

ACY v ACZ
[2014] SGHC 58

Case Number : Divorce Transferred No 3593 of 2012
Decision Date : 01 April 2014
Tribunal/Court : High Court
Coram : George Wei JC
Counsel Name(s) : Wong Kai Yun (Chia Wong LLP) for the plaintiff; Carrie Gill (Harry Elias Partnership LLP) for defendant.
Parties : ACY — ACZ

Family Law – Matrimonial Assets

Family Law – Maintenance

1 April 2014

Judgment reserved.

George Wei JC:

Introduction

1 This is the ancillary hearing of Divorce Transferred No 3593 of 2012. The Plaintiff and the Defendant reached a settlement on 27 September 2013 in respect of a majority of the matrimonial assets, which include the shares in [C] Pte Ltd and [D] Pte Ltd, household furniture and the rental deposit held by the property agent on behalf of Singapore Land Authority. Both parties have prayed for the matrimonial assets that are held in the parties' own names to remain as such and to this end, what remains in dispute is the division of a property located in the United Kingdom ("UK") and maintenance for the Plaintiff. There are no children born to the marriage.

Background facts

The parties

2 The parties were married on 19 June 2009. The Plaintiff filed for divorce on the ground of adultery on 25 July 2012. Interim judgment was subsequently granted on 6 November 2012 on an uncontested basis.

3 The Plaintiff and the Defendant are both from the UK but they have been residing and working in Singapore for many years. Both parties have had previous marriages prior to their marriage to each other.

4 The Plaintiff's first marriage ended in divorce in 2002. Her first husband, [B], subsequently passed away in the 2004 tsunami disaster in Thailand. The Plaintiff, aged 51 years old, has three children from her first marriage, aged 7, 10 and 13 years old. Her children are attending boarding schools in the UK. The Plaintiff is an estate agent in Singapore. Since the death of her first husband, she asserts that she has been solely responsible for her children. [\[note: 1\]](#) On the other hand, the Defendant asserts that he has provided monetary assistance for the children's education. This was by

way of an education allowance provided by the Defendant's previous employer. [\[note: 2\]](#) In response, the Plaintiff asserts that she has been providing for her children out of the insurance proceeds of [B]'s estate and that the Defendant had only used the education allowance once for a single school term. [\[note: 3\]](#) To this end, the Plaintiff states that the education allowance amounted to no more than £10,000. The Defendant denies the Plaintiff's version of events and further asserts that his previous employer had provided financial support in excess of S\$30,000 and that the benefit had been extended over four school terms. [\[note: 4\]](#)

5 The Defendant had two prior marriages before the current marriage. His second marriage to one [E] lasted some 17 years. *Decree nisi* (as it then was) was granted in Singapore on 4 April 2006. There are two children to the second marriage, who were at the time of the divorce aged 11 and 14 years old. In respect of this second marriage, the Defendant was ordered to make a lump sum payment and to provide maintenance for [E] and the children. [\[note: 5\]](#) On the other hand, the Defendant's first marriage to one [F] lasted some six years from 22 November 1980 to 1 December 1986. According to the Defendant, there were no children from that marriage and no maintenance order was awarded in favour of [F]. [\[note: 6\]](#)

The parties' marriage

6 According to the Plaintiff, the relationship between the parties started some time in 2002. [\[note: 7\]](#) At that time, the Defendant was still married to his second wife. In her subsequent affidavits, the Plaintiff states that the parties did not merely date "on and off" before their marriage in 2009. [\[note: 8\]](#) In particular, the Plaintiff points out that she became pregnant with the Defendant's child in 2003, but the pregnancy was later terminated as the Defendant was still married to [E]. Subsequently, the Plaintiff suffered a miscarriage in 2006 during the parties' relationship before their marriage. [\[note: 9\]](#) At about that time, the Plaintiff and the Defendant moved in to the accommodation at [address redacted]. Thereafter in 2007, the parties moved into a rented property at [address redacted] ("the Singapore Property"). [\[note: 10\]](#) The parties married some two years later in June 2009 at the Singapore Property. [\[note: 11\]](#) Accordingly, even though the marriage lasted only about three years, the Plaintiff asserts that the relationship as a whole lasted some ten years. This is relevant as will be seen below, given that the Plaintiff has mounted an argument that her indirect contributions prior to the marriage should be taken into account in relation to the division of the matrimonial assets.

7 The relationship between the Singapore Property and [D] Pte Ltd is as follows. [D] Pte Ltd was established in 2005 by the Plaintiff as a vehicle under which the Plaintiff appears to have conducted her business. [\[note: 12\]](#) In 2007, [D] Pte Ltd entered into its first two-year lease for the Singapore Property, which was intended to be used as the parties' matrimonial home. To this end, the Plaintiff and the Defendant injected S\$45,000 into the share capital of [D] Pte Ltd. From that time, the parties lived together at the Singapore Property until recently.

8 As mentioned earlier, the principal matrimonial asset in dispute is the UK property at [address redacted] ("the UK Property"). The property was purchased in October 2011 after their marriage. Whilst the UK Property is held in the joint names of the Plaintiff and the Defendant, there is no dispute that it was paid for entirely by the Defendant. The purchase price of the UK Property was £370,000. The estimated value of the property was S\$750,000 as at 29 November 2012. [\[note: 13\]](#)

9 Apart from the division of the UK Property, the Plaintiff is also seeking lump sum maintenance of S\$317,880.00 (being S\$8,830.00 per month over a period of three years) from the Defendant on the

basis of the clean break principle.

10 With regard to the Defendant's history of employment, it is the parties' common understanding that the Defendant is the Managing Director of [G]. [\[note: 14\]](#) However, they disagree over the quantum of his salary – whilst the Defendant asserts that his gross monthly income is S\$48,000 (being S\$576,000 per annum as set out in his letter of employment, which excludes other cash or discretionary bonuses and benefits, such as the car allowance and medical benefits), [\[note: 15\]](#) the Plaintiff derived a different figure of S\$78,407 per month from taking the average of his annual income in the Income, Deductions and Reliefs Statement by the Inland Revenue Authority of Singapore ("IRAS") for the year of 2012. [\[note: 16\]](#) In this regard, the Plaintiff asserts in her written submissions that the Defendant has failed to make full and frank disclosure of his financial means. [\[note: 17\]](#)

11 As regards his expenses, the Defendant claims to spend the sum of S\$55,800 per month. This figure includes, amongst others, payment of the university tuition fees and room rental charges for both children from his second marriage and maintenance for [E]. Given that this figure is higher than his declared income, the Defendant explained in his affidavit that he relies very much on his savings and discretionary bonus to get by. [\[note: 18\]](#) In respect of his debts, he declared that he was owing monies to the following creditors: [\[note: 19\]](#)

- (a) S\$89,674.66 to IRAS as at 2012;
- (b) S\$12,028.03 to American Express as at 29 November 2013;
- (c) S\$176.01 to HSBC MasterCard as at 29 November 2012;
- (d) £1.96 to HSBC UK MasterCard as at 29 November 2012; and
- (e) S\$19,013.21 to [J] as at January 2013.

12 With regard to the Plaintiff's employment, she asserts that she is a director and shareholder of [C] Pte Ltd, and earns an average gross monthly income of S\$13,183 (being S\$158,200 per annum). Whilst the Plaintiff has declared in her affidavit [\[note: 20\]](#) her interests as both a director and shareholder in two other companies, namely [K] Pte Ltd and [L] Pte Ltd, she did not disclose receipt of any additional income from the same. In this regard, whilst the Defendant has requested that the Plaintiff furnish him with the financial reports of these two companies, he did not go so far as to argue for the drawing of an adverse inference against the Plaintiff for want of full and frank disclosure in respect of her financial means. Nonetheless, the Defendant has referred to the commissions and dividends paid to the directors of [K] Pte Ltd and [L] Pte Ltd. To this end, the Defendant asserts that the Plaintiff's total income for the past three years has been in excess of S\$1.16m, or an average of more than S\$32,350 per month for the past three years. [\[note: 21\]](#)

13 As for the Plaintiff's expenses, she declares incurring the following sums per month:

- (a) S\$10,449.50 in respect of the Singapore Property, with S\$9,312.50 being her half-share of the shared expenses and S\$1,137 as the amount incurred by her in respect of other household expenses; and
- (b) S\$9,076 for her personal expenses, which includes the vehicle loan and petrol costs.

14 In particular, the Plaintiff highlighted that the Defendant has been making sporadic payments for his half-share of the shared expenses since her discovery of his adultery in April 2012. The Plaintiff alleges that whilst the Defendant continued to pay for the monthly bills charged by the telecommunications companies, he has not made full payment in respect of the SP Services and his half-share of the rental of the Singapore Property since September 2012. Therefore, the Plaintiff took out an application and the Defendant was ordered to make due payment of his half-share of the said rental and expenses by way of an order of court dated 8 November 2012.

15 In addition, the Plaintiff has excluded the monthly expenses of her three children from the first marriage with [B] even though they are still schooling in the UK. She explained this on the basis that the children are presently supported by the monies paid out of [B]'s estate. The Plaintiff does not have any outstanding debts.

Division of the matrimonial assets

Settled matters

16 Prior to the hearing of the ancillary matters, parties have arrived at a settlement on 27 September 2013 on the issues regarding the rental deposit and household furniture of the Singapore Property, as well as the shareholding in the relevant companies as follows:

- (a) Each party shall retain all items already taken by them from the Singapore Property and neither party shall have any claims against the same;
- (b) All other movable property in the Singapore Property, which was jointly acquired, shall be sold in the open market and both parties shall share the sale proceeds equally. All proceeds from jointly acquired movable property which has already been sold shall be shared equally as well;
- (c) All movable property, and or its sale proceeds solely acquired by either party, in the Singapore Property shall be retained by that party and the other shall not have a claim on the same;
- (d) All costs of rectification and disposal of items of the Singapore Property shall be shared equally between the parties;
- (e) The rental deposit of the Singapore Property shall be divided between the parties within one (1) week of receipt;
- (f) The Asiatique bookcases and ladders that were removed from the UK Property by the Plaintiff shall be returned to the UK Property;
- (g) Subject to clause (f) above, all movable property already removed by the Plaintiff from the UK Property shall belong to the Plaintiff and the Defendant shall have no further claims on the same;
- (h) All movable property currently in the UK Property shall belong solely to the Defendant and the Plaintiff shall have no further claims to the same; and
- (i) The Defendant shall transfer all his rights and interests in [C] Pte Ltd and [D] Pte Ltd to the Plaintiff immediately after he has been repaid under clause (e) above and when the paperwork is completed by the Plaintiff.

17 As regards the other assets held in the sole names of either party, they have prayed for and this court is similarly of the opinion that the assets are to remain as such. Accordingly, the only matrimonial asset in dispute is the UK Property.

Parties' arguments in respect of the UK Property

18 Whilst it is undisputed that the Defendant paid for the entire purchase price of the UK Property, [\[note: 22\]](#) the Plaintiff nonetheless asserts that she has made both financial and non-financial contributions to the marriage, and should therefore be entitled to a 25% share of the property. With regard to financial contributions, the Plaintiff sets out in her written submissions that her payment of the upkeep expenses, renovation and furnishing costs amount to S\$14,480, which is approximately 4% of the total financial outlay by both parties. [\[note: 23\]](#) Furthermore, the Plaintiff enumerates some instances of "substantial contributions and sacrifices" to the marriage in establishing her indirect contributions to the welfare of the family. For example, the Plaintiff asserts that she had always been the one who organised their very active social life and coordinated events such as their family holidays.

19 On the other hand, the Defendant contends that the Plaintiff ought not to be awarded any share in the UK Property on the basis of the "short and childless marriage" principle, which courts rely on in dividing matrimonial assets based on parties' direct financial contributions. As regards the Plaintiff's alleged payment of utilities and renovation costs in respect of the UK Property, the Defendant asserts that there is no "documentary" or "direct" evidence to substantiate the same. In addition, the Defendant also relies on the parties' agreement, pursuant to which the Plaintiff would remove from the UK Property all the furniture she has paid for, to substantiate his submissions that the Plaintiff had made "little or minimal" indirect contributions to the UK Property. [\[note: 24\]](#) In this regard, the Defendant also highlights several incidents – namely the Plaintiff's exclusive occupation of the UK Property for seven weeks in 2012, the Defendant's "payment" of the education expenses of the Plaintiff's children in Singapore through his employment contract, his payment for the annual holiday expenses of both the family and the Plaintiff's extended family, and his assignment of two AIA insurance policies to her. These were said to amount to the Defendant's indirect contributions to the marriage, which effectively offsets any "little" indirect contributions that the Plaintiff may have made towards the marriage. On this basis, the Defendant asserts that the Plaintiff should not be entitled to any share in the UK Property.

20 The tables below set out the parties' versions of their financial contributions in relation to the UK Property:

Plaintiff's version		
	Defendant	Plaintiff
Direct financial contributions, viz, purchase price, stamp duty and legal costs [note: 25]	£386,962.00	N.A.
Other financial contributions, viz, furnishing and renovation costs and other charges [note: 26]	£5,172.00	£14,480.00
Total	£392,134.00	£14,480.00
Percentage	96%	4%

Defendant's version		
	Defendant	Plaintiff
Direct financial contributions, viz, purchase price, stamp duty and legal costs [note: 27]	S\$ 799,615.60 (£379,417.60)	N.A.
Other financial contributions, viz, furnishing and renovation costs and other charges [note: 28]	£5,000.00	£4,535.00
Total	£384417.60	£4,535.00
Percentage	98.8%	1.2%

Discussion of case authorities

21 Notwithstanding that both parties have reached a settlement as regards ownership of most of the matrimonial assets save for the UK Property, this court is nonetheless not bound by their decision and has the discretion to decide otherwise. To this end, the court is to have regard to all the circumstances of the case, including the factors listed in s 112(2) of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Act"). In particular, s 112(2)(e) states that one factor of consideration would be:

(e) any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce ...

22 To this end, the court may decline to exercise its power to order the division of matrimonial assets if both parties enter into a *comprehensive agreement* which is *not unreasonable*: see *Wong Kam Fong Anne v Ang Ann Liang* [1992] 3 SLR(R) 902 and *Lee Leh Hua v Yip Kok Leong* [1999] 1 SLR(R) 554. Alternatively, the court may also incorporate the agreement into a consent order if the terms of the agreement are found to be "just and equitable". However, in the present case, the settlement entered into by both parties is *not comprehensive* given that it does not deal with matrimonial assets such as the UK Property. The significance of this is explained at para 130.830 of the *Halsbury's Laws of Singapore* vol 11 (LexisNexis, 2006 Reissue, 2006):

While there is no doubt that an agreement between the spouses with regard to the division of property is valid and one made in contemplation of divorce may even be encouraged given that the Family Court seeks the harmonious resolution of disputes between spouses, this is just one factor towards the just and equitable proportions of division of the matrimonial assets.

It bears noting first that an agreement is of significance only where it conforms to at least two characteristics, that is it is intended as a comprehensive financial arrangement so that there are no longer any residual financial matters and of the division of matrimonial assets, it achieves a 'just and equitable' division of the spouses' matrimonial assets. ...

Where the agreement is not a comprehensive settlement or worse, where it could be regarded as failing to give the weaker spouse a just and equitable proportion of the matrimonial assets, the fact there was such an agreement will not constrain the court in exercising the power to achieve the objective in its enactment. The Court of Appeal has unequivocally upheld the power in the

face of agreement.

23 Therefore, in arriving at my decision on the division of the spouses' matrimonial assets, the presence of an agreement is but one of the factors to be assessed in light of the overall circumstances of the case so as to achieve a just and equitable distribution of the matrimonial assets. In this regard, this court notes that the marriage here was a short and childless one.

24 The general principles governing short and childless marriages are found in the Court of Appeal decision of *Ong Boon Huat Samuel v Chan Mei Lan Kristine* [2007] 2 SLR(R) 729 ("*Ong Boon Huat Samuel*"). In that case, Judith Prakash J, in delivering the judgment of the court, held that:

In a short and childless marriage, the division of matrimonial assets will usually be in accordance with the parties' direct financial contributions as non-financial contributions will be minimal. Thus, in Wang Shi Huah Karen v Wong King Cheung Kevin [1992] 2 SLR(R) 172, a case where the wife left home after a year, the High Court divided the matrimonial home solely in accordance with the parties' direct financial contributions.

[emphasis added]

25 In that case, the husband appealed against the lower court's decision, which held that a real property in dispute was to be included in the pool of matrimonial assets to be divided between the parties. The disputed property was bought in the parties' joint names even though they agreed that the husband would be solely responsible for financing it as the wife was already responsible for all monthly mortgage instalments of their matrimonial home. However, as the husband could not obtain financing in his sole name, the parties agreed to apply for the mortgage loan of the disputed property in their joint names. Prior to the conclusion of the mortgage loan application, the parties' relationship broke down and the wife refused to sign the mortgage documents unless the husband entered into a deed of financial settlement that he would be solely responsible for all liabilities arising out of the disputed property. As the husband refused to execute the deed, the wife pulled out of the purchase. Subsequently, the husband proceeded with the purchase in his sole name without informing the wife, who only found out much later.

26 On appeal, the Court of Appeal reversed the lower court's decision and held that the disputed property did not constitute a matrimonial property. In this regard, the court reasoned that its determination would be consistent with the wife's position all along, *viz*, that she was to have no part in the purchase and all associated liabilities were to be borne by the husband. This was despite the fact that the disputed property was purchased during the parties' marriage and would technically be considered a matrimonial property under s 210(10) of the Act. Nevertheless, it was observed that the court's power to divide any matrimonial asset was a discretionary power and the court may decline to exercise this power where a valid reason was given. Therefore, Prakash J relied on the "short and childless marriage" principle to divide the matrimonial assets in accordance with the parties' *direct financial contributions*.

27 In applying the "short and childless marriage" principle here, this court notes that in the absence of evidence to the contrary, the parties' settlement of 27 September 2013, whilst not comprehensive, is nonetheless fair – each party is assumed to have paid for the property under their names, which includes each contributing financially to the property held in their joint names. Furthermore, apart from the settlement of 27 September 2013, both parties have also prayed for the matrimonial assets that are held in the parties' own names to remain as such. For the reasons above, I am of the view that this approach is eminently fair and I so order.

28 Therefore, the only property in dispute is the UK Property, to which the Plaintiff is seeking a 25% share of. To this end, the Plaintiff seeks to rebut the alleged assumption underlying the “short and childless marriage” principle – that the parties’ indirect contributions would be minimal. The Plaintiff has sought to substantiate her claim on the basis of her indirect contributions to the family, which includes the time and effort she expended in finding the UK Property. With regard to the issue of direct financial contributions, it is undisputed that the Defendant had funded the entire purchase price of the UK Property.

29 Furthermore, the Plaintiff has relied on several case authorities in support of her proposition that non-financial contributions should be recognised in childless marriages and that she should be entitled to a 25% share of the UK Property. Of the eight cases cited by the Plaintiff, three are not strictly relevant given that the marriages in those instances lasted at least ten years – namely *Smith Brian Walker v Foo Moo Chye Julie* [2009] SGHC 247 (11 years); *Ah So Etee (alias Chua Ming Soo) v Fan Moli* [2008] SGHC 142 (10 years); *Chow Hoo Siong v Lee Dawn Audrey* [2003] 4 SLR(R) 481 (11 years). The considerations involved in dealing with marriages that last more than ten years are likely to be different as compared to short marriages, such as in the present case. On this basis, I do not find the above-mentioned three cases to be particularly relevant to the Plaintiff’s argument that there ought to be a departure from the “short and childless marriage” principle laid down in *Ong Boon Huat Samuel*.

30 Apart from that, the Plaintiff has also cited the High Court decision of *Lee Siew Lin v Oh Choon* [2013] SGHC 25, where the wife was awarded a 26.29% share in the matrimonial assets. However, it bears noting that the husband subsequently appealed against the High Court decision, and the appeal was allowed with regard to the division of matrimonial assets (see *Oh Choon v Lee Siew Lin* [2014] 1 SLR 629). To that end, the Court of Appeal noted that the wife’s contributions to the marriage were at best negligible (or perhaps even non-existent) after the parties had separated from one another six years into the marriage. Therefore, it was held that the High Court’s award of 26.29% did not correctly reflect a just and equitable division, and the wife’s share in the matrimonial assets was accordingly reduced to 15%. However, it must be acknowledged that the High Court made a few findings of fact in relation to the wife’s non-financial contributions to the marriage and these findings were not disturbed on appeal. This included the fact that the wife had provided “substantial assistance to the husband’s catering business ... [and] that the wife had carried out household chores and had looked after the matrimonial home” (at [24]). To this end, I do not find the Plaintiff’s reliance on the High Court decision of *Lee Siew Lin v Oh Choon* to be particularly convincing. First, it must not be overlooked that the appeal against the High Court decision was allowed in part by the Court of Appeal. Second, the facts in that case are rather different from the facts in the present case, insofar as the wife’s non-financial contributions are concerned.

31 As regards the other four cases, this court is of the view that they are distinguishable for the following reasons. I will first deal with the decision of *Tan Su Fern v Lui Hai San alias Lei Haishan* [2006] SGDC 159 (“*Tan Su Fern*”), in which the childless marriage lasted four years. In that case, the court recognised the petitioner-wife’s act of letting the husband and his family enjoy almost five years of rent-free occupation at the matrimonial home as being her indirect contributions to the marriage. Accordingly, the court awarded the wife an additional 10% of the value of matrimonial home, taking into account the fact that the wife had not claimed maintenance from the husband. Furthermore, the court’s decision of awarding the wife a 30% share in the matrimonial home must be seen in that particular context of the wife having made financial contributions of close to 20% of the value of the matrimonial home. In contrast, the purchase price of the UK Property in this instance was not borne by both parties but rather by the Defendant alone. Even if the Plaintiff’s version of events is accepted in its entirety, it bears noting that her financial contributions do not exceed 5% of the value of the UK Property. Apart from that, *Tan Su Fern* is in fact an adverse authority with regard to

the Plaintiff's position given that her occupation of the UK Property with her family for seven weeks in 2012 would be considered as indirect contributions on the part of the Defendant, and not the Plaintiff.

32 In addition, the Plaintiff has also made an argument in her submissions that her indirect contributions extend to the payment of all household bills, which are issued in her name, such as the council taxes and electricity bills. [\[note: 29\]](#) Similarly, this argument was raised by the husband in *Tan Su Fern*. However, in that case, the court declined to make a finding on this issue given that the husband failed to substantiate his claim with any proof of payment, such as receipts. Similarly, in the present case, this court is of the opinion that the Plaintiff has not adduced any relevant evidence for the court to decide on the same. This is because the Plaintiff has only adduced proof of bills issued in her name. She has not shown any evidence of payments made by her in this regard. Thus, this court is not inclined to make a finding on this issue given that proof of bills cannot be regarded as proof of the fact that a party has made payment or contributions to the household in this regard.

33 The second decision is *Chung Jia Hwa v Tan Chor Mui* [2007] SGDC 134 ("*Chung Jia Hwa*"), in which the childless marriage lasted four years just as in *Tan Su Fern*. In *Chung Jia Hwa*, the court awarded 30% of the matrimonial property to the respondent-wife in light of her direct contributions of 25.7% to the same. In doing so, the court observed that the wife was truthful whereas the petitioner-husband sought to muddy waters by hiding or dissipating the parties' matrimonial assets. Accordingly, the court believed the wife's evidence that she had made indirect contributions to the household during the marriage. As with *Tan Su Fern*, *Chung Jia Hwa* differs from the context in this case given that the wives in the cited authorities had made direct contributions to the matrimonial property. Furthermore, unlike in *Chung Jia Hwa* where the wife's indirect contributions included doing the household chores and taking care of the husband (including ferrying him around and laundering his clothes), the parties in this case had mainly relied on the services of a domestic helper.

34 The third cited authority is *Ong Chye Huat v Ng Wee Ngeng (Huang Huiyin)* [2009] SGDC ("*Ong Chye Huat*"), in which the defendant-wife claimed to have made indirect contributions in the form of cleaning and washing clothes during their five-year marriage. This was not denied by the husband given that he did not file an affidavit in reply to refute her assertions. As such, the court awarded an additional 5% of the matrimonial home to the wife, on top of her direct financial contributions of 20.1%, in recognition of her indirect contributions to the household. As with *Chung Jia Hwa*, *Ong Chye Huat* can be distinguished on the basis that the wives in the relatively short marriages did not have any assistance with the maintenance of the household, such as the services of a domestic helper. As mentioned above, on the facts of the present case, the parties had mainly relied on the services of a domestic helper with regard to the maintenance of the household. Furthermore, it appears that both parties had made equal financial contributions towards the monthly household expenses, and this included payment for the domestic helper's salary and relevant levies. [\[note: 30\]](#)

35 Lastly, the Plaintiff also relied on the decision of *Tan Wei Chong v Kiew Nixian* [2012] SGDC 182 ("*Tan Wei Chong*"). In that case, the parties rented out a private investment property owned by them in their joint names and lived in the husband's parents' HDB apartment. In light of the wife's indirect contributions in cleaning the parents' HDB apartment as well as in liaising, cleaning and coordinating the rental of their private property, the court awarded her 4% for her indirect contributions on top of her direct contributions of 26% towards the private property. As with the decisions cited above, *Tan Wei Chong* is different from the facts in the present case. Suffice it to say that the wife's indirect contributions in *Tan Wei Chong* related directly to the maintenance of the household whereas the Plaintiff's alleged contributions to the short childless marriage centred primarily on her coordinating their very active social lives. As such, it is unlikely that the Plaintiff's indirect contributions to the marriage are significant in their short childless marriage of three years.

36 More importantly, the decisions discussed above demonstrate the trend of courts awarding approximately 5%, or at most 10% in the case of *Tan Su Fern*, in recognition of the wife's indirect contributions to the household. This is over and above the wife's direct financial contributions, which in the cases cited above, range from 20% to 30% of the value of the property in question. Therefore, the Plaintiff's reliance on these cases to support her proposition that she should be entitled to 25% of the value of the UK Property is misguided as this would be tantamount to asking for a 25% share solely on the basis of her indirect contributions. Even if the Plaintiff's version of events is accepted in its entirety, the Plaintiff would have only made financial contributions amounting to 4% of the value of the UK Property. On this basis alone, I am firmly of the view that awarding the Plaintiff a 25% share of the UK Property would be excessive.

37 Moving on, a preliminary issue raised by the Plaintiff in the current proceeding relates to the significance or weight to be attached to indirect contributions made prior to marriage. In this regard, the Plaintiff seeks to rely on her pre-marital indirect contributions by her reasoning that: [\[note: 31\]](#)

There is nothing in the express wording of s. 112(2) [of the Women's Charter] which prohibits the consideration of pre-marital contributions. In fact, the section uses the word "includes", and as such, the stated factors in s. 112(2) are "non-exhaustive", "and a wide discretion is conferred upon the court in order to achieve a just and equitable division". The phrase "of the case" and not "during the marriage" is used, thus evincing that the circumstances to be contemplated are of a wide nature.

38 In this regard, the Plaintiff has cited the High Court decision of *Smith Brian Walker v Foo Moo Chye* [2009] SGHC 247 for the proposition that pre-marital contributions can be taken into account in the division of matrimonial assets. In that case, both the District Court and High Court accepted the wife's argument that she had made "significant contribution" in assisting the husband to secure a consultancy project. Notably, the facts of that case share some similarities with the present case here. In that case, the parties had cohabited prior to their marriage, and it was during this time that she helped him secure the consultancy project. The learned District Judge reasoned that her assistance in securing the project had spill-over effects and translated into the financial wealth enjoyed by the parties during their marriage. This reasoning was subsequently accepted and relied upon by Steven Chong JC (as he then was) in the High Court decision *vis-à-vis* the division of the parties' matrimonial assets. Nevertheless, it is noteworthy that whilst the courts' recognition of pre-marital contributions was implicitly accepted on the facts of that case, the courts did not examine the legal issue in detail.

39 Notwithstanding the above, I note that the Plaintiff's pre-marital indirect contributions constitute a part, and not the whole, of her alleged indirect contributions to the marriage. In this vein, she has brought this court's attention to matters such as her financial contributions to the household expenses and monthly rental of the Singapore Property, her understanding and support for the Defendant's career and work demands when he was posted to Taiwan for a year, as well as her pro-activeness in organising their active social life and coordinating events such as family holidays. Apart from that, it is acknowledged that the Plaintiff has also highlighted the time and effort she expended in searching for the UK Property. Whilst the Defendant has not denied any of the above (with the exception of the amount of time that the Plaintiff had spent in finding the UK Property), he asserts that her alleged efforts must be "offset" against his own indirect contributions to the marriage as enumerated above. In any event, this court is of the opinion that the Plaintiff's alleged indirect contributions in coordinating their social lives and family holidays, in comparison with the wives' indirect contributions in the decisions cited above, are but minimal in the larger scheme of things.

40 Bearing in mind the emphasis of the law on direct financial contributions in short childless

marriages (see eg, *Ong Boon Huat Samuel*) and taking into account the factors examined above, I am of the view that the Plaintiff should be entitled to 5% of the value of the UK Property and I so order. This would be a "just and equitable" proportion giving sufficient recognition to her indirect contributions to the marriage.

Maintenance for the Wife

41 In relation to the post-divorce maintenance for the wife, the Plaintiff suggests that a lump sum payment of S\$317,880, being S\$8,830 per month for a period of three years, would be a just and equitable figure on the basis of the clean break principle.

42 In response to the case authorities cited by the Plaintiff, the Defendant has also cited a few Family Court and High Court decisions to support his argument that no maintenance order should be granted by the court on the facts of this case. I now proceed to discuss these case authorities.

43 The first case relied on by the Defendant is the recent Family Court decision of *Lee Yu Hou v Nam Liang Heng* [2011] SGDC 394 ("*Lee Yu Hou*"), in which he has highlighted the following extract from the judgment:

77 The Husband has a duty to maintain the Wife. However, parties are young and obviously able to work to sustain themselves. There is nothing to impede them from moving on with their lives and to secure alternative life partners for themselves.

78 An extended period of periodic maintenance would not be fair to the Husband nor beneficial for the Wife bearing in mind the short duration of the marriage and the parties' youth and employability. Instead, I felt that a token one time lump sum payment would give due recognition to the Wife for her efforts towards the marriage and have the added advantage of giving both parties the desired clean break from each other.

44 At the outset, it bears noting that the wife in *Lee Yu Hou* was awarded a lump sum payment of S\$2,500. Therefore, it does not support the Defendant's position that no maintenance order should be granted. More importantly, the learned District Judge had specifically stated that an extended duration of periodic maintenance would not be appropriate "bearing in mind the short duration of the marriage and *the parties' youth and employability*" [emphasis added]. In this regard, the fact that the wife was 29 years of age and the husband was 36 years old at the time of the hearing was clearly a factor that the learned District Judge had taken into account in arriving at the final maintenance order. Furthermore, the husband in *Lee Yu Hou* had been unemployed and was unable to find work for a period of time as a result of his mental breakdown. At the time of the hearing, it was also accepted that the wife was earning more than the husband (at [64], [69] and [76]). In contrast, the facts in the present case are rather different. Firstly, the Plaintiff and the Defendant are respectively 51 and 56 years of age at the time of the hearing. Furthermore, even if there is some dispute between the parties over the Plaintiff's actual monthly income, it is undisputed that the Defendant has a greater earning capacity than the Plaintiff. In this regard, assuming that the Defendant's account of his financial means is accepted by this court in its entirety, his gross monthly income is still at the very least S\$48,000. It bears noting that this amount does not take into account the car benefit, and also any discretionary bonus, if applicable, that the Defendant is entitled to. On this basis, it is undisputed that the Defendant has a greater earning capacity than the Plaintiff. In addition, unlike the husband in *Lee Yu Hou*, there is no evidence to show that the Defendant suffers from any illness so as to affect his employability. In light of the observations above, I am not entirely convinced that the decision of *Lee Yu Hou* supports the Defendant's position that no maintenance order should be granted in the present case.

45 Moving on to the next decision, the Defendant cited another Family Court decision of *Gangesh Kumar Chawla v Prerna Dave* [2010] SGDC 501 ("*Gangesh Kumar Chawla*"). At the outset, it bears noting that the learned District Judge had accepted both parties as being 34 years old at the time of the hearing. Therefore, unlike the parties in the present case, the parties' youth and employability may have been a factor taken into account by the court. More importantly, the factual matrix in *Gangesh Kumar Chawla* was rather unique as the husband alleged that the wife had "taken away all her movable assets as well as *assets belonging to him and his family* to India" [emphasis added]. The husband also claimed that the wife had admitted to taking away gold and jewellery belonging to him from the matrimonial home without informing him. While the learned District Judge did not make a specific finding on the husband's allegations, it was held that:

... there appeared to be some evidence that the wife had taken items belonging to the husband, the court had no credible evidence before it as to the value of these items. Any order on the jewellery would only have served to introduce further conflict and the court felt that a clean break was ideal. The court was of the view that justice would be served, if on balance, no order was made on both the jewellery items belonging to the husband that the wife appeared to have taken and the issue of maintenance for the wife. The nominal lump sum maintenance that the court might otherwise have been inclined to award the wife was best set-off against the jewellery items.

In light of the unique circumstances in *Gangesh Kumar Chawla*, I am of the view that this case does not support the Defendant's proposition that no maintenance order ought to be granted in the present case. At best, it may lend some credence to the clean break principle, *ie*, that a "nominal lump sum maintenance" should be awarded when the marriage is short and when "[b]oth parties earn good incomes and are self reliant" (*Gangesh Kumar Chawla* at [17]).

46 The third case cited by the Defendant is the High Court decision of *Lim Cheok Kwang v Chew Fong Heng Shirley* [2010] SGHC 214 ("*Lim Cheok Kwang*"). In this regard, the Defendant highlighted the following extract of the judgment:

[t]he wife had demonstrated she was a very capable and resourceful woman when she represented herself in these proceedings before me and in the court below. With some diligence, she should be able to find some gainful employment.

47 However, it bears noting that in that case, the wife used to work as a property agent before the marriage and Lai Siu Chiu J accepted that the wife had an earning capacity of approximately S\$3,500 per month. In contrast, the learned judge noted that the "husband was not well-off" and that his take-home salary as a construction safety officer was only about S\$1,640 per month. On this basis, it was acknowledged that maintenance of S\$500 per month would amount to one-third of his take-home salary and was "simply not *practicable*" [emphasis in original]. Furthermore, the learned judge also noted that the District Court's order of S\$42,000 as lump sum maintenance was not practicable as the husband had very little cash and would most probably have to sell the matrimonial flat to raise that sum of money. On this basis, Lai J awarded a lump sum maintenance of S\$5,000 to the wife so as to achieve a clean break between the parties. On the face of it, the facts in the present case are rather different from that in *Lim Cheok Kwang*. In particular, there is no evidence before this court to show that the Defendant would be unable to pay periodic maintenance to the Plaintiff or that it would be impracticable for lump sum maintenance to be granted. On this basis, I am not convinced that *Lim Cheok Kwang* supports the Defendant's proposition that no maintenance should be ordered in this case.

48 Finally, the Defendant cited the Family Court decision of *FN v FO* [2004] SGDC 292. With regard

to this case, it was argued that: [\[note: 32\]](#)

... Her Honour Ms Jocelyn Ong awarded no maintenance to the Wife of the marriage of 5 years which bore 2 children. The Husband was awarded care and control and was solely responsible for the maintenance of the children. Her Honour stated that it was "*a very short marriage of less than 5 years. **More significantly, she was not even being asked to contribute anything towards the maintenance of the children** . In the circumstances, I did not order any maintenance for the wife.*"

[emphasis in original by the Defendant]

49 It is surprising that the Defendant had chosen to emphasise this portion of the extract as it appears to reduce the relevance of this decision to the facts in the present case. Clearly, the learned District Judge in *FN v FO* had taken into account the fact that the husband was awarded care and control of the children and that the wife was not asked to contribute anything towards the maintenance of the children. On this basis, the learned District Judge did not order any maintenance for the wife. This is an irrelevant factor in the present case as there are no children to the marriage. Therefore, I do not see how the decision of *FN v FO* advances the Defendant's case in any way.

50 Furthermore, the Defendant also contends that no maintenance ought to be awarded to the Plaintiff given that she has "become accustomed to ... fending for herself and maintaining herself". However, this is an erroneous view. In the Court of Appeal decision of *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506 ("*Foo Ah Yan*"), Andrew Phang JA observed at [21] that:

21 In any event, we were unable to locate authorities in support of the husband's broad – indeed, sweeping – proposition to the effect that one who has not maintained his wife during the course of the marriage need not do so after the divorce. Indeed, s 69(1) of the Act imposes an obligation on a husband to provide maintenance to his wife during the course of the marriage. *Of course, what is reasonable depends on all the circumstances of the case; that a wife is financially capable does not per se excuse a husband from his duty to maintain her, although it may affect the quantum of maintenance deemed to be reasonable*: see Tan Cheng Han, *Matrimonial Law in Singapore and Malaysia* (Butterworths Asia, 1994) at pp 205-206. While non-provision of maintenance during subsistence of the marriage could therefore be justified in some situations, a husband's reliance on his failure to provide maintenance during the marriage per se, in order to evade his duty to maintain his former wife after divorce, cannot possibly sit well with the court's sense of justice.

22 Furthermore, the duty of a husband to maintain his wife during the marriage, as provided by s 69(1) of the Act, and the obligation to provide maintenance to a former wife under s 113 of the Act are driven by separate forces. As Prof Leong Wai Kum pointed out in *Elements of Family Law* in Singapore ([15] *supra*) at p 476:

In the former situation, the objective is to provide modest maintenance, namely, to help her overcome her immediate financial need which may well be the same objective when ordering maintenance for a dependent child. In the latter situation, maintenance ordered for a former wife, however, serves the far more ambitious objective of giving her a fair share of the surplus wealth that had been acquired by the spouses during the subsistence of the marriage.

Indeed, while the court must have regard to all circumstances of the case when ordering maintenance in both contexts, the matters that the Act specifically directs the court to consider

under ss 69(4) and 114 of the Act are not identical. *It is thus conceivable that one who justifiably fails to maintain his wife during the course of their marriage may nevertheless be obliged to do so after the marriage has ended.*

[emphasis added]

51 Therefore, whilst the lack of maintenance during the marriage may point towards the self-sufficiency of the wife, it is but one of the factors which must be assessed in light of all the circumstances of the case in determining the appropriate maintenance for the Plaintiff in this case.

52 The Plaintiff is currently seeking a lump sum payment of S\$8,830 monthly for three years, giving rise to a total sum of S\$317,880. In the Plaintiff's Submissions for Ancillary Matters Hearing dated 26 November 2013, *Foo Ah Yan* was cited in support of the proposition that an order of maintenance at the ancillary proceedings "serves the far more ambitious objective of giving her a fair share of *the surplus wealth that had been acquired by the spouses during the subsistence of the marriage*" [emphasis added]. However, the Plaintiff has not demonstrated how her prayer for the lump sum maintenance of S\$317,880 is grounded on any surplus wealth acquired by the parties during the marriage, especially when the marriage lasted only for a short period of three years.

53 The Plaintiff also cited the Court of Appeal decision of *BG v BF* [2007] 3 SLR(R) 233 in support of the proposition that an order for maintenance "plays a complementary role to the order for division of matrimonial assets", and that "the rationale behind the law imposing a duty on a former husband 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*" [emphasis added]. However, as explained above in the context of the division of matrimonial assets, I am of the view that the Plaintiff's contributions to the marriage were nowhere as substantial as what she has put it out to be. Coupled with the fact that the duration of the marriage was extremely short, I am not convinced that the Plaintiff has suffered any significant "economic prejudice" during the subsistence of the marriage.

54 Nevertheless, the self-sufficiency of the Plaintiff based on her current monthly income does not conclusively yield the result that no maintenance ought to be awarded to her. Instead, it is a factor to be taken into consideration in determining the quantum of maintenance which would be a just and equitable award to the Plaintiff in accordance with the principles embodied in s 114 of the Act. In this regard, the Plaintiff relies on the case of *Kalutara Achriage Dharshani Chrishanthu Herbert v P L B Sarath Manukularatne* [2003] SGDC 78 for the proposition that nominal maintenance for a wife does not necessarily mean S\$1. Rather, the quantum depends on a holistic consideration of all factors in s 114(1) of the Act.

55 Taking into account the respective earning capacities of the parties, I am of the view that the Defendant's prayer for no maintenance to be ordered is not supported by the authorities that were cited above. Similarly, the Plaintiff's prayer for a lump sum maintenance of S\$317,880 is clearly excessive in light of the factors examined above. In particular, the fact that the marriage lasted only for a short period of three years is a factor to be taken into account in determining the appropriate maintenance order. On this basis alone, I am of the view that the Plaintiff's prayer for a multiplier of three years of maintenance is excessive.

56 Furthermore, in response to the Plaintiff's attempt to rely on the existing court order dated 5 June 2013 to demonstrate that a maintenance sum of S\$8,830 per month is reasonable on the facts of the present case, this court notes that the court order was an interim order to maintain status quo until the final disposition of the ancillary matters. Therefore, I am not convinced that the court order bears any significant weight as to the appropriate maintenance order that the Plaintiff should be

entitled to *after* the dissolution of the marriage. For instance, the Plaintiff will not require as large a house as the Singapore Property that both parties resided in during the course of their marriage.

57 Furthermore, while the Plaintiff has asserted that her personal expenses amount to S\$9,076 per month, it bears noting that certain categories of expenditure appear to be rather excessive on the face of it. For instance, the Plaintiff has declared her mobile phone bills and the hire-purchase instalments for the vehicle as amounting to S\$1,215 and S\$1,653 respectively. Whilst the Plaintiff may argue that she ought to be entitled to maintain the standard of living that she used to enjoy during the course of the marriage, the fact that the marriage only lasted for a short period of three years cannot be overlooked. Coupled with the fact that the Plaintiff has declared her average gross monthly income to be S\$13,183, the Plaintiff's multiplicand of S\$8,830 per month is clearly excessive as it would increase the Plaintiff's income beyond what is required to sustain her declared monthly personal expenses.

58 On balance, taking into account the factors examined above and in light of the clean break principle, I am of the view that a multiplicand of S\$4,000 per month would be a fair and equitable sum. With regard to the multiplier, the Plaintiff has submitted that the appropriate multiplier ought to be three years. In comparison, given that the marriage only lasted for three years, the multiplier of three years would, in my view, be excessive. To this end, a multiplier of 18 months, which is approximately half the duration of the marriage, would be more appropriate. Therefore, I am of the view that a multiplicand of S\$4,000 per month with a multiplier of 18 months, giving rise to a total lump sum maintenance of S\$72,000, would be a just and equitable sum for the Plaintiff, and I so order.

Conclusion

59 For the reasons set out above, my orders are as follows:

(a) The Defendant is to pay the Plaintiff S\$37,500, being 5% of the estimated value of the UK Property [\[note: 33\]](#) within three months of this judgment. Upon full payment of the same, the Plaintiff is to transfer her entire interest in the UK Property to the Defendant.

(b) In the event that the parties are unable to agree on the estimated value of the UK Property, the Defendant is to pay the Plaintiff 5% of the market value of the UK Property as determined by an independent valuer. Costs of the valuation are to be borne by both parties in accordance with their respective shares in the UK Property and both parties are to have joint conduct of the valuation process. The valuation is to be concluded within three months of this judgment and the Defendant is to pay the Plaintiff the ascertained sum within three months of the conclusion of the valuation. Upon full payment of the same, the Plaintiff is to transfer her entire interest in the UK Property to the Defendant.

(c) The settlement on 27 September 2013 is to be executed by both parties.

(d) Each party is to keep all other assets in his or her sole name.

(e) All assets in the joint names of the parties are to be disposed of, and the proceeds are to be divided equally between both parties. For the avoidance of doubt, the parties' joint accounts shall be closed and any balance in the accounts is to be divided equally between them.

(f) The Defendant is to pay the Plaintiff a lump sum maintenance of S\$72,000.

Costs

COSTS

60 Given that both parties have not been awarded their prayers in full, coupled with the need for them to seek closure and move on with their lives, I am not inclined to make any order as to costs. Each party shall bear their own costs of this hearing.

[\[note: 1\]](#) Plaintiff's 1st Affidavit for Ancillary Matters Hearing filed on 21 December 2012 ("PAM-1") at p 4, para 8; Plaintiff's 3rd Affidavit for Ancillary Matters Hearing filed on 1 July 2013 ("PAM-3") at p 15, para 45.

[\[note: 2\]](#) Defendant's 2nd Ancillary Affidavit filed on 21 January 2013 ("DAM-2") at p 18, para 57.

[\[note: 3\]](#) PAM-3 at p 14, para 43.

[\[note: 4\]](#) Defendant's 3rd Ancillary Affidavit filed on 20 May 2013 ("DAM-3") at p 17, para 41.

[\[note: 5\]](#) Defendant's 1st Affidavit of Assets and Means filed on 20 December 2012 ("DAM-1") at p 11, para 16.

[\[note: 6\]](#) DAM-3 at p 13, para 34.

[\[note: 7\]](#) Plaintiff's Affidavit for Summons Hearing filed on 20 September 2013 at p 3, para 8.

[\[note: 8\]](#) PAM-3 at p 6, para 17.

[\[note: 9\]](#) PAM-3 at p 6, para 17.

[\[note: 10\]](#) PAM-3 at p 6, para 18.

[\[note: 11\]](#) PAM-1 at p 9, para 24.

[\[note: 12\]](#) Plaintiff's 2nd Affidavit filed on 25 January 2013 ("PAM-2") at pp 4–5, para 10.

[\[note: 13\]](#) DAM-1 at pp 3–4, para 9.

[\[note: 14\]](#) DAM-1 at p 3, para 7.

[\[note: 15\]](#) DAM-1 at p 3, para 7.

[\[note: 16\]](#) PAM-2 at pp 2–3, paras 4–5.

[\[note: 17\]](#) Plaintiff's Submissions for Ancillary Matters Hearing dated 26 November 2013 at pp 20–22, para 33.

[\[note: 18\]](#) DAM-1 at pp 8–10, para 15.

[\[note: 19\]](#) DAM-1 at pp 11–12, para 17.

[\[note: 20\]](#) PAM-1 at pp 2–3, para 3.

[\[note: 21\]](#) DAM-3 at p 20, para 49.

[\[note: 22\]](#) PAM-1 at p 8, para 21; DAM-1 at p 12, para 18.

[\[note: 23\]](#) Plaintiff's Submissions for Ancillary Matters Hearing dated 26 November 2013 at p 20, para 31 (as amended in Plaintiff's Letter dated 10 December 2013).

[\[note: 24\]](#) Defendant's Skeletal Submissions for Ancillary Matters dated 26 November 2013 at p 6, para 17.

[\[note: 25\]](#) PAM-1 at p 8, para 21; DAM-1 at p 12, para 18.

[\[note: 26\]](#) Plaintiff's Submissions for Ancillary Matters Hearing dated 26 November 2013 at p 20, para 31 (as amended in Plaintiff's Letter dated 10 December 2013).

[\[note: 27\]](#) Defendant's Skeletal Submissions for Ancillary Matters dated 26 November 2013 at pp 3–4, para 7.

[\[note: 28\]](#) DAM-2 at pp 4–5, para 13.

[\[note: 29\]](#) Plaintiff's Submissions for Ancillary Matters Hearing dated 26 November 2013 at p 16, para 25(c).

[\[note: 30\]](#) PAM-1 at p 6, para 14; DAM-1 at pp 8–10, para 15.

[\[note: 31\]](#) Plaintiff's Submissions for Ancillary Matters Hearing dated 26 November 2013 at p 19, para 29.

[\[note: 32\]](#) Defendant's Skeletal Submissions for Ancillary Matters dated 26 November 2013 at p 18, para 43.

[\[note: 33\]](#) DAM-1 at pp 3–4, para 9.

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