may be drawn against the party. The drawing of an adverse inference in this context has been the subject of an extensive discussion in the recent decision of this court in *BPC*. An adverse inference may be drawn where (*BPC* at [60]):

(a) there is a substratum of evidence that establishes a *prima facie* case against the person against whom the inference is to be drawn; and

(b) that person must have had some particular access to the information he is said to be hiding.

19 In *AZZ v BAA* [2016] SGHC 44 at [107], the High Court interpreted the first criterion as referring to a *prima facie* case of *concealment* by the party against whom the inference is to be drawn. For convenience, we will refer to this spouse as "the non-disclosing party", and to the other spouse as "the other party".

20 The drawing of an adverse inference in the context of the duty to fully and frankly disclose assets enables the court to reach a fair assessment of the total pool of matrimonial assets liable to be divided in accordance with the judicial philosophy undergirding s 112 of the Women's Charter. In the context of matrimonial proceedings, when considering whether a party has failed to make full and frank disclosure, the court ought to bear in mind that it is an impossible exercise to have a detailed record of every transaction in a marriage, particularly when the marriage was a long one. Thus, in *UYQ v UYP* [2020] 1 SLR 551 ("*UYQ*"), this court held:

> 2 … Indeed, the nature of a marriage stands in stark contrast to a cold commercial relationship, where parties generally keep a close and calculative eye on each other. Attempting to dredge up every record is futile because human memory is fallible, and also constitutes an exercise in obfuscation, when viewed against the tendency for parties to try to locate every detail in *their* favour in the aftermath of a marriage breakdown.
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> …

> 4 In our view, it would assist the parties to find a way forward and put this painful chapter of their lives behind them by focusing on the *major details* as opposed to every conceivable detail under the sun. We caveat that this does not mean parties should swing to the other extreme by being remiss in submitting the relevant records. Put simply, there ought to be ***reasonable*** *accounting rigour that* ***eschews flooding the court with details that would obscure rather than illuminate***. …
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> [emphasis in original]

21 An adverse inference ought not to be easily drawn against a party unless both the criteria we have referred to above (at [18]) are satisfied. Not every shortfall in the account provided by a party would present a suitable occasion for an adverse inference to be drawn. Parties in a functioning marriage may not always keep fastidious records, and it is understandable that they may genuinely be unable to recount past transactions in the AM proceedings (see *UBM v UBN* [2017] 4 SLR 921 ("*UBM*") at [15]). In fact, requiring or incentivising parties to dredge up every record far into the past runs contrary to the legal exhortation in s 46(1) of the Women's Charter: spouses must not be incentivised to be calculative, nor constrained from being generous and loving while they cultivate trust during their marriage and build their joint lives together. Upon divorce, the termination of the marriage does not abruptly transform the parties into adversaries such that the past years of marriage are examined through the lens of a cold, commercial partnership. It would simply be unrealistic to ignore the fact that spouses in a marriage do not conduct themselves in the way they would with business parties. Even though divorced parties are no longer spouses, there is every reason to treat one's former spouse, and current co-parent of one's children, with respect and a measure of give-and-take.

The adverse inference in the present case

22 In the present appeal, the parties do not dispute that the adverse inference against the Husband was correctly drawn by the Judge in principle. It is common

ground between them that the Husband's total earnings could be taken as $4,549,959. They were also content to approach the issue on the basis adopted by Mr Wong, which was to calculate what the Husband's cash balance ought to have been as at 31 December 2016 based on the Husband's expenditures from 2010 to 2016. This analysis is focused on the premise that a party's earnings which are not expended, transferred elsewhere, or converted into another asset (such as property) would be expected to remain in that party's possession in the form of cash (as balances in bank accounts).

23 We also note that Mr Wong's analysis in the present case appears to proceed on the implicit assumption that the Husband started 2010 with a net cash position of zero, since the analysis only accounted for his earnings and expenses starting from that year. This was how the parties ran the case and this is the issue and the factual matrix before us.

24 In general, using a broad-brush approach, a party's income over the years of marriage is usually reflected in the value of her assets in the pool (whether immovable property, shares or cash balances in bank accounts), after living expenses are taken into account. Most cases thus do not take on the approach that the present case did – totalling the income in question and examining if the use of the income has been accounted for. The present case concerns a spouse who earned a substantial income during the marriage over a good number of years and yet has negligible assets at the time of divorce. In such a situation, there ought to be some explanation for this discrepancy. Was it because the family had a disproportionately high standard of living and the spouse was not a prudent saver or investor? Was it due to a major financial crisis that caused great losses? Was the spouse in a habit of giving massive donations to various causes?

25 We would caution that such a detailed analysis of the parties' earnings and expenditure for the purposes of determining the extent of the matrimonial assets should not be taken as a matter of course. This would not be in keeping with the principles we have reiterated at [20]–[21] above. Instead, such an approach may be used in cases where there is already good reason to suspect, upon a preliminary overview, that there is a mismatch between a party's assets and their means.

26 On the facts of the present case, there was sufficient basis for a closer look at the Husband's cash flow. The Husband's disclosed cash balance of less than $500 did not gel with his significant income from his law practice. Having taken a closer look into the Husband's finances, we agree that an adverse inference should be drawn against him. Even on the basis of Mr Wong's rather generous assumptions, the Husband's disclosed cash balance fell far below the magnitude of what it should have been as assessed by Mr Wong ($428,678.36). There was simply no explanation given for this disparity. This is even before one considers the fact that the Judge expressly rejected significant items of expenditure which Mr Wong had accepted in his analysis (see [7] above), which would only further increase the shortfall and hence reveal the full extent of the non-disclosure.

Legal principles on giving effect to the adverse inference

27 It is important to bear in mind that the present appeal must, in any event, begin with the adverse inference drawn against the Husband as an established fact. This is the consequence of unchallenged findings following the Husband's decision not to appeal against the Judge's decision. The Husband's counsel, Ms Lisa Sam ("Ms Sam"), accepted that the Husband was bound by the Judge's findings at the hearing of the appeal, and rightly so. For that reason, the only

two issues that are squarely before us are those raised by the Wife in her appeal, which we have summarised at [12] above. We begin with the question of how the adverse inference should be given effect to.

28 It is well-established in the jurisprudence in this area that there are generally two approaches the courts have used to give effect to an adverse inference against a non-disclosing party (see *BPC* ([16] *supra*) at [64], *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 ("*Chan Tin Sun*") at [64], *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 ("*Yeo Chong Lin*") at [65], and *NK v NL* [2007] 3 SLR(R) 743 ("*NK v NL*") at [61]–[62]):

> (a) First, the court may *make a finding on the value of the undisclosed assets* based on the available evidence and, subject to the party dissatisfied with the value attributed showing that that value is unreasonable, include that value in the matrimonial pool for division. We will refer to this as "the quantification approach".
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> (b) Second, the court may order a *higher proportion of the known assets* to be given to the other party. We will refer to this as "the uplift approach".

29 The judgments of this court have made it clear that whether the court adopts the quantification approach or the uplift approach is a matter of judgment in each individual case (see *Yeo Chong Lin* at [66] (cited in *BPC* at [66]), *Chan Tin Sun* at [65], and *NK v NL* at [64]). The court should adopt the method it considers most appropriate in achieving a just and equitable result. What is just and equitable must be seen in the light of the objective of drawing an adverse inference in this context in the first place – to counter the effects of non-

disclosure of assets which diminishes the value of the matrimonial pool and thereby places those assets out of the reach of the other party for the purposes of division under s 112 of the Women's Charter as matrimonial assets (see [16] above). The preferred approach should enable the court to most appropriately reach a just and equitable division of the true material gains of the parties' marriage.

30 The quantification approach may be used where a specific asset (such as immovable property or a sum of money) has not been disclosed by a party, and the court finds sufficient evidence that such an asset exists and ought to have been disclosed. The court may then include into the matrimonial pool the value of the undisclosed asset if it is able to make such an assessment of its likely value.

31 The quantification approach may also be used even where the value of the undisclosed assets cannot be determined with precision. This was explained in *BPC* at [66], citing the comments made by this court in *Yeo Chong Lin* at [66]:

> It has been observed in reported decisions that the [quantification] approach … might not be appropriate where there are numerous undeclared assets, given that ascribing a specific value to these undeclared assets would involve 'unnecessary speculation': see *Chan Tin Sun* at [64], *Yeo Chong Lin* at [65] and *NK v NL* at [62]. Hence, in the circumstances, it might appear that it would be more just and equitable and more practical to adopt the [uplift] approach … . However, we consider the [quantification] approach to be appropriate here for the reasons explained in *Yeo Chong Lin* (at [66]) as follows:
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> > … In the nature of things, whichever approach the court adopts in such a situation, it is undoubtedly to a large extent speculative; whether it decides to give a value to what it considers to be 'undisclosed assets' or to give a higher percentage of the disclosed assets to the other party. ***Either approach would translate to giving something more to the other spouse by way of a***

> ***specific sum***. The very fact that the court is confronted with the problem of 'undisclosed assets' means that the position is unclear and far from certain. In the final analysis, it is for the court to decide, in the light of the fact-situation of each case, which approach would in its view best achieve an equitable and just result. What must be clearly recognised is that when the court makes such a determination *it is not undertaking an exercise based on arithmetic but a judgmental exercise based, in part at least, on feel.*
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> [emphasis added in italics and bold italics]

32 The decision in *BPC* illustrates how the quantification approach can be adopted even when it is difficult to quantify the value of the undisclosed assets. In *BPC*, the only undisclosed assets which had been valued totalled only $294,461.69 and no value could easily be ascribed to the assets in respect of which the court had concluded there had been insufficient disclosure or to the sources of income that the non-disclosing party had been found to be hiding (at [65]). There were thus other undisclosed assets which were difficult to value. This court found it fair to estimate the total value of all the undisclosed assets at 10% of the value of the total matrimonial pool. This corresponded to about $3,183,578, which the court added to the pool, commenting that this was "a fair figure in the circumstances of this case where the [non-disclosing party] has proved himself capable of earning very substantial sums in a relatively short space of time and has also sought to withhold relevant financial information" (at [67]). Similarly, in *Mok Kah Hong (m.w.) v Zheng Zhuan Yao (formerly known as Tay Chuan Yao)* CA 177/2013 (13 October 2014), this court estimated that the true value of the matrimonial pool in that case should be about 40% larger than the total value of the known matrimonial assets, based on the extensive failure by one party to disclose his assets (as recounted in *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 at [24(c)]).

33 Thus the quantification approach may result in adding into the pool of matrimonial assets the amount assessed by the court to be the likely value of a specific undisclosed asset, or adding a sum into the pool of matrimonial assets by calculating a value based on a percentage of the total value of the pool.

34 The uplift approach, on the other hand, seeks to eliminate the effects of non-disclosure by awarding a greater share of the total pool of matrimonial assets to the other party. In *NK v NL* ([28] *supra*) at [55]–[56], this court found that one party had failed to make full and frank disclosure owing to a decline of some $2.7m in his cash assets in the one-year period leading up to the decree *nisi*. Nevertheless, the court decided to adopt the uplift approach. This was because the court accepted that some of the non-disclosing party's cash assets could have been expended in the course of the year, and there was nothing to shed light on what proportion of the decline in the cash assets could be attributed to the actual expenditure and what proportion was concealed or wrongfully dissipated (at [60] and [62]). In another decision, *TQU v TQT* [2020] SGCA 8 ("*TQU*"), the non-disclosing party provided no information on various overseas properties (see *TQU* at [139]). As a result, this court applied the uplift approach by adjusting the ratio for the division of the matrimonial assets by 10% in favour of the other party (*TQU* at [142]). The High Court has also taken the uplift approach in other cases similarly involving assets of entirely unknown value (see, *eg*, *VBS v VBR* [2020] SGHCF 10 at [6] and [14], *UTN v UTO and another* [2019] SGHCF 18 at [94], and *TLB v TLC* [2016] SGHCF 3 at [9] and [13]).

35 Giving effect to the drawing of an adverse inference enables the court to better reflect the true *extent* of the matrimonial pool (see *Lau Loon Seng v Sia Peck Eng* [1999] 2 SLR(R) 688 at [30]). This can be achieved under either the quantification approach or the uplift approach. In practice, any adjustment of

the ratio for the division of the matrimonial assets under the uplift approach has an effect equivalent to adding some corresponding value of undisclosed assets to the matrimonial pool under the quantification approach (see [39] below for an illustration in respect of the present case). We suggest that where there is a genuine doubt or dispute as to the true extent of the non-disclosure, the court should prefer a finding which results in a higher share of the matrimonial assets being awarded to the other party. This follows from the very reason why the court is confronted with this task in the first place – the withholding of full disclosure or the concealment of assets by the non-disclosing party, which had led to the drawing of an adverse inference. On appeal, the exercise of discretion by the judge at first instance will not easily be disturbed unless the effect of the judge's decision was out of proportion to any reasonable estimate of the value of the undisclosed assets, and therefore resulted in the value of the matrimonial assets awarded to the other party being significantly different from what would have been just and equitable.

The appropriate approach in giving effect to the adverse inference in the present case

36 When a court makes findings in respect of the value of undisclosed assets, those findings should be reflected in the manner in which the court gives effect to the adverse inference. This is true whether the court's findings provide a basis for making a reasonable estimate of the value of the undisclosed assets, or are direct pronouncements on what the undisclosed assets are worth. In the present case, having made findings on specific amounts of cash that the Husband should have had in his possession at or around the IJ date, the Judge should have gone on to reflect that finding in the division of matrimonial assets. In particular, in the present factual matrix, where parties agree on the amount of

income earned and are disputing how its depletion can be accounted for, we think that the quantification approach is the appropriate one.

37 The Judge expressly rejected the Husband's claims that his yearly expenses were between $280,000 and $300,000 (the Judgment at [26]). Since this was the basis for the figure of $2,045,000 used by Mr Wong as the Husband's living expenses, this part of Mr Wong's calculations would also have been rejected by the Judge. The Judge contrasted this figure against the living expenses which Mr Wong had considered substantiated, which was $1,163,162.68. The logical inference is that the Judge preferred this latter figure. So far as the Husband's living expenses were concerned, the Judge's findings would effectively translate into the inference that the Husband should have had a further $881,837.32 (or so) of cash in hand as at 31 December 2016 (being the difference between $2,045,000 and $1,163,162.68). The other items of expenditure rejected by the Judge totalled $310,000 (see [7] above). Adding these two sums to the cash balance of $428,678.36 as found by Mr Wong, the Judge's findings would suggest that the Husband should have had a cash balance in the region of $1,620,515.68 as at 31 December 2016. Against this, the information provided by the Husband only showed a total balance of $425.44 across all his bank accounts as at 31 August 2016 (see the Judgment at [57]). There is no evidence as to the Husband's bank balances as at 31 December 2016, but neither is there anything to suggest that the Husband's bank balances would have changed significantly in this period. The parties having been content to have proceeded on the basis of slightly different dates for different aspects of the AM proceedings, there can be no complaint against the impact of this difference in dates. There is also no suggestion that the Husband had any other undisclosed assets besides cash derived from his income.

38 The findings made by the Judge quantified the Husband's undisclosed assets at $1,620,090.24 (being $1,620,515.68 minus $425.44). We do not suggest that the precision in this figure was reflective of the level of confidence in what was ultimately a broad-brush analysis of the Husband's earnings and outlays. Nevertheless, this estimated figure has been obtained, suggesting that the Husband had concealed some $1.62m in cash when disclosing his assets.

39 It would then have been appropriate for the Judge to adopt the quantification approach, rather than the uplift approach, to give effect to the adverse inference he had drawn. As we explained at [35] above, the question for this court is whether this ultimately had a significant impact on the amount of the matrimonial assets awarded to the Wife. There is no doubt that it did. The Judge's decision to award the Wife a total of 40% of the matrimonial pool resulted in the Wife receiving a total of $763,440.88 of the matrimonial assets. On the other hand, if the Judge had notionally added the $1,620,090.24 in undisclosed assets based on his findings to the pool of matrimonial assets (resulting in a matrimonial pool of $3,528,692.43), and awarded the Wife the *same share* of 32% of this enlarged pool of assets (being her share before the uplift approach was applied), the Wife would have received a total of $1,129,181.58 of the matrimonial assets. In other words, the Judge's decision resulted in the Wife receiving almost a third less than she would have, had he applied the quantification approach. This, in our view, illustrates the limitations of the uplift approach under such a factual matrix, where applying the uplift approach made it difficult to recognise the extent to which the adjustment made fell short of reflecting the true extent of the matrimonial pool despite factual findings having been made with respect to the unaccounted sums.

The true extent of the Husband's undisclosed assets

40 We now turn to the issue concerning the true extent of the Husband's expenditure as taken into account by Mr Wong's analysis and the Judge's findings. We will consider each contested category of expenditure in turn.

(1) Living expenses

41 The Husband seeks to support the figure of $2,045,000 as his living expenses from 2010 to 2016. In his Respondent's Case, the Husband argues that some of the individual categories of expenditure that make up his living expenses (such as his monthly groceries bill) were in fact higher than the figures adopted by Mr Wong in coming to the conclusion that he could only substantiate $1,163,162.68 for the Husband's living expenses. In our view, the Husband's contentions are not supported by the evidence. In any event, as we have observed at [27] above, the Husband is bound by the Judge's findings given that he has not filed an appeal against the Judge's decision. For completeness, the Husband also did not state in his Respondent's Case that he wished to support the Judge's decision on grounds other than those relied upon in the Judgment (pursuant to O 57 r 9A(5) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed)). As such, the Husband cannot contest the Judge's express rejection of the figure of $2,045,000. In fact, as we explained at [37] above, we understand the Judge as having found that $1,163,162.68 was the more likely figure for the Husband's living expenses.

42 We would add that even this figure of $1,163,162.68 is a generous one. Although Mr Wong characterised this amount as comprising living expenses he was "able to substantiate", there are numerous sub-categories of expenses which have been included within this amount despite the fact that no documentary evidence was available. Instead, even this figure was premised in large part on

the Husband's self-declared breakdown of his living expenses. As such, there is already some degree of buffer in Mr Wong's analysis of the Husband's cash balance.

43 At the hearing before us, Ms Yap Pui Yee, the Wife's counsel, conceded that the difference of $881,837.32 between these two figures for the Husband's living expenses should *not* be added to Mr Wong's original finding of the Husband's cash balance, which was $428,678.36, as this would amount to double-counting the Husband's cash assets. However, when Mr Wong's analysis is properly understood (see [5]–[6] above), we see no double-counting in adding these figures together to obtain the Husband's true cash balance. Mr Wong's conclusion that the Husband should have had $428,678.36 in cash as at 31 December 2016 was premised on the Husband having spent various sums of money, including a total of $2,045,000 on living expenses. Since we only accept that the Husband spent $1,163,162.68 on this category of expenditure, the difference between the two figures should be added to $428,678.36 to obtain a better estimate of the Husband's cash balance as at 31 December 2016. We will thus include both the figures of $428,678.36 and $881,837.32 as part of the Husband's true cash balance as of 31 December 2016.

(2) Legal costs

44 The Husband's legal costs for the divorce amounting to $45,000 were included in Mr Wong's analysis as an item of the Husband's expenditure (see S/N 14 of the table at [5] above). Since the Judge made no comment about this item of expenditure, he implicitly accepted it. The Wife contends that this item of expenditure should be rejected as the Husband has not provided any documentary evidence to show that it was incurred. Furthermore, when dealing

with the Wife's legal costs for the divorce, the Judge had ruled that legal costs could not be deducted from the matrimonial assets.

45 In our view, the Husband's $45,000 in legal costs for the divorce must be returned to the matrimonial pool. We note the Judge's decision to return the Wife's legal costs for the divorce to the matrimonial pool (see [8] above). This correctly reflects the approach that the courts have generally taken to the legal costs of matrimonial proceedings, which should be settled by the parties out of their own share of the matrimonial assets after division, and not taken out of the matrimonial pool (see *UFU* ([8] *supra*) at [105], citing *AQT v AQU* [2011] SGHC 138 at [37]). There is no justification for treating the Husband's legal costs any differently from the Wife's in this regard.

(3) The upkeep of [P] LLP

46 A sum of $141,001.96 was included in the Husband's expenditure by Mr Wong for the "upkeep" of his legal practice at [P] LLP (S/N 13 of the table at [5] above). However, Mr Wong was unable to verify this expense. Since the Judge likewise made no comment about this item of expenditure, he implicitly accepted it. The Wife submits that there is no evidence that this expense was ever incurred and it therefore should not be deducted from the Husband's total earnings.

47 At the hearing of the appeal, Ms Sam informed us that the Husband's case was that the $141,001.96 was spent on a single occasion for a recreational activity for the staff of [P] LLP. If this were true, there would be some documentary evidence of this large one-off expenditure, but none was produced. We are therefore of the view that the Husband has not proved that this

expenditure was in fact incurred. For this reason, it should not be deducted from the Husband's cash balance as at 31 December 2016.

48 There is also a further reason why this expenditure of $141,001.96 should not have been deducted from the Husband's total earnings. The sole basis for Mr Wong's conclusion that the Husband had spent this sum on the upkeep of [P] LLP was an affidavit filed by the Husband in which he sought to account for a total of $386,393.42 he had drawn down from a term loan with United Overseas Bank ("the term loan") which was secured against a property referred to as the WP Property. This amount was still outstanding under the term loan. It is worth noting that the Husband's father was a joint borrower under the term loan, and also a 50% owner of the WP Property as a tenant-in-common with the Husband (see the Judgment at [12]). According to the Husband, $141,001.96 of the sum drawn down from the term loan was used for the upkeep of [P] LLP. In the Judgment at [54], the Judge also accepted this account of how the Husband had spent the term loan.

49 Mr Wong explained in his report that he nevertheless decided to deduct the Husband's expenditure of the term loan moneys from his total earnings to account for the fact that the term loan would eventually have to be repaid from the Husband's own funds. However, the Judge accounted for the outstanding liability under the term loan in a different manner: in the Judgment at [55], the Judge deducted *half* of the amount outstanding under the term loan from the value of the Husband's share of the WP Property. This was presumably to account for the fact that the Husband's father was jointly liable for the term loan. As such, the amount of the liability which the Judge ascribed to the term loan was fully accounted for by a reduction in the value of the Husband's matrimonial assets. There is no challenge against this decision by the Judge. It was a clear instance of double counting for the Judge to then accept Mr Wong's

analysis, which accounted for the liability under the term loan by deducting the relevant sum as expenditure out of the Husband's total earnings.

50 The expense of $141,001.96 therefore should not have been deducted from the Husband's cash balance for two different reasons: the Husband has not proved that it was in fact incurred, and even if it had been incurred, the manner in which this expense was funded was already accounted for by the Judge through the reduction in the value of the WP Property. As such, we add the sum of $141,001.96 back to the Husband's cash balance as at 31 December 2016.

(4) Purchase of jewellery

51 A sum of $20,000 purportedly spent by the Husband on the purchase of jewellery for himself was another item of expenditure included by Mr Wong in his analysis (S/N 12 of the table at [5] above). Again, the Judge did not address this item of expenditure and therefore implicitly accepted it. The Wife contends that it should likewise be rejected because of the lack of documentary evidence.

52 No details have been provided of what jewellery the Husband had purchased with this $20,000. On the other hand, the parties had agreed that the Husband's matrimonial assets included "[g]old chains, rings and two watches" worth $30,000 (see the Judgment at [17]). Although there was no evidence to suggest any connection between the jewellery accounted for in the Husband's expenses and that declared in the Husband's matrimonial assets, we were prepared to give the Husband the benefit of the doubt and find that the $20,000 was in fact expended.

53 However, as with the sum spent on the upkeep of [P] LLP (see [48] above), the sole basis for Mr Wong's conclusion that the Husband had spent this sum of $20,000 on jewellery for himself was the same affidavit filed by the

Husband, in which he claimed that this amount was spent out of the moneys disbursed under the term loan. This was likewise accepted by the Judge in the Judgment at [54], although he incorrectly referred to the expenditure as being "jewellery for the Wife". For the reasons we have given at [48]–[49] above, the Judge double-counted the Husband's liability under the term loan by accepting the manner in which Mr Wong accounted for this $20,000. As such, we agree with the Wife that this $20,000 should be added back to the Husband's cash balance as at 31 December 2016, albeit for a different reason than the one she advances.

54 Although it appears to us that other expenses paid for by the Husband using the term loan were also factored into Mr Wong's analysis as part of the Husband's expenditure (namely, the down payments for the 16G Property and the 18G Property as well as the monthly mortgage payments for these properties) and therefore double-counted by the Judge, we do not make any further adjustments to the Husband's cash balance as the Wife has not challenged these sums. Consequently, our conclusions as to the Husband's cash balance as at 31 December 2016 would incorporate an even larger buffer in favour of the Husband to account for any other items of expenditure incurred over the years which may not have been expressly taken into account.

(5) Miscellaneous items of expenditure

55 This last category includes amounts purportedly spent by the Husband on pilgrimage trips, gifts to various relatives, traffic accident repairs, and astrological advice (S/N 8–11 of the table at [5] above) totalling $310,000. The Husband argues that each of these items of expenditure was in fact incurred. However, there is no evidence or documentation of any kind to support the Husband's assertions, which is entirely unsatisfactory considering the

considerable sums of money involved and the nature of the purported expenses. In any event, the Husband is bound by the Judge's express rejection of these items of expenditure being incurred (see [7] and [27] above).

Our decision in summary

56 In view of the foregoing, our analysis of the Husband's net cash position at the IJ date is as follows:

(a) The Husband's total earnings were $4,549,959.

(b) Mr Wong found the Husband's total expenditure to be $4,121,280.64 (see [5] above).

(c) Given our findings, the following sums totalling $1,397,839.28 should *not* have formed part of the Husband's total expenditure in Mr Wong's analysis:

(i) $881,837.32 for living expenses (see [43] above)

(ii) $45,000 for legal costs (see [45] above)

(iii) $141,001.96 for the upkeep of [P] LLP (see [50] above)

(iv) $20,000 spent on jewellery (see [53] above)

(v) $310,000 for miscellaneous expenses (see [55] above)

(d) As such, we find the Husband's total expenditure to be $2,723,441.36 (*ie*, (b) – (c)).

(e) We therefore find that the Husband should have had a cash balance of $1,826,517.64 as at 31 December 2016 (*ie*, (a) – (d)).

(f) Compared to his declared cash balances totalling $425.44 (see [36] above), the Husband has failed to disclose some $1,826,092.20 in assets.

57 Applying the quantification approach, we notionally add $1,826,092.20 to the initial pool of matrimonial assets amounting to $1,908,602.19 (see [3] above), resulting in an enlarged matrimonial pool valued at $3,734,694.39. Since the additional sum is being included by virtue of an adverse inference rather than by disclosure, the Husband is not entitled to credit for it in the computation of the contribution ratios (see *BPC* ([16] *supra*) at [67]). As such, we do not make any adjustment to the ratio of 68:32 the Judge found in favour of the Husband (see [9] above).

58 As a result, the Wife is entitled to $1,195,102.20, being 32% of all the matrimonial assets. We therefore vary the Judge's orders on the division of matrimonial assets to this extent. For the avoidance of doubt, we do not disturb the Judge's order on maintenance.

Assessing the true value of the matrimonial pool: legal principles

59 We make some brief comments on the broader scope of the court's duty to ensure that the matrimonial pool reflects the full extent of the material gains of the marital partnership. We think this important owing to the Wife's arguments before the Judge challenging the Husband's alleged expenditures as well as the manner in which these arguments were framed in the Judgment, both of which might, with respect, be liable to cause confusion. We explain this further at [69]–[71] below.

Drawing and giving effect to an adverse inference

60 As we have explained at [20]–[21] above, an adverse inference should not be drawn unless the relevant criteria are satisfied. There should be a substratum of evidence that establishes a *prima facie* case against the person against whom the inference is to be drawn; and that person must have had some particular access to the information he is said to be withholding.

61 An adverse inference is the consequence of a culpable failure by a party to make full and frank disclosure. The underlying rationale for the drawing of an adverse inference and the giving effect to it by the quantification approach or the uplift approach is that there is concealment of matrimonial assets which should be included for a fair division under s 112 of the Women's Charter. Either approach enables the concealed assets to be factored into the division of matrimonial assets.

Putative matrimonial assets not to be expended under the "TNL dicta"

62 Apart from the drawing of an adverse inference, the values of certain assets may also be added into the pool, but not as a consequence of a lack of full and frank disclosure. One such situation is when a party has expended substantial sums when divorce is imminent. This court held in *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 at [24] ("*TNL*"):

> … [T]he issue is how the court should deal with substantial sums expended by one spouse during the period: (a) *in which divorce proceedings are imminent*; or (b) *after interim judgment but before the ancillaries are concluded.* We are of the view that if, during these periods, and whether by way of gift or otherwise, one spouse expends *a substantial sum*, this sum must be returned to the asset pool *if the other spouse is considered to have at least a putative interest in it and has not agreed, either expressly or impliedly, to the expenditure* either before it was incurred or at any subsequent time. Furthermore, this remains

> the case regardless of whether: (a) the expenditure was a deliberate attempt to dissipate matrimonial assets; or (b) the expenditure was for the benefit of the children or other relatives. The spouse who makes such a payment must be prepared to bear it personally and in full. In the absence of consent, he or she cannot expect the other spouse to share in it. What constitutes a substantial sum is, of course, a question of fact and we do not propose to lay down a hard and fast rule in this regard, except to emphasise that it is not intended to include daily, run-of-the-mill expenses.
>
> [emphasis added]

63 For convenience, we will refer to this as the "*TNL dicta*". Expending a large sum of money when divorce is imminent, without more, is *not* in itself a "wrongful dissipation" in the character of dispositions contemplated by s 132(1) of the Women's Charter, part of which provides:

> … the court shall have power on application —
>
> > (i) to set aside any disposition of property, if it is satisfied that the disposition of property has been made within the preceding 3 years, with the object on the part of the person making the disposition of —
> >
> > > …
> > >
> > > (B) depriving that person's wife, former wife, incapacitated husband or incapacitated former husband of any rights in relation to that property; …

64 The basis for adding the sums back into the pool of matrimonial assets under the circumstances described in the *TNL dicta* is that the consent of the other party was not obtained, rather than a suspicion of concealment. For example, a mother uses a sum of $35,000, which would have constituted part of the matrimonial pool, to pay for their child's school fees in an overseas institution. The mother's reason for withdrawing the sum is to fund their child's overseas education. If this is true, it is not a "wrongful dissipation" intended to put assets out of reach of the other party. However, if it is made without the father's consent, this withdrawal may be more appropriately dealt with when

addressing how the parents should maintain their child, and the sum should be returned to the matrimonial pool in the meantime. The father may argue that he never agreed that the child should have an overseas education, which is far more expensive than a local one. Thus, his consent was not given when the mother withdrew the sum of $35,000 for this purpose at a time when divorce was imminent, and the *TNL dicta* would apply.

65 Although the label of "dissipation" is commonly used to describe dispositions intended to put assets out of reach of the other spouse, a dissipation falling within the *TNL dicta* is not necessarily a culpable act. It may also not involve a non-disclosure. Instead, this category may be seen to encompass a disposition of matrimonial assets during the relevant period when one spouse has failed to obtain the other's consent, even for "innocent" reasons, as illustrated in the hypothetical example above. Adding a sum back into the pool on the basis of the *TNL dicta* does not rest on the making of an adverse inference in the way we have described at [18] above.

Dissipation or inability to account for large sums* before *the time divorce is imminent

66 This does not mean, however, that outflows of money or assets *before* divorce is imminent can never be called into question. There have been cases discussing the possibility of an adverse inference being drawn from the withdrawal of significant sums of money during the course of the marriage: see, for example, *BOR v BOS and another appeal* [2018] SGCA 78 at [107], *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 at [31] and *Shih Ching Chia James v Swee Tuan Kay* [2002] SGCA 2 at [41]. It is important to recognise the context in which these discussions arose. If an adverse inference had been drawn in such cases, it would have been because of the court's suspicion that the sums

withdrawn had been stashed or spirited away instead of being expended in the ordinary course of the family's life. This would give rise to a *prima facie* case of concealment of assets or wrongful dissipation (with the intention to put assets out of reach of the other party). However, in those cases cited, the courts declined to draw such a conclusion – not surprisingly so, as it is difficult to believe that the parties would have intended to withdraw assets for the purpose of concealing or putting them out of reach of the other spouse during a time when their marital relationship was still functioning.

67 Therefore, before divorce is imminent, parties may use their financial resources in the various ways that functioning families would. If there is a large sum of money withdrawn by a party in the early years of the marriage, it is usually hard to believe that there is concealment or wrongful dissipation carried out to put assets out of the reach of the other party. If, for example, a spouse has indeed used up large sums of moneys on gambling activities long before divorce became imminent, such conduct may be relevant in determining the parties' *direct and indirect contributions* under the *ANJ* structured approach, but these sums spent have not been wrongfully dissipated in the relevant sense; nor are they concealed assets, for they are no longer in existence. As such, there is no basis to add such sums back into the matrimonial pool. It would, however, be appropriate to take the "dissipation" (in the different sense of wasteful whittling away) of moneys into account when assessing the parties' contributions to the marriage.

68 On the other hand, if there are indeed sums expended or given away especially nearer to the time when divorce is imminent, say, on gambling activities (especially when one had not previously indulged in gambling), or purchasing a property for a third party with whom one is having an adulterous affair, it may be possible to view such acts as wrongful dissipation carried out

with the intention of depleting the matrimonial pool. Whether a court finds such wrongful dissipation depends on the evidence and facts of the particular case. In such situations, the underlying reason for adding the assets back into the pool is the wrongful dissipation of assets carried out with the purpose of depleting the pool of matrimonial assets, or because of the concealment of assets (if the giving away of the assets was found to amount to a parting with the legal title, but not the beneficial interest). This is not necessarily based on an adverse inference arising out of a finding of non-disclosure; indeed, a party may fully disclose that he had given away or whittled away assets and if this is proven, there is in fact no failure to disclose one's assets and means. However, if such assertions are disputed and not proven by that party, then that party could be found to have failed to disclose the true facts and an inference may be drawn that he is in fact concealing the assets elsewhere. In the latter situation, an adverse inference arising from non-disclosure is plausible.

Observations pertaining to the present case

69 In the present case, the Wife had submitted before the Judge that various items of the Husband's expenditure should not be taken into account when determining his cash balance as they were not justifiable expenses (see the Judgment at [23]). The Judge characterised the Wife's arguments as amounting to allegations of "wrongful dissipation" of the matrimonial assets by the Husband. The Judge rejected this submission before moving on to consider the Wife's contentions through the lens of whether the Husband had failed to make full disclosure of his assets such that an adverse inference should be drawn (the Judgment at [24]).

70 The Wife's contention was that the Husband's personal or private expenses could not be taken into account to justify the use of his earnings. This

was a misunderstanding of the purpose of analysing the Husband's expenses. The court is not concerned with the justifiability of expenses stretching indefinitely into the past, but rather with what assets there were at the relevant time (usually, at the IJ date). As we explained at [22]–[24] above, in respect of accounting for how a spouse's income has been expended, their expenses shed light on whether the earnings have in fact been used up, or have instead been concealed. Restrictions on the parties' disposal of large quantities of matrimonial assets, meanwhile, generally only come to the fore after divorce proceedings are imminent, as explained in the *TNL dicta* (see [62]–[65] above). On the other hand, if a party appears to be spending significant sums of money which the other spouse does not support (say, on gambling activities) *before* divorce proceedings are imminent, the argument is instead one of financial irresponsibility, which will impact the question of the parties' direct and indirect contributions to the marriage in applying the *ANJ* structured approach (see [67] above). This argument would have no impact on the identification or quantification of the matrimonial assets themselves.

71 The Judge was faced with the challenge of framing the Wife's arguments so that they could be understood within the existing legal frameworks. With respect, however, the Judge's characterisation of the Wife's arguments as drawing upon the notion of "wrongful dissipation", and his identification of the *TNL dicta* as setting out the guidelines for making a finding to that effect (in the Judgment at [23]–[24]), are inaccurate for the reasons we have explained at [63]–[65] above. The Judge also appeared to use "wrongful dissipation[s]" interchangeably with the term "unlawful dissipations" to refer to the same concept in this passage. This latter term may also cause the conflation of the different notions explained at [59]–[68] above. In fact, the tenor of the Wife's arguments on this issue bore little resemblance to the *TNL dicta*, as our

foregoing explanation shows. Instead, it reflected a misunderstanding of the task of identifying the pool of matrimonial assets. Furthermore, the comment in the Judgment at [24] that the Wife had failed to make out an allegation of wrongful dissipation, and the Judge therefore "prefer[red] to analyse this issue" in terms of whether an adverse inference ought to be drawn against the Husband for the failure to make full and frank disclosure, does not assist in avoiding the same conflation. As we have explained, it is important to recognise that a failure to make full and frank disclosure and the dissipation of assets, although related in some ways, are not concepts located along a continuum.

Conclusion

72 The pool of matrimonial assets can be undervalued due to inadvertence, concealment (*eg*, arising due to intentional non-disclosure), wrongful dissipation (*eg*, falling under s 132 of the Women's Charter) or innocent dissipation (*eg*, falling within the *TNK dicta*). An understanding of the distinctions between each of these situations will assist in the application of the appropriate legal tests and criteria. All these concepts share the common object of ensuring that the matrimonial pool that is divided reflects the true material gains of the marital partnership.

73 We conclude with a reminder of the call made by this court in *UYQ* ([20] *supra*) at [2]–[4] (quoted at [20] above) for parties in matrimonial proceedings to be reasonably rigorous in ensuring disclosure and accounting, but without going so far as to embark on an acrimonious excavation of the past. Adversarial conduct that is petty and calculative should have no place in our system of family justice, especially if by all indications such an exercise would not have a significant impact on the overall justice of the case. To this end, we stress that as parties in a functioning relationship often and understandably do not keep

records of all their transactions, there is no reason for parties to dredge up every record deep into the past, unless there is good reason, at first blush, to suspect that not all of a party's assets have been disclosed (see [21] and [25] above). In the present case, there would have been some suspicion that the Husband had failed to fully disclose his assets as there was such a marked disparity between his disclosed assets and his very substantial earnings over a significant period of time. There was thus good reason for a closer look at his earnings and expenses.

74 As a result of the drawing of an adverse inference, the Husband has not received any credit in the assessment of the parties' financial contributions for the very substantial sum of undisclosed assets which he had amassed. The Wife has therefore been awarded a somewhat larger amount of matrimonial assets than she would probably have obtained had the Husband been frank in his disclosure from the start.

75 We order the Husband to pay the Wife the costs of the appeal, fixed at $30,000 inclusive of disbursements. The usual consequential orders will apply.

Steven Chong Judge of Appeal	Woo Bih Li Judge	Debbie Ong Judge

Alfred Dodwell and Yap Pui Yee (Dodwell & Co LLC) for the appellant;
Sam Hui Min Lisa (Lisa Sam & Company) for the respondent.