

GAK v GAL
[2012] SGHC 132

Case Number : DT No 1246 of 2010
Decision Date : 25 June 2012
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : K Sathinathan and Ms Jayanthi (Sathi & Co) for the plaintiff; Josephine Choo and Quek Kian Teck (WongPartnership LLP) for the defendant.
Parties : GAK — GAL

Family law – Division of matrimonial assets

Family law – Maintenance

25 June 2012

Lai Siu Chiu J:

Introduction

1 This was a hearing to decide ancillary matters between [GAK] (“the Wife”) and [GAL] (“the Husband”) subsequent to an interim judgment of divorce being granted in December 2010. After hearing counsel for both parties, I made the following orders:

- (a) the Wife was to have a 40% share of the matrimonial flat situated at Serangoon North (“the HDB flat”) with an option to purchase the Husband’s 60% share at market value exercisable within 30 days from 29 February 2012, with the costs of the transfer and all incidental expenses to be borne by the Wife;
- (b) if the Wife failed to make her election, the HDB flat was to be sold within 120 days of 29 February 2012 and the sale proceeds were to be apportioned 40:60 in favour of the Wife and Husband;
- (c) the Wife was to receive lump sum maintenance of \$80,000 to be paid in four equal quarterly instalments with effect from 1 March 2012, in the alternative to be deducted from the Husband’s 60% share in the HDB flat; and
- (d) costs were fixed at \$4,000 to be paid to the Husband, to be deducted from the Wife’s share of the sale proceeds of the HDB flat or from the lump sum maintenance of \$80,000, in particular from the first quarterly instalment due on 1 March 2012.

2 As the Wife has appealed against the whole of my decision (in Civil Appeal No 27 of 2012), I shall now set out my reasons.

Background

3 [Company A] Pte Ltd (“the Company”) was a family-run ship-chandling business. The term

“ship-chandling” refers to the supply of provisions to ships. After completing national service, the Husband joined the Company as a boarding officer. In August 1975, the Wife joined the Company as a clerk-typist. The parties married in November 1980.

4 After marriage, the parties lived at the Husband’s family home at 29 Jansen Road (“29 Jansen Road”) with his parents and siblings. The Husband has three siblings:

- (a) [G], his brother;
- (b) [H], his sister; and
- (c) [J], his sister.

The Husband’s father transferred various properties to each of his four children as part of his legacy. The Husband received property in Sri Lanka in 1977 (see para 25 of his ninth affidavit) and [J] received a bungalow at 30A Jansen Road (“30A Jansen Road”) in 1979. 30A Jansen Road was located across the road from 29 Jansen Road.

5 In December 1986, [J] transferred 30A Jansen Road to the Husband’s sole name on the instructions of their father. In return, the Husband transferred his property in Sri Lanka to [J]. This was largely because their mother and [J] (who fell seriously ill) were returning to Sri Lanka and the Husband had informed his parents that he wished to stay in Singapore.

6 30A Jansen Road was left unoccupied and was sold sometime in 2000. The Husband deposited the sale proceeds of about \$4.2m into his personal account which was a Standard Chartered Cheque and Save Account No ABC (“the Cheque and Save Account”): [see para 22 of his second affidavit]. According to him, these monies were used *inter alia* for payment and renovations for the HDB flat (which was bought in 2000), the children’s education in Singapore and Australia, family holidays, daily expenses, insurance premiums and his failed business ventures.

7 The Wife continued working in the Company after the marriage. She stopped work in 2000 and her last-drawn monthly salary was \$1,500. The Husband also stopped working in the Company in the same year. His last-drawn monthly salary was \$2,000.

8 Sometime in April 2009, the Wife applied for a Personal Protection Order (“PPO”) on the basis that she had been physically assaulted and threatened by the Husband. She subsequently withdrew the application after the Husband undertook not to commit family violence. In November 2009, the Husband left the HDB flat. Since then, he has been living in rented accommodation.

9 Both parties filed for divorce in March 2010 and interim judgment was granted in December 2010. The Husband is 55 years old while the Wife is 54 years old.

10 Custody and care and control of the two children of the marriage were not in issue. The daughter [M] is 30 years old and graduated from the University of Sydney in 2004 while her brother, [N], is 27 years old and graduated in 2010 from the same university.

The assets disclosed by the parties

11 The Husband disclosed the following assets at pages 3–7 of his first affidavit:

No	Item	Value
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1	The HDB flat	Between \$750,000 and \$780,000 (co-owned with Wife)
2	Mitsubishi Gala 2.0 GDI car	\$24,195
3	AIA Financial Guardian Policy No L522453698	\$24,141.74
4	AIA Accident Policy No P550818056	Nil
5	Prudential PruSave Policy No 26058318	\$58,219.80
6	POSB Savings Account No XXX ("the POSB Savings Account")	\$4,480.93
7	UOB Savings Account No YYY ("the UOB Savings Account")	\$27,203.68
8	Standard Chartered Xtrasaver Account No ZZZ ("the Xtrasaver Account")	\$16,299.52
9	The Cheque and Save Account (as defined at [6] above)	\$195,844.47
10	CPF Ordinary Account	\$174,065.06
11	CPF Medisave Account	\$18,723.32
12	CPF Special Account	\$38,041.23

The Husband's total assets as declared above (excluding the HDB flat) amounted to \$581,214.80.

12 The Wife disclosed the following assets in her first Affidavit of Assets and Means:

No	Item	Value
1	The HDB flat	\$590,000 (co-owned with Husband)
2	AIA EAS CPF Ordinary Account Endowment Policy No L520954209	Unknown (Sum assured \$30,000)
3	AIA Financial Guardian Policy No L522453685	\$20,450
4	AIA Sapphire Enhanced (Personal Accident) Policy No 3080013560-000-00	Nil
5	AIA Healthshield Gold Policy No H221605158	Nil
6	AIA EAS Savings Policy No L518675260	Unknown (Sum assured \$100,000)
7	AIA Endowment Policy No L517195262	\$7,492.97
8	AIA EAS Single premium savings Policy No L533090480	Unknown (Sum assured \$6,000)
9	AIA CPF SA Single premium Policy No U 020250063	\$7,304.25

10	Shares in Singapore Telecommunications	\$548.70
11	POSB Savings Account No AAA	\$42.98
12	POSB Joint-alternate Account No BBB	\$12.89 (jointly owned with mother)
13	Several accounts with Standard Chartered Bank	Not stated (jointly owned with Husband)
14	CPF Ordinary Account	\$13,573.70
15	CPF Medisave Account	\$18,988.39
16	CPF Special Account	\$2,394.10
17	Jewellery	\$40,000

The Wife's total assets as declared in her first affidavit (excluding the HDB flat) amounted to \$110,807.98. The Wife did not declare the surrender value of the savings and endowment policies which she had (see items 2, 6 and 8 above) although this information would be well within her power to obtain. The total sum insured by these policies was \$136,000.

Matrimonial assets available for division

The HDB flat

13 The HDB flat was purchased in June 2000 at a price of \$495,000 which was fully paid in cash. Although the Wife initially disagreed with the Husband's valuation of the HDB flat, she subsequently accepted that it had a present estimated value of \$750,000.

14 Both parties agreed that the HDB flat was a matrimonial asset.

30A Jansen Road

15 The Wife took the position (at para 54(b) of her second affidavit) that 30A Jansen Road was a matrimonial asset and she should be granted 70% share in its remaining sale proceeds as at 28 April 2009. The Husband contended that 30A Jansen Road was not a matrimonial asset.

16 The law is set out in s 112(10)(b) of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Charter"), which provides as follows:

In this section, "matrimonial asset" means —

...

(b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,

but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

In *Chen Siew Hwee v Low Kee Guan (Wong Yong Yee, co-respondent)* [2006] 4 SLR(R) 605 ("*Chen Siew Hwee*") at [32], Andrew Phang J explained that the purpose of the gift exception was two-fold: (a) to recognise the absence of intention on the donor's part to benefit the donee's spouse; and (b) to prevent unwarranted windfalls accruing to the donee's spouse.

17 The Wife admitted that 30A Jansen Road was transferred into the Husband's sole name in 1986. However, she argued (at para 6 of her fifth affidavit) that this was done because the father considered it easier to have a direct transfer done between [J] and the Husband as that had been the case with the transfers to the other siblings which took place before their marriages. She maintained that the Husband's father had good relations with her and her children and that he had intended the parties to be co-owners.

18 The Wife also stated (at para 35 of her fifth affidavit) that the Husband was not on good terms with his family members and may not have received 30A Jansen Road but for the fact that he was married. She pointed out that the father had given the property to the Husband in 1986, 6 years after their marriage. She argued that it was his father's wish to ensure that the Husband's family was financially secure at all times. She also added (at para 45 of her eighth affidavit) that the father had only wanted to give the Husband the property after his marriage because he favoured her and her children and wanted them to benefit from 30A Jansen Road.

19 I accepted the Husband's consistent evidence that his father had intended 30A Jansen Road as a gift for his sole benefit. The Husband's evidence was corroborated by the evidence of his mother who deposed (at para 10 of her first affidavit) that the Husband's father and herself did not wish to intervene in the family affairs of their children and therefore decided to transfer the properties into their children's sole names, leaving it to them to take the necessary steps to benefit their families if they so wished. Although it was true that 30A Jansen Road was transferred to the Husband by [J] only in 1986 (which was 6 years after the parties' marriage and 4 years after [M] was born), the Wife's arguments were undermined to a significant extent by the fact that the Husband's father had transferred property in Sri Lanka to him earlier in 1977 before the parties were married. In substance, the Husband received the gift from his father in 1977 and the subsequent exchange of properties between the Husband and [J] in 1986 occurred simply because the Husband's parents and [J] intended to move to Sri Lanka whereas he intended to stay in Singapore.

20 The Wife's assertion that it was easier for the transfer to be made into the Husband's sole name because that was how it was done for all his siblings was rather far-fetched. If it was indeed true that the Husband's father had good relations with her (in the 9 years since the first gift was made in 1977) and had intended her to benefit from 30A Jansen Road, it would have been easy for him to direct [J] to transfer the property into the parties' joint names in 1986 when the swap took place. He did not do so.

21 In the circumstances, I found that 30A Jansen Road was a gift to the Husband from his father.

22 I agreed with the Husband that the Wife had not in any case substantially improved 30A Jansen Road. Her contention (at para 10 of her second affidavit) that from 1985 onwards she used to go over to 30A Jansen Road with the maid and the two children to clean, feed the guard dogs and maintain the house was not plausible given that the two children were still very young ([M] was born in 1982 and [N] was born in 1985). The Husband and his mother disputed the Wife's version of events. In any event, the Wife's contributions, assuming they were true, did not amount to a substantial improvement of 30A Jansen Road. First, her actions were *de minimis*: (see *Shi Fang v Koh Pee Huat* [1996] 1 SLR(R) 906 where the wife's allegations of substantial improvement were dismissed on this ground). Secondly, her actions amounted at most to maintenance of the property (*ie*, ensuring

that it did not become dilapidated) whereas the proviso to s 112(10) of the Charter contemplates that the asset should be substantially *improved*.

23 I also agreed with the Husband that 30A Jansen Road was not a matrimonial home. As the Wife accepted that the parties and their children had never lived at 30A Jansen Road, it was never used as a matrimonial home. Between 1986 (when it was given to the Husband by [J]) and 2000 (when it was sold), there was no evidence that the parties and/or their children had used or enjoyed 30A Jansen Road for shelter or household purposes. While there was some evidence that the Wife and the children had occasionally used 30A Jansen Road as a correspondence address, this was largely insignificant given that they lived across the road at 29 Jansen Road.

24 As 30A Jansen Road was a gift, was not substantially improved by the Wife, and was not a matrimonial home, I held that it was not a matrimonial asset within s 112(10) of the Charter.

The sale proceeds of 30A Jansen Road

25 As 30A Jansen Road was sold in 2000 for \$4.2m, the real dispute between the parties concerned its sale proceeds. In *Chen Siew Hwee* (cited above at [16]), Phang J explained that (at [57]–[58]) where funds derived from a non-matrimonial asset are used to acquire a new asset, this new asset will *not* be a matrimonial asset unless it was shown by the spouse that the donee demonstrated a real and unambiguous intention that the new asset should be considered part of the pool of matrimonial assets. As I explained above (at [19]–[24]), 30A Jansen Road was not a matrimonial asset. Accordingly, in order for the Wife to succeed in her contention that a particular asset derived from 30A Jansen Road *was* a matrimonial asset, she had to convince me that the Husband had intended that asset to form part of the pool of matrimonial assets.

26 The sale proceeds of \$4.2m were initially deposited in the Cheque and Save Account which was in the Husband's sole name (see para 22 of his second affidavit). According to the Wife (see para 15–16 of her eighth affidavit), the sale proceeds were then spent in the following way:

- (a) Purchase and renovation of the HDB flat: \$660,000;
- (b) The Husband's Cheque and Save Account: \$510,000;
- (c) Standard Chartered Time Deposit Account No DDD ("Account DDD"): \$10,800;
- (d) Australian bank accounts: \$70,000;
- (e) Various cars: \$215,000;
- (f) Children's education: \$250,000; and
- (g) Insurance for the whole family: \$175,000.

This was a total of \$1,890,800. The Wife further asserted that the Husband's Standard Chartered Time Deposit Account No CCC ("Account CCC") contained the remainder of \$2,167,156.30. Although the sum total of the amount in Account CCC and the Wife's list was only \$4,057,956.30 and not \$4.2m, this difference was probably because part of the sale proceeds was also used for the family's daily expenses (see para 37 of the Wife's second affidavit).

27 In her second affidavit, the Wife's position was (at para 37) that the sale proceeds were also deposited into, *inter alia*, the UOB Savings Account (as defined above at [11]) and Standard

Chartered Savings Account No EEE ("Account EEE").

28 Sometime in April or May 2009, the Husband closed Account CCC and withdrew the closing balance of \$2,167,156.30 in cash. The Wife accepted that these monies originally formed part of the sale proceeds of 30A Jansen Road (see paras 13–16 of her eighth affidavit). As I concluded that 30A Jansen Road was not a matrimonial asset (see [19]–[24] above), it was incumbent on the Wife to establish that the Husband had intended those monies to form part of the pool of matrimonial assets. The Wife had failed to discharge this burden. The evidence indicated the absence of such intention on the Husband's part because he kept the monies in Account CCC which was held solely in his name and under his full control (see para 16 of the Wife's eighth affidavit). The \$2,167,156.30 in Account CCC was thus not a matrimonial asset.

29 According to the Husband, he purchased 21 blue sapphires and 58 rubies ("the Gemstones") from a Thai national for \$2.5m and he withdrew the \$2,167,156.30 from Account CCC for this purpose. When the Husband left the HDB flat in November 2009, he left the Gemstones in the master bedroom which he locked. He believed that this would be a safer location for the Gemstones than to bring them to his rented premises. In September 2011, the Husband realised that the Gemstones were missing and lodged a police report. The Husband submitted that the Gemstones should not be divided because (a) they were directly traceable to 30A Jansen Road and were therefore not matrimonial assets, and (b) in any event, they were lost or stolen. A decision on the veracity and relevance of the Husband's claims, which were disputed by the Wife, was unnecessary given that the closing balance in Account CCC was not a matrimonial asset (see [28] above). There was no evidence to indicate that the Husband intended that the monies withdrawn from Account CCC should form part of the pool of matrimonial assets.

30 As for the balances in the Husband's other bank accounts into which part of the sale proceeds was deposited (*ie*, the Australian bank accounts, Account EEE, Account DDD, and the UOB Savings Account), I was of the opinion that they also did not constitute matrimonial assets. The Wife did not produce any evidence of a real and unambiguous intention on the Husband's part that these particular bank accounts should constitute part of the pool of matrimonial assets to be divided. Accordingly, she had failed to discharge her burden of proof.

31 Further, there was evidence to the contrary in relation to Accounts EEE and Account DDD. The Husband asserted (at para 8 of his ninth affidavit) that Account EEE contained his savings which he had accumulated before his marriage in 1980. The Husband stressed (at para 6 of the same affidavit) that the Wife was a joint account holder only because she had requested to be able to withdraw the monies in case he were to meet with an accident. Although the Husband had used the monies in Account EEE to pay \$1,000 per month to the Wife (see para 21 of his second affidavit), it did not necessarily follow that the remaining balance in the account (after deducting the monthly payments) also constituted matrimonial assets.

32 Account EEE was closed and the balance therein was transferred to the Xtrasaver account (as defined above at [11]) in the Husband's sole name (see para 21 of the Husband's second affidavit).

33 Account DDD was opened solely to provide collateral for a safe deposit box with the bank (see page 21 of the Husband's seventh affidavit); an earlier account (Standard Chartered Time Deposit Account No XYZ ("Account XYZ")) which was opened for the same purpose was closed in January 2009 and converted into Account DDD as a result of the bank's operational requirements. Account DDD was closed in June 2009 and the balance was transferred to the Cheque and Save Account (see page 21 of the Husband's seventh affidavit).

34 In addition, the Wife failed to discharge her burden of proof in relation to the POSB Savings Account (as defined above at [11]). As the Husband explained (at para 26 of his second affidavit), all the monies in the POSB Savings Account came from the Cheque and Save Account.

35 The parties and their children enjoyed a comfortable life from the outset largely due to the father's wealth. The sale proceeds of 30A Jansen Road was the main source of funds for the purchase and renovation of the HDB flat, the children's education (both in Singapore and in Australia), the insurance premiums for the entire family, and daily expenses. However, it was fairly clear from the way the Husband managed the balance of the sale proceeds that the Wife's access was limited. For instance, the bulk of the sale proceeds were left in the Cheque and Save Account which was in his sole name. The sale proceeds dwindled over the years due to expenditure on various items such as daily expenses, insurance premiums and the children's education. However, this did not necessarily mean that the *balance* of the sale proceeds in the various accounts would constitute part of the matrimonial assets to be divided. The burden of proof in this regard was on the Wife who had failed to discharge it.

Adverse inference

36 The Wife submitted that the court should draw an adverse inference against the Husband for several reasons. She referred to *NK v NL* [2007] 3 SLR(R) 743 at [55]–[65] as guidance on when the courts should draw an adverse inference against a party. In *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407, the Court of Appeal stated:

50 ...Whether or not in each case an adverse inference should be drawn depends on all the evidence adduced and the circumstances of the case. There is no fixed and immutable rule of law for drawing such inference. Where, as was the case here, the trial judge is of the view that the plaintiffs themselves had not made out their claim to the requisite standard, then no drawing of an adverse inference against the defendants is necessary. *The drawing of an adverse inference, at least in civil cases, should not be used as a mechanism to shore up glaring deficiencies in the opposite party's case, which on its own is unable to meet up to the requisite burden of proof. Rather, the procedure exists in order to render the case of the party against whom the inference is drawn weaker and thus less credible of belief.*

[emphasis added]

37 First, the Wife pointed out that the Husband had failed to explain satisfactorily what had happened to the \$2,167,156.30 which he withdrew from Account CCC. This was immaterial to the issues before the court because the Wife had admitted that those monies were derived from the sale proceeds of 30A Jansen Road, which were not a matrimonial asset. Further and in any event, this was not a case where the Husband had concealed the existence or quantum of those monies. He had disclosed the statements of Account CCC and the Wife knew that it contained \$2,167,156.30. There was therefore no substratum of evidence that established a *prima facie* case that the Husband was concealing assets: see *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 at [28].

38 The second reason was due to the Husband's unilateral closure of five bank accounts held jointly with the Wife (*ie*, Account EEE, the Cheque and Save Account, Account CCC, the UOB Savings Account, and Standard Chartered Supersave Account No DEF) and two savings accounts held jointly with the children in May and June 2009 soon after the Wife applied for a PPO. In my view, this was insufficient to establish a *prima facie* case that the Husband was concealing assets. Again, the Husband had disclosed the statements of those bank accounts.

39 The Wife's third reason (at para 86 of her submissions) was that the Husband had failed to disclose that he received \$82,195.14 upon maturity of an insurance policy. She pointed out that he had merely produced the policy document (at page 95 of his first affidavit) without disclosing that it had matured in November 2010. However, there was no evidence produced by the Wife to support her assertion that the policy had matured in November 2010. Furthermore, although this allegation was put forward in her second affidavit (at para 22), she did not explain in that affidavit or any subsequent affidavits how she arrived at the quantum of \$82,195.14 which she alleged in her submissions before the court. In any event, even if it was true that this insurance policy had matured (or was converted into cash) in November 2010, this did not establish a *prima facie* case against the Husband. He had disclosed the existence of this policy in his first affidavit. The policy date of 20 April 2000 was also very close in time to the sale of 30A Jansen Road; this raised a strong inference that this policy was funded by the sale proceeds of 30A Jansen Road.

40 The final reason concerned the Husband's CPF monies. Although he declared his CPF monies to be \$105,749.80 as at 31 December 2008, this had increased to \$230,829.61 in January 2011 although he stated that he had no steady employment. The Wife argued that this showed that he had failed to make full and frank disclosure of his assets. The Husband's explanation for the increase in his CPF account balance was that he had used his CPF funds for investments which had increased in value leading to a corresponding increase in his CPF account balance when the investments were liquidated (see pages 156–167 of his first affidavit). I accepted this explanation.

41 In the circumstances, I did not draw an adverse inference against the Husband.

Division of matrimonial assets

The applicable law

42 The starting point for any division of matrimonial assets is s 112(1) of the Charter which empowers the court to make a division in such proportions as the court deems "just and equitable". Section 112(2) of the Charter provides a list of factors which a court is required to take into consideration in determining how the matrimonial assets are to be divided. The relevant factors in this case are:

- (a) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the matrimonial assets;
- (b) any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage;
- (c) the needs of the children (if any) of the marriage;
- (d) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party;
- (e) any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;
- (f) the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business; and

(g) the matters referred to in section 114(1) in so far as they are relevant.

43 In *Lim Choon Lai v Chew Kim Heng* [2001] 2 SLR(R) 260, the Court of Appeal stated at [29]:

Finally, it is paramount that courts do not focus merely on a direct and indirect contributions dichotomy in arriving at a just and equitable division of matrimonial assets. The various factors enumerated by s 112(2) of the Act, which are no less important, must be duly assessed and considered as a whole. At the end of the day, no one factor should be determinative as the court's mandate is to come to a just and equitable division of the matrimonial assets having regard to all the circumstances of the case...

44 In this regard, a party's direct financial contributions to the acquisition of any particular matrimonial asset can no longer be primarily determinative of how it is divided, and the court is free to give as much weight or more to other non-financial factors: *Yow Mee Lan v Chen Kai Buan* [2000] 2 SLR(R) 659 at [32]. The importance of giving the fullest effect to non-financial contributions has been stressed repeatedly in case law, for example in *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 at [55].

45 The court is to adopt a broad brush approach in deciding what would be a just and equitable division in all the circumstances of a case. This is an exercise largely based on feel and the court's sense of justice, and the court is not expected to make an exact calculation of each spouse's contributions, whether financial or non-financial: *Yeo Chong Lin v Tay Ang Choo Nancy* [2011] 2 SLR 1157 at [78] and [81].

Application of the law to the facts

46 The Wife submitted that the HDB flat should be transferred to her absolutely with no cash consideration. As for the matrimonial assets other than the HDB flat, the Wife contended (at para 74 of her submissions) that her share of the sale proceeds should be somewhere between 60% and 70% on the basis of her contributions to the marriage and the Husband's lack of full and frank disclosure of his assets.

47 The Husband submitted that the HDB flat should be sold and the proceeds divided 20% to the Wife and 80% to him. The Husband and his family took care of all the household expenses and sent the children overseas for their education. He referred to s 112(2)(f) of the Charter which provided that the court should consider "any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party", and pointed out that the Wife had continued to live in the HDB flat rent-free for more than 2 years since he was forced to leave in November 2009 whereas he had been staying in rented accommodation.

48 The HDB flat was the first home which the parties and their children had to themselves. While it was true that the HDB flat was fully paid for with the sale proceeds of 30A Jansen Road (which was not a matrimonial asset), the parties had lived in the HDB flat as a family for about 9 years until the marriage broke down and the Husband left in late 2009.

49 The Wife's submission (at para 54(a) of her second affidavit) that the Husband should be ordered to transfer his share in the HDB flat to her for no cash consideration was without merit. This was a case where the Wife made no direct financial contributions to the HDB flat at all. The purchase price of the HDB flat of \$495,000 in 2000 was rather substantial and it was fully paid in cash by the Husband from the sale proceeds of 30A Jansen Road.

50 However, this was a 29-year marriage with two children. Although the Wife's indirect contributions to the Husband's family and the family business were disputed by the Husband, it was fairly clear that the Wife had contributed to some extent to the household and the upbringing of the children. Nonetheless, the Wife's assertions of the extent of her contributions had to be taken with a pinch of salt. The Company where the Wife worked for 20 years was a family-run business controlled by the Husband's parents and there was at least one maid to assist her with the household chores. I also took note of the fact that while the Wife asserted that she had made substantial contributions to the household and children, she had also asserted that she worked very hard at the Company. Such assertions were, to an extent, inconsistent.

51 Adopting a broad brush approach, I was of the view that it was just and equitable that the Wife be awarded 40% share of the HDB flat.

Maintenance

The applicable law

52 Section 113 of the Charter empowers the court to make an order for maintenance. In making such an order, the court has to consider all the circumstances of the case, including the factors set out in s 114(1) of the Charter:

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage; and
- (f) the contributions made by each of the parties to the marriage to the welfare of the family, including any contribution made by looking after the home or caring for the family.

53 As stated in *BG v BF* [2007] 3 SLR(R) 233, the power to order maintenance is exercised in a manner supplementary to the power to divide matrimonial assets, such that the court takes account of each party's share of the assets, and the order for maintenance plays a complementary role to the order for assets. Essentially, the aim is to even out any financial inequalities between the spouses, taking into account any economic prejudice suffered by the wife during marriage: *Tan Sue-Ann Melissa v Lim Siang Bok Dennis* [2004] 3 SLR(R) 376 at [27].

Decision on maintenance

54 The Wife submitted that she should be awarded a lump sum of \$120,000 (\$1,000 monthly for 10 years). She pointed out that the Husband had agreed in May 2009 to provide \$1,000 monthly as interim maintenance. Alternatively, she submitted that she should be awarded a monthly maintenance of \$2,500. Her declared monthly expenses in her first affidavit amounted to a total of \$2,564.80.

55 The Husband submitted that he should not be ordered to pay any maintenance to the Wife and

their children because:

- (a) he was 56 years old and unemployed with no income;
- (b) the Gemstones, which were his only assets of significant value (besides the HDB flat), were lost or stolen;
- (c) the Wife would continue to have sole enjoyment of the HDB flat without rent until it was sold whereas he would continue to incur monthly rent for his rented premises;
- (d) his savings were dwindling without any income and the children were unlikely to support him; and
- (e) both children had graduated and were working.

The Husband referred to *NI v NJ* [2007] 1 SLR(R) 75 at [14] where the court stated that one should take into account the husband's age and uncertainty of future employment. The Husband added that his efforts to find a well-paying job had not been successful because the ship-chandling business which he had been working in all his life was now a dying trade with the advent of direct sales through the internet.

56 In my view, a lump sum maintenance of \$80,000 (\$666.67 per month for 10 years) would be an equitable amount in the circumstances. As both children are working and living with the Wife, a substantial part of her financial needs could reasonably be expected to be met by the children. Given that the children were university graduates, their salaries would not be insubstantial. They would also save on accommodation costs because they were living in the HDB flat which is fully paid-up. Should the Wife elect to buy over the Husband's 60% share in the flat, the children could continue to live with her and also contribute towards the cost of purchase and the household expenses. If the Wife declined to buy over the Husband's share in the flat, then the children could continue to live with the Wife in alternative accommodation that she selected after the sale. Further, although the Husband's income tax statements disclosed that he had received *some* income from trade after he left the Company in 2000, such income was intermittent and not substantial (see pages 23–34 of his fifth affidavit).

The children

57 In her submissions, the Wife urged the court (at para 72) to direct the Husband to return what she called "the children's insurance monies and bank accounts" to them. She asserted that those assets came from the sale proceeds of 30A Jansen Road. This question, which involved assets allegedly belonging to the children and not to the Wife herself, was not relevant to the issues before the court, *ie*, division of matrimonial assets and maintenance of the ex-wife. The children are above 21 years of age and may raise this question of their own accord in separate proceedings if they so wished.

58 The Wife also prayed (at para 99(e) of her submissions) for an order that the Husband refund \$1,233 for [N]'s airline ticket and \$9,000 for [N]'s expenses between July 2010 and December 2010. At para 41 of her second affidavit, the Wife made clear that the airline ticket in question was [N]'s return ticket from Singapore to Sydney in 2009.

59 I rejected this submission. According to the Wife, the airline required that the credit card used to purchase the ticket be produced at the airport: see para 23 of her fourth affidavit. The reason

why the airline ticket had to be purchased was due to the fact that [N] had cut his supplementary credit card (which was used to purchase the return ticket Sydney–Singapore–Sydney) into two: see the text message from [N] at page 21 of the Husband's sixth affidavit. The Wife's claim in her affidavits (see, for instance, para 41 of her second affidavit) that the airline ticket had to be purchased because the Husband had *cancelled* the supplementary credit card was, at the very least, highly disingenuous.

60 As for the expenses incurred by [N] from July 2010 to December 2010, the Wife requested reimbursement of the \$9,000 which she provided to [N]. In substance, this was a claim for a child's maintenance. I was not convinced by the Wife that this expense was necessary in the circumstances because [N] was "undergoing training for a trade, profession or vocation, whether or not while in gainful employment": see s 69(5)(c) of the Charter. Although [N] was hired as a part-time department store sales promoter in September 2010 (see para 18 of his affidavit), he did not disclose how much he earned from this job. Neither did he provide a breakdown of his actual expenses from July 2010 to December 2010. His reliance on his expenses from January 2010 to June 2010 (see para 19 of his affidavit) was unsatisfactory because it would not be reasonable for him to expect that his father would continue to provide for him to the same extent as while he was still studying. One would expect him to reassess his financial position in the light of the ongoing divorce proceedings of his parents and to adjust his expenses accordingly after he had graduated. No man should be expected to maintain a 27 year old son who is a university graduate and working. Hence I rejected the Wife's claims for reimbursement of \$1,233 and \$9,000 by the Husband.

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