IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 105

Civil Appeal No 104 of 2020

Between

UWM

… *Appellant*

And

UWL

… *Respondent*

In the matter of HCF/Divorce (Transferred) No 2254 of 2017

Between

UWL

… *Plaintiff*

And

UWM

… *Defendant*

EX TEMPORE JUDGMENT

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

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UWM
v
UWL

[2021] SGCA 105

Court of Appeal — Civil Appeal No 104 of 2020
Andrew Phang Boon Leong JCA, Quentin Loh JAD and Chao Hick Tin SJ
16 November 2021

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Andrew Phang Boon Leong JCA (delivering the judgment of the court *ex tempore*):

Introduction

1 In CA/CA 104/2020 ("CA 104"), the Wife has appealed against the ancillary orders made by the High Court Judge (the "Judge") in HCF/DT 2254/2017, in respect of the division of matrimonial assets, maintenance, and costs.

2 The appellate court will seldom interfere with the orders made by the court below unless it can be demonstrated that it has committed an error of law or principle, or has failed to appreciate certain crucial facts (see the decision of this court in *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 ("*TNL v TNK*") at [53]). Before we turn to our decision and our reasons, we set out the pertinent points of the Judge's decision in the court below.

The Judge's decision

3 The Judge issued two judgments, one after the ancillary matters hearing (the "AM Judgment"), and one after hearing the parties' further arguments (the "FA Judgment").

4 In the AM Judgment, the Judge held that the pool of matrimonial assets and liabilities should be identified at the date of the parties' separation, as that date marked the end of the parties' marriage. The Judge noted that the parties own two properties in Singapore – the River Valley Property and the Marina Property. We refer to the other matrimonial assets, excluding these two properties, as the "Other Assets".

5 Next, the Judge applied the classification methodology in dividing the matrimonial assets, as the Marina Property had a negative value. He thus separately considered and divided the River Valley Property, the Marina Property, and the Other Assets. In dividing each class of assets, he applied the structured approach of this court in *ANJ v ANK* [2015] 4 SLR 1043, and considered the parties' contributions up to the date of separation. We summarise his findings as follows:

(a) The Judge found the net value of the River Valley Property to be $561,149.17. He divided this 55:45 in favour of the Wife, the Wife's share being $308,632.04 and the Husband's share being $252,517.13.

(b) The Judge found the net value of the Marina Property to be -$880,265.32. He ordered that this liability be shared equally by the parties, *ie* - $440,132.66 each.

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(c) In the AM Judgment, the Judge found the value of the Other Assets to be $836,340.97, and he divided the Other Assets 52:48 in favour of the Husband. However, after hearing the parties' further arguments, the Judge revised the division of the Other Assets. In the FA Judgment, he found the value of the Other Assets to be $1,136,340.97, and divided this 51.45:48.55 in favour of the Husband, the Husband's share being $584,647.43, and the Wife's share being $551,693.54.

6 In the FA Judgment, the Judge also noted that in the AM Judgment, he had incorrectly stated the date of the parties' separation to be 21 March 2013, when it was actually 21 May 2013. The Judge said the Wife should have realised that the separation date in the AM Judgment was incorrect when it was handed down, but she did not include this issue in her application for an extension of time to file a request for further arguments. The Wife said the Husband had withdrawn $245,944 between 21 March 2013 and 21 May 2013 and transferred it to his sister, and this sum should be returned to the pool of matrimonial assets. However, since no leave was given to include this as an issue for further arguments, and it was not connected to the issues for which leave was given, the Judge declined to review the effect of this withdrawal on the pool of matrimonial assets and the parties' direct contributions.

7 We now turn to the issues raised by the Wife on appeal.

Issue 1: Procedural irregularity in extracting ORC 165

8 First, the Wife alleges that there was procedural irregularity in extracting the order of court for the ancillary matters, HCF/ORC 165/2020 ("ORC 165"),

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as the Husband's solicitors did not comply with the "court's Rules/Practice Directions". Thus, ORC 165 should be set aside.

9 We summarise the events leading up to the extraction of ORC 165, after the AM Judgment was issued on 30 July 2019:

(a) The Wife's request for further arguments was accepted by the Registry on 22 January 2020.

(b) On 11 June 2020, the Wife filed a Notice of Intention to Act in Person, In Place of Solicitor.

(c) On 12 June 2020, the Judge heard the Wife's further arguments and varied some of his orders in the AM Judgment.

(d) On 16 June 2020, the Husband's solicitors sent a draft order of court to the Wife's former solicitors.

(e) On 19 June 2020, the Husband's solicitors informed the Registry that the Wife and her solicitors had failed to return a copy of the draft order with their signed consent or any amendments within two days after their receipt of the draft, and requested that an order of court be made on the terms contained in the draft order. The draft order was rejected, and the court directed that certain amendments be made.

(f) On 16 July 2020, the Husband's solicitors extracted ORC 165 after amending the draft pursuant to the court's remarks.

10 Based on the events set out above, we do not think there was any irregularity in the process of extracting ORC 165.

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11 First, in so far as the alleged "irregularity" pertains to a failure to comply with any requirements of the Family Justice Rules (2014 Rev Ed) ("FJR"), we note that the appropriate forum to set aside ORC 165 is by filing a summons with a supporting affidavit (rules 10 and 11 of the FJR), not filing an appeal.

12 Second, the Wife was no longer legally represented once she filed the Notice of Intention to Act In Person, In Place of Solicitor at the Registry and served it on her former solicitors and the Husband's solicitors on 11 June 2020 (rule 932 of the FJR, read with rule 930(2)). Thus, the Husband's solicitors could submit the draft order to the Registrar on 19 June 2020 without sending it to the Wife (rule 676(6) of the FJR; see the decision of this court in *Wee Soon Kim Anthony v UBS AG and Others* [2005] SGCA 3 at [61], considering the equivalent rule under the then Rules of Court). The Husband's solicitors also complied with para 114(1) of the Family Justice Court Practice Directions ("FJCPD") – para 114(1)(g) of the FJCPD preserves the application of rule 676(6) of the FJR.

13 Even if that is wrong, and the Wife was still legally represented at the further arguments hearing (the "FA Hearing") on 12 June 2020, the Husband's solicitors complied with rule 676(1) of the FJR by sending the draft order of court to her solicitors on 16 June 2020. Indeed, as the Husband's solicitors point out, it appears that the Wife herself had, at the hearing of further arguments, asked for the draft order to be sent to her former solicitors. As the draft order was not returned to the Husband's solicitors within two days after 16 June 2020 with the Wife's solicitors' signed consent or any required amendments, the Wife's solicitors were deemed to have consented to the terms of the draft (rules 676(2) and (3) of the FJR), and there was no irregularity in the Husband's solicitors applying to extract the order on 19 June 2020, and subsequently

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extracting it on 16 July 2020 after amending the draft pursuant to the court's remarks.

14 We therefore dismiss this part of the Wife's appeal.

Issue 2: Division of matrimonial assets

15 Second, in so far as the division of matrimonial assets is concerned, we do not see any merit in the Wife's submissions on appeal. We are not persuaded that the Judge had committed an error of law or principle or failed to appreciate certain crucial facts – save for one point.

16 We note that the Judge had incorrectly used 21 March 2013 as the date of separation, rather than *21 May 2013*. While this error was drawn to the Judge's attention in the Wife's further arguments, the Judge declined to consider the consequences of this error as the Wife had not obtained leave to make further arguments on this point.

17 In our view, the incorrect date of separation is a crucial fact warranting appellate intervention, as it is the date at which the pool of matrimonial assets and liabilities was ascertained. As a result of using the incorrect date of separation, the Judge did not consider the Husband's transfer of $245,944.10 to his parents and sister in Canada on 28 March 2013, and whether this transfer falls within the principle in *TNL v TNK* at [24] (the "*TNL* dicta", affirmed by this court in *UZN v UZM* [2021] 1 SLR 426 at [62]), which we set out as follows:

> … [T]he issue is how the court should deal with substantial sums expended by one spouse during the period: (a) in which divorce proceedings are imminent; or (b) after interim judgment but before the ancillaries are concluded. We are of the view that if, during these periods, and whether by way of gift or otherwise, one spouse expends a substantial sum, this sum must be returned to the asset pool if the other spouse is considered to

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> have at least a putative interest in it and has not agreed, either expressly or impliedly, to the expenditure either before it was incurred or at any subsequent time. Furthermore, this remains the case regardless of whether: (a) the expenditure was a deliberate attempt to dissipate matrimonial assets; or (b) the expenditure was for the benefit of the children or other relatives. The spouse who makes such a payment must be prepared to bear it personally and in full. In the absence of consent, he or she cannot expect the other spouse to share in it. What constitutes a substantial sum is, of course, a question of fact and we do not propose to lay down a hard and fast rule in this regard, except to emphasise that it is not intended to include daily, run-of-the-mill expenses.

18 On appeal, the Husband concedes that $205,944.10 of this sum should be returned to the matrimonial assets pursuant to the *TNL* dicta, as $50,000 was money for his parents' maintenance and $155,944.10 was a gift to his parents for the purchase of their residential property in Canada. We agree. In our view, the Wife had a putative interest in this money as part of the matrimonial assets and did not consent to this transfer, and this sum was not for the Husband's daily, run-of-the-mill expenses. We note the Husband made this transfer when the parties' *separation* was imminent and commenced divorce proceedings four years later. Nonetheless, we view this as the same scenario as when "divorce proceedings are imminent" (see *TNL v TNK* at [24]), since the divorce in the present case was based on the parties' four-year separation.

19 As for the remaining $40,000, the Husband's position is that this was repayment of a loan he took from his sister in 2005, and it should not be added back to the matrimonial assets. In our view, however, this $40,000 from the Husband's sister was a gift rather than a loan, and the Husband's transfer of $40,000 to his sister was hence not for repayment of an existing matrimonial liability. In our judgment, the $40,000 should also be added back to the matrimonial assets.

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20 The Husband claims that his sister loaned him this $40,000 to purchase a flat in Redhill (the "Redhill Flat") with the Wife in 2005. We note, however, that the Husband does not provide evidence or details of this alleged loan, such as the timeline for repayment or the interest rate; he only says that he "felt obliged to repay [his sister]" in February 2013 when he received the sale proceeds from the Redhill Flat, which coincided with his sister taking a leave of absence from work due to illness. This suggests that the Husband felt a *moral*, rather than a *legal* obligation to repay his sister (see the decision of this court in *BON and others v BOQ* [2018] 2 SLR 1370 ("*BON v BOQ*") at [8]). If this $40,000 were really a loan, the Husband would have been obliged to pay it back regardless of whether he had enough money to repay her, and regardless of his sister's circumstances. Second, the Husband himself did not consider his sister as a creditor, as he did not list her as a creditor in his Affidavit of Assets and Means (see *BON v BOQ* at [8]). Third, as the Wife says (and as the Judge observed), it is suspicious that this alleged loan was given to the Husband in 2005, yet he only repaid it 8 years later, shortly before the parties separated.

21 In our view, therefore, the $40,000 from the Husband's sister was a gift to the Husband, rather than a loan, with the understanding that he would pay her back if and when he was able to do so. Therefore, the Husband's transfer of $40,000 to his sister on 28 March 2013 falls within the *TNL* dicta, since it was transferred without the Wife's consent shortly before the date of separation.

22 We therefore add back the entire sum of $245,944.10 to the parties' Other Assets, and credit this sum as the Husband's sole direct contribution (see *TNL v TNK* at [26], [37]; *CHT v CHU* [2021] SGCA 38 at [9], [13]). The Judge found the parties' direct contributions to the Other Assets to be $601,092.81 for the Husband and $535,248.16 for the Wife. After adding the $245,944.10 as the Husband's direct contribution, his direct contributions will now be $847,036.91.

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We do not disturb the indirect contributions ratio of 50:50 as determined by the Judge. Our revised figures for the division of the Other Assets are as follows:

	Husband	**Wife**
Total direct contributions ($)	847,036.91	535,248.16
Direct contributions ratio (%)	61.28	38.72
Indirect contributions ratio (%)	50	50
Average ratio (%)	**55.64**	**44.36**
Total value of the Other Assets ($)	1,382,285.07	
Parties' shares of the Other Assets ($)	**769,103.41** (being 0.5564 x $1,382,285.07)	**613,181.66** (being 0.4436 x $ 1,382,285.07)

23 The Husband's counsel submits that if this court corrects the Judge's error regarding the date of separation and notionally adds back the money the Husband transferred to his sister to the matrimonial assets, the court should also order the Wife to pay the Husband 50% of the liabilities he has paid for the Marina Property since 30 June 2018, and set off any sums payable by the Husband to the Wife against this debt owed by the Wife to the Husband. By "liabilities", the Husband's counsel means the monthly loan repayment, MCST fees, and property tax paid by the Husband since 30 June 2018, and a one-time payment of the Husband's agent's commission for the Marina Property. This submission is based on the Judge's order in the AM Judgment that the outstanding liability of the Marina Property as at 30 June 2018 shall be borne equally between the parties.

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24 We disagree with this submission. We do not see why we should make such an order just because we have corrected the parties' separation date in this appeal; this correction is only relevant to any transactions that occurred between 21 March 2013 and 21 May 2013. Whatever payments the Husband made towards the Marina Property since 30 June 2018 are irrelevant, since they were made *after* 21 May 2013.

Issue 3: Maintenance

25 The Wife appeals against the Judge's decision to order no maintenance for her. On appeal, the Wife seeks monthly maintenance of $2,000 for 10 years if she continues living in the River Valley Property, or monthly maintenance of $4,000 for 10 years if it is sold.

26 In our view, the Judge did not err in his findings. As he observed, the Wife has a Bachelor of Applied Science from an Australian university and a Master of Science (Information Systems) from a local university. Given her educational qualifications, we think she should be able to find a job and support herself. We also do not think the Judge erred in his finding that the Wife was capable of earning substantial income, based on the income earned from her various business ventures. We note that while the Wife argues on appeal that she suffers from recurring headaches, she has not adduced evidence of this alleged medical condition or how it prevents her from working.

27 However, we also acknowledge the fact that we are living in extraordinarily difficult times and we accept that this has made it difficult for the Wife to find a suitable job. In the circumstances, we vary the Judge's order below, and order the Husband to pay the Wife a lump sum of $36,000 (being the equivalent of maintenance of $2,000 per month for eighteen months) in

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order to tide her over this period. For the avoidance of doubt, no further payments in respect of maintenance need be made by the Husband apart from this particular sum.

Issue 4: Costs below

28 Lastly, the Wife appeals against the cost orders made either by the Judge in the ancillary matters proceedings below, or in the other applications she filed before the ancillary matters were heard. For the ancillary matters hearing (the "AM Hearing"), the Wife submits that the Judge should have ordered the Husband to pay her costs of $15,000 instead of ordering her to pay the Husband $15,000. For the FA Hearing, the Wife says the Judge should have awarded her costs, instead of making no order as to costs.

29 The Wife also seeks costs of $10,000 for FC/SUM 2270/2018 ("SUM 2270"), the Wife's summons for discovery against the Husband filed on 26 June 2018, which was allowed in part by the District Judge, costs of $20,000 for HCF/SUM 251/2019 ("SUM 251"), the Wife's application for an extension of time to request further arguments after the AM Hearing, which was allowed by the Judge below, and costs of $8,000 for ORC 165.

30 The costs of the ancillaries is an issue that is well within the discretion of the Judge (see *TNL v TNK* at [66]). In this case, we do not see any compelling reason to interfere with the Judge's costs orders for the AM Hearing, which includes the costs of SUM 2270, or the FA Hearing.

31 As for SUM 251, based on the Judge's minute sheet dated 12 December 2019, we note that the Judge granted SUM 251 and did not deal with the question of costs. In our view, since the Judge was silent as to the issue of costs, he must have intended for each party to bear his or her own costs. We do not

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see any reason to interfere with this. There is no basis for the Wife to seek costs from the Husband for her own application, which was necessitated by her own delay.

32 Finally, we see no basis to order costs for ORC 165. In fact, the Wife appears to be referring to the costs of HCF/SUM 315/2020 ("SUM 315"), which was her application before the Judge for a stay of execution of ORC 165. The costs of SUM 315 were reserved to CA 104, and we will discuss this shortly.

33 To sum up, we dismiss the Wife's appeal pertaining to the cost orders in the proceedings below.

Conclusion

34 In conclusion, in addition to ordering the Husband to pay a lump sum of $36,000 for maintenance (as set out at [27] above), we allow the Wife's appeal in part by adding the sum of $245,944.10 to the Other Assets and crediting this as the Husband's direct contribution. The final division ratio for the Other Assets will be 55.64:44.36 in favour of the Husband, the Husband's share being $769,103.41 and the Wife's share being $613,181.66.

35 As for the costs of CA 104 (which includes the costs of SUM 315), each party seeks costs of $35,000 against the other. Since the Wife has partially

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succeeded in her appeal, we think it is fair to order that each party bears his or her own costs. There will be the usual consequential orders.

Andrew Phang Boon Leong
Justice of the Court of Appeal

Quentin Loh
Judge of the Appellate Division

Chao Hick Tin
Senior Judge

The appellant in person;
Wong Soo Chih, Tan Yong Quan and Nicholas Roshan Rai (Lai Jinjie) (SC Wong Law Chambers LLC) for the respondent.

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