

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 223

Registrar's Appeal from the State Courts No 132 of 2014
(Summons No 3485 of 2021)

Between

CSW

... Appellant

And

CSX

... Respondent

GROUND S OF DECISION

[Family law — Maintenance — Variation]
[Family law — Maintenance — Wife]

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CSW

v

CSX

[2022] SGHC 223

General Division of the High Court — Registrar's Appeal from the State
Courts No 132 of 2014 (Summons No 3485 of 2021)

Andre Maniam J

20 October 2021, 9 May, 27 June 2022

16 September 2022

Andre Maniam J:

Introduction

1 If a former wife ceases to rent accommodation because she has bought a place to stay, does she lose her entitlement to maintenance from her ex-husband?

2 The respondent (husband) applied to reduce to “no maintenance” the maintenance of \$600 a month that he had been ordered to pay the appellant (wife) since 2014. I dismissed the husband's variation application. The husband has now appealed. These are my grounds of decision.

Background

3 The parties were married in February 2006. The application for divorce was made in May 2012, when they had been married for some 6 years 3 months. The divorce was granted by an interim judgment in August 2013, made final in January 2015.

4 There are two children of the marriage, born in November 2006 and June 2008. They are now around 16 and 14 years old. The parties were granted joint custody of the children; the husband was given care and control, the wife was given access. The extent of the wife's access was increased on appeal in October 2014.

5 In June 2014, the husband was ordered to pay maintenance of \$300 a month to the wife. That was increased to \$600 a month on appeal in October 2014. The husband paid maintenance as ordered but applied in July 2021 to vary the maintenance order to "no maintenance ... forthwith". I dismissed that application in May 2022, a decision which I affirmed in June 2022 after hearing further arguments.

Grounds of the variation application

6 The sole ground for varying maintenance to "no maintenance", as stated in the summons, was that the wife was earning more than she had been when maintenance was earlier ordered:¹

The [wife's] income was S\$3,200/- per month at the time of Order of Court dated 26th November 2014. Her income for 2020 as per her Supplementary Affidavit filed on 21st July 2021 for the HC/SUM 2238/2021 is S\$4,798/- per month

¹ HC/SUM 3485/2021 filed on 23 July 2021.

7 In his supporting affidavit dated 27 August 2021, the husband said that there had been a material change in circumstances in that the wife's income had increased substantially since 2014 (when maintenance was ordered).² Her monthly income had increased from \$3,200 then,³ to \$4,798 as of 2020.⁴

Whether maintenance should be rescinded (or reduced) because the wife's income had increased

The original maintenance orders

8 As noted above, the husband was originally ordered to pay the wife maintenance of \$300 a month, which was increased to \$600 on appeal. The wife and husband were also ordered to share the children's educational expenses and medical (including hospitalisation) expenses in a 30:70 ratio. It was further ordered that the parties shall each solely maintain the children while they are in their respective care.

9 Although the \$300 maintenance order (later increased to \$600) was expressed as payment of maintenance by the husband to the wife, the court took account of what the wife would spend on maintaining the children when they were in her care, and what the wife would spend on sharing in their educational and medical expenses. There was no separate monetary order for maintenance of the children.

² Husband's affidavit dated 27 August 2021, paras 193–194.

³ \$3,201.68, as stated in the wife's affidavit dated 28 January 2013 in D 2058/2012.

⁴ \$4,798.33, as stated in the wife's affidavit dated 21 July 2021, para 81 and p 294 (notice of assessment).

10 The link between maintenance to the wife, and her maintenance of the children, was expressly recognised by the High Court on appeal. In increasing maintenance from \$300 to \$600, the judge said:⁵

On maintenance, as W will have to spend more given her increased access with the children, I will increase the monthly maintenance from \$300 to \$600.

11 This does not mean that the whole of the \$300 increase in maintenance was for the wife to spend on the children, or indeed that the \$600 or any specific amount of it was for her to spend only on the children. The point is simply that the \$600 in maintenance was ordered having regard to the fact that the wife would (to some extent) be maintaining the children. On a related note, the husband's submissions addressed both variation of maintenance for the wife, and variation of maintenance for the children.⁶ The common thread is that an order for maintenance of a wife or child may be varied if there has been a change in circumstances: see the Women's Charter (Cap 353, 2009 Rev Ed), section 118 (wife) and section 72 read with section 127 (child).

Principles relating to variation of maintenance orders

12 For a change in circumstances to justify varying a maintenance order for a former spouse, it must be a **material** change from the **circumstances prevailing when the order was made**: *ATS v ATT* [2016] SGHC 196 at [10], citing *Tan Sue-Ann Melissa v Lim Siang Bok Dennis* [2004] 3 SLR(R) 376 at [26] and *AYM v AYL and another appeal* [2014] 4 SLR 559 at [14]. The inquiry is not simply whether there has been any material change *per se* since the original maintenance order; the change must be sufficiently material such that

⁵ Notes of Argument dated 31 October 2014; Husband's affidavit dated 27 August 2021, p 212 at 213.

⁶ Husband's submissions dated 14 October 2021, paras 105–111.

it is no longer fair to expect the *status quo* to remain: *BZD v BZE* [2020] SGCA 1 (“*BZD*”) at [14].

13 The husband submitted that “there is a material change of circumstances in that [the wife’s] income has increased substantially [to \$4,798 per month] since the Ancillary matter hearing/appeal in 2014 [when it was \$3,200 per month].”⁷ That was the basis for the extreme argument in the husband’s request for further arguments: “Her income increment (S\$1,598.00) is more than enough to contra the S\$600 per month.”⁸

14 However, the *wife’s income* is only one aspect of the overall financial position of both parties. The husband implicitly recognised this, in also addressing in his submissions *his income*, and the *parties’ expenses*. That was a fuller but still incomplete picture of the parties’ overall financial position. I elaborate below.

The husband’s income

15 The husband’s variation application was based on the wife’s income having increased since 2014. But the husband’s income had also increased since then:

(a) In his affidavit of 7 December 2012, he had declared his monthly income as \$8,250 gross, \$5,195.90 net.⁹

(b) His income tax notice of assessment for year of assessment 2021 stated his employment income for that year as \$109,490, *ie*, \$9,124.17 a

⁷ Husband’s submissions dated 14 October 2021, para 113 (also see para 114).

⁸ Husband’s request for further arguments dated 20 May 2022, para 12.

⁹ Husband’s affidavit dated 7 December 2012, para 4 and p 31 (payslip).

month (gross).¹⁰ I note that his payslip for June 2021 stated his total earnings for that month as \$7,484.67 gross, \$6,277.67 net. In the text of his affidavit, he stated that his monthly income was \$6,277.67.¹¹ That was selective: it was his *net monthly* income as stated in his payslip; it did not give the full picture of his income.

(c) In summary, the husband's monthly income had risen from \$8,250 gross, \$5,195.90 net (in 2014), to \$9,124.25 gross, \$6,277.67 net (in 2021). That was an increase of around \$1,000 a month both on a gross basis and on a net basis.

16 The husband's position was thus:

(a) he should no longer have to pay the wife \$600 a month in maintenance because her income had increased by more than \$600 a month; and

(b) his income having increased by some \$1,000 a month did not mean he should continue paying her \$600 a month in maintenance, or any maintenance.

17 The husband cannot have it both ways: he cannot say that the wife's increase in income is *relevant* to rescinding her maintenance, but his increase in income is *irrelevant* to continuing her maintenance. The increase in the husband's income is relevant: *BZD* at [12]–[14].

¹⁰ Husband's affidavit dated 27 August 2021, p 222.

¹¹ Husband's affidavit dated 27 August 2021, paras 173 and 196.

The husband's expenses

18 The husband said that he incurred some \$4,340.43 in monthly expenses, excluding payment of maintenance to the wife.¹² His net monthly income is \$6,277.67, almost \$2,000 more than his stated monthly expenses. The husband did not say that from that surplus, he could not afford to continue paying the \$600 in monthly maintenance to the wife and maintaining the children when they were in his care.

The wife's expenses

19 The wife said that she had the following monthly expenses (based on the component figures in her affidavit dated 21 September 2021):¹³

- (a) Personal expenses: \$2,465.22;
- (b) Household expenses: \$683.42 being $\frac{1}{4}$ of \$2,733.66 (she divided household expenses by four: counting herself, the two children, and her sister who stays with her); and
- (c) Children's expenses (including a $\frac{1}{4}$ share each of household expenses): \$1,909.42 + \$1,459.42.

20 With her monthly income of \$4,798, those expenses of some \$6,517.47 left her with a deficit of almost \$2,000, of which \$600 was defrayed by the monthly maintenance from the husband.

21 The husband critiqued the wife's expenses: for some items, he suggested lower figures; for some items, he suggested that the proper amount should be

¹² Husband's affidavit dated 27 August 2021, para 197.

¹³ Wife's affidavit dated 21 July 2021, para 80.

zero as they were “business expenses”.¹⁴ But he was not focused on comparing the wife’s expenses today with her expenses in 2014 on which the maintenance order was based.

22 The distinction which the husband sought to draw between the wife’s business and personal expenses was not relevant to the issue of varying the maintenance order. Whether an item of expense was regarded as “business” or “personal”, it would still have to be met by the wife from the resources available to her. The husband has not shown, for instance, that the wife had deducted business expenses in arriving at her net income, and then double-counted the same expenses as personal expenses that still had to be met from that net income.

23 The husband’s position was that the wife’s MediSave, income tax, the *whole* of her car-related expenses, home-related expenses, and various other expenses should be regarded as business expenses, and as such, completely excluded from consideration. This was flawed:

(a) The wife’s MediSave and income tax are not business expenses: they are items she must pay as an individual contributing to MediSave, and as an individual taxpayer.

(b) As the wife stayed at her home, as did the children for one night every weekend, the wife could not treat the *whole* of her home-related expenses as business expenses, nor could she thus regard her car-related expenses, or the other expenses which the husband asserted were business expenses, all of which had at least some element of personal, non-business use.

¹⁴ Husband’s affidavit dated 27 August 2021, paras 161, 165, 184 and 185.

(c) The husband applied double standards: he sought to exclude the wife's car-related expenses, but he included his own; in similar vein, he sought to exclude the wife's expenses on food and beverage (away from home), handphone, holiday travel, utilities, internet broadband, replacement of household appliances, home repairs, town council fees, and home protection scheme cover. By seeking to exclude all of these as the wife's "business expenses", the husband contended that the wife's expenses were only \$297.40 + \$112.50 + \$637.50 + \$647.35 (totalling \$1,694.75); moreover, that excluded various items of the children's expenses that he asked to be dealt with on a cost-sharing basis.

24 By incorrectly excluding various expense items, the husband asserted that the wife's expenses had not increased since 2014.¹⁵ When maintenance was ordered in 2014, the wife had stated that her expenses were \$4,768.86.¹⁶ I disagree with the way in which the husband has tried to whittle down the wife's expenses; I accept that the wife's expenses have increased since 2014.

25 One new item of the wife's expenses (which the husband disputed) was a \$1,240 housing loan instalment. When maintenance was ordered in 2014, the wife had yet to purchase her current home; she was renting accommodation at a cost of \$1,350 per month. I address this separately from [30] below.

The parties' overall financial position

26 The husband addressed the parties' income and expenses, but he did not go beyond that to address the parties' overall financial position today and how that compared to what it was in 2014.

¹⁵ Husband's request for further arguments dated 20 May 2022, para 8.

¹⁶ Ancillary Matters Fact and Position Sheet dated 5 November 2013, p 20.

27 He said that the wife had financially supported her younger sister to an Australian university education around 2001 to 2004.¹⁷ This however predated the maintenance ordered in 2014 by a decade: it would not be a material change in circumstances since 2014. He also said he believed that the wife's income documents are substantially under-reported her actual income, but this allegation was not substantiated.

28 In submissions, the husband acknowledged that variation of the maintenance order was being sought only on the ground of material change in circumstances, not misrepresentation or mistake.¹⁸ He cannot use his variation application as a back-door appeal against the maintenance ordered in 2014, by disputing the circumstances prevailing in 2014: *ATS v ATT* at [11]. Moreover, there was already an appeal against the first instance order, which resulted in maintenance being increased from \$300 to \$600 a month; the husband did not seek to pursue a further appeal against that.

29 The husband did not seek to have the maintenance order varied on account of a material change in the parties' overall financial positions; rather, his focus was on the increase in wife's income. Thus, the husband did not provide information as to his own overall financial position, encompassing not only his income and expenses, but also his assets (including his CPF balance). He turned 55 in March 2022 but did not say what his CPF balance was or how much of it he could withdraw. He concluded his supporting affidavit by saying "I wish to have a clean break from her on this issue [of maintenance] to avoid

¹⁷ Husband's affidavit dated 27 August 2021, paras 191 and 200; Husband's submissions dated 14 October 2021, paras 120 and 127.

¹⁸ Husband's submissions dated 14 October 2021, para 107.

any future litigation. I also need to save for my old age.”¹⁹ But he did not say how much he had already saved.

Accommodation expenses

30 The husband argued that as the wife was no longer paying rental (because she had purchased her home), he should no longer be required to pay her maintenance. The husband’s argument was that maintenance could be used towards *rental* of accommodation, but maintenance could not be used towards the *purchase* of accommodation (whether directly towards the purchase price, or towards mortgage loan payments).

31 That argument was rejected by Debbie Ong J in *UEB v UEC* [2018] SGHCF 5 at [5]–[10]. Ong J upheld the first instance decision which factored the wife’s monthly housing instalments into the reasonable expenses for determining maintenance. I respectfully agree with Ong J’s reasoning, which I would summarise as follows:

- (a) the law on maintenance does not contain any absolute prohibition against the use of maintenance funds to acquire assets (at [6]);
- (b) if lump sum maintenance were ordered for a wife which included her need for shelter, food, clothing and other reasonable needs, the wife could use the lump sum maintenance to purchase a flat; the court focuses on what is reasonable and fair (at [6]);
- (c) both money that goes towards rent and money that goes towards a mortgage loan ensure that a wife and child have a roof over their heads;

¹⁹ Husband’s affidavit dated 27 August 2021, para 201.

it would not be appropriate for maintenance purposes to make distinctions merely by the way in which property is being held, such as whether a wife lives as a tenant, or owns a property subject to a mortgage: both are accommodation expenses which can be taken into consideration for maintenance purposes (at [7]);

(d) if, however, a wife has purchased a property (rather than renting one), the court may consider the fact that the wife owns the property and thus has some financial resources in the form of an asset (at [7]);

(e) it is not inappropriate for the court to consider a wife's mortgage loan payments, for this reflects her overall financial burdens (at [9]); and

(f) if the monthly mortgage instalment were higher than the monthly market rental for a particular property, a reasonable sum (which may be lower than the actual mortgage instalment) may be considered as the reasonable accommodation expenses (at [9]).

32 It would be illogical if monthly maintenance can be used for rental, but not towards the purchase of accommodation, when there is no such restriction on the use of lump sum maintenance. There is nothing preventing the court from regarding mortgage payments as accommodation expenses for the purpose of determining maintenance. Indeed, for the court to do so would be consonant with the principles regarding maintenance.

33 In assessing maintenance to be paid by a man to his wife or former wife, the court must have regard to all the circumstances of the case, including the financial needs, obligations, and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future: section 114 of the

Women's Charter. That would include a wife's need to pay for accommodation, whether that payment is in the form of rental or mortgage payment.

34 The rationale behind the law imposing a duty on a man to maintain his former wife 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]. The overarching principle is that of financial preservation: to maintain the wife at a standard that is, to a reasonable extent, commensurate with the standard of living she had enjoyed during the marriage: *ATE v ATD and another appeal* [2016] SGCA 2 ("*ATE*") at [31], citing *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506 at [22] and [26].

35 If a former wife has ceased to pay rental but instead is making mortgage payments, and there has been no material improvement in her overall financial position merely by her becoming a homeowner, it would run counter to the above objectives to exclude her mortgage payments in reckoning her reasonable expenses: that would place her in a worse position than she had been whilst paying rent.

36 Further, former wives are encouraged to strive towards self-sufficiency. An order for maintenance is not intended to create life-long dependency of the former wife on the former husband (*ATE* at [31]); it was observed in *Quek Lee Tiam v Ho Kim Swee (alias Ho Kian Guan)* [1995] SGHC 23 at [22] that the ex-wife in that case:

is free to live her own life and her time is at her disposal. She has to exert herself, secure a gainful employment, and earn as much as reasonably possible. She should, if able, contribute to preserve her pre-breakdown lifestyle and standard of living and her reasonable contribution will reduce pro tanto the obligations of the husband.

37 It would be consistent with the policy of the law to encourage former wives to transition from renting accommodation to owning their own home. When the mortgage loan has been fully paid up, that component of accommodation expenses will fall away. Over time, the former wife's equity in her home would increase, and consequently her financial position will improve; there is also the prospect of capital appreciation improving her financial position further. At some point, the improvement in the wife's financial position may justify the court revisiting its earlier order for maintenance.

38 In the present case, however, the husband did not point to any improvement in the wife's financial position because of her purchasing her own accommodation. Instead, he was fixated on her *income* having increased.

39 The wife used to pay \$1,350 a month in rental (which the court considered when it ordered maintenance in 2014). She now pays a slightly lesser sum of \$1,240 a month in mortgage payments. The fact that she is paying less per month for her accommodation expenses is to be lauded. The husband did not contend that the difference of \$110 a month is a material change justifying rescinding his maintenance towards her; instead, he sought to exclude the \$1,240 altogether as a business expense with an element of capital repayment.²⁰ I rejected this.

40 The husband cited *BZD* – albeit only at the stage of further arguments – contending that the Court of Appeal had “upheld the [High Court’s] removal of the rental component [of the former wife’s maintenance]”.²¹ That is a clear misreading of the case.

²⁰ Husband's submissions dated 14 October 2021, paras 115 and 118–119.

²¹ Husband's request for further arguments dated 20 May 2022, para 5.

41 In *BZD*, the original maintenance order required the husband to pay the wife (among other things):

- (a) a sum of \$6,400 per month comprising \$3,500 for her personal expenses, \$2,500 for rent, and \$400 for maid expenses; and
- (b) a sum of \$600 per month being maintenance contribution for the children for the period they were with her (at [3]).

42 The wife subsequently purchased two properties. She stayed in one of them and rented out the other (at [4], [16]).

43 At first instance, the judge allowed in part the husband's application for the maintenance order to be varied. The judge noted that the wife was no longer paying for rental and a maid, and ordered the rental component of \$2,500 per month and the maid component of \$400 per month to cease with effect from 1 August 2019. The judge further ordered that the husband's payment of \$3,500 per month for the wife's personal expenses, and \$600 per month as maintenance contribution in relation to the children, would continue up to 1 February 2020 only (at [6]).

44 The wife *did not appeal* against the decision as regards rental and maid expenses (at [8]). It is plainly incorrect to say that the Court of Appeal had *upheld* the High Court's removal of the rental component when that was not appealed against.

45 The wife did appeal against the variation of the maintenance order in relation to her personal expenses and the maintenance contribution for the children (at [8]). The Court of Appeal allowed her appeal (at [23]). In so doing,

the Court of Appeal found that there was no material change such as to justify the removal of those payments (at [11]–[20]).

46 The Court of Appeal noted that in 2010, the wife had received \$935,742 as her share of the division of assets; she had subsequently purchased two properties, but they were heavily mortgaged and the sum of their net values, should they be liquidated, did not constitute a significant increase from the share of assets she had received (at [16]–[17]). The net values of the properties totalled some \$1,162,739.24 (without factoring in transaction costs should they be liquidated), which was some \$226,997.24 more than the \$935,742 she had received. While this was an increase of some 24%, it would have materialised only after nearly ten years.

47 Far from upholding the first instance decision removing the rental and maid components of maintenance, the Court of Appeal’s conclusion – that there was no material change in circumstances such as to justify the removal of the other two components of maintenance – casts doubt on the first instance decision removing the rental and maid components. But since there was no appeal against those aspects, the Court of Appeal simply did not deal with them.

48 In the present case, there was no evidence from which I could conclude that the wife’s overall financial position has improved since the maintenance order was made in 2014.

49 In so far as the first instance decision in *BZD* was based on excluding mortgage payments from reckoning as accommodation expenses, for the reasons given above I would decline to follow it.

Whether maintenance should be rescinded altogether

50 In any event, even if I were persuaded that there had been a material change in circumstances justifying a reduction in the husband's maintenance obligations, I would not have rescinded maintenance altogether. This would entail depriving the wife of even nominal maintenance.

51 Where there is an order for at least nominal maintenance, the wife's right to apply for substantive maintenance is preserved should the need arise in the future (*ATE* at [27]). The husband argued that there "should not even be nominal maintenance" for the wife, for the sole reason that the court will not order nominal maintenance automatically or as a matter of course (*ATE* at [27]–[28]).²²

52 The husband is right that the court will not order nominal maintenance automatically or as a matter of course, but that does not mean that the maintenance order in this case should be rescinded. At first instance, the court was satisfied that substantive maintenance was appropriate, in the sum of \$300 per month. That was increased on appeal by the High Court to \$600 per month. If, as the husband contended, a *reduction* in maintenance were justified given the increase in the wife's income (or, more broadly, a material change in circumstances), it does not follow that maintenance should be *rescinded*.

53 Importantly, the material change in circumstances alleged in this case related to the wife's income. The wife ran her own business and her income was more susceptible to variation than if she had stable employment.²³ If her income were to fall, possibly even to what it was in 2014, it would be wrong to deny

²² Husband's affidavit dated 14 October 2021 at [132]–[133].

²³ Wife's affidavit dated 21 September 2021, para 105.

her substantive maintenance when the courts had considered substantive maintenance justified in 2014. Moreover, the order for payment of maintenance to her was tied in with her maintenance of the children when they were in her care. These expenses continue to be incurred. It was not appropriate to rescind maintenance altogether.

Whether periodic maintenance should be converted to lump sum maintenance

54 After I gave my decision in May 2022, both parties requested further arguments. Those requests gave rise to the issue of whether the periodic maintenance of \$600 per month should be converted to lump sum maintenance.

55 The wife requested further arguments on (among other things) whether the costs that I had ordered her to pay could be paid by deductions against the monthly maintenance payments.²⁴ The husband responded to say that those costs should not be offset against monthly maintenance payments, but he was amenable to the monthly maintenance payments being converted to a lump sum payment, and to that being set off against costs.²⁵

56 I agreed to hear further arguments from the parties, limited to whether the costs payable by the wife should be set off against monthly maintenance, and whether the monthly maintenance should be converted to lump sum maintenance (and if so, in what sum) and that set off against those costs.²⁶

57 At the hearing of further arguments, the parties' positions were far apart.

²⁴ Wife's request for further arguments dated 19 May 2022, para 8.

²⁵ Husband's request for further arguments dated 20 May 2022, para 15.

²⁶ Correspondence from courts dated 26 May 2022.

58 The husband's position was as follows. At first instance in 2014, the wife had sought as an *alternative* to monthly maintenance of \$1,000 a lump sum of \$84,000 (equivalent to seven years' worth of monthly payments of \$1,000). The court ordered periodic maintenance of \$300 per month at first instance (which was increased to \$600 per month on appeal). The husband submitted that the wife's alternative submission of \$84,000 a month should be used as the basis to convert periodic maintenance to lump sum maintenance: deducting from \$84,000 the cumulative sum of \$56,100 he had paid since 2014, the balance of \$27,900 would be the appropriate lump sum to replace monthly payments henceforth.²⁷

59 The wife's position was that although she had put forward \$84,000 as an alternative position, if lump sum maintenance were now to be ordered, she should get \$142,260 as a lump sum (on top of the \$56,100 she had received since 2014). The wife arrived at this sum using a multiplier of 27.55, based on the average of (i) the average life expectancy of a woman in Singapore (86.1 years) and (ii) the usual retirement age of a Singapore worker (63 years), less the wife's present age of 47 years.²⁸

60 In *Ong Chen Leng v Tan Sau Poo* [1993] 2 SLR(R) 545 ("*Ong Chen Leng*") at [35], the court had used the formula which the wife here relied on, but in that case the parties were married for 23 years (here they were married for only some 6 years). Moreover, applying the formula there resulted in maintenance equivalent to a further 17 years on a straightline basis, whereas here it would be 27.55 years (on top of the husband having already paid

²⁷ Husband's request for further arguments dated 20 May 2022, para 7.

²⁸ Wife's written submissions dated 27 June 2022 for the hearing of further arguments, para 11(c).

maintenance for 8 years since 2014). The same formula was used in *Wan Lai Cheng v Quek Seow Kee and another appeal and another matter* [2012] 4 SLR 405 at [89]–[91], but that too involved a long marriage (36 years), and applying the formula resulted only in a multiplier of 9 years.

61 The *Ong Chen Leng* formula should not indiscriminately be applied to marriages of any length whatsoever or parties of any financial circumstance whatsoever. The court did not set out a general approach for all future cases; it simply said that “[i]n the circumstances of this case [the approach] seems proper and we make no comment on it.” In *VLO v VLP and another appeal* [2021] SGHCF 34, the marriage broke down in less than three years (at [1]); an award of maintenance of \$700 per month, for a period of only 24 months, was upheld by the High Court (at [5]). Moreover, in appropriate cases the court will only order *nominal* maintenance, or even *no* maintenance at all: see *ATE* (at [35]–[38]). In *ATE* itself, the Court of Appeal rescinded the order of nominal maintenance that was granted at first instance.

62 Given that the parties here had been involved in recent litigation for over a year (after a break of some seven years since maintenance was ordered in 2014), helping them achieve a clean break appeared attractive. In *Lee Puey Hwa v Tay Cheow Seng* [1991] 2 SLR(R) 196, the Court of Appeal noted at [9] that “[i]n so far as maintenance of a spouse is concerned, the court’s power to order a lump sum payment, as an alternative to periodical payments, makes it possible for a husband, who has the means to make a lump sum payment, to achieve a clean break, and is clearly a method which should be taken advantage of whenever this is feasible.”

63 The court however recognised in the same paragraph that a lump sum payment should not be ordered “if the husband does not have adequate cash or

other capital assets which can be readily disposed of, or if the lump sum payment or the disposal of assets will effectively cripple his earning power". I had no information from which I could decide whether a lump sum payment in the sum suggested by the wife could sensibly be met by the husband.

64 I was moreover not persuaded that, in the present case, a multiplier of 27.55 as suggested by the wife was appropriate. Neither was I persuaded that the husband's figure of \$27,900 (representing a multiplier of 3.875) was appropriate. On a straightline basis, that would represent maintenance till the wife was just 51, and the children, 20 and 18.

65 The issue of converting periodic maintenance to a lump sum was not raised in the husband's variation application; it arose in the context of the wife wanting to set off the cost orders I made against maintenance. The husband did not contend that periodic maintenance should be varied to a lump sum because of some material change in circumstances. Given the parties' positions, converting periodic maintenance to a lump sum might not facilitate a clean break either; instead, it might be a further point of contention. In the circumstances, I simply affirmed the decisions I had made earlier.

Conclusion

66 There was no material change in circumstances since maintenance was ordered in 2014 sufficient to justify a variation of the maintenance order. The husband had not shown that it was no longer fair to expect the *status quo* to remain. In particular, the increase in the wife's income since 2014, viewed in the context of the parties' financial positions as a whole, was not sufficient to justify rescinding (or reducing) the maintenance of \$600 a month. The \$1,240 a month that she was paying in mortgage instalments (in place of \$1,350 a month

in rental) was an accommodation expense to be considered in evaluating maintenance. I thus dismissed the husband's application to vary maintenance. I ordered the wife to pay the husband costs of \$12,000 plus disbursements of \$2,500. These were global figures for both the present variation application (Summons No 3485 of 2021) as well as the wife's application in Summons No 2238 of 2021.

Andre Maniam
Judge of the High Court

Ong Mary and Jasmin Yek (DCMO Law Practice LLC) for the
appellant;
Low Woon Ming (WM Low & Partners) for the respondent.
