

XZ v YA  
[2011] SGHC 244

**Case Number** : Divorce Suit No 721 of 2007 (RAS No 216 of 2010)  
**Decision Date** : 11 November 2011  
**Tribunal/Court** : High Court  
**Coram** : Steven Chong J  
**Counsel Name(s)** : Grace Chacko (Synergy Law Corporation) for the Plaintiff/Respondent; Diana Foo (Tan Swee Swan & Co) for the Defendant/Appellant.  
**Parties** : XZ — YA

*Family Law*

11 November 2011

**Steven Chong J:**

1 Disputes over maintenance and division of matrimonial property are common incidents arising from dissolution of marriages. In the present case, the dispute over maintenance has been particularly acrimonious. It has undergone several rounds before no less than three District Court Judges and several appeals to the High Court. Furthermore, the husband claimed that his mother's loan to purchase the matrimonial home should be treated as his direct financial contribution for the division of matrimonial assets, in addition to deducting it at source from the gross sale proceeds to be refunded to his mother. In either event, the mother's loan would be repaid but if the husband's position was accepted, it would have increased his share of the net sale proceeds and would also entail double counting of the mother's loan.

**Background facts**

2 The parties were married on 20 May 1995, and have two children (ages 9 and 12). The husband is 42 years old and is a captain with a reputable airline. The wife is 43 years old, and is a part-time customer service engineer.

3 In July 2005, the wife confronted the husband on the issue of his suspected infidelity. In September 2005, he moved out of the matrimonial home at xxx ("the matrimonial property") to live with his mother, before returning in November 2006. In February 2007, the wife filed for divorce. After a contested trial, the wife was granted a decree nisi on 28 December 2009 on the ground of the husband's unreasonable behaviour (in particular, his improper association with a third party), while the husband's counterclaim against the wife was dismissed.

4 Earlier, pursuant to the wife's application for interim maintenance in Maintenance Summons No 5941 of 2005, the parties had entered into Maintenance Order No 1168 of 2005 by consent on 8 November 2005, the terms of which were as follows:

- (a) The husband was to pay the wife monthly maintenance of \$4,500 for maintenance of the wife and the two children from 1 October 2005 to 1 December 2005;

(b) Thereafter, the husband was to pay –

(i) \$4,800 per month for the period of 12 months from 1 January 2006;

(ii) \$5,100 per month for the period of 12 months from 1 January 2007;

(iii) \$5,400 per month for the period of 12 months from 1 January 2008;

(iv) \$5,700 per month for the period of 12 months from 1 January 2009; and

(c) The husband was to pay \$6,000 per month from 1 January 2010 onwards.

5 The husband subsequently applied to vary this maintenance order downwards in Maintenance Summons No 7419 of 2006 ("Maintenance Summons No 7419/2006"), while the wife applied to vary it upwards and to enforce outstanding arrears in Maintenance Summons Nos 5549 and 5500 of 2007 respectively ("Maintenance Summons Nos 5549/2007 and 5550/2007"). On 16 May 2006, District Judge Sowaran Singh ("DJ Sowaran Singh") dismissed both applications to vary the maintenance order, but held that the husband was at liberty to re-apply for a downward adjustment in the event that his total income was substantially reduced (by at least \$500) or in the event that the wife's take-home salary increased substantially (by at least \$400). Arrears of maintenance amounting to \$24,408.10 were ordered to be paid in monthly instalments until the entire sum was paid up.

6 In District Court Appeal No 19 of 2008, the husband appealed against the orders in Maintenance Summons Nos 7419/2006 and 5550/2007. Various grounds were raised by the husband including misrepresentation by the wife that she had ceased working or would be ceasing work even though she continued to work part-time, as well as matters relating to the true state of each party's expenses. On 4 December 2008, Chao Hick Tin JA granted a downward variation with a monthly reduction of \$1,000 backdated to January 2007, and ordered that the wife was to pay the husband the over-payment of \$1,000 per month from January 2007 to November 2008 amounting to \$23,000 in total. In *XZ v YA* [2009] SGHC 51 ("*XZ v YA*") at [23], Chao JA stated that the reduction was on account of the misrepresentation of the wife as regards her employment status prior to the entering of the consent maintenance order. In the result, the monthly maintenance was reduced as follows:

(a) \$4,100 per month for the period of 12 months from 1 January 2007;

(b) \$4,400 per month for the period of 12 months from 1 January 2008;

(c) \$4,700 per month for the period of 12 months from 1 January 2009; and

(d) \$5,000 per month from 1 January 2010 onwards.

7 In Maintenance Summons Nos 5819 and 6388 of 2009 respectively, both the wife and the husband again applied to vary the interim maintenance order. On 30 August 2010, District Judge Amy Tung Chew Ming ("DJ Amy Tung") granted a downward variation such that the husband was to pay the wife \$4,000 per month with effect from 1 January 2010. DJ Amy Tung also ordered that the husband was to pay the wife the arrears of \$14,395 in instalments of \$200 per month.

8 Both parties appealed but subsequently agreed to withdraw their respective appeals in the High Court against the interim orders made by DJ Amy Tung in deference to the final orders to be made in the ancillary matters. For this reason, DJ Amy Tung did not record in writing her decision to vary the maintenance order. On 30 November 2010, various ancillary orders were made by District Judge Jen Koh ("the DJ"). On 13 December 2010, the husband filed the present appeal against the orders in respect of access, maintenance and the division of the matrimonial property.

9 I heard the appeal over two days on 26 May and 23 August 2011, and on 6 September 2011 I delivered my brief oral grounds where I substantially dismissed the appeal. The appeal against the division of matrimonial property was dismissed while the maintenance order was varied primarily due to a change in circumstances arising from the recent purchase of an HDB flat by the wife. Variations to the access time for the children were made principally by consent. The husband was ordered to pay costs fixed at \$2,000 inclusive of disbursements.

10 As the husband is appealing to the Court of Appeal against my orders on division of matrimonial assets, maintenance and costs, I now set out the reasons for my decision in respect of these orders. He has not appealed against the orders for access to the children.

### **Decision below**

11 The ancillary orders pertaining to maintenance and the division of matrimonial assets made by the DJ on 30 November 2010 were as follows:

#### **Maintenance for the wife and the children**

7. With effect from 1 January 2010, the [husband] is to pay to the [wife] monthly maintenance in the sum of \$5,000-00 being \$2,000-00 per month per child and \$1,000-00 per month for the [wife].

8. The monthly maintenance is to be paid on the first day of every calendar month direct into the [husband's] DBS account no: xxx.

9. The parties are to agree on the quantum of arrears arising from this order and agreed arrears shall be paid from the [husband's] share of the sale proceeds upon successful completion of the sale of the [matrimonial property]. The [husband's] conveyancing solicitors are to make the payment to the [wife] and/or her solicitors together with the [wife's] share of the sale proceeds. In the event that parties are unable to agree on the quantum of arrears, parties are at liberty to write in with their respective computations for the court's consideration and to restore the matter pertaining to the quantum of arrears for clarification. Pending clarification, the [husband's] conveyancing solicitors shall hold as stakeholders \$20,000-00 from the [husband's] share of the sale proceeds.

10. In the event of any default of maintenance payments by the [husband], the [wife] is to write in to restore this matter for hearing and to apply for an Attachment of Earnings order.

11. The [husband] shall be responsible for the children's medical expenses pursuant to his current contract of employment with respects to medical benefits for Medical Insurance for Dependents of Senior Staff of [xxx]. The [wife] shall ensure that the children attend at the appointed panel of clinics applicable for their medical needs and the [husband] shall forward the necessary documentation and medical cards to the [wife] within 7 days of the date of this order if he has not already done so.

12. The parties are at liberty to apply for a variation of the monthly maintenance sum set out in paragraph 7 above, upon the [wife] acquiring a property of her own and her residing therein with the children, or, after the expiry of six (6) months from the date of receipt by the [wife] of her share of the sale proceeds from the matrimonial property, whichever is earlier. This order shall not in any way preclude the parties from filing a variation application in the event that either party satisfies the requirements for a variation pursuant to the provisions of the Women's Charter, Chapter 353.

### **Division of the [Matrimonial Property]**

13. Further to the orders made on 6 April 2010 with respects to the matrimonial property, upon completion of the sale, the proceeds of sale shall be utilized to repay outstanding mortgage loan and the costs and expenses of sale. The balance sale proceeds shall be utilized as follows:

(a) To repay to the [husband's] mother the sum of \$305,0000-00 [sic]

(b) The remaining sale proceeds after repayment of the sum of \$305,000-00 are to be divided equally between the parties.

From their respective shares, the parties shall refund their respective Central Provident Fund accounts of monies utilized there from for the purchase inclusive accrued interest.

### **No further claims**

14. There shall be no further claims between the parties and the [wife's] 50% of the sale proceeds as set out in paragraph 14 shall be in full and final settlement of all her claims against the [husband] including costs of the ancillary matters.

12 With respect to division, the DJ assessed the husband's and the wife's direct financial contributions towards the matrimonial property to be 61.2 percent and 38.8 percent respectively. After considering all circumstances of the case including the wife's contributions to the husband in his career, her contributions to the welfare of the family, the conduct of the husband, the wife's care of the children, both parties' indirect contributions to the household expenses and the length of the marriage, the DJ ordered an equal division of the net sale proceeds of the matrimonial property after repayment of the bank loan, the husband's mother's loan, and the costs and expenses of the sale.

13 With respect to maintenance, the DJ found that the husband had an average total income of \$17,886.31 per month (from all sources). As such, his financial situation had improved substantially since 2007/2008 when the order for \$5,000 per month was made by Chao JA, and thus there was no merit in the husband's application to vary the maintenance for each child downwards to \$1,000 per month. Further, the DJ found, after taking into consideration the wife's income and expenses, that

she would have a shortfall of about \$5,000 per month, which reinforced the appropriateness of the maintenance order in that quantum.

### Division of matrimonial assets

14 The matrimonial property is the only matrimonial asset that the wife is claiming. Both parties had agreed that each party was to retain all other assets held in their own names, including CPF monies.

15 The matrimonial property was purchased for \$935,000, with the assistance of a \$305,000 loan from the husband's mother. It has since been sold for \$1.27 million. The break-down of the sale proceeds, according to the completion account on 14 December 2010, was as follows:

<b>Total sale proceeds</b>		<b>\$1,270,000.00</b>
Less		
Repayment of bank loan	(\$310,926.77)	
Repayment of loan to husband's mother	(\$305,000.00)	
Legal and agent's fees	(\$32,719.60)	
<b>Net sale proceeds</b>		<b>\$621,353.63</b>
Refund to husband's CPF	(\$297,464.11)	
Refund to wife's CPF	(\$172,591.61)	
<b>Cash balance</b>		<b>\$151,297.91</b>

16 The DJ first assessed the husband's and wife's direct financial contributions towards the matrimonial property to be 61.2 percent and 38.8 percent respectively after considering the parties' contributions towards the mortgage payments and the improvement of the matrimonial property. The break-down of their respective direct financial contributions (at the time of the hearing before the DJ) was as follows:

	<b>The wife</b>	<b>The husband</b>
--	-----------------	--------------------

CPF with interest	\$160,223.10	\$272,767.43
Renovations	\$28,048.00	\$24,210.00
<b>Total contributions</b>	<b>\$188,271.10</b>	<b>\$296,977.43</b>
<b>Percentage contributions</b>	<b>38.8 percent</b>	<b>61.2 percent</b>

The DJ rejected the husband's assertion that his mother's loan of \$305,000 should be included as part of his direct financial contributions. As this sum was to be repaid to his mother from the sale proceeds (and has since been repaid), its inclusion in the calculation of direct financial contributions would lead to double-counting. In any case, the sum was intended by the husband's mother as a loan, and not an investment.

17 On the issue of indirect contributions, the DJ found that the marriage subsisted for 12 years, and rejected the husband's contention that the wife's contributions towards him and the marriage should be confined to 7.75 years by excluding the period when they did not live together when the husband was undergoing training in Perth, Australia (12 months) and when he was training and staying at xxx (11 months), as well as the period when the parties stayed with his parents (15 months). During those periods, it could not be said that their marriage was suspended and that they were no longer married, or that they failed to do their part in contributing towards the family.

18 The following indirect contributions over the length of the marriage were pleaded by the wife:

- (a) Paying for the family expenses when the husband was studying to become a pilot.
- (b) Taking care of the children, maintaining the home and looking after the welfare of the family especially when the husband was away from Singapore for 15 to 17 days each month.
- (c) Contributing more financially towards the first matrimonial property which was an HDB flat.
- (d) Holding the family together and looking after the children when the husband walked out on them for one and a half years while he was involved with another woman.

Having considered these factors as well as all the circumstances of the case, the DJ apportioned a *further* 11.2 percent of the matrimonial property to the wife for her indirect contributions, such that the parties each received an equal share of the net sale proceeds after repayment of the bank loan, the husband's mother's loan and the costs and expenses of the sale.

19 Before me, it was not suggested by the husband that the DJ was wrong in assessing the indirect contributions of the parties. Instead, counsel for the husband only advanced two arguments that the DJ had erred in her apportionment:

- (a) That the husband's mother's loan should be included as part of the husband's direct financial contribution.
- (b) That the DJ's apportionment had overlooked a consent order recorded by DJ Sowaran Singh dated 6 April 2010 ("the Consent Order"), wherein the parties had agreed to the apportionment of net sale proceeds *after* the repayment of the bank loan, the husband's mother's loan *and the refund of CPF contributions*.

As such, the husband sought the refund of CPF contributions *before* apportionment (such that

the net sale proceeds to be apportioned would amount to only \$151,297.91) and an upward adjustment of his share of the net sale proceeds to 70 percent on the basis of his increased direct financial contribution (taking his mother's loan into account).

### ***Treatment of the mother's loan***

20 I agreed with the DJ that the husband's mother's loan should not be treated as the husband's direct financial contribution. This was a loan to both the husband and wife to purchase the matrimonial property. While it is true that the husband's mother extended the loan because the husband is her son, it is equally true that it was extended to enable both the husband and the wife to *jointly* purchase the matrimonial property. After all, the property was registered in their joint names. This became even clearer given that the loan has since been fully repaid to the husband's mother from the sale proceeds of the matrimonial property.

21 I have also noted that in the husband's 1<sup>st</sup> Affidavit of Assets and Means filed on 1 February 2010, he had averred that the mother's loan was to be repaid first before apportionment and, more significantly, had not listed his mother's loan as part of his direct financial contributions. Furthermore, there was no suggestion by the husband in his 1<sup>st</sup> Affidavit of Assets and Means that he had paid any interest to his mother or that the loan attracted any interest payment. Instead he had simply alleged that the repayment of the mother's loan should include interest at 2.5 percent being "opportunity costs of the fixed deposits [*sic*] interest". Significantly, the mother was not listed as a creditor of the husband under the section "Particulars of my Creditors (i.e. people whom I owe money to)". In his 2<sup>nd</sup> Affidavit of Assets and Means filed on 29 April 2010, the husband adopted a contrary position and claimed that the mother's loan was a personal loan to him and as such it should count as part of his direct financial contribution. On the other hand, in the wife's 1<sup>st</sup> Affidavit of Assets and Means, she maintained that part of the purchase price for the matrimonial property came from an interest-free loan from the husband's mother. I should add that in her 3<sup>rd</sup> Affidavit of Assets and Means filed on 19 August 2010, she claimed that the loan was a gift from the husband's mother to both of them but did not wish to deprive her of repayment though there was never any agreement on interest. It was curious that no affidavit was filed by the "lender", *ie*, the husband's mother, to depose that the loan was personal to the husband, that there was an agreement on interest or that the husband had paid interest to her. Based on the objective evidence before me, it was clear that the mother's loan was to both the husband and the wife to enable them to purchase the matrimonial property jointly. In the circumstances, the husband's case that the mother's loan was personal to him was, in my view, an afterthought which was contrived to increase his share of the sale proceeds.

22 In any event, the approach of refunding the mother's loan before apportionment *and* including the loan as part of the husband's direct financial contribution for the purposes of apportionment, as proposed by the husband, would have resulted in double counting of the mother's loan to the detriment of the wife. Should the loan of \$305,000 be included in the husband's direct financial contribution, the ratio of direct financial contributions would shift from 38.8 percent : 61.2 percent to 23.8 percent : 76.2 percent in favour of the husband. Making the same adjustment for indirect contributions as was done by the DJ, the apportionment ratio would be about 35 percent : 65 percent, instead of equal apportionment, in favour of the husband. This implies that the husband would receive \$403,879.86, out of the net sale proceeds of \$621,353.63, *in addition to* the refund of \$305,000 to his mother. On the other hand, the wife would receive only \$217,473.77, as opposed to the \$310,676.81 that she would receive under the present orders. As such, it may be observed that double counting of the mother's loan would unjustifiably re-allocate close to \$100,000 from the wife to the husband.

## ***The Consent Order***

23 Before DJ Sowaran Singh, the parties had recorded the Consent Order to sell the matrimonial property and for the sale proceeds to be dealt with on the following terms:

- (1) The Parties are to sell [the matrimonial property] in the open market at the price not less than the valuation price.
- (2) The [wife] and the [husband] shall have the joint conduct on the sale of the [matrimonial property]. Each party shall appoint their respective agent who will co-broke with each other.
- (3) The [matrimonial property] shall be sold within three (3) months from the date of the Order of Court and the proceeds shall be applied as follows:-
  - (i) Repay the outstanding housing loan with HSBC Bank;
  - (ii) Reimburse the parties' respective CPF account monies withdrawn for the purchase of the [matrimonial property] plus interest;
  - (iii) Repayment of [husband's] loan of \$305,000.00 from the [husband's] parents... to the [husband]. The [wife] confirms that this sum be returned to the [wife's] parents regardless of any other orders that may be made at the ancillary hearing;
  - (iv) Agent's fees;
  - (v) Solicitors' legal costs and disbursements and incidentals in connection with the sale of the [matrimonial property];
  - (vi) The costs of the divorce proceedings of \$15,000.00, disbursements and costs of the private investigators' reports (as per receipt);
  - (vii) Each of the parties' solicitors (or a solicitor nominated by the party) shall keep half of the balance proceeds as stakeholders pending the final determination of the divorce ancillary matters.
- ...
- (6) This Consent Order shall not prejudice the [husband's] right to claim interest on the loan of \$305,000.00 which the [husband] borrowed from his parents or the positions of both parties on the division of the proceeds of the [matrimonial property].
- (7) The parties are entitled to use the sum that has been reimbursed to their CPF accounts under paragraph 3(ii) for the purchase of any property and both parties confirm that they will not claim any share of such property that the other party may purchase.
- (8) For the avoidance of doubt, this Order is made to facilitate the sale of the [matrimonial property] and the return of the \$305,000.00 to the [husband's] parents pending division of the Court of the [matrimonial property] in the ancillary proceedings.

This Consent Order was not made pursuant to any application by the parties and the circumstances under which it arose were unclear.



24 In *Smith Brian Walker v Foo Moo Chye Julie* [2009] SGHC 247 at [5], I observed that “there is no hard and fast rule whether the sale proceeds should be divided at source or after repayment of the parties’ respective CPF accounts”. On that occasion, the District Judge had ordered the division of the sale proceeds of the matrimonial home at source and not after reimbursement of their CPF accounts with the result that the wife’s share of the sale proceeds was insufficient to fully refund her CPF account. Under those circumstances, I allowed the appeal and ordered the sale proceeds to be apportioned *after* reimbursement of the respective parties’ CPF contributions in order to achieve a fair and equitable distribution.

25 In the present case, no such argument was raised by either party. Instead the husband’s case was that under the terms of the Consent Order, the parties had *agreed* that the sale proceeds should be applied in a specific order, in particular, that the apportionment of the balance net sale proceeds should be done *after* repayment of the bank loan, the husband’s mother’s loan *and* refund of the parties’ respective CPF contributions. However, the DJ, at paras 62–63 of her Grounds of Decision (“the GD”), had instead awarded an equal apportionment of the net sale proceeds after repayment of the bank loan and the husband’s mother’s loan, and directed the parties to use their equal net sale proceeds to refund their respective CPF contributions. In doing so, the husband submitted that the DJ had reversed the order in relation to the refund of CPF contributions as recorded in the Consent Order.

26 The rationale for the husband’s argument for the refund of the parties’ respective CPF contributions prior to apportionment was obvious – this would effectively grant him a larger share of the net sale proceeds of the matrimonial property. At the point of completion of sale, the total CPF contributions from both parties amounted to \$470,055.72. The refund of this amount prior to apportionment would necessarily imply that about three-quarters of the net sale proceeds (*ie*, \$621,353.63) would be excluded from the process of apportionment, and thus the relative indirect contributions of the parties (which was in favour of the wife) would only be reflected in the apportionment of the remaining \$151,297.91.

27 In my view, the Consent Order by DJ Sowaran Singh was made to facilitate the sale of the matrimonial property and for repayment of the husband’s mother’s loan (see para 5(8) of the Consent Order). Further it was specifically recorded in para 5(3)(vii) of the Consent Order that the balance sale proceeds shall be kept by the parties’ solicitors pending final determination of the ancillary matters. It was therefore merely an interim arrangement and was not intended to bind both parties for the purpose of division of the matrimonial property on the specific order for the application of the sale proceeds. There was also no question of issue estoppel either since neither party addressed this issue before DJ Sowaran Singh or before me for that matter. Further, the husband evidently did not treat the Consent Order as having such an effect since this argument was not even raised before the DJ in the court below. This was yet another afterthought that was raised belatedly to increase the husband’s share of the sale proceeds.

28 In any case, I was of the opinion that the approach of refunding CPF contributions prior to apportionment would lead to an inequitable outcome in the present case. In effect, the husband’s submission would also entail some form of double counting of his CPF contributions. The DJ in arriving at her decision that the husband’s direct contribution was 61.2 percent had factored in his CPF contributions. If his argument was accepted, it would result in reducing the net sale proceeds from \$621,353.63 to \$151,297.91. This would in turn have a negative effect on the value of the wife’s additional indirect contributions (over and above those of the husband’s) which was found to be 11.2 percent of the value of the net sale proceeds. Under the present order, the monetary value of her additional indirect contributions would be 11.2 percent of \$621,353.63, *ie*, \$69,591.61 whereas under the husband’s computation, it would be drastically reduced to \$16,945.37 (11.2 percent of

\$151,297.91). This would result in an inequitable recognition of the wife's indirect contributions and would thus be inconsistent with the need to give full credit and value to indirect contributions, as stated in *NK v NL* [2007] 3 SLR(R) 743 at [34].

29 Accordingly, I ordered that the division of the matrimonial property made by the DJ below was to stand.

## Maintenance

30 Before examining the reasons for my decision on the maintenance, it is necessary to briefly recount the history of the parties' disputes over the quantum of the maintenance. By consent, the husband had previously agreed to interim maintenance for the wife and children ranging from \$4,500 to \$6,000. It has since undergone two variations eventually resulting in the DJ ordering monthly maintenance of \$5,000. I reduced it to \$3,500 due to a change in the circumstances as explained below. The amount ordered by me is the lowest of all the previous maintenance orders made and is \$1,500 more than what the husband claimed to be the fair monthly maintenance for both the wife and the children. There was no cross appeal by the wife.

31 The husband is a pilot of a reputable international airline. When the application was heard by the DJ, his monthly salary was at least \$12,000. Since then, he was promoted to the position of captain with effect from August 2010. The husband did not produce the updated salary after his promotion but it is likely to be higher than \$12,000 per month. The husband also disputed the DJ's assessment of his average monthly income from all sources (including salary, bonuses and income from personal investment activities) as \$17,886.31. During the hearing before me, much time was unnecessarily spent in determining the exact current salary of the husband. Ultimately, the exact current salary was not critical as the ability of the husband to pay the maintenance whether it was \$2,000 (as proposed by the husband) or \$5,000 (as claimed by the wife) was really not in issue based on either his previous salary or his current salary as a captain. This was borne out by the undeniable fact that he had previously agreed to a higher interim maintenance ranging from \$4,500 to \$6,000 (see [4]) above) or even the reduced maintenance ordered by Chao JA (see [6] above) after taking into account the wife's part-time employment. On the other hand, the wife works part-time as a customer service engineer and has a monthly take-home pay of \$1,999 (or \$2,165 after taking into account pro-rated bonuses).

32 In the court below, the DJ assessed the wife's expenses as follows:

Item			Amount
(a)	Wife's personal expenses		\$1,491.27
(b)	Transportation		\$1,083.75
(c)	Household expenses Less: Rental	\$2,670 (\$1,880)	\$790.00
(d)	Daughter's expenses		\$1,026.20
(e)	Son's expenses		\$753.60
	<b>Total expenses</b>		<b>\$5,144.82</b>

33 The rental of the apartment was deducted from the list of expenses as the DJ held that the wife was to be solely responsible for this item to be paid with her part-time salary. As such, the DJ

found that the wife would have a monthly shortfall of \$5,144.82 (based on her basic salary of \$1,999) or \$4,859.82 (based on her gross salary of \$2,165). This was rounded to \$5,000 per month, which coincided with the amount of maintenance ordered in view of the husband's financial resources and income.

34 In this appeal, the husband argued that the maintenance for the two children should be reduced from \$2,000 each to \$1,000 and that no maintenance should be ordered for the wife, such that the total maintenance should be \$2,000 and not \$5,000. The grounds were as follows:

- (a) There were several unjustified expenses in the wife's list of expenses, including insurance expenses, expenses for the maid and the children's tuition fees.
- (b) The wife had sufficient CPF funds to purchase a small HDB flat, which would free up rental expenses and enable her to contribute towards the expenses of the children.
- (c) The wife should not receive maintenance as the parties had the same educational qualifications (*ie*, a diploma) and the wife deliberately took on part-time, instead of full-time, work to halve her income.
- (d) The children's maintenance was excessive as the children are ordinary primary school children in local schools with school fees of only \$5.50 per month.

35 I agreed with the husband's counsel that the following expenses should be deducted for the purpose of determining the maintenance:

- (a) Personal expenses of the wife – the insurance premium of \$541.27 for the wife's personal insurance which was paid by the wife even prior to the marriage.
- (b) Daughter's expenses – the insurance premium of \$205.70 for a policy which has already lapsed.

Taking into account these two deductions, the total remaining expenses would be \$4,397.85.

36 Further, at the hearing on 23 August 2011, the wife confirmed that she has since purchased an HDB flat which is scheduled for completion in December 2011. Upon completion, this would have the effect of freeing up the rental expenses of \$1,880 which the wife is currently paying with her monthly part-time salary. It should be remembered that in arriving at the revised expenses of \$4,397.85, the current rental of \$1,880 was not included. However, with the purchase of the HDB flat, the wife would be able to use her current salary to provide for herself and to contribute towards the maintenance of the children.

37 Arising from the recent purchase of the HDB flat, the wife through her counsel informed the court that she would be required to top up monthly repayments in cash of \$300 for the HDB flat and that she is likely to incur renovation expenses of about \$30,000 to be funded by a bank loan. Although the additional information was not stated by way of an affidavit, no objection was raised by the husband's counsel during the hearing. Had it been raised, I would have directed the wife to file a supporting affidavit. In any event, the additional information appeared both fair and reasonable to me.

38 The husband also submitted that if the wife would like to have the benefit of a full-time maid, she should return to full-time employment. In *BF v BG* [2006] SGHC 197, *Woo Bih Li J* found that although it was not in the interest of the children for the wife to return to full-time employment, she

could have taken on part-time work given her qualifications and experience. Woo J then notionally ascribed a monthly salary of \$1,000 as the amount which the wife could reasonably have earned from her part-time employment. The decision was affirmed by the Court of Appeal – see *BG v BF* [2007] 3 SLR(R) 233 at [80].

39 In the present case, the wife is working part-time drawing a monthly salary of \$2,165 (see [31] above) and is contributing to the expenses. Similarly, the wife submitted that a full-time job would not be realistic or desirable as the two children were very young (ages 9 and 12) and she did not have the benefit of assistance from her parents since both of them have already passed away. Further, she added that as the husband is frequently overseas (due to the nature of his occupation), it was not reasonable for her to resume full-time employment as the children required constant parental attention at this stage of their lives. I therefore did not accept the husband's submission that the wife should return to full-time employment to provide more financial contribution towards the household expenses. In any event, the wife has been working part-time since January 2006 prior to the dissolution of the marriage. Having said that, when the children are older the wife should consider resuming full-time employment, at which time, it would be appropriate for the husband to apply to vary the maintenance order taking into account the full-time earning capacity of the wife as well as the cost of living then.

40 On the evidence before me, I was satisfied that, contrary to the husband's assertion, the wife was not deliberately working part-time to halve her monthly income in order to enhance her maintenance claim.

41 Given that she has now acquired an HDB flat and is required to pay for her own insurance premiums as well as to pay the monthly top up amount of \$300 for the HDB flat, I found that she should be able to contribute about \$1,500 towards the revised expenses which would have included the expenses for the maid in any event. This was in fact consistent with the argument raised by the husband's counsel in [34(b)] above as well as para 12 of the GD by the DJ wherein she stated that the husband was at liberty to apply for variation when the wife acquired a property of her own. In this regard, it is material to highlight that Chao JA in *XZ v YA* at [23] had reduced the maintenance by only \$1,000 even though the effect of the wife's misrepresentation had concealed her then part-time salary of \$1,831. He found that it "would not be fair to reduce the monthly maintenance by the entire amount". Similarly in the present case, I did not think it was fair or appropriate to reduce the monthly maintenance by the entire rental payment of \$1,880 as both parties should benefit from this reduction.

42 Accordingly, adopting a broad brush approach, I reduced the monthly maintenance for the wife from \$1,000 to \$500 and for each child from \$2,000 to \$1,500, totalling \$3,500. I ordered the reduction to take effect from December 2011 after the completion of the purchase of the HDB flat. In my view, although the sale proceeds of the matrimonial property were distributed in December 2010, it was not unreasonable for the wife to rent an apartment in the meantime pending the purchase of the HDB flat. The wife did take prompt steps to purchase the HDB flat immediately after the observation which I made at the first hearing on 26 May 2011.

## **Costs**

43 The appeal by the husband was substantially dismissed. The appeal against the division of matrimonial property was dismissed while the maintenance order was reduced primarily due to a change in circumstances arising from the recent purchase of the HDB flat by the wife though I have no doubt that the husband's appeal helped to hasten the process. The variations to the access time were principally by consent. In the circumstances, I ordered the husband to pay the wife costs fixed

at \$2,000 inclusive of disbursements.

Copyright © Government of Singapore.