

Cheung Kam Yi Betty v Liu Tsun Kie
[2012] SGHC 213

Case Number : Divorce Suit No 1434 of 2011
Decision Date : 29 October 2012
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Serene Chan Poh Choo (Serene Chan & Co) for the plaintiff; The defendant in person.
Parties : Cheung Kam Yi Betty — Liu Tsun Kie

Family Law

29 October 2012

Judgment reserved.

Judith Prakash J:

Introduction

1 The issues in dispute in this matrimonial matter relate to the division of the matrimonial property and the quantum of maintenance payable by the husband to the wife. The wife also seeks repayment of loans that she allegedly made to the husband in course of the marriage and for him to contribute towards the costs of the children's education.

2 The parties were married in October 1975. They went on to have three children, two daughters and a son, who were born respectively in 1977, 1986 and 1989. In 2001, the wife discovered that the husband had been having an affair and she started proceedings for divorce on the basis of his adultery. Subsequently, acquiescing to the husband's request, she withdrew the proceedings and entered into a deed of financial arrangement dated 16 March 2001 ("the Deed") with him. In March 2011, the wife found out that the husband had started another affair. She filed for divorce again on the basis of his adultery and this time the proceedings went through. An interim judgment of divorce was granted on 24 May 2011. Thus, the parties were married for some 36 years.

3 Both the parties are now 61 years old. The wife worked between 1980 and June 2004. Since then she has not held paid employment. The husband worked throughout the marriage and is currently a director of at least two companies, one of which is in Hong Kong.

What the parties want

4 The only immovable property that the parties currently own is their matrimonial home located at 2 Gentle Drive, a 3-storey semi-detached house ("the Gentle Drive property"). This was purchased for about \$1.98m in 1995. The wife wants the home to be sold and the net proceeds to be distributed equally. She also wants the husband to pay her the following from his share of the sale proceeds:

- (a) \$424,000 in repayment of personal loans made by the wife to the husband;
- (b) The amount necessary to repay the husband's overdraft under DBS Bank Autosave account No [xxx] ("the DBS joint account") which is held in the joint names of the parties;

- (c) The sum of \$672,000 as lump sum maintenance;
- (d) \$79,992 as reimbursement of educational expenses for the second child;
- (e) \$200,000 as lump sum maintenance for the third child; and
- (f) Costs.

5 The husband does not want to sell the matrimonial home. He wants to keep it so that it can be inherited by the children after the death of the parents. As for maintenance, he is willing to pay the wife a monthly sum of \$5,000 as well as to keep paying the instalments due in respect of the mortgage loan. He does not agree to lump sum maintenance. The husband says that in the assessment of the matrimonial assets, the sum of \$300,000 that he borrowed from a Mr Chia Hock Teck ("Mr Chia") has to be deducted because this was a loan that was taken jointly by the parties. He does not accept that the wife made any personal loan to him. As for the children's expenses, his position is that the two daughters are self-sufficient and do not need any support. He is, however, willing to support the youngest child while he is still studying.

The wife's position

6 The wife was originally from Hong Kong and her family lives there. She and the husband set up home in Singapore upon their marriage.

7 The parties bought their first matrimonial home in 1977. This was subsequently sold and, in 1986, they bought a property in Jalan Ampang. The family lived there until 1992 when the husband was posted to Hong Kong. The wife and two younger children moved to Hong Kong with the husband. The Jalan Ampang home was sold that same year and the proceeds were used to buy another house which was sold shortly thereafter at a profit. In the same year, an investment property was purchased in London ("the London property").

8 The family moved back to Singapore in 1995 and at the end of that year, they purchased and moved to the Gentle Drive property. The wife said that she contributed to the purchase of all the matrimonial homes. As at 4 August 2011, the wife had drawn \$682,950.25 (inclusive of interest of \$196,126.79) from her CPF account towards the acquisition of the Gentle Drive property. As of that date, the housing loan amount outstanding for that property was \$67,028. In the wife's opinion, based on the sale of a neighbouring property, the Gentle Drive property was worth approximately \$3.1m as of September 2011.

9 Apart from contributing to the purchase price, the wife said that in 2005, she and the husband agreed that they would renovate the Gentle Drive property and bear the renovation costs equally. In the event, however, the husband paid nothing and the wife paid the entire costs which amounted to \$105,131.

10 The wife asserted that she had made other financial contributions in the course of the marriage by bearing some of the household expenses, meeting the cost of the children's overseas education and making personal loans to the husband.

11 Apart from the time that they lived in Hong Kong during which she was on no pay leave, the wife had contributed to the household expenses. These included marketing/groceries, maid's salaries/expenses, gardener's fees, children's pocket money and clothing and miscellaneous expenses, school bus fees, medical expenses and the costs of items like birthday parties. She paid these

expenses by making withdrawals from her sole account with DBS Bank. The wife estimated that she spent about \$4,000 per month on household expenses.

12 In respect of the cost of educating the children overseas, the wife alleged:

- (a) Between 1996 and 1999 when the elder daughter was studying at Washington University in St Louis, the wife contributed approximately \$100,000 to the daughter's expenses;
- (b) Between 2000 and 2004, the elder daughter went to medical school in Australia and both parties paid her school fees and living expenses with the wife contributing about \$150,000;
- (c) Between 2003 and 2005, the younger daughter spent three years at high school in Sydney, Australia and the wife paid \$57,600 towards the costs of the school;
- (d) Between September 2008 and April 2012, the younger daughter pursued a course at the Digipen Institute of Technology in Washington State, USA. Whilst the husband paid for the expenses incurred in the first year, he stopped contributing thereafter and the wife paid for all the expenses thereafter, contributing \$117,450.46 up to April 2011; and
- (e) In January 2011, the couple's youngest child and only son went to study in the Digipen Institute of Technology in the USA. Between January and June 2011, the wife paid approximately \$37,700 in respect of her son's education expenses.

13 The wife noted that under para 4 of the Deed, the husband was to pay the children's tuition fees if they were studying abroad. She alleged that the husband had not honoured this commitment.

14 The wife also gave details of the personal loans that she had made to the husband between 2007 and 2011. The money that she lent him was withdrawn from her personal bank account and most of the time the sums were credited into the parties' joint account with DBS Bank ("the DBS joint account"). On two occasions, sums totalling \$9,000 were credited into an HSBC premier account held in the name of the husband ("the HSBC account"). The total amount lent to the husband was \$424,000. Although the DBS joint account was held in the names of both parties and could be operated by both of them, the wife said that the husband controlled the account and that she only made withdrawals from it occasionally with his express consent.

15 The wife asserted that she had funded her financial contributions to the family and the loans to the husband from the following sources:

- (a) Her monthly salary – at the time she retired in 2004, she was earning approximately \$7,500 a month;
- (b) Her severance package of \$126,418.88;
- (c) A sum of about \$300,000 which she had inherited from her parents;
- (d) The sum of \$620,000 which, pursuant to the terms of the Deed, she had received upon the sale of the London property; and
- (e) Her investments in dual currency deposits and equities.

It was the wife's position that her savings from the above sources had been depleted by reason of her financial support for her children and the loans made to the husband.

16 The wife also asserted that she had been the children's main caregiver even during the years when she was working.

17 In relation to the division of the matrimonial home, the wife asked that the court take the terms of the Deed into consideration. She noted that under para 12 of the Deed, it was provided that the terms of the Deed *vis-a-vis* the financial provision by the husband to the wife and the children were to form the basis of agreement in all future divorce proceedings. Paragraph 1 of the Deed stated that the wife and children were to continue to reside at the Gentle Drive property and that the husband would leave immediately but would continue to service the mortgage loan and meet the outgoings on the property. As events turned out, however, the husband had moved back into the matrimonial home after the Deed was signed and remained there.

18 The wife relied in particular on para 6 of the Deed which reads:

The Husband and Wife agree the sale of the matrimonial property at No. 2 Gentle Drive, Singapore 309208, is at the sole discretion of the Wife and the net proceeds of sale be divided equally between the Wife and Husband. In the meantime, there be severance of the title to the said property now held jointly between the parties, into equal shares as tenants in common.

19 As for maintenance, the wife pointed out that the Deed provided for the husband to pay her \$6,000 per month for her maintenance and that of the children. She said that the husband did not honour this and she needed to ask for lump sum maintenance because at her age, it would be difficult for her to get a suitable job. She calculated maintenance on the basis of a multiplicand of \$4,000 and a multiplier of 14 years.

20 The assets disclosed by the wife are as follows (the valuations being as at June/July 2011):

- (a) Her joint ownership of Gentle Drive;
- (b) Her motor vehicle that she valued at \$70,000;
- (c) Her account with DBS Bank which had a credit balance of \$9,570.84;
- (d) Her CPF balances which were:
 - (i) Ordinary account : \$133.77
 - (ii) Special account: \$63.41
 - (iii) Medical account: 35,599.77
 - (iv) Retirement account: \$13,552.94
- (e) 1,360 SingTel shares : \$4,229.60;
- (f) 300 Citigroup Inc shares : \$12,000;
- (g) 390,000 Centillion shares : \$1,170;
- (h) 10,000 Chinaaalec shares : \$900;

- (i) 50 Noble Group shares: \$93.50.

The wife valued her sole assets at \$147,313.83. She also disclosed two joint accounts which she had with the husband. The first, the DBS joint account, had a negative balance of \$47,812.07 arising from the husband's use of the overdraft facilities granted by the bank in respect of that account. The second joint account had a nil balance. In terms of liabilities, apart from the amount owing on the DBS joint account, there was an outstanding amount of \$67,028.73 due in respect of the mortgage loan for the Gentle Drive property.

The husband's position according to the wife

21 The husband did not participate in the divorce proceedings for a very long time. The wife's affidavit of means was filed on 2 September 2011. The husband failed to file his own affidavit of means and therefore on 2 December 2011, the wife filed a further affidavit to inform the court of the husband's assets and means to the best of her knowledge and belief.

22 She said that the husband was a director of a company called Strategic Investment Advisors Pte Ltd ("Strategic") which paid him between \$34,000 and \$36,000 every three months. The amount paid fluctuated depending on the current exchange rates.

23 The husband was also a director of Asia-Pacific Mobile Telecommunications Satellite (APMT) Pte Ltd ("APMT"). The wife did not know what fee if any the husband received for this directorship. She did not know the details of his other sources of income but had done a search on the internet which showed his affiliation to two companies. First, there was a connection with Roly International Holdings Ltd, a Hong Kong company. This company was a subsidiary of Linmark Group Ltd, a listed company in Hong Kong. The husband was stated to be chief executive officer of the Consumer Electronics Division at Linmark Group Ltd and executive director of another company in the group, Byford International Ltd. Second, there was DVN (Holdings) Ltd, a company incorporated in Bermuda. The husband was said to be an independent non-executive director of this company as well as being chairman of its audit and remuneration committees. I shall refer to this group of companies as "the Roly Group".

24 The husband's income from Strategic was credited into the DBS joint account. According to the wife's calculations based on the monthly statements of account, the husband received income amounting to \$212,855.47 from Strategic in 2010. In January 2011, he received a further \$42,042.24 from this source.

25 The wife had been able to obtain information on the husband's CPF savings after an order of court was made authorising the CPF Board to disclose such information. According to the CPF Board, as at 20 September 2011, the husband had withdrawn \$980,936.83 (inclusive of accrued interest of \$295,896.46) for the purchase of the Gentle Drive property. His other balances were as follows:

- (a) Ordinary account: \$598.44;
- (b) Special account: \$44.98;
- (c) Medisave account: \$25,528.05;
- (d) Retirement account: \$24,137.22.

The CPF Board also informed the wife that upon the sale of the Gentle Drive property, the husband would have to pay \$71,522.25 into his account with the Board in order to make up the deficiency in

his Minimum Sum.

26 The wife obtained further information from the CPF Board on 27 October 2011. This was that the husband owned 1,490 SingTel shares and had an investment account with the DBS Bank. Subsequent investigations disclosed that there were no assets in this investment account.

27 In relation to bank accounts, apart from the HSBC account, the husband had two joint accounts with the wife which she had disclosed in her affidavit. The wife did not know the balance in the HSBC account.

The husband's affidavits

28 The first occasion when this matter came on for hearing before me was on 28 March 2012. The husband appeared in person whilst the wife was represented by Ms Serene Chan. The husband said that he had not filed any affidavit because he thought, after reading the wife's affidavits, that he would be able to state his responses to them in person. When it was explained that this was not proper procedure because the wife had to have a chance to reply to his allegations, he offered to make an affidavit. Ms Chan pointed out that she had written to the husband three times (one letter in August 2011 and two letters in September 2011) asking him to file his affidavit of means. The wife's affidavits had been filed and served on him on 9 December 2011 and he had had ample opportunity to dispute the facts stated therein.

29 I made an order for the husband to file and serve his affidavit of means on or before 11 April 2012. In the event, the husband's first affidavit was filed on 17 April 2012 but served on the wife only on 23 April 2012. The wife's affidavit in reply was filed on 27 April 2012. The matter then came on for hearing again on 30 April 2012 and in the course of that hearing, the husband asked for leave to file a further affidavit which he said could be filed by 16 May 2012. He wanted to prove that he had paid the children's school fees. I granted him the leave asked for and adjourned the matter to a date to be fixed after 6 June 2012.

30 The husband did not file his affidavit by 16 May 2012. On 27 June 2012, the wife filed an application asking for an order that unless the husband filed his affidavit by the day after the hearing of that application, he should be precluded from adducing any further evidence whether orally or by affidavit. This summons was fixed for hearing on 18 July 2012. The husband finally filed his second affidavit in the ancillary matters on 13 July 2012 thus rendering the hearing of the summons otiose. The wife has asked for the costs of that application.

31 The matter then came on for hearing again before me on 6 August 2012.

The husband's position

32 The husband's position as revealed by his two affidavits is as follows. He explained that he attended court in respect of the divorce proceedings for the first time on 28 March 2012 because his repeated attempts to persuade the wife to cease the divorce proceedings and try to resolve matters through counselling and mediation had failed. The husband considered that after 36 years of marriage and three nicely brought up children, the parties should stay together for their health and financial well-being.

33 The husband disclosed the following assets:

- (a) HSBC account No [xxx] with a balance of \$0.97;

- (b) CPF balances as follows:
 - (i) Ordinary account: \$598.44;
 - (ii) Special account: \$44.98;
 - (iii) Medisave account: \$25,528.05;
 - (iv) Retirement account: \$24,137.22
- (c) 1,490 SingTel shares : \$4,633.90;
- (d) An inactive UOB Kay Hian account;
- (e) The Pines Club membership : \$7,000; and
- (f) POSB savings account : \$6,718.01.

34 The husband had the following liabilities. As at April 2012, he owed HSBC \$46,065.36 on his credit card and owed Citibank two credit card debts viz \$1,904.66 and \$35,321.36. He also mentioned the mortgage loan of \$67,028.73 and the overdraft debit balance of \$47,812.07 in the DBS joint account. In addition, he said that he owed Mr and Mrs Chia the sum of \$300,000 and one Mr Lim Eng Tuan \$25,000 for a loan taken in June/July 2011 to pay his hospital bills.

35 The husband asserted that his income for the year of assessment 2012 had been \$158,000 in cash and \$4,646 in CPF contributions and that he expected it to fall because he had been warned that the business with which he was associated with was looking bleak. To support this, he produced an email dated 29 December 2011 from a Japanese gentleman in respect of the Inflexion fund which stated that his annual remuneration for managing this fund would be reduced from JPY10 m to JPY8 m (about \$123,000) per year effective 1 January 2012. This was his income from Strategic.

36 The husband expressed concern about his income earning capacity in the future given his age of 61 years and health problems. He stated he had undergone four major operations in 2007, 2010, June 2011 and July 2011. These operations cost him about \$150,000 and he had needed to borrow \$25,000 to help pay the hospitalisation deposit. He stated that he was currently on extensive medication for pain relief.

37 Regarding the Gentle Drive property, the husband asserted that in 1996 he had paid about \$500,000 in cash for that property. This money was borrowed from his company and the husband had repaid it in full by 2007. Apart from that, he had taken a mortgage loan for the balance and had used his CPF contributions to pay the mortgage loan as shown in the CPF Board's letter. Over the past ten years, he had found it difficult to pay the mortgage instalments as the wife did not have enough CPF to help defray these. He had been frequently in arrears of payment as his funds had been used to support his children overseas.

38 The husband asserted that the wife had actively transferred moneys to and from the DBS joint account. She had made transfers to her own account and had used both NETS and cheques to make payments from the DBS joint account for renovation and household expenses. As far as household expenses were concerned, many of these were paid by Giro from the DBS joint account for example the telephone bills, the maid's levy and the utility charges.

39 The husband asserted that he had been the main caregiver, homemaker and financial support of the children, the household, the car, the house and the annual family outings. The family's maid had borne most of the burden of the housekeeping. The wife had had no ability to make all the payments she claimed because she had not been working since 2004 and had been making substantial investments in securities. As for the wife's reliance on the Deed, this was puzzling because the wife had been sufficiently compensated when the London property was sold and she had been paid the proceeds of sale and had then reconciled with the husband. The terms of the Deed related to the circumstances then and could not be relied on in present circumstances, more than ten years having elapsed since the Deed was signed.

40 The husband claimed that he had contributed towards the academic expenses of the second child. He had also paid for the wife's and son's trip to Seattle. When the first child had gone to medical school in US and Australia, he had obtained additional directorships in order to earn fees to support her studies. His income was supplemented quite often by short-term borrowings from relatives and friends. Such loans had been used to pay for the children's education and the wife's travelling expenses.

41 The husband denied taking any loans from the wife. He asserted that the movement of funds between her personal account and the DBS joint account was to reimburse the latter account for share purchases that she had made using funds from the same. Between 2006 and 2008, the wife had punted on shares and had incurred losses when the financial crisis struck in 2008.

42 Regarding the \$300,000 loan, the husband asserted that he had had to borrow this money to repay a debt of \$200,000 to his sister who was pressing for repayment.

43 In an affidavit filed on 5 July 2012, the husband explained why he had not been able to file his second affidavit by 16 May 2012 as ordered. He asserted that the bank had had difficulty in identifying the cheques that the husband wanted and the point of sale transactions that the wife had carried out in respect of the DBS joint account. It had asked for hefty administrative charges and further time to retrieve electronic images of cheques so that it could process the husband's request.

44 In his second affidavit for the ancillary matters filed on 13 July 2012, the husband repeated that he had experienced difficulty in terms of the cost and time needed to obtain documents from DBS Bank. Finally, however, he had managed to receive copies of some cheques drawn on the DBS joint account which the wife had signed in 2008. These cheques clearly indicated that the wife had been using the DBS joint account to pay for the car instalment payments.

45 In his submissions, the husband said that he was the main financial contributor for the household during the marriage. His salary during the marriage was at least four times the wife's monthly salary. At the peak of their careers, her monthly salary was \$7,000 while his was \$30,000. This proportion was reflected in the contributions of each party to the mortgage loan, the children's expenses and all household expenses. Throughout the marriage, he had paid all medical fees. All his income was credited into the DBS joint account and this was the account used to pay all household and family expenses.

Analysis and decision

Matrimonial property

46 The parties agreed that the Gentle Drive property was the most substantial matrimonial asset. The proven direct financial contributions to the acquisition of this property amounted to \$486,823.46

(excluding interest) from the wife's CPF account and \$685,040.37 (excluding interest) from the husband's CPF account. The husband also claimed a cash contribution of \$500,000 which he had taken as a loan from his company. While the husband did not produce any documentary proof of this amount there is reason to accept the husband's claim. The wife had stated that the property cost the parties \$1.98 m. She did not claim to have paid any further sums towards the Gentle Drive property (apart from the 2005 renovation costs of \$105,131) and therefore the combined amount from the parties' CPF accounts was not sufficient to meet the purchase price. There would have been a difference of at least \$800,000 which needed to be funded and therefore the husband's claim to have paid a further \$500,000 with money borrowed from his company is believable. The husband also stated that before the London property was sold in 2001, he had used rental from that property to pay the loan instalments on the Gentle Drive property. No figures were given, however. After the sale of the London property, the husband said that he had a heavy burden to bear to pay off the mortgage loan when the wife had used up her CPF moneys. Again, he did not give any figures as to how much he had paid.

47 In the absence of full documentation, it is difficult to work out the precise contributions of the parties to the Gentle Drive property. Doing the best I can and using the figures in [46] above, the wife would have contributed approximately 24.5% of the cost while the husband contributed 75.5% of the cost. If the renovation payment is taken into account, then the wife's contribution would be 28.4% of the increased acquisition cost (*ie*, \$1,980,000 + \$105,131). It is likely, however, that the percentages calculated overstate the wife's direct contribution because of the difference between the known contributions and the actual acquisition cost, and that her actual financial contribution would be in the region of 20%.

48 The other matrimonial asset with some value is the car, a BMW bearing registration number SFE9229B, which is registered in the wife's name. The car was purchased in December 2003 with the aid of a hire purchase loan. That loan has been fully repaid. The wife estimated the value of the car to be about \$70,000 in August 2011. The wife said that the agreement between the parties was that the husband would pay the hire purchase instalments while she took care of the household expenses. However, although the husband initially kept to this agreement, he was subsequently short of money and the wife had to pay some instalments. The husband asserted that he had paid most of the instalments due for the car. He did not produce any documents to support the amount paid by him but broadly speaking, his account agrees with the wife's stand. Consequently, I accept that the husband must have paid most of the price of the car.

49 The parties did not quibble over the division of the car or the other assets which each of them had in his/her own name. As disclosed, none of these was very substantial. The wife did make the point that the husband had not made full disclosure of his assets and income but the husband disputed this.

50 I have come to the conclusion that the Gentle Drive property and the car must be sold and the proceeds divided between the parties. Although the husband refuses to recognise it, the marriage has ended and the parties must go their separate ways. At present, the wife has no other roof over her head and has to sleep in Gentle Drive but because she wants to avoid her husband, she spends her days outside the home wandering around until he has left it. This is not a satisfactory situation. The matrimonial property must be divided and distributed so that each party can obtain shelter away from the other. The idea of keeping the home as a legacy for the children is unrealistic. The eldest child is married and at present she and her family are living in Sydney. The second daughter is working in the United States and the son is expected to spend two years studying in the United States. None of the children need to live in this particular property. If and when they return to Singapore, they will be able to find jobs and their own accommodation.

51 The question is how the division should take place. In this exercise, I have to give consideration to the non-financial contributions of the wife. It is clear from the evidence that the wife has almost beggared herself in providing for the family and the children's education. The husband declared that he had paid for everything and whilst I accept that he must have borne a large proportion of the expenses in the early years especially when the family was in Hong Kong and the wife was not working, he has not been able to substantiate his more recent contributions. He has not shown that he has borne substantially all the costs incurred in educating the children whilst the wife has been able to document her payments. The wife's contributions in this respect are set out in [12] above and it can be seen that the expenses paid by her were considerable, especially since she had no regular income at the time. In contrast, the amounts that the husband has been able to show he sent are much smaller. In October 2008, he sent the first daughter \$5,140 and the second daughter \$7,476.50. In January 2010 he sent the second daughter a further \$6,970. There was also a remittance of A\$30,000 (\$38,172) to the first daughter in 2007. This must be credited to the husband as most of the money put into that account was his. The wife has accepted that he made contributions at first. However, his failure to keep up the support meant that the wife had to shoulder the main burden especially for the two younger children.

52 The wife has also shown that she has contributed towards the family expenses by withdrawing a sum of about \$4,000 a month from her sole account. No doubt the wife was enabled to make some of these contributions by the fact that she received \$620,000 from the sale of the London property pursuant to the terms of the Deed. This was to provide the wife with some financial security but she has used a lot of it to support the family. There is also the fact that the wife transferred a total of \$424,000 from her sole account to the DBS joint account between 2007 and 2011. Whether this amount is regarded as a loan to the husband or as deposits into the joint account which were used for the expenses of the family, the wife's contribution is clear.

53 Considering all the circumstances, including the length of the marriage and the wife's efforts as mother and caregiver, in my judgment, an equitable distribution of the Gentle Drive property and the car would be an equal distribution. The Gentle Drive property should be sold and the proceeds divided between the parties. As for the car, I give the wife the first option to buy over the husband's share therein for 50% of the current market value of the car as valued by Performance Motors, the BMW authorised dealer. I should state that in coming to this conclusion I have not applied the terms of the Deed on the division of the matrimonial home. The Deed was executed ten years before the parties finally divorced and much changed in the intervening period.

The \$300,000 loan

54 There is a dispute over the \$300,000 loan made by Mr Chia in 2009. The husband said that this money was borrowed by him and the wife in order to repay a loan of \$200,000 that his sister had made to him to help repay the wife's share trading indebtedness and pay for the second daughter's education. This allegation of the husband is not supported by the evidence.

55 Mr Chia affirmed an affidavit in these proceedings and exhibited a promissory note signed by the husband on 12 March 2009 in respect of the \$300,000 loan. The wife signed as witness. The promissory note provided for the loan to be repaid on 30 June 2009. According to Mr Chia, on 12 March 2009, the husband telephoned him and asked whether he could borrow \$300,000 from Mr Chia urgently on a short-term basis for a period of three months. He told Mr Chia that one of the companies in which he was a director required him to advance \$1m to the company and that he needed a further \$300,000 to make up that sum. The husband said that the company wanted the money urgently. Mr Chia regarded the husband as an old friend and made the loan by way of a cheque drawn in favour of the husband. Subsequently, the husband told Mr Chia that he would not be

able to meet the 30 June 2009 deadline for repayment because his company had not completed its restructuring. Mr Chia exhibited an email dated 29 June 2009 from the husband to this effect. Mr Chia also said that up to the date of the affidavit, the husband had not made repayment and had come up with various explanations for the delay in repayment.

56 The wife produced a letter from the husband's sister which indicated that the amount of \$200,000 had been lent to the husband to assist him with his business problems. The husband did not produce any affidavit from his sister as to the purpose of that loan. He was not able to produce any evidence substantiating his allegation that the wife had lost money in share trading. Nor was there any evidence that the original loan from the sister or the any part of the money borrowed from Mr Chia was used to pay any broker or remisier for the alleged trading losses. Further, he did not produce any evidence to show that the money was used for the second daughter's education.

57 I do not accept the husband's version. What evidence there is indicates that he took the original \$200,000 loan from his sister for business purposes and the loan from Mr Chia for other business purposes which perhaps included repayment of his sister's loan. In any case, he seems to have represented to both parties that he needed money to help with business difficulties. His assertion that the wife was a co-borrower and the money was needed to pay her debts and support the second daughter's fees is a bare assertion. In this regard, it is significant that the borrowed money was not deposited into the DBS joint account. The bank statements for March 2009 and April 2009 show no trace of this money. The money must therefore have gone into the husband's sole account with HSBC. If the money had been borrowed for the wife's debts and children's expenses, it would have been put into the DBS joint account. I say this for two reasons. First, the husband said he used the funds in the joint account to pay family expenses. Second, putting the money into the DBS joint account would have given the wife access to it and enabled her (with the husband's agreement) to pay her remisiers from those funds. Whilst the husband could have used funds in his sole account for the same purposes, he produced no evidence to show that he did utilise the \$300,000 in this way. There is, in my judgment, no basis on which to make the wife share in the responsibility for repaying Mr Chia's loan.

58 I should also deal with the husband's allegations that the wife had incurred huge losses in the stock exchange and used money from the DBS joint account to cover the same. The wife denied these allegations. She said that she had not incurred such huge losses and in any event, had not used moneys from the DBS joint account to settle her share purchases and sales. The wife produced her bank statements which showed that she had paid for all shares purchased by giro payments through her sole account. When she sold those shares, the sales proceeds had been deposited into the same account, also by giro. If the wife had used moneys from the DBS joint account to pay for any share trading losses incurred, the DBS joint account statements would have shown many transfers of funds into the wife's sole account. However, no such transfers were identified by the husband, despite having obtained bank records showing the use of the DBS joint account. He did not produce any documents to substantiate his allegations.

Alleged loans to the husband

59 The wife, by reference to statements in respect of her sole account and the DBS joint account, showed that in 2007 she transferred sums totalling \$114,000 to the DBS joint account and between 2008 and early 2011, she transferred sums totalling \$310,000 to the DBS joint account. It is the wife's position that the DBS joint account was controlled by the husband and that each time she put money into it, she did so at the husband's request to help him.

60 The husband said that transfers into the DBS joint account did not constitute loans. This

account received all fees paid to him in respect of his directorships whether local or foreign. The account was used to pay family expenses and the wife was also authorised to operate it and did so.

61 In support of his allegation, the husband produced three cheques which the wife had signed. The first two cheques were both dated 23 April 2008. One was in the sum of \$2,663.57 and was made in favour of United Overseas Bank Ltd whilst the second was in the sum of \$24.45 and was made in favour of Tan Tock Seng Hospital. The third cheque dated 2 May 2008 was for \$162 and was in favour of EmitAsia (S) Pte Ltd. The wife's explanation was that the cheque in favour of United Overseas Bank Ltd was issued to pay for the car loan and that it was the husband's responsibility to pay this loan and that was why the money was taken from the DBS joint account on the husband's instruction. The other two cheques for rather small sums were also issued on the husband's instructions.

62 In regard to the wife's operation of the DBS joint account, I note that in September 2007, she applied for a sum of AUD\$30,000 (\$38,172) to be remitted from this account to the elder daughter who was then in Australia. The husband referred to the remittance instruction as another example of the wife's use of the DBS joint account and the wife's rejoinder was the same – that the husband had asked her to utilise that account for the daughter's expenses in Australia.

63 I note from the bank statements that the DBS joint account was an overdraft account and that there was usually a debit balance in the account. The overdraft limit was \$50,000. I also note that deposits made by the wife were often, though not always, followed by withdrawals of a substantial portion of the amount deposited, sometimes the whole of it.

64 Unlike the wife who was meticulous in her account keeping and notation of her bank statements to indicate what various deposits and withdrawals related to, the husband gave no explanation for various substantial withdrawals from the DBS joint account. In particular, he did not explain what the money deposited by the wife was used for on those occasions when a large portion of it was withdrawn almost immediately after being deposited. For example, on 20 November 2009, the wife deposited \$17,000 in the DBS joint account. Before the deposit was made, the debit balance in that account was \$49,664.08, *ie*, just below the credit limit. On the day of deposit, a sum of \$14,500 was transferred out of the account, \$200 was withdrawn in cash and \$823.69 was used to pay a bill. The husband did not explain any of these withdrawals. The fact that the account was almost overdrawn past the credit limit when the deposit was made and the immediate withdrawal of \$14,500 indicates that the husband was in urgent need of funds in the DBS joint account. If these funds were needed for the family, the wife could have made payment directly from her sole account. Alternatively, the husband could have explained what the need was.

65 It was also odd that when the husband was given an opportunity to obtain the cheques from the bank, he obtained only six cheques and having received those six cheques, he chose to display only the three that had been signed by the wife. He did not produce the three cheques that he had signed or explain what they were for and in what sums. I can only surmise that these cheques were used to pay his own personal or business expenses and that is why he did not want to show them to the court. The failure to produce the cheques undermined the husband's argument that the DBS joint account was used only for the expenses of the family.

66 I am satisfied that in all likelihood the sums transferred by the wife into the DBS joint account were loans to the husband. They must, therefore, be repaid. As a corollary, I find that the overdraft balance in the DBS joint account is the husband's responsibility alone.

Maintenance

67 Before I deal with the wife's claim for maintenance for herself and the children, I would like to deal with the husband's income. The husband's position was that his only income came from his director's fees from Strategic. He said that this was an investment fund and as it was not doing well, his income from the same was likely to drop. He also produced a letter which showed a reduction in his income from the fund in 2012. The husband initially stated that he did not receive any income from his directorships with APMT and the Roly Group. Subsequently, however, when the wife was able to point out certain remittances into his account, he agreed that he also receives \$6,000 per quarter as a director in the Roly Group.

68 There is reason to believe that the husband has not made full and frank disclosure. First, there is the belated disclosure of his income from the Roly Group. Second, there is the fact that the husband did not participate at all in these proceedings until March this year. It was the wife who had to file an initial affidavit setting out what she believed to be his income and assets in order to proceed with the ancillary matters. It was only in March that the husband responded and even then he did not file any affidavit before appearing in court. He delayed the hearing of the matter several months by asking for leave to file his affidavits and even after obtaining such leave, he did not produce full bank statements and records. Third, sums totalling \$55,318.05 were deposited into the DBS joint account on 29 June 2012 and an amount of \$30,000 was transferred out to another account on the same day. The husband did not explain where the sums received came from or into which account he had paid them. I am not convinced that the husband has disclosed all his assets or sources of income.

69 The husband did not produce any account of his expenditure. The wife managed to find out that he had purchased a new iPad and a new massage chair (which cost several thousand dollars) in the past few months. He had, however, stopped paying the instalments of the mortgage loan and had not made any contribution towards the wife's expenses. As for the children, the husband said that he had transferred \$500 to the son's account on 29 June 2012 but that was a one-off transfer and he produced no evidence to substantiate any regular maintenance given to the son. The wife suggested that the husband was maintaining his girlfriend and had purchased a car for her. The husband denied these allegations but, as I said, did not explain where his money went, though he did show a credit bureau statement which indicated that he had credit card debts amounting to more than \$85,000. He also asserted that he had borrowed money to help pay for his medical expenses. No attempt was made, however, to give a systematic accounting of his indebtedness and his monthly expenditure.

70 Even if only the husband's known income is taken into account, he earns \$15,167 a month (based on \$158,000 per annum from Strategic and \$24,000 per annum from the Roly Group). If the moneys remitted into the DBS joint account between September 2011 and 29 June 2012 are considered, however, they show that the husband received \$204,291.90 over a 10-month period or \$20,429.19 per month. The husband does have resources.

71 The wife is not employed and has been out of the job market since 2004. She is now 61 years of age and is in remission from cancer. She said that her chances of earning a decent wage are not good in view of her age and her health. The wife gave a list of her expenses amounting to \$4,782 a month. She asked for lump sum maintenance for 14 years on the basis of \$4,000 per month. The husband did not dispute the wife's expenses. He is willing to pay her maintenance of \$5,000 a month. He is not, however, agreeable to lump sum maintenance.

72 In order to provide a clean break between the parties, the courts generally order lump sum maintenance as long as the husband concerned can afford it. In this case, the husband will have half the proceeds of the sale of the Gentle Drive property and should be able to pay the lump sum maintenance from it. He also appears to be able to earn a reasonable living even if only his disclosed

income is taken into consideration. As stated earlier, I consider that the husband has not been completely full and frank in his disclosure. If that is indeed so, he would have more resources to fund the lump sum maintenance.

73 To obtain the multiplier for the lump sum maintenance, the wife relied on the recent decision of *Wan Lai Cheng v Quek Seow Kee and another appeal and another matter* [2012] SGCA 40 ("*Wan Lai Cheng*"), where the Court of Appeal in dealing with this issue accepted the method of calculating the multiplier set out in *Ong Chen Leng v Tan Sau Poo* [1993] 2 SLR(R) 545 which as set out at [35] thereof was:

... a period of 17 years as a compromise between the average life expectancy of a woman (70 years) and the usual retirement age (65) of a Singapore male worker less the wife's present age which was 50.

Applying this method to the facts in *Wan Lai Cheng* where the wife was aged 66, the court, acting on the basis that the average life expectancy of women in Singapore is 85 years, calculated the appropriate multiplier as being nine years (calculated by the formula $[85 + 65] \div 2 - 66$).

74 Originally, the wife had asked for maintenance of \$384,000 which was based on a multiplier of eight. Between the first and the second hearings of this matter, however, the judgment in *Wan Lai Cheng* was issued, and the wife changed her submission on the multiplier. The wife submitted that the appropriate multiplier would be 14 years on the basis of her present age of 61 and the normal life expectancy of women of 85 years (*viz* $[85 + 65] \div 2 - 61 = 14$). The wife did not produce any evidence of her own regarding this life expectancy, preferring to rely on the Court of Appeal's observation in *Wan Lai Cheng* that as at 2011, the Department of Statistics Singapore had stated that the life expectancy of females in Singapore was 84.3 years. Using 14 years and a multiplicand of \$4,000, the wife came to a total of \$672,000.

75 Taking into account the ability of the husband to pay, the wife's health, and her own resources after the Gentle Drive property has been sold and she has been paid her half share thereof and the sum of \$424,000 owing to her by the husband, I think that \$672,000 is too high a figure to award as lump sum maintenance in this case. I also note that the wife was originally content to ask for \$384,000. In the circumstances, the multiplier should be reduced. I would use a multiplier of ten years and award the wife \$480,000 on the basis of the same multiplicand of \$4,000. Alternatively, if the wife chooses, she may opt for monthly maintenance of \$5,000 a month.

76 Moving on to the children's maintenance, the wife asked to recover \$79,992 in respect of the second daughter's educational expenses. As the husband pointed out, the second daughter is now gainfully employed and not entitled to maintenance. As for the amounts paid for her education, the wife could have but did not ask for maintenance to cover the children's education prior to the filing of the divorce petition in March 2011. Therefore, I do not think that she is entitled to recover amounts incurred before then. According to the wife's own tables, after March 2011, she sent the second daughter a total of \$16,355.46 for her expenses. The husband shall reimburse the wife with this sum.

77 In respect of the son, the wife asked for \$200,000 as lump sum maintenance. The son is enrolled in an American university pursuing a four-year course of which one year was spent in Singapore. According to the wife's figures, in 2011, she spent \$37,693.69 on the son's education. Of this, only \$8,411.19 was spent after the petition was filed. I order the husband to repay this sum of \$8,411.19 to the wife. I note that the husband has evinced a willingness to support the son's education hereafter. However, he has not made any concrete proposals. The wife presented figures showing that it would cost \$6,666 per month (\$79,992 per annum) to educate the son in the United

States. The husband did not dispute this figure. However, in 2011, the wife apparently sent the son only about \$38,000. There may therefore be some padding in her estimation. The sum of \$5,000 a month or \$60,000 a year may be more appropriate. On this basis, for his two final years of education, the son would require \$120,000. The husband shall pay this sum.

Costs

78 The wife asked that the husband be ordered to pay the costs of her private investigator, the costs of the uncontested divorce and of the ancillary matters. She also wanted costs in respect of the summons taken out to obtain an "unless order" in respect of the timely filing of the husband's second affidavit.

79 In general, costs are not ordered in matrimonial matters. This, however, was a case based on the husband's adultery and the wife had to incur expense in employing a private investigator since the husband did not want the marriage to end. She should therefore be entitled to recover the private investigator's fee. In respect of the divorce proceedings and the ancillary matters, these have been prolonged by the husband's refusal to participate in any way, apparently owing to his belief that if he did not acknowledge the existence of or participate in the proceedings, they would go away. The wife has, as a result, incurred more costs than would normally be the case. It is only fair that he contribute to the wife's costs. I therefore award the wife costs of \$8,000 for the divorce and the ancillary matters including all summonses. This amount shall include the sum of \$250 previously ordered to be paid as costs by the husband.

Conclusion

80 For the reasons given above, I make the following orders:

(a) The matrimonial home at No 2 Gentle Drive Singapore shall be sold in the open market and upon conclusion of the sale, the net proceeds after repayment of the outstanding mortgage loan and any agent's commission, shall be divided equally between the parties. Each party shall to the extent required reimburse his/her own CPF account out of his/her own share of the sale proceeds.

(b) The wife shall have the conduct of the sale. In the event that the husband does not sign any documents connected with the sale and/or the transfer of the property within seven days of being asked to do so, the Registrar of the Subordinate Courts shall be empowered to sign all such papers for and on behalf of the husband.

(c) The motor car bearing No SFE9229B shall be valued by Performance Motors and the wife shall have the option to purchase the husband's share in the motor car by paying him 50% of the valuation price, such amount to be deducted from the wife's share of the sale proceeds of the Gentle Drive property. The wife shall indicate within four weeks from today whether she wishes to buy the car. If she does not, the husband shall have the same option to buy the wife's share in the car at 50% of the valuation price. If the husband buys the car, he shall bear the transfer fees. If neither party wants the car, it shall be sold in the open market and the net proceeds shall be shared equally.

(d) The husband shall pay the wife the following sums which shall be deducted from his share of the proceeds of sale:

(i) Lump sum maintenance for the wife in the amount of \$480,000;

- (ii) Reimbursement of the second daughter's educational expenses amounting to \$16,355.46;
- (iii) Reimbursement of the son's educational expenses amounting to \$8,411.19;
- (iv) In payment of the son's current and future educational expenses, the sum of \$120,000;
- (v) The sum of \$424,000 as repayment of the loans borrowed from the wife;
- (vi) The sum of \$2,675 being the cost of the private investigator's report; and
- (vii) \$8,000 as costs for the divorce and the ancillary matters.

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