

Lian Hwee Choo Phebe v Tan Seng Ong
[2012] SGHC 255

Case Number : Divorce Suit No DT 6396 of 2010
Decision Date : 28 December 2012
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Molly Lim, SC, Sunanda Koh Swee Hiong and Roy Lim Rui Cong (Wong Tan & Molly Lim LLC) for the husband; N Sreenivasan, Stuart Palmer and Judy Ang (Straits Law Practice LLC) for the wife.
Parties : Lian Hwee Choo Phebe — Tan Seng Ong

Family law

28 December 2012

Tay Yong Kwang J:

1 The parties were married on 8 August 1974. They have four adult children with ages ranging from 21 to 36. On 21 December 2010, the plaintiff (“the wife”) commenced this divorce suit. On 12 April 2011, the parties were granted an interim judgment for divorce on the ground that they had lived apart for a continuous period of at least three years immediately preceding the filing of the writ and the defendant (“the husband”) consented to a judgment being granted on this ground.

2 After the interim judgment was granted, the parties filed their respective affidavits of assets and means for the division of matrimonial assets. The wife then asked for discovery and interrogatories against the husband, requesting documents and information on all his companies. The husband objected to her requests because of certain alleged arrangements made between the parties in 1985/86 and/or in their course of dealings, whereby both agreed to a division of their then matrimonial assets with each party thereafter having sole ownership of the divided assets and all such other assets he/she may acquire subsequently and that each would have no claim or interest in the divided assets of the other party or those subsequently acquired by the other party. The husband therefore maintained that the wife was not entitled to the documents and information about his companies which were established after 1986 as they were not matrimonial assets. Similarly, the wife objected to disclosure concerning her companies on the ground that they were not matrimonial assets and the husband did not pursue the matter further in the light of the 1985/86 arrangements.

3 The wife denied that the arrangements applied to the husband’s companies and therefore took out a discovery application in Summons No. 20543 of 2011.

4 The husband responded by filing Summons No 690 of 2012 for the determination of preliminary issues. On 16 April 2012, a Deputy Registrar of the Family Court made the following orders:

(a) The following questions or issues to be tried and determined as a preliminary issue before the hearing for the division of the parties’ assets, namely:

(i) Whether the plaintiff and the defendant have agreed, by their arrangements made in 1985/86 and/or their course of dealings, to a division of their then matrimonial assets and to

have no further community of assets between them, with each party thereafter, having sole ownership of the divided assets and all such other assets he/she may acquire subsequently and having no claim, interest and/or liability of whatever nature, for any or all such assets owned or acquired by the other party (collectively referred to as "the Arrangements"); and

(ii) if so, whether it is just and equitable that each of the plaintiff and the defendant should adhere to the Arrangements for the limited purpose of determining whether the court should, when dealing with the division of matrimonial assets under s 112 of the Women's Charter at the final stage:

(aa) exclude for its consideration, all the assets acquired by each party since the 1985/86 Arrangements up to date of Interim Judgment;

(bb) include for its consideration all the assets acquired by each of the parties during the course of their marriage from August 1974 up to 2007 or the date of Interim Judgment;

(cc) include for its consideration, all the assets acquired by each party since the 1985/86 Arrangements up to 2007 or date of Interim Judgment

(b) the hearing of the preliminary issues, as set out in paragraph (a) above, be transferred to and determined by the High Court as the combined assets of the plaintiff and defendant far exceed \$1.5m and pursuant to the Supreme Court of Judicature (Transfer of Proceedings pursuant to Section 17A(2)) Order 2007;

(c) pending the outcome of the hearing of the preliminary issues, all further proceedings in relation to the division of the parties' assets, including the discovery, interrogatories and/or other interlocutory applications, be stayed and/or until further order;

(d) an early date be given for the hearing of the preliminary issues;

(e) for the trial of the preliminary issues:

(i) each of the plaintiff and the defendant shall be at liberty to file one further affidavit on or before 25 May 2012 and shall thereafter attend the trial of the preliminary issues for cross-examination on all the respective affidavits of the plaintiff and the defendant filed in respect of both Summons Nos. 690/2012/J and 20543/2011/E, which shall stand as their evidence in chief;

(ii) the defendant's solicitors shall prepare the bundles of documents for use at the trial;

(f) parties shall be at liberty to apply;

(g) the costs of the application shall be reserved to be dealt with at the final ancillary hearing.

5 Before me, it was agreed that the cross-examination be confined to issue (i) above as issue (ii) could only be determined at the final hearing (which this hearing was not) of the ancillary matters since case law (see the Court of Appeal's judgment in *TQ v TR* [2009] 2 SLR(R) 961) requires the court to look into all the circumstances of the case in determining how much weight to be given to any such agreement as specified in issue (i) even if one is found to exist.

The husband's case

6 The parties got to know each other in 1971 when they were both students in Ngee Ann Polytechnic. The husband was studying mechanical engineering and the wife was studying commerce. The wife dropped out after one year.

7 After the husband completed his national service, they married and lived in rented premises. The husband was earning \$550 per month working in the then Public Utilities Board ("PUB") while the wife carried on a hairdressing business for a short while.

8 The husband claimed that he had always been interested in real estate. He purchased his first property for \$42,500 in 1971 while still in polytechnic by paying a deposit of \$500 and taking out a loan for the balance. He serviced the loan repayments with the rent collected. After a few years, he sold that property for \$74,000. In 1972, while in national service, he managed to help a friend sell a property. From then until 1982, he managed to do a few property transactions with the help of the wife.

9 As he was employed by the PUB from 1975 to 1984, he needed the wife's help in his property deals. He would place advertisements in the newspapers using the wife's contact details. The wife would take the telephone calls from prospective buyers and sellers and fix the appointments for viewing in the evening after he finished his work at the PUB. In 1975, he registered Ocean Housing Agency for the wife to conduct the business of a property agent but no significant deals were made through this agency.

10 In mid-1980, the owner of a piece of land at 30 Pasir Ria responded to the husband's advertisement. It turned out that he knew the owner's son as he was also an employee of PUB. He met the owner and his son a few times to discuss the sale of this plot of land covering some 76,446 square feet. The wife was not at these meetings. The owner was anxious to sell the land but the property market was not doing well then. Sensing a good opportunity, the husband decided to buy the land, intending to develop it into a condominium.

11 As the husband was the broker for the land and was still working in the PUB, he arranged for the wife to be the buyer with him paying the option fee. The purchase price was \$1,758,258. He agreed to pay an additional amount of about \$171,000 to remove the squatters on the land because of the then Rent Control Act. He approached his friend, Cheng Lip Kwong ("Cheng"), a civil engineer, to help finance the purchase. Cheong agreed to contribute 25% of the 10% deposit for the land. The other 75% came from the husband's own money and loans from family and friends. The wife then exercised the option to purchase the land.

12 The husband next engaged a firm of architects to draw up plans for the development of 32 residential units. The development charges amounted to another \$1.63m. Knowing that he could not finance the development, he advertised the property for sale.

13 The wife's father, who had just purchased an apartment from a developer called Oasis Development Pte Ltd ("Oasis"), mentioned to Oasis the fact that Pasir Ria was available for sale. Oasis approached the wife who conducted the negotiations for sale, acting strictly on the husband's instructions as he was then busy dealing with other prospective buyers.

14 The deal with Oasis was successfully concluded in November 1982 with the wife signing as the registered owner of the land. There was a "buy-back" arrangement whereby the husband agreed to buy 4 residential units from Oasis. The husband, the wife and Cheng agreed that the wife and Cheng would each have one unit while the husband would have two units in the development which became known as Pepys Hill Condominium. The wife took the best unit (number 09-01) out of the four. The

total price paid by Oasis was some \$5.054m, giving the husband a profit of about \$3.125m. After deducting the down payment of 40% of the purchase price of the four units, the balance due to him from Oasis was about \$2.009m. This amount was paid to the wife and deposited into their joint bank account.

15 The parties then went on holiday in the USA and in London. Before leaving on the trip, the husband purchased a traveller's cheque of US\$242,000. During the trip, the parties discussed opening a joint account in Bank of China London with the traveller's cheque. At the said bank, the wife insisted that the account should be in her sole name. The husband did not object as they were married and he trusted her.

16 The rest of the money was used for the purchase of several properties in 1983/4. As the parties owned a Housing and Development Board flat at that time, they were not permitted to own private property. The wife suggested that the properties be bought in the names of her mother and her sister to be held on trust by them. The husband agreed. The following properties were purchased:

- (1) 8 Lorong G, Telok Kurau at \$555,000, initially in the wife's mother's name but transferred to the wife later;
- (2) 17 Lengkong Enam at \$540,000, registered in the wife's sister's name; and
- (3) 35 Lorong Marzuki at \$278,000, in the wife's sister's name.

17 The Telok Kurau property was redeveloped into a bungalow for \$480,000 or so. It became the matrimonial home. It was mortgaged to a bank for a line of credit to enable the husband to finance its development as well as to use as working capital for his property business as he had left PUB's employ in 1984. The wife was named as the principal borrower while the husband was named the guarantor. Both of them could operate the account individually.

18 That year, the husband had an affair. When the wife found out about it, she became angry, resentful and suspicious and cancelled the line of credit unilaterally. The husband's business' cash flow was severely affected by it and he tried to reason with the wife to restore the line of credit without success. He was at her mercy as she controlled all their assets then. In November 1985, she left the matrimonial home with their three children (the youngest was not born yet) with the intention of leaving Singapore.

19 The husband was frantic and sought the help of his solicitors, Shook Lin and Bok ("SLB"), to protect his interests in the properties and to deal with the welfare of his three children as they were all below 10 years of age then. SLB obtained an injunction to prevent the wife from leaving Singapore with the children and lodged caveats against the properties in question. The wife's solicitors, Harold Seet and Co, then contacted SLB and discussions took place to try to resolve the disputes.

20 On 19 November 1985, the parties met in the presence of their respective solicitors. The husband wanted all the properties transferred back to him immediately. The wife did not agree and said she would discuss the matter with her solicitors.

21 On 22 November 1985, SLB wrote to the wife's solicitors to "confirm that the following matters were discussed and agreed upon" at the 19 November 1985 meeting. In that letter, it was stated that the wife would keep her unit and the husband his two units in the Pepys Hill Condominium. The wife would arrange with Oasis to issue the relevant options in the husband's name. The Lengkong Enam property would be transferred by the wife's sister to the husband with the costs of doing so borne by

the husband. The matrimonial home at Telok Kurau would also be transferred to the husband who would assume full responsibility for the line of credit. As for the income tax to be paid on the profits made on the sale of the Pasir Ria land, each of them would be responsible for his/her share of the profits. However, as the wife was the registered owner, she wanted some assurance that the husband would pay his share of the taxes. The Lorong Marzuki property would also be transferred by the wife's sister to the husband with him bearing the costs of transfer.

22 On 23 November 1985, the wife returned to the matrimonial home with the three children. In December 1985, the wife's solicitors wrote to say that until the income tax issue was resolved, she would not effect the transfer of the properties. Further discussions took place. The wife also alleged that the husband owed her \$53,000 given to him as a loan. This was denied by the husband. However, on 5 May 1986, he agreed to pay her the alleged loan amount upon the transfer of the matrimonial home to him, in order not to cause any delay. The wife did not transfer the properties as agreed but raised further issues in correspondence.

23 Their relationship deteriorated further, resulting in the wife leaving the matrimonial home again with the children in July 1986. She instructed her solicitors to restore the injunction hearing as she wanted to have it discharged.

24 Just before the hearing in respect of the injunction, the parties and their solicitors met to attempt to settle their dispute. It was agreed in principle that the wife would purchase a half-share in the matrimonial home for \$500,000 and the husband would purchase a half-share in the wife's Pepys Hill unit. They would set off against the \$500,000 payable by the wife the amount of the alleged loan, 50% of the deposit already paid for the wife's Pepys Hill unit and the outstanding amounts under the line of credit. As a result, the injunction was discharged.

25 Unfortunately, the wife refused to honour the terms of the agreement and chose instead to impose new and onerous conditions in relation to the matrimonial home. Although the wife was back in the matrimonial home, the husband was still concerned that she would leave again as she was very keen to take the children abroad for their studies. He applied to court for custody but withdrew the application when the wife handed over the children's passports to her new solicitors.

26 The wife continued to raise the issue about income tax on the sale proceeds of the Pasir Ria property. The husband's tax consultants advised that the parties inform the revenue authority that they were electing for separate assessment. However, the terms of a draft letter to the revenue authority could not be agreed. The wife proposed that they enter an agreement ("Profit Share Agreement") to acknowledge the respective amounts received by them in the sale of Pasir Ria. The husband agreed.

27 Upon the execution of this Profit Share Agreement in February/March 1987, the wife transferred the matrimonial home to the husband. Her family members transferred the Lengkong Enam and Lorong Marzuki properties to him. The cash in the wife's personal bank account in Bank of China London remained with her and she continued to hold the husband's two Pepys Hill units on trust for him. She therefore retained some \$555,000 in the account and about \$270,000 as the paid-up value of her Pepys Hill unit while the husband had the matrimonial home (worth \$1.035m but with liabilities amounting to \$776,250), the Lengkong Enam property (worth \$540,000 with liabilities of \$405,000), the Lorong Marzuki property (worth \$278,000 with liabilities of \$208,500) and the two Pepys Hill units (worth \$270,000 and \$152,800 in paid-up value). The wife therefore had assets of \$825,000 while the husband had \$886,050. This meant that the wife took about 48% and the husband took about 52% of their total assets. This division, in the husband's view, was generous towards the wife as she had not paid anything for the purchase of the Pasir Ria property. Moreover, she was discharged of all her

obligations and liabilities in respect of the properties transferred.

28 After these Arrangements were made, the husband faced financial difficulties with the mortgage repayments, business costs and household expenses. He went on his knees to beg the wife to buy a half-share in the matrimonial home with the cash that she had. She would only agree to do so if he gave her a guarantee that in the event the matrimonial home was sold, she would receive no less than the original amount of her share regardless of the sale price (although the property market was in a bad state then).

29 She made it very clear to him that since the assets had been divided, she was content with her share and did not want her assets to be connected with his in any way or to claim more assets. She also wanted no further link between them and wanted a clean break so that if their relationship ended, she could go her own way. They were to be responsible for their individual assets and any future assets. Her prospects were much better at that time as he did not have cash but had plenty of debt. She had always thought herself superior to him and was confident that she would achieve much more success on her own. She was therefore prepared to have the division of assets to be a full and final one.

30 Despite the above Arrangements, the parties carried on with their respective obligations to the home and their children. They continued to have conjugal relations resulting in the birth of their youngest child in 1991. The husband continued to pay for the household expenses and the children's overseas education. He also gave the wife a fixed monthly allowance of \$5,000 for expenses on food and the maids. This was reduced to \$4,000 pm when 3 of the children were studying abroad.

31 The wife started her property broking business and moved on to property development. The husband continued with his property development and related businesses. They avoided talking to each other about their businesses. However, in 1991, they agreed on a joint venture to purchase and to develop a plot of land at 38 Gilstead Road after the wife obtained an option to purchase this property. The husband's company, Wah Khiaw Realty Pte Ltd, was used as the vehicle to develop the property. The wife was given 50% of the shares of this company and she became a director. The company exercised the option.

32 Disagreements arose between the parties and they decided to sell the project to a company called Trendale Pte Ltd in March 1993. They made a profit of slightly more than \$2m and each took 50% of the profit.

33 Besides this project, there was no further collaboration in business between the parties. The wife would offer him properties for sale from time to time. He bought one property in Vanda Road and one in Wareham Road through her as broker. The wife incorporated and owned several companies, including companies in the British Virgin Islands. She also invested in various others including Maxz Universal Development Group Pte Ltd ("Maxz") for which her company also gave a guarantee of \$1m. This company was involved in a hotel project on Sentosa. Over the years, she built up a very successful career in property development and sales. Since the time of the Arrangements, the parties' businesses were kept separate without contribution or interference from each other.

34 When the wife objected to discovery in respect of her companies set up between 1990 and 1996 during the marriage, she asserted that they were not matrimonial assets. That could only be understood in the context of the Arrangements since 1987.

35 The husband explained that they did not sign a formal agreement because negotiations had already taken more than a year and, as far as he was concerned, a deal had already been made with

the benefit of legal advice on both sides. The agreement was reflected in the correspondence exchanged between the lawyers and the wife transferred the properties in accordance with the Arrangements. It was not true that the Arrangements were made merely to resolve the tax issues. The tax authority only began its queries about the Pasir Ria property some two years after its purchase. After a series of correspondence, the final assessment was made in September 1994, years after the Arrangements were made between the parties. The tax issue between the parties was already resolved by the Profit Share Agreement (see [26] and [27]) and the election for separate tax assessments.

36 As for the wife's allegation that in February 1983, the husband withdrew \$1.1m of the profits from the Pasir Ria property and she was concerned that there would not be any funds for the payment of income tax, the husband said the money was initially placed in short term fixed deposits for higher returns as the interest rates for savings accounts were too low. The money was later used for the purchase of the matrimonial home, the Lengkong Enam and the Lorong Marzuki properties. The wife was aware of this. Some of the profits were used to repay loans taken by the husband from his family. They were also spent on the purchase of a car and on holidays.

37 The husband stated that his business journey was a turbulent one and he almost became a bankrupt in 1999. Instead of helping him out, the wife was constantly treating him with disdain in front of the children and friends. He sold two of his properties at a loss a few months after the Arrangements had been put into effect because of the financial crisis sparked off by the Pan-El incident. It was only from 2005 that his financial position became very positive. The husband's companies now own several expensive properties in Sentosa. The wife sold her Pepys Hill unit sometime before 2005 and kept the sale proceeds. They had maintained their respective units in that condominium separately. She was presently involved in litigation in the High Court with Maxz (see [33]) but he did not know anything about the case.

The wife's case

38 In 1980, the wife saw an advertisement for the sale of the Pasir Ria property and came up with the idea of buying it for resale to a developer. She acted as the buyer and the husband acted as the agent as he was then working in the PUB. As the parties did not have sufficient funds for the 10% deposit, the husband borrowed money from others. She borrowed \$100,000 from her father and used her savings from her work as a part-time property agent. She also approached Cheng, an acquaintance, who agreed to contribute 25% of the deposit in return for the same percentage of the profits to be made.

39 After the option was signed, the wife engaged the architect, Tan Aik Chuan, and worked closely with him on the design for the condominium that was to be built on the land. She also advertised the sale of the land. Her father knew a director of Oasis and introduced Oasis to her. She then dealt with Oasis on the terms of the sale and on the buy-back of four units of the condominium. It was agreed that she would own the unit with the highest floor and Cheng would own one and the husband would take two of the units.

40 As there were squatters on the Pasir Ria property, the wife was heavily involved in finding a resolution with the seller on the compensation to be paid to the squatters for them to vacate the land. Oasis agreed to buy the land for \$4.968m and also agreed to pay half of the compensation amount for the squatters.

41 Upon completion of the sale to Oasis, the wife received \$2.009m by a cashier's order made out to her name. She then deposited this amount into the parties' joint bank account.

42 In January 1984, the tax authority enquired about the sale of the Pasir Ria property. The husband took over the correspondence with the tax authority. The wife was concerned that she would have to pay income tax on the profits made on the resale of the Pasir Ria property. She also discovered that most of the money had been withdrawn from the joint account and that the husband had also withdrawn some \$150,000 from the overdraft facility with Bank of China which was secured by a mortgage on the matrimonial home. He had also drawn up trust deeds stating falsely that his siblings financed part of the purchase price for the Pasir Ria property. She was afraid that there would not be sufficient funds to pay the tax due and feared she would be prosecuted. When she asked the husband for assurance that he would pay the tax, he lost his temper and abused her.

43 In November 1985, the wife left the matrimonial home with the three children. After the husband applied for an injunction and filed caveats against their properties, negotiations were made through their respective solicitors to resolve their differences. Her main concern throughout the exchange of correspondence was the payment of the tax. A few weeks later, she returned home with the children. She agreed to have the three properties in issue (see [16]) transferred to the husband on condition that he gave an undertaking to be responsible for the tax due on the profits from the Pasir Ria property.

44 The marriage continued for more than 20 years thereafter and their fourth child was born in 1991. In October 2009, the wife received a letter from the husband's solicitors indicating his intention to commence divorce proceedings. She then decided to commence the present proceedings in December 2010.

45 The wife stated that the Arrangements in 1985/86 came into being because of her concerns about the tax on the profits from the sale of the Pasir Ria property which she would have to pay if the husband did not. There was no intention on their part to divorce or to separate or to divide the existing matrimonial assets. The scope of the Arrangements was limited. In any case, the parties did not sign any agreement although both were represented by solicitors.

46 The wife continued with her family duties as wife and mother after the difficulties were resolved between the parties. She also made direct and indirect contributions to the husband's businesses and to the family. She was frequently involved in the husband's property projects, including 38 Gilstead Road and Vanda Road. Throughout the long marriage, he continued to discuss his business decisions with her, including the acquisition of his brother's company in 1999. There was never any discussion or intention to have no further community of assets as the parties continued to live together as husband and wife even after the Arrangements. His thriving businesses and success have their roots in the Pasir Ria property in which she played a significant role both directly and indirectly as set out above. According to valuation reports filed in these proceedings, the husband's companies would be worth about \$141m to \$205m.

47 The wife is a Singapore citizen but has Australian permanent resident ("PR") status. The parties had applied for PR in order to obtain cheaper education for their children. In 2004, she bought a condominium unit in Perth to live in. The total costs of about A\$600,000 were paid for entirely by her. The youngest child studied in Perth from 2005 to 2009 and she shuttled between Perth and Singapore during that period. She now resides in the matrimonial home. The litigation she is involved in before the High Court concerns an oppression action commenced by her and another person (see Andrew Ang J's judgment in *Lian Hwee Choo Phebe and another v Maxz Universal Development Group Pte Ltd and others and another suit* [2010] SGHC 268).

The decision of the court

48 Section 112 of the Women's Charter (Cap 353) provides:

(1) The court shall have power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable.

(2) It shall be the duty of the court in deciding whether to exercise its powers under subsection (1) and, if so, in what manner, to have regard to all the circumstances of the case, including the following matters:

(a) ...

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

49 There was no signed agreement between the parties setting out all the terms of the Arrangements. However, an agreement could still be implied from a course of conduct or dealings between parties or from correspondence or from all relevant circumstances (see *Cooperative Centrale Raiffeisen-Boerenleenbank BA (trading as Rabobank International), Singapore Branch v Motorola Electronics Pte Ltd* [2011] 2 SLR 63).

50 The correspondence between the parties' solicitors show that there were negotiations relating to the division of matrimonial assets which included the cash in Bank of China London. The discussions were triggered by the wife leaving the matrimonial home with the three children. I was satisfied that she left in a fit of anger at discovering the husband's infidelity rather than because of fear or concern over the tax issue. I doubted that she was contemplating leaving Singapore with the children over her alleged fear of prosecution when she did not know then the amount of tax that would be levied by the tax authority. Moreover, she and her family members were holding three properties in their names at that time and those could be sold if necessary to pay for the tax. The truth of the matter, as testified by the husband, was that she wanted to punish him for his infidelity by causing him to be without assets, without any credit line and without a family.

51 Seen in that context, the negotiations that followed bore the hallmarks of a couple contemplating the possibility of divorce in the future. The property issues apparently took centre stage but there were also discussions about the children and a personal allowance for the wife. The Arrangements were not made in a spirit of reconciliation and renewal of vows but were more akin to transforming the marital relationship into a business-like one, at least where property matters were concerned. This could be seen in the trade-offs demanded by the wife in exchange for the transfer of the properties. The transfer of the properties was final and was not meant for tax reduction or other purposes such as the avoidance of some regulations. They were also certainly not done out of love.

52 It was accepted that conjugal relations continued for some time thereafter as the youngest child was born in 1991. However, that was the extent of the resumed relationship. The parties were taking care of their respective properties and making their own payments for the balance of the purchase price in the buy-back of the Pepys Hill units and for the units' upkeep. They were also making their own decisions pertaining to their rental and sale despite the fact that the 3 units were in the same condominium.

53 The husband had to offer a half-share of the matrimonial home for sale to the wife when all married couples would have ordinarily regarded a matrimonial home as their common property.

Similarly, the wife offered a half-share in her Pepys Hill unit to the husband for monetary consideration. Everything from the time of the Arrangements was dealt with as business transactions, including the rare collaboration in respect of 38 Gilstead Road. The parties were dealing with their own business affairs and buying or selling assets without the need for consultation or consent. Examples of this could be seen in the wife's investment in Maxz and in her purchase of the property in Perth. They were also apparently handling their own tax matters.

54 The wife's conduct in discovery in these proceedings also underscored the parties' understanding that there was to be no more community of assets after the Arrangements. There could be no justification otherwise for her assertion that her companies were not matrimonial assets when they were set up and running as businesses during the subsistence of the marriage.

55 Looking at the overall circumstances from 1985 to 2010, I was satisfied that the Arrangements fell within the ambit of "any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce" in s 112(2)(e) of the Women's Charter. The husband's evidence was more credible and it showed that issue (i) set out in [4] above ought to be answered in the affirmative and I so ordered at the conclusion of the hearing. As indicated at [5] above, this is not the end of the enquiry where matrimonial assets are concerned as the court conducting the final hearing of the ancillary matters would have to look at all the circumstances of the case when determining how much weight to give to such an agreement as specified in issue (i). I also ordered the costs of this hearing to be reserved for determination at the final hearing of the ancillary matters.

56 The wife has appealed in CA 36 of 2012 to the Court of Appeal against the above decision.

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