BGT *v* BGU
[2013] SGHC 50

Case Number : Divorce Suit No DT 5731 of 2009

Decision Date : 27 February 2013

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Kelvin Lee Ming Hui (Shankar Ow & Partners LLP) for the plaintiff; Gulab Sobhraj and Michael Low (Crossbows LLP) for the defendant.

Parties : BGT — BGU

Family Law – Matrimonial Assets – Division

Family Law – Maintenance

27 February 2013 Judgment reserved.

Judith Prakash J:

Introduction

1 This judgment deals with claims for division of matrimonial assets and maintenance. The plaintiff-wife and the defendant-husband were married in Singapore on 22 June 1995. They subsequently had two children, a son born in September 1996, and a daughter born in December 1997. The wife filed for divorce in November 2009 and an interim judgment of divorce was granted on 23 March 2010.

2 When the matter first came before me, an interim order on custody, care and control and access had been made by District Judge Shobha Nair. The parties were given joint custody with care and control being awarded to the wife and detailed access arrangements being put in place for the husband. The parties indicated that they were agreeable to joint custody and the wife having care and control. The husband, however, wished to have certain modifications made in the access arrangements. After hearing the parties, I varied the access orders slightly and this is no longer a disputed issue.

3 The issues that I have to deal with in this judgment are with respect to the amount of maintenance that the husband should pay for the children (the wife is only claiming nominal maintenance for herself), and how the matrimonial assets should be divided between the parties.

Maintenance

4 When I first saw the parties last year, the wife (based on an affidavit she had filed in March 2011), claimed that the son's expenses were $2,000 per month while the daughter's expenses were $1,950 per month. She wanted the husband to contribute $3,000 per month to the children's expenses. The husband was not paying the wife any maintenance for them at that time though he did bear the costs incurred when he had access to the children. During the hearing of the ancillary matters, I made an interim order that the husband should pay $600 a month as maintenance for both the children pending my final judgment. This order took effect in April 2012.

5 The first question that arises here is whether the expenses claimed are reasonable. The children are now aged 16 and 15 and are in secondary school. They not only have various tuition classes but also engage in extra-curricular activities. The children's monthly expenses as claimed by the wife are as follows:

Son		
(a)	Food	$600
(b)	Phone bills/Pocket money	$200
(c)	Chinese tuition	$200
(d)	Golf lessons	$150
(e)	Guitar/Piano lessons	$250
(f)	Math tuition	$280
(g)	Shoes/clothing/personal care/misc	$200
(h)	Medical/dental	$120
	Total	$2,000
Daughter		
(a)	Food	$600
(b)	Phone bills/Pocket money	$200
(c)	Chinese tuition	$200
(d)	Guitar/Piano lessons	$250
(e)	Ballet	$100
(f)	Other tuition/supplementary classes	$280
(g)	Shoes/clothing/personal care/misc	$200
(h)	Medical/dental	$120
	Total	$1,950

6 The husband alleged that the above expenses were inflated. He thought that the amounts allocated to food and shoes/clothing and personal care were excessive. Additionally, he objected to the medical and dental expenses as not being of a recurring nature. In respect of the son, the husband submitted that the son did not pay $150 monthly for golf lessons but incurred $150 a year for golf lessons organised by his school. For both children, the husband also commented that the piano lessons were no longer being taken and that they had never taken guitar lessons.

7 The wife's response was that the figures in her affidavit were reasonable but that some figures had been overtaken by events. She agreed that the children were not having guitar or piano lessons and that neither child was still enrolled for Chinese tuition classes. As regards the golf lessons, however, she had had to pay a one-time fee of $250 and the son's math tuition had increased to $360 per month. As for the daughter, her math tuition classes came up to $180 a month. Additionally, the wife had obtained medical insurance for the children from her employers costing about $300 per

year which meant that the children's medical expenses would be covered by her employer. She also testified that it was going to cost her $4,000 to pay for the daughter's braces and that the daughter was making a school trip to Germany which would cost her $3,000.

8 The evidence establishes that the children have grown up in a well-to-do environment. Both their parents have held well paying jobs. Before he was retrenched in 2009, the husband earned about $18,000 a month (there were periods during the marriage when he earned $25,000 a month) and the wife has also been able to draw a good salary, earning from about $8,000 a month to around $11,000 presently. The children are used to a good standard of living which would include meals at restaurants, holidays abroad from time to time and reasonable expenditure on items such as clothes and entertainment. With that in mind, the amounts claimed as spent on food, shoes etc and tuition are not excessive. It appears to me that a reasonable amount for both children's ordinary maintenance, outside of extraordinary expenditure like braces, would be as follows:

(a)	Food	$1,200
(b)	Phone/pocket money	$400
(c)	Math tuition	$540
(d)	Shoes/clothing etc	$400
(e)	Ballet and golf	$200
(f)	Medical/dental	$100
	Total	$2,840

It should be noted that the wife did not include as part of the children's expenses a proportionate part of her expenditure on utilities and transport. If those items were added, then the total expenditure on the children would be $3,000 a month or more.

9 It was the husband's submission that since the wife is earning more than $10,000 per month as a sales operation manager whilst he has only a gross monthly income of $2,047 as a remisier, the children's expenses should be shared unequally between them with him paying 30% and the wife paying the remaining 70%. It is true that the husband no longer has salaried employment and that his earnings as a remisier would vary from month to month. The husband, however, is a very capable man. This is a new career for him and that may account for the low level of income he is presently receiving. With his ability, it is not unreasonable to expect his earnings to increase in the future. Further, as would be clear when I go into the details of the matrimonial assets below, the husband has substantial savings in the form of shares and in his interest in the matrimonial property. Accordingly, I consider that he should bear an equal share in the burden of maintaining the children. I therefore order that he pay the sum of $750 per month per child as maintenance (based on a monthly expenditure figure of $3000 for both children). This order shall be back-dated to April 2012 and the husband shall pay the difference between the sum of $600 per month for both children and the new maintenance ordered for the period from April 2012 to the date hereof within four weeks. For the avoidance of doubt, the husband shall continue to pay the monthly maintenance in advance on or before the 7th day of each month. Apart from contributing towards the children's daily expenses the husband shall also pay half of any extraordinary dental and medical expenses incurred by the children which are not covered by the wife's insurance and shall reimburse the wife with his share of such expenses upon production of the receipts for the same.

10 As for the wife, I see no need to make even a nominal maintenance order in her favour. She is gainfully employed, is eight years younger than the husband and has assets. She does not need to rely on the husband for support.

Matrimonial assets

Background

11 The husband is now 54 years of age. In 1995, the year of the marriage, he was 37 years old and had been in gainful employment for some time. In 1994, the husband's annual income was $211,327 *viz*. some $17,000 per month. In 1995, he had more than $138,000 in his CPF account and he used money from that account to assist him in the purchase of an apartment in a development known as The Tanamera ("the Tanamera property") which was bought for $805,000. The Tanamera property was purchased a few months before the marriage and the husband was registered as its sole owner. The husband paid for the Tanamera property via his savings and a bank loan. He paid the instalments of the bank loan from his CPF contributions. The wife made no payments towards the cost of the Tanamera property.

12 Prior to the marriage, the wife was working in Malaysia. She came to live in Singapore sometime in 1995. After the marriage, she moved into the Tanamera property which then became the couple's matrimonial home. The wife was then aged 29. The wife obtained a job in Singapore and worked throughout the marriage.

13 In 2001, the parties purchased a new home, a house in Kew Terrace ("Kew Terrace"), for $1,265,000. It was registered in their joint names. On completion of the purchase, the family moved into Kew Terrace and this remained the matrimonial home until the wife filed for divorce. When the family vacated the Tanamera property, it was rented out and the rental proceeds were paid to the wife until the sale of this property in 2009.

14 Over the years, whilst the family lived comfortably, both parties also saved a portion of their income. The husband invested in stocks and shares and took pride in the fact that his stock portfolio grew over the years. The wife's savings went mainly into bank accounts. Both parties also have substantial sums in their CPF accounts. The sum of $678,996 was deposited into the husband's account upon the sale of the Tanamera property.

15 The wife purchased a new property in 2011, after her first affidavit of assets and means was filed on 24 March 2011. This property ("the Tropica property") is an apartment unit in a development known as The Tropica in Tampines Avenue 1. The purchase price of the Tropica property was $969,426. The wife and children are now residing in the Tropica.

16 During most of the marriage, the husband was gainfully employed and earning a high salary. He was out of work for one year between 1997 and 1998 but thereafter resumed paid employment until March 2009 when he was retrenched. At the time he was drawing $18,776.42 per month but his annual income in 2008 was $306,000 which averaged out to $25,500 a month. The husband remained out of work after his retrenchment. In his first affidavit of assets and means, he said that he had decided to become a home-based remisier so that he would have flexible working hours and be able to look after his children.

Joint assets

17 At the time of the interim judgment, the parties had only two jointly-owned assets:

(a) Kew Terrace (which had an estimated value of about $1.9m as at September 2011); and

(b) Units in a Barclays Unit Trust valued at $18,385.54.

Assets held in individual names

18 By the end of the exchange of affidavits of assets and means, the wife had filed three affidavits and, taking the salient items from each affidavit, had declared the following assets as being in her sole name:

	Item	Value (S$)
a)	A Hyundai motor vehicle (Less Outstanding Loan)	$32,522.00
b)	Insurance Policies:	
	NTUC Income Life Assurance	$48,375.00
	Great Eastern Flexi-Plan Whole Life	RM 11,175.00 ($4,613.28)
c)	Shares, Warrants and Bonds	
	Call Option on Hewlett Packard Stock @ $32	Nil
d)	Bank Accounts:	
	DBS Current Account	$70,748.29
	DBS MSA Account (joint account with the daughter)	$418,349.61
	Maybank Savings Account	$25,000.00
	POSB Savings Account	$47,032.25
	POSB Savings Account	$60,059.67
	Maybank (Malaysia) Savings Account	RM 7,000.27 ($2,889.86)
	Maybank (Malaysia) Fixed Deposit Account	RM 15,000.00 ($6,192.32)
e)	CPF Accounts	
	Ordinary Account	$110,437.00
	Medisave Account	$99,906.95
	Special Account	$39,500.00
	TOTAL	**$965,626.23**

19 The husband had declared the following assets in his three affidavits of assets and means:

	Item	Value (S$)
a)	Volvo S60	$70,000.00
b)	Insurance Policies (based on surrender value):	
	NTUC Violife / Critical Illness	$3,481.02
	NTUC Incomeshield Enhanced Preferred / Rider	Nil
	Prudential Whole Life	$31,329.40
	AIA Premier Life	$43,903.69
	AIA Choice Life	$17,807.23
	AIA Choice Life	$17,849.21
	Great Eastern Eldershield Plan	Nil
c)	Shares, Warrants and Bonds:	
	Capitaland	$102,300.00
	Fung Choi	$10,500.00
	Genting SP	$42,400.00
	GLP	$10,050.00
	Midas Holdings	$24,150.00
	Olam	$88,500.00
	SembCorp	$53,500.00
	Sinograndines	$28,500.00
	Swiber	$107,400.00
	UIC	$14,150.00
	Yangzijiang	$18,600.00
	Capitaland Limited	$82,110.56
	Digiland International Limited	$2,161.60
	Popular Holdings Limited	$6,776.34
	Newsmart Energy 91	HK$ 7,500.00 ($1,227.59)
	Termbray Industrial International Holdings 93	HK $54,000.00 ($8,838.62)
d)	Bank Accounts	
	DBS Fixed Deposit	$10,000.00
	DBS Autosave Account	$126,723.48

	POSB Savings Account	$6,059.92
	DBS Savings Plus Account	$800.82
	Standard Chartered Bank Shanghai Ltd Shanghai Hongqiao	RMB 757,963.85 ($152,832.56)
e)	CPF Accounts	
	Ordinary Account	$711,682.46
	Medisave Account	$29,130.39
	Special Account	$136,101.57
	TOTAL	**$1,958,866.46**

20 It should be noted that the parties did not agree that all of the disclosed assets (as listed above) formed part of the matrimonial pool available for division. The husband in particular sought to take out a substantial portion of his assets from the pool.

21 On the subject of the matrimonial assets to be divided, the parties raised a number of issues. First, for much of the proceedings, they were materially at odds over the extent of direct financial contributions by each party to Kew Terrace. The second issue raised was whether the proceeds from the sale of the Tanamera property constituted matrimonial assets. Thirdly, there was a question regarding the effect of the wife's purported disassociation from the husband's investment in shares. Fourthly, there was a dispute over how much the wife had contributed towards the expenses of the family during the marriage and how much of her savings were actually from her income rather than derived from the husband's income. Each party also questioned whether the other party had made full and frank disclosure to the court. There were also differences about whether some of the valuable assets disclosed should be part of the matrimonial assets. It should be noted that because of the striking differences in the parties' positions as revealed by their affidavit evidence, I made an order for cross-examination and the parties were duly cross-examined on their various contentions.

Direct contributions to Kew Terrace

22 In her affidavit evidence, the wife alleged that her direct financial contributions towards the matrimonial home amounted to 26% of the cost thereof. In coming to this percentage, she did not include some of the minor expenses such as stamp fees and legal fees. In her calculation, the wife had proceeded on the basis that her contribution to the amounts paid in cash *viz.* the downpayment and the loan instalments amounted to $190,000. There was no direct proof of this, however.

23 The moneys in question were taken from the parties' joint account with DBS Bank ("DBS joint account"), which both parties had put money into from time to time. This account was closed in around 2010. It was the husband's position that he contributed about 75% of the moneys in the DBS joint account while the wife had contributed the remaining 25%. At first, the wife rejected this and said that she would like to believe that the contributions were 34:64 as between herself and the husband. In her closing submissions, however, she accepts a ratio of 30:70 between herself and her husband. This is the ratio that the husband had agreed to in cross-examination. In her closing submissions, the wife includes a re-calculation of the various contributions and concludes that after all contributions were taken into account, she had contributed 19.2% to the husband's 80.8%. This result is very close to the husband's calculation in his closing submissions that she had contributed

18% while his contribution amounted to 82%. In view of the very slight difference in the parties' closing positions, it is not necessary for me to make a finding on exactly what their respective contributions were.

Sale proceeds from Tanamera property

24 The Tanamera property was sold in October 2009 for $800,000. Of the proceeds, $678,996.16 was refunded to the husband's CPF account and after payment of the agent's commission, legal fees and other expenses, he received $103,208.84. He paid his sister the sum of $32,000 in settlement of a loan she had extended to him and the balance was put into his sole account.

25 It is not disputed that the wife did not make any direct financial contribution to the Tanamera property. When the property was purchased, the husband had a credit of $138,834.48 in his CPF account. He used this money and his further CPF contributions accruing over the years to pay for the Tanamera property and that is why the bulk of the sale proceeds had to be repaid into his CPF account.

26 The husband's position is that the Tanamera property did not constitute a matrimonial asset because it was purchased before the marriage without any direct monetary contribution from the wife. Further, the wife had not done anything during the course of the marriage to enhance the value of the property. The husband therefore submits that the money in his CPF account flowing from the sale of the Tanamera property is not a matrimonial asset and ought not to be divided.

27 The wife, on the other hand, contends that because the parties lived in the Tanamera property as their matrimonial home between 1995 and 2001, the property became a matrimonial asset. She relies on s 112(10)(a) of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Charter") which reads:

> (10) In this section, "matrimonial asset" means —
>
> (a)
>
> any asset acquired before the marriage by one party or both parties to the marriage —
>
> (i)
>
> ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or
>
> (ii)
>
> which has been substantially improved during the marriage by the other party or by both parties to the marriage;
>
> …

She further says that as the Tanamera property was the family home for six years, the fact that she did not do anything to enhance the property is irrelevant.

28 The situation is not as clear cut as the wife contends. At the time that she filed for divorce, the Tanamera property was no longer the matrimonial home. The definition of a matrimonial asset in s 112(10)(a)(i) refers to, inter alia, an asset which is "ordinarily used or enjoyed by both parties ...

while the parties are residing together for shelter ...” and it is this part of the definition that the wife is relying on. However, from 2001 onwards, the parties had not used the Tanamera property for shelter. There is no doubt that whilst they lived there it was a matrimonial asset. The question is whether it retained that character once the family moved out and the Tanamera property was used as an investment. Neither party addressed me on this. In my view, if an asset would only constitute a matrimonial asset when its ordinary use is for the use or enjoyment of the parties or their children, then if such use ceases during the period when the parties are residing together for a reason that has nothing to do with the end of the marriage, that asset would cease to be a matrimonial asset. The position would be different if the reason for the cessation of use was the break-up of the marriage.

29 This proposition, however, is not the end of the matter. Although the husband might have purchased the Tanamera property before the marriage, he paid for most of it during the marriage. He used his CPF contributions for this purpose and it is well established that any contributions to his account from moneys earned after the marriage would form part of the matrimonial assets. If the husband had not been paying for the Tanamera property, his monthly contributions during the marriage would have remained in his CPF account and there would have been no doubt at the end of the marriage that those contributions would have to be included as part of the matrimonial assets. The husband had $138,834.48 in his CPF account before the marriage. This amount must be deducted from his present CPF balance but the rest of the balance, whether it came from the sale proceeds of the Tanamera property or from contributions made by the husband after the sale of that property, would have to be included as part of the matrimonial assets. I therefore do not accept that $678,996 should be deducted in full from the husband’s CPF savings because that represents the amount that went back into his CPF account on the sale of the Tanamera property. As at 9 April 2011, a month before his first affidavit of assets and means was made, the husband had $711,682.46 in the ordinary account portion of his CPF account. After deduction of $138,834.48, the amount remaining for division is $572,847.98.

The Tropica

30 The wife purchased the Tropica property in her sole name in June 2011. In order to do so she took a loan of $500,000, paid the sum of $370,000 from her savings and used $100,000 from her CPF ordinary account. The husband contends that the savings and CPF moneys constitute matrimonial assets and that the wife should be treated as having funds of $470,000 but that the risk of gain or loss from the acquisition of the Tropica property should be borne by her alone. However, he also submits that he should be considered to have an interest in the Tropica because, in purchasing it, the wife used money from the DBS joint account to which he had contributed. The wife is not willing to cede an interest in the Tropica to the husband but agrees that the sum of $470,000 that she used towards its purchase should be returned to the matrimonial pool for division. In this respect, she avers that the $470,000 that she used had been declared in her first affidavit when she declared the balances in her CPF account and various bank accounts.

31 There is no doubt that the Tropica property was purchased after the interim judgment and after the parties had declared their assets for the purposes of the ancillary matters. In acquiring the property, the wife was providing for her future accommodation as she could no longer live in the matrimonial home once the ancillary matters were resolved. She did not finance the purchase entirely from matrimonial assets but took on a substantial loan which she and she alone will be responsible to repay in the years to come. In *Yeo Chong Lin v Tay Ang Choo Nancy* [2011] 2 SLR 1157 (“*Yeo Chong Lin*”) the Court of Appeal observed (at [33]) that it would be wholly unreal to treat a property bought by the husband jointly with his new companion after the issue of the decree nisi as being a matrimonial asset. This observation applies *a fortiori* in the present case. The husband’s position is not prejudiced as long as the funds used to buy the property are put back (notionally) into the

matrimonial pool. As stated above, the wife recognises that she must do this. I therefore hold that the Tropica property is not a matrimonial asset and that the husband's only claim is to an interest in the $470,000 that the wife used to buy it. If the husband were to have an interest in the property, then he would have to bear the concomitant risk of a fall in value. He is not willing to bear this risk. The husband is trying to eat his cake and still have it and that is not possible.

The husband's shares

32 The husband used a substantial part of his earnings during the marriage to purchase and trade in shares. There is no doubt that all shares purchased fell within s 112(10)(b) since the definition of "matrimonial asset" in that section includes "any other asset of any nature acquired during the marriage by one party or both parties to the marriage". The husband, however, seeks to avoid the consequences of this definition. There is no dispute that during the marriage the wife was not in favour of the husband's investments in shares. The husband relies on this disapproval to argue that she disassociated herself from his investments and therefore that the shares are not matrimonial assets liable for division.

33 The husband supports his argument by reference to *Anthony Patrick Nathan v Chan Siew Chin* [2011] 4 SLR 1121 ("*Nathan*") in which the judge observed at [27] that the corollary of limiting risk exposure to the party taking a unilateral decision on a separately owned asset is that it also prevents the other party from benefitting from a profitable investment decision which he or she had no part in. In making this observation, the judge relied on the Court of Appeal decision of *Ong Boon Huat Samuel v Chan Mei Lan Kristine* [2007] 2 SLR(R) 729 ("*Ong Boon Huat*") where the Court of Appeal refused to treat as a matrimonial asset a property which the husband had bought in the face of the wife's refusal to have anything to do with the acquisition.

3 4 *Ong Boon Huat* demonstrates that in the appropriate case the court will use its discretion to exclude from the pool of matrimonial assets an asset which would otherwise have fallen within that pool. This is a power that is used very sparingly by the court and only in special circumstances. It is not a power which is applied to just any asset that one party purchases during the course of the marriage despite the disapproval of the other.

35 Whilst the wife here did not think that the husband should invest in the stock market, she did not place any hindrance in the way of his doing so as and when he saw fit. In fact, it was an activity that he carried out throughout the marriage. He did not need her participation in this activity as his earnings were more than sufficient to supply savings which could be invested. The facts here are far removed from those in *Ong Boon Huat* which concerned a very short marriage during which the wife, having originally agreed to purchase a property with the husband, withdrew her consent and participation after the couple separated, leaving the husband to shoulder alone a financial burden which was intended to be shared. When subsequently the value of the property appreciated, the wife sought to have a share in it. This would have been inequitable in all the circumstances and the Court of Appeal accordingly rejected her claim.

36 The situation here with regard to the husband's share portfolio is entirely different. He invested funds earned during the marriage and this makes all his shares matrimonial assets. Simply because the wife did not put in funds or support this activity is not reason enough to persuade me that the portfolio should be removed from the pool when the funds that were invested would clearly have been treated as matrimonial assets had they been kept as cash savings. That would be an inequitable result and would also lead to numerous unnecessary disputes between spouses as to whether they had objected to the acquisition of any particular asset during the marriage.

37 The husband did not draw any distinction between one parcel of shares and another with regards to the dates of acquisition thereof and I take it that that was because, on the facts, no rational distinction could be drawn so as to exclude any particular parcel from the pool. His contention that the wife should not share in the portfolio because she disapproved of share purchases applied to all the shares therein and was the only basis on which he sought such exclusion. That argument having been rejected, no other basis for withdrawing any parcel of shares from the matrimonial assets exists.

38 As for the value of the portfolio, when the husband originally declared his assets in April 2011, he gave the value of the individual parcels of shares as shown in the table in [18]. Subsequently, he asserted that the portfolio had fallen in value and that as at 30 September 2011, it was worth only $511,715. The question is whether for the purpose of distribution of the assets the portfolio value should be taken as at April or as at September 2011.

39 The issue of the operative date at which matrimonial assets are to be valued was considered in *Yeo Chong Lin*. There, the Court of Appeal noted that there are four dates which a court may adopt: first the date of separation; second, the date on which the writ for divorce is filed; third, the date on which an interim judgment is given; and fourth, the date of hearing of the ancillary matters. It observed (at [39]) that generally speaking, it would be sensible to apply either of the last two dates mentioned.

40 The wife submits that using the September 2011 value of the share portfolio would offend the principle that once a marriage is over, a spouse should not bear the risk of a fall in value or the benefit of any appreciation in value of an asset, due to the unilateral actions of the other spouse. This view was expressed in *Nathan* where after reviewing the authorities, Quentin Loh J observed (at [26]) as follows:

> The authorities reviewed above also support the proposition that separately owned matrimonial assets should generally be valued at the date on which the matrimonial assets were determined. Not only should a party not be exposed to the risk of a gain or a loss flowing from the other party's separate acquisition of new assets (funded out of existing matrimonial assets), a party should also not be exposed to the risk of a gain or a loss flowing from the other party's continued holding of the existing matrimonial assets which he or she separately owns in the first place. Indeed, to hold an asset is as much an investment decision as to sell it.

41 In this case, the husband dealt with his share portfolio as he saw fit. Whether to buy or sell shares and when to buy or sell them were decisions that he made unilaterally. I therefore agree that it is for him to bear the risk of depreciation after the marriage ended and therefore that the date of interim judgment would be more suitable than September 2011. In this case, I do not have the value of the portfolio as of the date of the interim judgment, however. The closest I have to that value is the value declared by the husband in his first affidavit of assets and means. I agree with the wife's submission that that is the value to be placed on the portfolio rather than the lower value obtained in September 2011.

The insurance policies

42 The husband disclosed insurance policies worth $114,370.55 on the basis of the surrender values of the same as of April 2011. He contended that three of these policies should not be included in the pool of assets and that therefore the total value of the policies which formed part of the assets amounted to $78,714.10.

43 The three policies which the husband seeks to exclude comprise two "Choice Life" policies issued by AIA and one "Whole Life Par Series 2" policy issued by Prudential. As for the AIA policies, these comprised a policy (surrender value $17,849.21) on the life of the son who is also the beneficiary of the same and another (surrender value $17,807.23) on the life of the daughter. I agree that these policies should be excluded. Although the husband paid for them, they constitute gifts to the children and he will not obtain any benefit from them. As for the third policy, it is a Prudential policy (surrender value $31,329) which was purchased in 1984. The husband contends that since it was acquired before marriage, it does not form part of the matrimonial assets. The wife does not disagree and I therefore exclude this policy as well.

Non-disclosure of bank accounts and unexplained withdrawals

44 Both parties contend that the other did not make full and frank disclosure to the court. The non-disclosures alleged relate to foreign bank accounts and the evidence established that both of them had not been forthcoming in certain aspects until full disclosure was prompted by specific discovery applications made by the other party.

45 In the case of the wife, she did not disclose the existence of two Malaysian Maybank accounts containing RM 22,000.27 until the husband served interrogatories. The wife subsequently gave contradictory accounts of how she came to have this money. Initially, she said that the moneys in the two accounts comprised her inheritance from her deceased father. Under cross-examination, however, she changed her story twice. At first she said the moneys constituted savings from her salary in Malaysia prior to the marriage. Later, she asserted that whilst she was married, she had remitted money to her father for his maintenance and the balance in the account represented moneys sent to Malaysia for this purpose. She also asserted that because the moneys in her account had been meant for her father she considered the balance that he did not use as an "inheritance" from him. This attempt to try and reconcile conflicting statements did not work.

46 In the case of the husband, he did not disclose an account with the Standard Chartered Bank, Shanghai branch in any of his affidavits. It transpired that this account contained Chinese Yuan 757,963.85 which is equivalent to approximately $153,000. This is not a small sum and the wife contends that the husband could not have "accidentally" forgotten to reveal it. Disclosure of the account was only made when specific discovery, naming the bank account, was requested by the wife on the basis of a document which she had found in the matrimonial home. The wife also points out that when the husband was questioned about this account in court, he maintained that he did not have bank accounts that he did not disclose in his affidavits. Further, the bank statements for this account were sent to his sister's address and his explanation as to why he had used this address rather than that of the matrimonial home was not believable. He said that he used the account to buy Chinese shares and as his wife always nagged him when he bought shares in China, he thought he would have the statements sent to his sister so as to avoid further nagging by the wife. However, the husband also carried on a lot of share trading in Singapore and his wife's nagging did not stop him from having those statements sent to the home address. The husband did not let the wife's nagging stand in the way of his trading in Singapore so his explanation for keeping the Shanghai statements away from the home lacked credibility.

47 The husband only disclosed the existence of the Shanghai account when he was forced to do so and even then he asserted that the wife had found a statement relating to the Shanghai account by breaking open his cupboard. In court, the husband said that he thanked the wife for doing this because otherwise he would not have remembered that he had a deposit in Shanghai and that it was earning six to eight percent in annual interest. He further asserted that he had not really planned to hide the Shanghai account, but his protestations that he had forgotten all about this money rang

hollow. The husband impressed me as a man who was proud of his ability to handle his money and make it grow and it defies belief that he could have forgotten such a substantial sum especially when he was using it to invest in shares.

Withdrawals from the parties' bank accounts

48 Both parties also sought to make capital out of what they alleged to be unexplained withdrawals from the joint account.

49 The husband questioned the following transactions conducted by the wife:

(a) A withdrawal of $10,000 from her Maybank account on 2 January 2009;

(b) A deposit of $10,000 into her Maybank account on 5 July 2010;

(c) A transfer of $50,000 from her then salary account with DBS Bank on 7 July 2008; and

(d) A total of $20,450 withdrawn from her account in July 2008.

50 When questioned as to what these transactions were about, the wife was not able to explain them. She could not say where the money came from or where it went to. In particular, she gave various explanations in relation to the $20,450 but was not really able to recall what had happened to the money. As for the $50,000 withdrawal, her explanation was that it was most likely that the money was paid into a joint account with her daughter. However, she was certain about this.

51 The husband's submission is that if the wife was not able to provide any clarity on transactions that took place as recently as 2008 and 2009, then she cannot be relied upon to give an accurate account of the transactions in the parties' joint fixed deposit accounts that had taken place many years earlier. The husband also suggests that the large movement of funds from her account suggest that she was putting aside funds in an undisclosed account. I am, however, satisfied that nothing sinister lies behind the wife's inability to explain exactly what happened to the moneys mentioned in [49]. The bank accounts disclosed by the wife contain substantial sums and it is likely that the money went into accounts meant for family expenses and is reflected in the balances disclosed.

52 At the same time, the husband takes the position that the wife's joint accounts with the children, which had substantial balances as at March 2011, contain money which was derived from his savings. The wife's joint account with the son had a balance of $60,059.67 whilst the two accounts with the daughter held $418,349.61 (a DBS account) and $47,032.25 respectively. The husband says that the moneys in these accounts must have been savings for the children derived mostly from interest earned from the parties' joint fixed deposit account. In any case, taking into consideration the wife's claims as to her expenses over the years, she could not have accumulated the substantial sums of money in the children's accounts by herself and it would be reasonable to hold that the husband had had made substantial contributions to these accounts.

53 The wife points out that the various monthly statements which the husband supplied in respect of his sole account with DBS Bank for the period between 2008 and 2011 show at least 28 transactions which involved withdrawals of more than $10,000 from the account. Additionally, in many months the total withdrawals came up to more than $40,000. The husband had not explained the nature of the withdrawals in his bank account and it was disingenuous for him to criticise the wife for not being able to explain transactions of much lower value prior to 2009 when he could not explain his later transactions. It should be noted, however, that when he was asked about some of these

transactions in court, the husband was able to show that they were payments for various expenses and share investments. The husband says that because his large withdrawals were made for his investments and he had disclosed all the shares he owned, complete disclosure had been made and there was no squirreling away of any funds.

54 On a consideration of the evidence overall, however, I am satisfied that, although both parties had initially been less than forthcoming, by the time of the hearing all assets of both parties had been disclosed.

Other assets

55 The husband has a membership in the Poresia Golf Club in Malaysia. The wife is not claiming a share in that asset so it does not need to be included in the pool.

56 The wife has a motor vehicle which she claims is worth $80,000. The husband on the other hand claims it is worth $92,000. The wife suggests that her valuation should be adopted given that the asset has continued to depreciate since she estimated its value in March 2011. In fact, the hire purchase agreement that the wife signed showed that she purchased this car in January 2010 for $80,999 and that she paid $32,999 from her own resources and borrowed the balance of $48,000 which she undertook to repay by monthly instalments of $659 each. The car was, therefore, acquired after she filed for divorce and, by the time of the interim judgment less than three months later, its net value (*i.e.* after subtraction of the hire-purchase loan) would not have been much more than $35,000. I propose to value the car at $35,000 for the purpose of the distribution.

57 The wife owns certain shares which had been allotted to her by reason of her employment. The wife referred to these shares as her "performance shares". On the stand, the wife stated that she had 500 performance shares but she claimed that they were worth nothing because when they were first allotted to her, they had been worth $32 each but at the time of the hearing, they were only worth $23 each. The wife also admitted that she had previously sold some of her performance shares to pay legal fees though at another point in her cross-examination, she said that she had no recollection how the moneys from the shares were spent. In this regard, I accept the husband's submission that the wife should be treated as having shares worth $11,500 (500 x $23) as part of the matrimonial assets.

The wife's savings

58 The husband submits that the wife's savings do not support her assertion that she bore the bulk of household expenses or her assertion that they were derived entirely from her own efforts. The first plank of the submission was that the wife's earnings were not large enough to support the level of savings that she had. In this connection, the husband noted the evidence given by the wife in cross-examination, which was that she had initially earned about $8,000 a month and subsequently for 12 years her salary had been about $9,500 a month. She also said it had been increased to about $11,000 per month during the two years preceding the hearing, giving her a net take-home salary of $10,000 per month. The wife further estimated that, including CPF, her annual salary had for the most part been between $120,000 and $150,000.

59 Secondly, the husband went into the wife's expenses and alleged savings. The wife had said that it was typical for her to save about $30,000 a year and she asserted that since 2001 she had saved about $40,000 a year. The husband thought that this level of saving was not consistent with her level of spending. The wife had revealed in court that currently her personal monthly expenses were $4,050 and that she spent another $4,000 on the two children. That left her with a balance of

$2,000 a month and of this $1,000 went towards the instalment on the Tropica Property. Thus, her saving level had to be much lower than $40,000 a year. Further, although the balance of $2,000 a month was the situation after she bought the Tropica property, the wife had testified that while she was living in Kew Terrace she had also spent $8,000 a month. At the most, this level of spending would have allowed her to save $2,000 a month.

60 On the basis of the evidence, the husband submits that the wife's claim that she saved $40,000 per annum could not be true. The wife could not have made a significant contribution to the DBS joint account and it was likely that the husband's estimation that the savings ratio was 25:75 in his favour was closer to the truth of the matter.

61 From my examination of the evidence, there is much to be said for the husband's contention that the wife was exaggerating her spending. It was the wife's position that throughout the marriage she had spent a lot of money on household expenses and the children's needs including clothing, tuition, books and other items. She asserted that a large chunk of her earnings had gone to support the standard of living that the family enjoyed. She agreed that she had collected rental from the Tanamera property amounting to about $130,000 over 5 years but asserted that this covered only part of such expenses and that she had had to make up the difference from her own funds. The wife estimated that while the family was living in the Tanamera property, she had contributed $3,000 per month towards the household expenses and, in fact, had settled the bulk of these expenses amounting to some $300,000 during the whole period. Once they had moved to Kew Terrace, her contribution had grown to $5,000 a month. Over the years in Kew Terrace, she had spent at least $600,000 on the household expenses.

62 As at March 2011 the wife had, according to her affidavit of assets and means, the total sum of $621,189.82 in her various bank accounts ($630,272 if the Malaysian Maybank accounts are included). If all this money came from the wife's own savings, it would mean that over the 16 or so years that had passed since the marriage in 1995, she had saved approximately $38,000 per annum. That high rate of saving could not have been achieved by a woman earning $120,000-$150,000 per year if at the same time she was contributing $3,000-$5,000 a month to the household expenses and paying for all her own personal expenses. If the wife was spending as much as she said she did, then it is more likely that she would not have been able to save more than about $20,000 a year.

63 Two possible conclusions can be drawn from the evidence. The first is that the wife did not contribute as much as she alleged to household expenses and the second is that if she was bearing such a high proportion of the family's expenses then her savings were drawn from the husband's earnings. However, the second conclusion is the less justifiable one because the husband was only able to point to one big withdrawal by the wife from the DBS joint account and that was the sum of $200,000 in about 2010. I should say that in calculating the wife's rate of saving, I did not deduct that $200,000 from the $621,189.82 in her bank account because it is roughly equivalent to the $190,000 that was part of the money withdrawn from the DBS joint account to pay off the mortgage on Kew Terrace. The wife calculated that that sum was what she had contributed to the joint account for the purpose of settling this loan.

64 As regards the money that the wife had in her various bank accounts, it is clear that $200,000 of this must have come or must be treated as coming from the DBS joint account. I have held that the wife only contributed 30% of the money in the DBS joint account. Accordingly, it should be noted that $140,000 of the amount withdrawn came from the husband's savings. By the same token, when the husband withdrew a lump sum of $200,000 from the DBS joint account in 2009, he was also withdrawing part of the wife's contributions amounting to $60,000 on the basis of the 30:70 ratio. The exact manner in which the husband treated the amount withdrawn was not disclosed but it is fair

to assume that it would be reflected either in his bank accounts or in his share portfolio since he asserted he had taken the money out to invest for a better return. However he used the money, I am able to hold that the wife contributed $60,000 to the husband's assets.

Recalculation of assets in the parties' possession

65 The findings that I have made above have some impact on the assets in the pool of matrimonial assets and the value of such assets. I think that at this point I should restate the consequences of my findings.

66 First, as far as the wife is concerned, the total value of the assets that she eventually declared was $965,626.23. She valued her motor vehicle at $32,522 but I have given it a value of $35,000. I have also found she possessed shares worth $11,500. Taking these two items into account, the total value of her assets would be increased to $979,604.23. Out of these assets, she had cash savings of $630,272. Of this amount, $140,000 would have come from the husband's savings in the DBS joint account.

67 Second, in relation to the husband, the assets declared by him totalled $1,958,866.46. I have found that he is entitled to deduct the sum of $138,834.48 from his CPF account as he had earned that amount prior to the marriage. I have also held that the sums of $17,849.21, $17,807.23 and $31,329 representing the surrender values of three insurance policies can also be deducted. After these deductions, the husband's assets total $1,753,046.54. Of this, $60,000 would have come from the wife's savings in the DBS joint account.

68 In summary, the values of the matrimonial assets are as follows:

(a) Jointly owned assets: $1,918,385.54 (estimated);

(b) Assets in wife's name: $979,604.23;

(c) Assets in husband's name: $1,753,046.54.

Total: $4,651,036.31

Distribution of assets

Parties' positions

69 The husband does not take an overall view as to the division of the assets. He has made different submissions in relation to different classes of assets as follows:

(a) In relation to Kew Terrace, an equitable means of dividing this property would be to order its sale and apportion the proceeds of sale in accordance with each party's contribution.

(b) As for the Tanamera property, as I have previously noted, he wants to keep the proceeds of sale for himself but this is a position that I have rejected.

(c) The husband's share portfolio should be retained entirely for himself and the wife can retain her performance shares for herself.

(d) He wants a share in the Tropica property, another position I have rejected.

(e) The moneys in the two POSB accounts held in the joint names of the wife and the children should be divided between the parties.

(f) The wife may keep her car but shall deposit $30,000 representing the proceeds of sale of the old car into the children's accounts.

(g) The wife may keep her jewellery and watches but shall give the stamp and coin collections to the children.

(h) All other assets to be retained by the party in whose name they presently stand.

70 The wife says that she should be given 65% of the combined matrimonial assets and argues that her claim is justified because:

(a) While the husband made more direct contributions to Kew Terrace, the wife made more indirect contributions by shouldering most of the family expenses for 15 years.

(b) The husband had refused to work since early 2009 and the wife had to shoulder the entire financial burden for the children for three years.

(c) The wife had contributed more significantly towards the children's care over the 15 years of the marriage.

(d) The children would be living with the wife and their needs should be taken into account.

(e) The husband has a much higher earning capacity than the wife and will be able to earn much more money than she does once he starts working again.

My decision

71 Section 112(2) of the Charter states that a court shall "have regard to all the circumstances of the case" when it is considering what would be a just and equitable division of the matrimonial assets. It also sets out a list of non-exhaustive factors which may be taken into account in determining how to divide the pool of assets.

72 In *Yeo Chong Lin*, the Court of Appeal (at [76]) commented on s 112:

> ... A wide discretion is conferred upon the court. The section does not prescribe the weight which should be attributed to each factor or how each factor should be regarded as against another factor. In most instances, the difficulty lies in evaluating the non-financial contributions of the homemaker wife as such contributions are not easily reducible into monetary terms. In *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 ("*Lock Yeng Fun*") this court noted (at [39]) that non-financial contributions were by their very nature "difficult to measure because they are, intrinsically, incapable of being measured in precise financial terms". That having been said, the court went on to state that such difficulty should never be a ground to refuse that spouse his or her equitable share in the matrimonial assets.

73 The Court of Appeal also noted in *Yeo Chong Lin* (at [79]) that the exact division which the court would make in each particular case would necessarily be fact sensitive. The only guidance which Parliament has laid down is "just and equitable" and that is the objective which the court must in each case seek to achieve.

74 The husband was undoubtedly the main breadwinner of the family from 1995 until he was retrenched in 2009. He bore the entire cost of acquiring the Tanamera property and paid for at least 80% of the second matrimonial home at Kew Terrace. The husband maintained that he also bore the lion's share of the family's expenses but in this regard he was only able to substantiate a sum of about $1,800 a month which covered property tax, utilities and insurance, home repairs and some other items. The husband did not produce any proof that he had paid for other expenses such as clothing, pocket money and medical expenses. It was accepted that apart from the levy, the wife had borne the expenses of the maid for most of the marriage. It should be noted, however, that the husband did pay for the family's holidays except in regard to one cruise booked by the wife. As he was not happy about this expense, he insisted in recovering a substantial part of the same from the wife. The husband was a good father and was also involved in the care of the children. He made it a point to return home on weekends from his frequent overseas business trips in order to spend more time with the family.

75 The wife made substantial contributions to the welfare of the family. She too was very much involved in childcare although she did have the assistance of her parents and a maid at various points of time. The wife returned home every day for lunch with the children despite holding a full-time job. She also had to bear more responsibility for the children while the husband was away on his business trips. After the husband was retrenched, the wife increased her contributions to the family's expenses.

76 It is difficult to determine exactly who paid what. The wife and the husband both tended to exaggerate their individual contributions and to downplay the contribution of the other. As I have observed above, the wife's claim to have borne the brunt of the family expenditure was not consistent with her high rate of savings. Throughout the marriage, the husband earned about three times more than the wife and I accept that he must have paid his fair share of these expenses, though the wife also contributed. The wife collected all the rental from the Tanamera property and although some of this had to be used to pay service charges and property tax for that property, there would have been a fair amount left over which she would have been able to use for the family. The husband produced documents which showed that the wife had regularly used a supplementary credit card (ultimately payable by the husband) to buy items for the house. Whilst the wife maintained that on those occasions, the husband had recovered the amounts charged from her salary, she was only able to point to three specific instances. One of those related to the costs of the cruise that I have mentioned above and the other two instances involved relatively small sums. On the whole, I accept that the husband paid more than the wife gave him credit for. This did not prevent him from saving a substantial amount as showed by the valuable portfolio of shares he amassed. I also accept, however, that the husband tended to be rather cheese-paring especially after he was retrenched when he became quite obsessed about the amount of electricity that the family was using.

77 In *Yeo Chong Lin*, the wife's contributions were entirely in the domestic sphere; the marriage was an extremely long one (49 years) and the husband had been extraordinarily successful in business. The wife was awarded 35% of the matrimonial assets. In the present case, the marriage was much shorter (15 years) but the wife contributed not only domestically but also financially. Further, the wife has not made any claim to substantial maintenance and by ruling that there should be no maintenance order at all in her favour, I have precluded any possibility of her making any financial claim on the husband hereafter. The husband's proposal that she should get only 20% of the matrimonial home and that he should be allowed to keep the bulk of the assets would not lead to an equitable result. The husband is a competent man and if he chooses to should be able to earn a fair income although he is now in his mid-fifties. As for the wife, in my judgment, giving her 65% of the assets would not be equitable either in view of the husband's contributions and support over the

years. Doing the best that I can and taking a broad brush approach, I think that it is equitable in all the circumstances of this case to divide the matrimonial assets equally between the parties.

78 This means that the jointly owned assets should be sold and the proceeds, net of all expenses, should be divided equally. As far as Kew Terrace is concerned, any amounts which the parties have to refund to their respective CPF accounts shall be taken from their respective shares of the net proceeds. Kew Terrace shall be sold within six months hereof and the parties shall conduct the sale jointly. I hereby give them liberty to apply should there be any difficulty in implementing this order.

79 As for the other assets summarised in [68] above, they total $2,732,650.77. Half of this sum is $1,366,325.38. The wife holds assets worth $979,604.23 and therefore there is a shortfall in her assets of $386,721.15. The husband shall pay her this amount in order to equalise the assets. He may do so out of his share of the sale proceeds of Kew Terrace but shall pay her the amount no later than ten months from the date of this judgment.

80 Any other assets which the parties hold which are not covered by [68] shall be retained by the party who is holding them. The parties should come to an amicable arrangement on dividing the furniture in Kew Terrace but if they do not, they may apply to me for division thereof.

81 Each party shall bear his or her own costs.