ARY
v
ARX and another appeal

[2016] SGCA 13

Court of Appeal — Civil Appeals Nos 3 and 5 of 2015
Sundaresh Menon CJ, Chao Hick Tin JA and Quentin Loh J
22 October; 26 November 2015

Family law — Matrimonial assets — Division

Family law — Maintenance

10 March 2016

Chao Hick Tin JA (delivering the judgment of the court):

Introduction

1 These are two related appeals against the decision of a judge ("the Judge") on the division of matrimonial assets and maintenance in the ancillary matters of a divorce. Her decision is reported at *ARX v ARY* [2015] 2 SLR 1103 ("the Judgment").

2 These appeals present us an opportunity to further clarify the legal position on the operative date for determining the pool of matrimonial assets for division in a divorce.

Background

3 The husband and wife were married on 29 October 1994, and remained married for approximately 15 years, until the relationship broke down in June 2009, when the parties separated by mutual agreement. The husband, now aged 43 and who originally hailed from Turkey, is currently resident and employed in the Hong Kong Special Administrative Region. He works for a large international media agency ("IMA") and earns a monthly salary of about $36,000.

4 The wife is a 52-year-old Scotswoman. She was a homemaker for a large part of the marriage, but is currently employed as a part-time bookkeeper and earns about $2,500 every month. The wife resides in Singapore with their two sons, who are 16 and 11 years of age. Both children are enrolled in an international school in Johor Bahru. They were boarders at that school when the matter was before the Judge, but had ceased boarding arrangements by the time the matter came before us. Parties have agreed on the custody, care and control, and access arrangements for the children.

The marriage and the early years

5 The parties met in 1993 when the wife was on holiday in Turkey. The wife was then a banker in England and earning a substantial salary. The husband lived and worked in Turkey. Just prior to the marriage, the husband moved to London to live with the wife. He became a full-time student reading for a university degree, and he also enrolled in an English language course.

6 The wife claims that during the early years of their marriage, she was the "sole financial provider". She funded the husband's passage to England and

his education there.[1] The husband, on the other hand, claims that he paid for his education in England with his savings from Turkey and the money he earned from part-time work while studying.[2] It is, however, clear and beyond doubt that the wife provided the marriage with financial stability in the early years, because her salary far outstripped the husband's.

7 In 1999, their first son was born. The husband, having graduated from his degree programme, took up employment at IMA in London in that year.

8 His career has been a successful one. He has risen through the ranks to his current position as a regional sales manager.

The moves to Hong Kong, Japan and then Singapore

9 The parties relocated to Hong Kong in 2003. The decision to relocate was caused by a confluence of three events that year. First, the husband was promoted, and offered a position at IMA's Hong Kong office. Second, the wife was made redundant by her then employer, a European bank. Third, the wife became pregnant with their second son, and gave birth to him in December that year. The wife stopped working to become a homemaker soon after.

10 Parties disagree over the reason the wife became a homemaker. The wife says that she sacrificed her career so that she could focus on the family.[3] The husband says that it was not a matter of choice. Instead, she could not find employment after having been made redundant.[4]

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1 Appellant's Case in CA 3/2015 at paras 5–6.

2 Respondent's Case in CA 3/2015 at paras 19–20.

3 Appellant's Case in CA 3/2015 at para 11.

4 Appellant's Case in CA 5/2015 at paras 77–78.

11 The family relocated two more times after moving to Hong Kong. In 2004, the husband was posted to Japan, and in 2006, he was posted to Singapore. The family went with him wherever his career brought him.

The separation and divorce proceedings

12 The husband had an affair while the family was in Singapore. This caused the marriage to deteriorate. The wife found out about the affair in January 2008,[5] and they eventually separated in June 2009 when the husband left their rented matrimonial home in Singapore. The wife stayed on at the matrimonial home with the children. The husband continued to pay for the rent of the matrimonial home and for the children's expenses. He also gave the wife $1,200 every month for her own expenses.

13 The husband filed for divorce on 2 February 2010. Interim judgment was granted on 26 October 2010. The ancillary proceedings commenced on 30 June 2012.

The decision below and the arguments on appeal

14 We will now provide a broad overview of the Judge's decision in the court below, as well as the parties' arguments on appeal, followed by an analysis of the issues of this appeal.

15 There were two main issues before the Judge. The first concerned the division of the matrimonial assets, and the second, maintenance for the wife and children.

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5 Wife's 3rd AM affidavit at para 8; ROA vol 3 part 2 at p 98.

16 In respect of the division of the matrimonial assets:

(a) The Judge held that the operative date for determining the pool of matrimonial assets was the date the ancillary proceedings commenced, 30 June 2012. At that date, the total assets in the matrimonial pool amounted to $1,475,809.24.

(b) The Judge rejected the husband's argument that the operative date should be (i) the date parties separated in June 2009, when the total assets in the matrimonial pool amounted to $966,708.51;[6] or alternatively (ii) the date interim judgment was granted on 26 October 2010, when the total assets in the matrimonial pool amounted to $1,289,399.35.[7]

(c) The Judge divided the pool of assets equally, resulting in each party receiving approximately $738,000.

17 In respect of the maintenance for the wife and children:

(a) The Judge awarded monthly maintenance of $7,700 to the wife, which comprised $3,000 for her personal and household expenses and $4,700 for rent for herself and the children.

(b) The Judge rejected the wife's claim for a supplementary card, a car, and a monthly sum of $1,000 for holiday expenses.

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6 Appellant's Case in CA 5/2015 at Annex A.

7 Appellant's Case in CA 5/2015 at Annex A.

(c) The husband agreed to pay for the children's school and boarding fees (which amounted to $7,250 monthly), school-related expenses, medical insurance and pocket money.

18 The husband appeals against the Judge's decision on division. His challenge to the decision on division is mounted at three levels. First, he argues that the operative date should not be the date of commencement of ancillary proceedings, but rather, the date the parties separated. Second, he argues that the Judge erred by including a Turkish property in the matrimonial assets. Third, he argues against an equal division of the matrimonial assets. He says that the division should be in the proportions of 70:30 in his favour, which is more closely aligned to the parties' financial contributions.

19 Both the husband and wife appeal against the Judge's decision on maintenance. The wife says that maintenance should be increased to $10,200 monthly comprising $4,500 for her personal and household expenses, $4,700 for rent, and $1,000 for holiday expenses. The husband, on the other hand, argues that the maintenance should be reduced to $5,000 monthly.

20 We will address the division of matrimonial assets and maintenance separately because they raise discrete legal principles and facts.

Issues relating to the division of matrimonial assets

21 The husband's appeal against the Judge's decision on division raises the same three issues (see [18] above). First, what the operative date for determining the pool of matrimonial assets should be. Second, whether a property in Turkey ("the Turunc property") should be included in the pool of matrimonial assets. Third, whether the Judge's division of the matrimonial assets in equal proportions is just and equitable.

What the operative date for determining the pool of matrimonial assets should be

The decision below

22 The appropriate operative date for determining the pool of matrimonial assets received extensive argument in the court below. It was a pivotal point because there was a surge of about 50% in the total matrimonial assets between the parties' separation in June 2009 and the commencement of ancillary proceedings on 30 June 2012. The surge was due to the husband's receipt of some $520,000 in salary and bonuses during that period.

23 The Judge accepted the wife's position that the operative date should be when the ancillary proceedings commenced. The Judge held that the court had a "broad discretion" in selecting an operative date for determining the pool of matrimonial assets (the Judgment at [22]). The wife was responsible for the welfare of the children even after the breakdown of the marriage and the grant of interim judgment (the Judgment at [31]). This allowed the husband to focus on his work, and obtain the salary and bonuses. Those monies should therefore be included in the pool of matrimonial assets for division.

The parties' cases on appeal

24 On appeal, the husband maintains his position that the operative date should be the date the parties separated. He gave four reasons. First, the parties' intentions are an important factor in determining the operative date. By June 2009, the parties manifested a clear intention not to contribute to the matrimonial assets. They were living apart and had closed their joint accounts (except for one to deduct rent and utilities and a second overseas account to

collect rental proceeds). Thereafter, they managed their assets separately.[8] Second, the Judge double-counted the wife's non-financial contributions. The Judge relied on the wife's non-financial contributions to justify a later operative date, and also relied on those same contributions when dividing the matrimonial assets.[9] Third, the Judge failed to consider that the husband continued to pay for the rent of the matrimonial flat and for the children's expenses even after he had moved out.[10] Fourth, as a matter of policy, setting the operative date to be at the date when ancillary proceedings are commenced will encourage parties to drag out divorce proceedings.[11]

25 The wife argues that the Judge's decision on the operative date should be upheld for three reasons. First, the case law is clear that the two "most sensible dates are either the date of the interim judgment or the date of the hearing of the final ancillaries".[12] If the selection of a particular date "renders the proportion of division unjust, the court will unhesitatingly reject that date".[13] Second, the fact that parties lived apart and managed their assets separately after June 2009 is unexceptional. That is an ordinary consequence of a failed marriage.[14] Third, adopting June 2009 as the operative date will be unjust to the wife because she will only receive approximately $488,000 (assuming equal division).[15]

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8 Appellant's Case in CA 5/2015 at para 19.

9 Appellant's Case in CA 5/2015 at paras 31–34, 37.

10 Appellant's Case in CA 5/2015 at para 36.

11 Appellant's Case in CA 5/2015 at para 40.

12 Respondent's Case in CA 5/2015 at para 22.

13 Respondent's Case in CA 5/2015 at para 24.

14 Respondent's Case in CA 5/2015 at paras 27–30.

15 Respondent's Case in CA 5/2015 at paras 39–41.

Our decision

26 We agree with the Judge that the court has the discretion to select the appropriate operative date. However, that discretion is not a free or an unguided one. So the first question we need to address is whether there is a starting point from which the court should determine the operative date

27 The analysis has to begin with the statutory definition of a "matrimonial asset" in s 112(10)(*b*) of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Women's Charter"). It includes an asset "of any nature acquired *during the marriage* by one party or both parties to the marriage" [emphasis added].

28 In *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 ("*Yeo Chong Lin*"), we considered the meaning of s 112(10)(*b*) of the Women's Charter in the context of the operative date for determining the matrimonial assets. We observed that there were four possible dates: (a) the date of separation; (b) the date the writ of divorce was filed; (c) the date of interim judgment; and (d) the date of the ancillary matters hearing (*Yeo Chong Lin* at [39]). Parliament had not prescribed any of these four options as the appropriate cut-off date, but had left the choice to the court. We preferred not to come down definitively in favour of any of the four potential operative dates, because the circumstances in which a divorce could occur were too diverse to do so (*Yeo Chong Lin* at [36]). We however opined that "it would be sensible to apply either the date of the decree *nisi* or the date of the hearing of the ancillary matters" (*Yeo Chong Lin* at [39]). The date of interim judgment was particularly appealing because it would be "wholly unreal" to treat assets acquired post-interim judgment as matrimonial assets. Once interim judgment is granted, "the marriage contract has for all practical purposes come to an end and there is no longer any marriage" (*Yeo Chong Lin* at [39]). On the facts, and in line with that

final observation, we applied the date of the interim judgment as the operative date for determining the pool of matrimonial assets.

29 We revisited the issue more recently in *Oh Choon v Lee Siew Lin* [2014] 1 SLR 629 ("*Oh Choon*"). That case is instructive because we adopted the date of the interim judgment as the operative date despite the long period between the breakdown of the marriage and the divorce proceedings. The parties in *Oh Choon* were married in 1993. The relationship broke down, and the husband moved out of the matrimonial home in 1999. He filed for divorce only 11 years later, in 2010. Interim judgment was granted the following year, in 2011. After leaving the matrimonial home and prior to the grant of interim judgment, the husband had purchased a car and a property in joint names with his mistress. The husband argued that the operative date should have been the date of separation in 1999. This would have excluded the car and the property from the pool of matrimonial assets.

30 We rejected his argument and instead adopted the date of the interim judgment. We stressed that there was no bright-line rule as to which of the four potential dates should be preferred as the operative date, and that everything turned on the facts of the case (*Oh Choon* at [14]):

> 14 Given our analysis thus far, it follows that we would respectfully reject [the husband's] argument … that the operative date for determining the pool of matrimonial assets in the present case ought to be the date of "separation" … Indeed, as the relevant case law makes clear, ***there is no hard and fast cut-off date for the determination of the pool of matrimonial assets and everything would, in the final analysis, depend on the precise facts of the case itself*** (see, for example, the decision of this court in *Yeo Chong Lin v Tay Ang Choo Nancy* [2011] 2 SLR 1157 ("*Yeo Chong Lin*") at [32]–[36]). In *Yeo Chong Lin*, this court noted (at [36]) that "[m]ultiple dates are distinctly possible, depending on the nature of the assets and the circumstances surrounding their acquisition". This court also observed (at [36]) that "[u]ltimately, perhaps the

> adoption of an operative date or dates *may not really be that critical as compared to arriving at a just and equitable division*"
> …
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> [original emphasis in italics; emphasis added in bold italics]

On the facts of that particular case, we held that the date of the interim judgment was appropriate for ascertaining the pool of matrimonial assets because there "was a *continuous (albeit clearly attenuated) relationship* between the [husband and wife] throughout" [emphasis in original] even after the husband left the matrimonial home and before he filed for divorce (*Oh Choon* at [12]). This was clear from the fact that the husband had visited the wife at the matrimonial home monthly and paid her maintenance of $1,200.

31 We would venture even further than *Yeo Chong Lin* and *Oh Choon* in this case. In our judgment, while the court retains the discretion to select the appropriate operative date to determine the pool of matrimonial assets, there is much to be said that, unless the particular circumstances or justice of the case warrant it, the *starting point* or *default position* should be the date that interim judgment is granted.

32 There is a strong justification for this position as a matter of principle. The interim judgment "puts an end to the marriage contract and indicates that the parties no longer intend to participate in the joint accumulation of matrimonial assets ..." (*AJR v AJS* [2010] 4 SLR 617 ("*AJR*") at [4]). The grant of interim judgment is a recognition by the court that there is "no longer any matrimonial home, no *consortium vitae* and no right on either side to conjugal rights" (*Sivakolunthu Kumarasamy v Shanmugam Nagaiah and another* [1987] SLR(R) 702 at [25]). The interim judgment "put[s] an end to the whole content of the marriage contract, leaving only the shell, that is, the technical bond" (*Fender v St John-Mildmay* [1936] 1 KB 111 at 115–117). In a general sense, it

would be artificial to speak of any asset acquired *after* the interim judgment has been granted as being a matrimonial asset.

33 Further, as Kan Ting Chiu J observed in *Yap Hwee May Kathryn v Geh Thien Ee Martin* [2007] 3 SLR(R) 663 at [25], there is "no reason why the actual division should not be done when [interim judgment] is granted" if all the relevant material is before the court at that time. It does not accord with good sense to encourage parties to drag out ancillary proceedings. However, depending on the party responsible, this factor could be a ground to adopt a later date as the operative date in order to achieve justice as between the parties.

34 Adopting the date of the interim judgment as a starting point will also better enable parties to a divorce to arrange their financial affairs. It will give them the comfort of knowing when they will be taken as having moved into a different phase in their lives. It will also make it easier for their counsel to advise them. Judicial Commissioner Debbie Ong, writing as an academic prior to her elevation to the bench, expressed the view that the operative date should be fixed at the date of interim judgment as a matter of fairness to the parties to the divorce (Debbie Ong, "Family Law" (2011) 12 SAL Ann Rev 298 at para 15.23):

> 15.23 The use of the date of the interim judgment of divorce is most consistent with the statutory definition of "matrimonial asset". … Upon the grant of [interim judgment], the marriage is practically at an end and it is in the interests of parties to settle all ancillary matters and bring closure to the divorce process. *Applying this date … brings certainty to parties who need to plan their financial affairs as they move on to post-divorce life.* [emphasis added]

We will not go so far as to *fix* the date of the interim judgment as the operative date for determining the pool of matrimonial assets. We think the right balance between certainty and flexibility is struck if the date of the interim judgment is

set as a starting point, with the court possessing the discretion to depart from it in deserving cases.

35 This will preserve the court's flexibility to ensure that justice is done in every case. The court may depart from the starting point when there are cogent reasons to do so. These include situations where, for example, a party incurs a large amount of expenditure from having "indulged in certain vices" such that the matrimonial assets have been "unfairly or unjustly depleted by the unacceptable actions of that party" (*AJR v AJS* at [6]). Even when the court chooses not to depart from the starting point, it remains able to take into account accruing benefits (*Yeo Chong Lin* at [21]) and restore expenditure notionally to the pool of matrimonial assets (*Yeo Chong Lin* at [33]).

36 The court must exercise care when it decides to depart from the starting point, and should provide reasons whenever it does. This is because the court has not only the discretion to select the operative date to *determine* the pool of matrimonial assets, it also has the discretion to determine the date at which those assets should be *valued* (*Anthony Patrick Nathan v Chan Siew Chin* [2011] 4 SLR 1121 at [21]–[33]), and the discretion to determine how those assets should be *divided*. Having the discretion at multiple levels also means there could be an inherent danger of double-counting in relation to a factor to achieve what is perceived to be a just result. Such a concern was raised in this case, and we will come to that in a moment. Adopting a starting point in respect of the operative date will ensure that the inquiry will be systematic. It will prevent an exercise of an "unguided discretion" (*ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ v ANK*") at [21]) to achieve justice and equity in each case.

37 Turning to the facts of this case, the question was whether the starting point should be departed from. In *Yeo Gim Tong Michael v Tianzon Lolita*

[1996] 1 SLR(R) 633 ("*Tianzon*"), this court adopted the date of the ancillary hearing as the operative date because the wife continued to look after the child of the marriage after the grant of interim judgment. In the present case, the Judge, having carefully reviewed past cases, including those of this court, namely, *Tianzon*, *Yeo Chong Lin* and *Oh Choo*, came to the conclusion at [31] that:

> As in the case of *Tianzon*, I noted that the defendant continued to be responsible for the welfare of the children even after the breakdown of the marriage and Interim Judgment which, *inter alia*, enabled the plaintiff to concentrate on his work and hence accumulate cash from his salaries and bonuses (see [46] below). I was of the view that the indirect contributions of the defendant as described had to be recognised. Therefore, applying the principle derived in *Tianzon* and *Oh Choon* at [13]), I decided that the Operative Date should be 30 June 2012. …

38 We deal first with the husband's arguments that the date of separation should apply before turning to the Judge's reasons that the date of commencement of ancillary proceedings should instead apply.

39 The crux of the husband's case is that after June 2009, parties "manifested [a] clear intention" that they did not want to "contribute to the pool of matrimonial assets" and that the parties "had a clean break".[16] With respect, this argument is flawed because even the husband himself acknowledges that subsequent to June 2009, he "paid for ... the rent for the [wife] and the children, the living expenses of the children, the [wife's] household expenses and gave a maintenance sum of $1,200 to the [wife] …".[17] These acts, as in *Oh Choon* (see [30] above), in fact demonstrate that "there was a *continuous (albeit clearly attenuated) relationship* between the parties throughout" (*Oh Choon* at [12]). It

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16 Appellant's Case in CA 5/2015 at paras 18–19.

17 Appellant's Case in CA 5/2015 at para 19(d).

was not one where parties had a clean break and severed all contact whatsoever after they separated.

40 Further, as the wife points out, the facts that the husband relies on are the ordinary factual concomitants of a failed marriage. If the husband's argument is accepted, then in almost every divorce the operative date will be that of the parties' separation. That, with respect, confuses the factual position with the position at law, which regards the parties as being in a subsisting legal union even though that union may have undergone factual disintegration.

41 The Judge, on the other hand, chose the date of the commencement of ancillary proceedings because the wife continued to care for the children even after the grant of interim judgment. This enabled the husband to focus on his work and obtain the salaries and bonuses he received in the intervening period (we quote again the Judgment at [31]):

> 31 … the defendant continued to be responsible for the welfare of the children even after the breakdown of the marriage and Interim Judgment which, *inter alia*, enabled the plaintiff to concentrate on his work and hence accumulate cash from his salaries and bonuses. …

42 Like in *Tianzon*, we think that this is a valid reason for the Judge to regard the earnings of the husband as being still part of the matrimonial pool. While the mere fact that the wife looked after the children after the granting of interim judgment may, in itself, be unexceptional, we emphasise two *further* points which, in our view, make the commencement of the ancillary hearing a fairer operative date. First, the amount of the salary and bonuses the husband received during the intervening period was tremendous, when considered in relation to the value of the matrimonial assets. We alluded to this at [22] above, where we mentioned that the pool of assets grew by approximately *50%* within the short period between the parties' separation and the commencement of

ancillary proceedings. Second, the wife's care of the children and household *prior* to the granting of interim judgment may well have been a contributing factor to the husband's ability to earn and attain the salary and bonuses that he then received *after* the granting of interim judgment. These factors viewed in their totality made it fairer in the circumstances of this particular case to adopt the later date of the commencement of ancillary proceedings, 30 June 2012, as the operative date.

43 In departing from the starting point or the default position, we recognise that the wife's efforts during this period will also be taken into account when determining the wife's indirect contributions. But this in no way amounts to double-counting as that is a distinct exercise. What is most important at the end of the day, having determined what is the pool of matrimonial assets, is to make a division which will achieve a just and equitable outcome having regard to both the financial and non-financial contributions of the parties and all the circumstances as set out in s 112 of the Women's Charter. It is true that during the post-interim judgment period the wife continued to receive support from the husband who continued to pay for the rent of the matrimonial home needed by the wife and children as well as the wife's and children's other expenses. But nothing in this alters the fact as to what ought to be regarded as matrimonial assets.

Whether the Turunc property should be included in the pool of matrimonial assets

The decision below

44 The husband argued that the Turunc property, which is situated in Turkey and valued at $70,357.50, belonged to his mother and should not be included in the pool of matrimonial assets. He produced a Turkish title deed

which appeared to indicate that his mother was the registered owner of the property (the Judgment at [32]). The wife argued that the Turunc property was a matrimonial asset that the parties had purchased through the husband's mother. The wife produced mortgage documents and bank statements showing that she had transferred substantial sums of money to the husband's mother at or around the period that the Turunc property was purchased (the Judgment at [33]).

45 The Judge preferred the wife's position because of the documentary evidence which she produced. The Judge held that the Turunc property formed part of the matrimonial assets for division.

The parties' cases on appeal

46 The husband maintains his position that the Turunc property belongs to his mother. The husband says that the amount and timing of the transfers of money from the wife to his mother do not coincide with the purchase price and date of the Turunc property.[18] He also relies on alleged contradictions in the wife's affidavits which show that the wife is "not a credible witness".[19]

Our decision

47 In our judgment, there is no basis for interfering with the Judge's decision to include the Turunc property in the pool of matrimonial assets. The wife has produced credible documentary evidence that corroborates her account that she mortgaged a property in London belonging to her to purchase a holiday home in Turkey. She has also produced documentary evidence that she

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18 Appellant's Case in CA 5/2015 at para 99.

19 Appellant's Case in CA 5/2015 at paras 101–103.

transferred substantial sums of money to the husband's mother during that period. The contemporaneous documentation shows that:

(a) In January 2003, the wife mortgaged her London property to take out a loan of £40,000, which was indicated to be for the "PURCHASE OF HOLIDAY HOME / FURNISHING IT + PAYING OFF AMOUNTS ABOVE"..[20]

(b) On 10 February 2003, £40,000 was credited into the parties' NatWest account.[21]

(c) On 13 February 2003, £20,036 was transferred from the NatWest account to the husband's mother.[22]

(d) On 16 July 2004, £10,000 was withdrawn from the NatWest account.[23] The wife claims that this money was taken to Turkey when the family went on holiday.[24]

(e) On 14 July 2005, £26,000 was transferred from the NatWest account to the husband's mother.[25]

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20 SCB at pp 3–4.

21 ROA vol 3 part 2 at p 257.

22 ROA vol 3 part 2 at p 258.

23 ROA vol 3 part 2 at p 259.

24 SCB at pp 1–2, para 99.

25 ROA vol 3 part 2 at p 260.

48 The husband, on the other hand, has produced a document that bears his mother's name and the date "22/06/2004".[26] The rest of the document is in Turkish. He claims that it is a title deed indicating that his mother is the owner of the Turunc property and that it was acquired on 22 June 2004. He also claims that the document was translated at the Consular Section of the Embassy of the Republic of Turkey in Singapore, but has not furnished that translation.[27]

49 Even if we accept the husband's position that the document indicates his mother is the owner of the Turunc property, that is not inconsistent with the wife's position that their holiday home was purchased by the mother and held in her name. The husband has not given any other plausible explanation for the transfers of large sums of money from the NatWest account to his mother at or around the time the Turunc property was purchased. In the circumstances, we do not think it is wrong to include the Turunc property in the pool of matrimonial assets.

Whether an equal division of the pool of matrimonial assets is just and equitable

The decision below

50 The parties agreed that the ratio of their total incomes during the subsistence of the marriage could be taken to represent their respective financial contributions to the marriage (the Judgment at [54]). The ratio of their total incomes was 73:27 in favour of the husband. The Judge noted that it was not surprising that the wife had provided such a substantial amount of financial

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26 ROA vol 3 part 1 at p 121.

27 Appellant's Case in CA 5/2014 at para 94.

contributions. The wife had been employed full-time for nine out of the 16 years of marriage (the Judgment at [49]).

51 The Judge concluded that an equal division of the matrimonial assets was just and equitable in the circumstances of the case (the Judgment at [59]). The Judge was satisfied that the wife contributed to the household and welfare of the children, especially given the frequent absence of the father (the Judgment at [56]). While the wife had to be given some credit for helping the husband to improve himself in the early years of the marriage, beyond a certain point, the husband's success had to be attributed to his own ability and drive (the Judgment at [57]). The Judge also gave the wife recognition for uprooting from London to move to Asia so that the family could be together. The Judge took into account the wife's age, the fact that they were exiting a 16-year marriage, and also that she would unlikely have the opportunity to save for retirement (the Judgment at [58]).

The parties' cases on appeal

52 The husband argues that the wife should only be entitled to 30% of the matrimonial assets. He raises five arguments in support of this. First, the Judge failed to consider the "incontrovertible" evidence that the wife had withdrawn $100,000 from the parties' joint accounts in 2008.[28] (We deal with this argument in a separate section at [71]–[78] below.) Second, the Judge was wrong to ignore the evidence which showed that the wife was "an absent wife, mother and homemaker".[29] Third, the Judge was incorrect to find that the wife had stopped

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[28] Appellant's Case in CA 5/2015 at paras 64–65.

[29] Appellant's Case in CA 5/2015 at paras 66–76.

working to focus on the family.[30] She stopped work only because she was made redundant and could not find employment thereafter. Fourth, the Judge placed undue emphasis on the wife's contributions in the early years of the marriage.[31] Fifth, the Judge placed undue emphasis on the respondent's age.[32]

53 The wife argues in response that the equal division is consistent with the case law on long marriages where the wife has contributed financially and non-financially to the family.[33] She puts forward three further arguments. First, the ratio of her financial contributions should be increased to 65:35 up from the ratio of 73:27 that was adopted by the Judge (and which the wife had agreed to in the court below).[34] Second, the Judge's decision is consistent with this court's decision in *ANJ v ANK* which introduced a "structured" approach to the division of matrimonial assets.[35] Third, an adverse inference should be drawn against the husband for his refusal to disclose information relating to his superannuation.[36] (We deal with this third argument also in a separate section at [79]–[86] below.)

Our decision

54 Section 112 of the Women's Charter is the legislative anchor for the court's statutory power to divide matrimonial property. The court is required to do so in proportions that it thinks "just and equitable" (s 112(1) of the Women's

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30 Appellant's Case in CA 5/2015 at para 77.

31 Appellant's Case in CA 5/2015 at paras 79–80.

32 Appellant's Case in CA 5/2015 at paras 82–91.

33 Respondent's Case in CA 5/2015 at paras 50–51.

34 Respondent's Case in CA 5/2015 at paras 53–55.

35 Respondent's Case in CA 5/2015 at paras 56–60.

36 Respondent's Case in CA 5/2015 at paras 61–79.

Charter). It should consider "all the circumstances of the case", including parties' financial contributions, the needs of the children, contributions to the welfare of the family, and the factors referred to in s 114(1) of the Women's Charter insofar as they are relevant (s 112(2) of the Women's Charter).

55 In *ANJ v ANK*, we emphasised that both financial and non-financial contributions should be considered. We suggested a three-step framework for dealing with the division of matrimonial assets (*ANJ v ANK* at [22]). First, a ratio had to be ascribed to the parties' direct contributions, having regard to the financial contributions made towards the acquisition and improvement of matrimonial assets. Second, a ratio had to be ascribed to the parties' indirect contributions, in respect of the non-financial or indirect financial contributions of the parties. Third, these two ratios had to be averaged against each other to derive an "average percentage". At none of these stages is the exercise a mathematical or mechanistic one. Ascertaining the parties' direct financial contributions requires "rough and ready approximation" (*ANJ v ANK* at [23]). Determining the parties' indirect contributions is all the more so an exercise in "broad strokes" (*ANJ v ANK* at [24]). Even at the third stage of averaging the ratios, the weight to be accorded to each ratio need not necessarily be equal. Circumstances could shift the average in favour of one ratio over the other. These include the length of the marriage, the size of the matrimonial pool, and the extent and nature of indirect contributions (*ANJ v ANK* at [27]). In the present case, our ensuing discussion on the parties' indirect contributions centres on their respective non-financial contributions.

(1) The first stage: ratio of financial contributions

56 The ratio of the parties' total incomes, which they have accepted represent their financial contributions to the marriage, had been agreed to be

73:27. We cannot see any basis on which she could now contend that their financial contributions should be adjusted to 65:35 (see [53] above).

(2) The second stage: ratio of non-financial contributions

57 At the second stage, the wife argues that the ratio of the indirect contributions should be 30:70 in her favour. She relies on the following facts:

(a) She supported the husband in the early years of the marriage; she paid for his passage to England and his education; she was the sole breadwinner for the first few years.

(b) She gave up her career to be a homemaker in order to look after the children; she uprooted from England and moved with the husband when he was posted to Asia, so as to keep the family together.

(c) As a homemaker, she spent her time looking after the household and the children, albeit with the help of the maid. Her efforts at home were further intensified because the husband travelled frequently and was away for about 40–45% of the time.

58 The husband argues that the ratio of the parties' indirect contributions should be equal, for the following reasons:

(a) The wife was only a homemaker for six of the 15 years of marriage.[37]

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[37] Appellant's Reply in CA 5/2015 at para 27(a).

(b) The husband would have had higher indirect contributions during the first few years of the marriage since he was studying and working part-time.[38]

(c) The wife relied on full-time domestic helpers and the husband to carry out household chores.[39]

(d) The wife was an "absent wife, mother and homemaker". She was depressed,[40] controlling[41] and tardy in paying bills.[42] She did not take proper care of the children.[43] She also did not keep the household in order.[44] She was more engrossed in "shopping, travelling, going to Starbucks cafés and doing nothing on a daily basis".[45] The label "homemaker" was a "pure façade".

59 We find it hard to accept the husband's contentions for three reasons. First, the husband's case in respect of the wife's indirect contributions has been a negative one from the outset. His affidavits filed in the ancillary matters and his arguments (both in the court below and before this court) sought to undermine the wife's alleged non-financial contributions "instead of dealing with his own indirect contributions" (the Judgment at [50]). His five affidavits

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38 Appellant's Reply in CA 5/2015 at para 27(b).

39 Appellant's Reply in CA 5/2015 at para 27(d).

40 Appellant's Case in CA 5/2015 at para 68.

41 Appellant's Case in CA 5/2015 at para 70.

42 Appellant's Case in CA 5/2015 at para 71.

43 Appellant's Case in CA 5/2015 at para 72.

44 Appellant's Case in CA 5/2015 at para 73.

45 Appellant's Reply in CA 5/2015 at para 27(e).

on the ancillary matters are threadbare in respect of his non-financial contributions, even though they rely on the fact that he supported the family financially. Even in his Appellant's Case, there are only isolated instances of his own non-financial contributions. It is only in his Appellant's Reply that he belatedly claims that "the evidence shows that [he] played an active role in the family and his indirect contributions were substantial, if not more than the [w]ife's" despite his frequent travel for work.[46] The reference given for this "evidence" is, surprisingly, to passages in his Appellant's Case, which attack the wife's alleged non-financial contributions instead of propping up his own.[47]

60 Second, the husband has not proffered any reasons why this court should reject the Judge's findings and accept his evidence on appeal. His allegations that the wife was not a supporting wife, mother, or that she was a poor manager of the household were considered squarely by the Judge (the Judgment at [50]–[52]) and rejected (the Judgment at [56]). It is trite that there is a presumption that the decision appealed against is correct (*Lee Bee Kim Jennifer v Lim Yew Khang Cecil* [2005] SGHC 209 at [14], cited with approval by this court in *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 at [46]), and it is incumbent on the husband to show why we should reject the finding made by the Judge.

61 Third, the evidence instead suggests that the wife had made sacrifices for the family and contributed indirectly to the household and the welfare of the children. Despite the husband's protestations to the contrary, the wife's decision to stop work and be a full-time homemaker must have been a conscious, if not deliberate one, rather than one brought about entirely by circumstance. The wife

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46 Appellant's Reply in CA 5/2015 at para 27(f).

47 Appellant's Case in CA 5/2015 at paras 66–76.

held a senior banking position when she was made redundant in 2003. There is nothing which shows that the wife would not have been able to find a job had she tried. Further, the wife relocated from England to Asia in 2003 and twice more within Asia between 2003 and 2008. Each relocation was driven by the demands of the husband's career; the wife subordinated her interests and career to allow the husband to pursue his. It is evident that the family had made a decision to prioritise the husband's career. The Judge also acknowledged the wife's participation in the children's school-related activities (the Judgment at [56]).[48] All of these factors point in favour of the wife having contributed non-financially towards the marriage, family and household. She spent time raising the children; she freed up time for the husband to devote to his career; she allowed her interests to take a backseat and followed the husband wherever he was posted.

62 In view of these circumstances, the ratio of the parties' non-financial contributions should be 30:70 in favour of the wife. This appears to be the ratio which the Judge had adopted, since she made an equal division. This ratio is not overly generous to the wife. In *ANJ v ANK*, we held that the ratio of indirect contributions was 40:60 for the husband and wife respectively in a nine-year marriage with two children, where both spouses were employed full-time throughout the course of the entire marriage.

(3) The third stage: determination of the average percentage

63 This takes us to the third and final stage, the averaging of both ratios. A straightforward mathematical average ascribing equal weight to both financial and non-financial contributions will produce the following result:

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[48] Wife's 3rd AM affidavit at para 184; ROP vol 3 part 2 at pp 140–141.

	Husband	**Wife**
Direct contributions	73%	27%
Indirect contributions	30%	70%
Average ratio of contributions	51.5 (103/2)	48.5 (97/2)

But a straightforward mathematical average is not necessarily the rule (*ANJ v ANK* at [27]). The "average ratio" may be moderated by a multitude of other circumstances, including the length of the marriage, the size of the matrimonial assets, and the extent and nature of non-financial contributions.

64 The husband argues that such circumstances are present, and that the average ratio should be weighted in favour of financial contributions and against non-financial contributions in the ratio 86:14. With respect, we find this suggested ratio absurd. The circumstances that the husband relies on,[49] comprise almost exclusively the factors that he relies on in the second stage of the *ANJ v ANK* analysis, which he used to justify a reduction in the ratio of the wife's non-financial contributions (see [58] above). The only novel circumstance that the husband raises is that the "pool of matrimonial assets was accrued by the [h]usband's responsible frugal lifestyle and exceptional individual efforts".[50] He bases this argument on our observations in *ANJ v ANK*, where we cited (at [27(b)]) *Yeo Chong Lin* as an example of this.

65 It suffices to say that the facts of *Yeo Chong Lin* differ markedly from those at present. The pool of assets in *Yeo Chong Lin* was in excess of $100m

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49 Appellant's Reply in CA 5/2015 at paras 38–59.

50 Appellant's Reply in CA 5/2015 at paras 46–49.

when initially assessed in the High Court and the husband, who came from a poor family, had built up that fortune almost single-handedly through his business. That is unlike the present case where the pool of assets is limited, and both the husband and the wife contributed substantially to it. The husband himself acknowledged in the court below that "the [wife's] primary direct contributions, which were made in the early part of the marriage, were in appreciating assets (the Glasgow and Turkish Properties)" (the Judgment at [42]). The Glasgow and Turkish properties together are worth about $485,750 $485,749, which is approximately a third of the entire pool of matrimonial assets.

66 In our judgment, therefore, approximately equal weight should be accorded to the ratios of the parties' financial and non-financial contributions. Since that will result in a ratio of 103:97 which deviates only slightly from the equal division that the Judge ordered, we will not interfere with her decision on this point.

(4) Two final points

67 There are two final points, one raised by each party, which are relevant to the division of the matrimonial assets.

68 The first concerns the wife's alleged unauthorised withdrawal and dissipation of funds from the parties' joint savings bank account, which we alluded to at [52] above. The husband argues that $100,000 should be notionally restored to the pool of matrimonial assets to account for this dissipation.

69 The second concerns the husband's alleged non-disclosure of documents relating to his superannuation or pension, which we also alluded to at [53]

above.[51] The wife argues that an adverse inference should be drawn against him for non-disclosure.[52]

70 Arguments were made on both these points at the hearing of the appeals on 22 October 2015. We adjourned the hearing for parties to file further affidavits and submissions addressing these specific issues (we refer to these as the husband's and wife's "further affidavit" and "further submissions" respectively). In our judgment, based on the further evidence that the parties have put forward, both these points are without merit. We therefore reject the husband's argument that $100,000 should be notionally restored to the pool of matrimonial assets. We also reject the wife's argument that an adverse inference should be drawn against the husband for his alleged non-disclosure of a superannuation entitlement.

(I) THE WIFE'S ALLEGED WITHDRAWAL AND DISSIPATION OF $100,000 FROM THE PARTIES' JOINT ACCOUNT

71 The husband argues that the Judge erred by failing to consider at all the wife's unauthorised withdrawal of $100,000 from their joint account in January 2008, which the wife then deposited in her POSB MySavings Account No XXX-XXX01-9 ("the POSB Account"). He also alleges that the amounts in the POSB account were dissipated by the wife thereafter.[53]

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51 Respondent's Case in CA 5/2015 at para 61.

52 Respondent's Case in CA 5/2015 at para 67.

53 Appellant's Case in CA 5/2015 at paras 64–65.

72 The husband first made this allegation in his affidavit dated 30 March 2012.[54] He said that the wife withdrew the money from the joint account without his knowledge. He only discovered that the money was missing in June 2009 when the wife told him she had withdrawn it. He relied on a bank statement that indicates a withdrawal of $100,000 from the parties' joint account on 23 January 2008.[55]

73 The wife responded in her affidavit dated 18 April 2012.[56] The explanation she gave in that affidavit is largely consistent with the position taken in the wife's further affidavit, which explains her withdrawal and dissipation of the $100,000 as follows:[57]

> (a) Both parties in January 2008 agreed to transfer $100,000 from their joint account to a POSB MySavings account which yielded higher interest. The account was registered in the wife's sole name because the husband was travelling and did not have time to sign the account-opening forms.
>
> (b) The husband had, on numerous occasions, withdrawn money from their joint account after January 2008. He would have been aware of the removal of $100,000 from the joint account. "Since [the husband] did not complain about it, it could only mean that he had agreed to the arrangement."[58]

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54 ROA vol 2 part 3 at p 157.

55 ROA vol 2 part 5 at p 132.

56 ROA vol 2 part 3 at p 126–127.

57 Wife's further affidavit at para 3.

58 Wife's further affidavit at para 2(c).

(c) After the breakdown of the marriage, the wife was "[l]eft with no option short of applying to the courts for interim maintenance against an absent spouse".[59] She thus drew down on the sum in the POSB Account to supplement the sum of $1,200 that the husband was paying her for monthly maintenance.

74 We prefer the wife's explanation on how the $100,000 was transferred and then expended. At the time immediately prior to the withdrawal of the $100,000, the parties' joint account contained $155,378.05. The withdrawal of $100,000 would thus have removed a *very substantial* portion of the money from the account. The bank statements also indicate frequent (almost daily) cash payments and withdrawals from that joint account, which corroborates the wife's position that it was in active use by the husband.[60] It therefore *could not have escaped the husband's attention* that such a substantial portion of the money in the joint account had been removed overnight. This undermines the husband's position that he was not even aware of the wife's withdrawal of $100,000, and that he only discovered it when the wife admitted to doing so in June 2009.

75 We turn next to address the amount that the wife withdrew from the POSB Account over the relevant period. The balance in the POSB Account was $106,375.72 in June 2009, when the relationship broke down. As at the operative date (*ie*, when the ancillary matters proceedings commenced, on 30 June 2012), the POSB Account had been closed and there was therefore no longer a cash balance. Assuming the wife had applied the full amount in the

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59 Wife's further affidavit at para 2(f).

60 ROA vol 2 part 5 at p 132–133.

POSB Account to her expenses, as she claimed, she would have spent the entire balance of $106,375.72 over the span of 36 months (between June 2009 and June 2012). This works out to approximately $2,954.88 per month. This does not appear to be unduly excessive in terms of her expenses in view of the fact that the husband was only paying her maintenance of $1,200 per month during that period.

76 The husband argues that the bank statements for the POSB account indicate that the wife only began withdrawing money from it in January 2010.[61] The husband therefore says that the wife withdrew approximately $4,249.06 every month between 27 January 2010, the date of first withdrawal and 4 November 2010, nine days after the grant of interim judgment. The husband says that this amount is unreasonable in view of the fact that he had been paying for the wife's and children's rent and certain expenses.[62] If the wife needed additional money she should have applied for interim maintenance rather than draw down on the POSB Account.[63]

77 While it is true that the wife's withdrawals from the POSB Account began only in January 2010,[64] in our judgment, the cumulative sum of money should be considered over the entire period of 36 months between the breakdown of the marriage and the operative date, namely, the commencement of ancillary proceedings. Further, from the bank statements that were made available to us, the pattern of the wife's withdrawals indeed suggests that she used the money for expenditure, rather than to syphon the money away to

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61 Husband's further affidavit at para 37.

62 Husband's further submissions at paras 13–14.

63 Husband's further submissions at para 15.

64 ROA vol 2 part 1 at pp 230–236.

conceal it. There was a substantial period of time between the wife's removal of the $100,000 from the parties' joint accounts in January 2008, and when she first began drawing down on the account in January 2010. If she had planned to hide the money, she had ample time to do so. Moreover, the withdrawals from the POSB account were also staggered and in relatively small amounts, rather than large withdrawals over a few tranches.

78 In our judgment, therefore, the withdrawal of the $100,000 from the parties' joint account, as well as the wife's expenditure of it, has been adequately accounted for by the wife. We therefore rejected the husband's argument that an adverse inference should be drawn against her for non-disclosure.

(II) THE HUSBAND'S ALLEGED NON-DISCLOSURE OF A SUPERANNUATION ENTITLEMENT

79 The question of the husband's superannuation entitlement only arose *after* the Judgment was handed down. This issue will require us to address and explain in some detail the correspondence between the parties prior to the hearing of the appeals on 22 October 2015.

80 On 9 June 2015, the wife wrote to the husband through their solicitors stating that the husband, "by virtue of his employment with IMA, is entitled to superannuation". She requested for him to "reveal the details of his superannuation within the next 7 days".[65] The husband responded the following day rejecting the request, but stated that the rejection did "not constitute

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[65] Respondent's Case in CA 5/2015 at p 41.

acknowledgment of the existence or non-existence of the requested documents".[66]

81 The wife replied on 11 June 2015 stating that the husband was being "evasive" and asked again for information relating to the husband's superannuation entitlement.[67] The husband's position was that his "supposed entitlement to superannuation" as an employee of IMA was a matter which occurred before the Judge's decision was made and was therefore inadmissible under the *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*") principles.

82 The husband's counsel was, however, quick to distance himself from that position at the oral hearing on 22 October 2015, and rightly so. The principles in *Ladd v Marshall* are no answer to the non-disclosure of a relevant piece of information or evidence that a party is duty-bound to disclose. The husband's counsel said that the husband was willing to furnish the requisite information if he was given time.

83 The husband's further affidavit exhibits two letters from IMA. Both are on IMA's letterhead and endorsed with IMA's company stamp. The first is dated 28 October 2015 and signed off by an employee from IMA Payroll.[68] The letter confirms that the husband is not entitled to any superannuation sum from IMA. The letter states as follows:

> The above referenced individual has been an employee with [IMA] since August 2, 1999. During the course of his employment with the respective offices of [IMA] (in London, Hong Kong, Tokyo and Singapore), [the husband] has not

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66 Respondent's Case in CA 5/2015 at p 43.

67 Respondent's Case in CA 5/2015 at p 46.

68 Husband's further affidavit at p 24.

> received or become entitled to superannuation or any pension or provident fund benefits save for (a) Central Provident Fund (CPF) contributions when he was working with [IMA] Singapore from November 8, 2006 to July 6, 2014 and (b) contributions under the Mandatory Provident Fund (MPF) in Hong Kong since he joined the [IMA] Hong Kong office on 7 July 2014.
>
> If you should require any information regarding the above-mentioned, feel free to contact the undersigned or IMA payroll department …

The second letter is dated 27 October 2015 and signed off by another employee, also from IMA Payroll.[69] This letter gives a breakdown of the husband's entitlement under Hong Kong's Mandatory Provident Fund ("MPF") scheme.

84 These letters put to rest any allegation of the husband's failure to disclose a superannuation entitlement. They are clear and reliable evidence that the husband is only entitled to his CPF contributions in Singapore (which were disclosed and was before the Judge); and his MPF contributions in Hong Kong (which are irrelevant because they only accrued to the husband after the operative date).

85 The wife argues that the provenance of the letters is suspect because:[70] (a) the husband was "cagey"; (b) IMA's website "proudly proclaim[s]" that its employees are entitled to pension payments; (c) the husband has every incentive to lie about the superannuation entitlement; (d) the designations of the signatories of the letters are not clear; (e) there is no explanation why two letters are necessary; (f) both letters are identically-worded though written by different people; (g) the answer (regarding the superannuation entitlement) would lie in the husband's contract of employment, which has not been disclosed; and (h)

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69 Husband's further affidavit at p 26.

70 Wife's further submissions at para 2.

the husband has refused to provide originals of the letters from IMA but instead only provided certified true copies of them.

86 These arguments are, in our judgment, entirely speculative. There is no reason to doubt the genuineness of the two letters from IMA or the veracity of the statements they contain. We reject the wife's argument that an adverse inference should be drawn against the husband for non-disclosure.

Conclusion on issues relating to the division of matrimonial assets

87 In summary, we: (a) do not disturb the Judge's finding on the operative date for determining the pool of matrimonial assets; (b) do not disturb the Judge's division of that pool of assets; and (c) reject both the husband's and the wife's arguments that adverse inferences should be drawn against the other party in respect of the $100,000 withdrawn by the wife from their joint account or the husband's superannuation entitlement. Accordingly, there is no reason to disturb the Judge's conclusion on the division of matrimonial assets, and the orders which she made to give effect to that division.

Issues relating to the maintenance for the wife and children

The decision below

88 Before the Judge, the wife initially claimed for monthly maintenance of $18,308, which fell into three categories: household expenses; personal expenses; and holiday expenses (the Judgment at [65]). She also asked that the husband provide her with a car and a supplementary credit card for any medical emergencies for the children (the Judgment at [66]). The wife subsequently reduced her claim for maintenance to an aggregate sum of $11,000 monthly.

89 The husband's position was that the wife should only be entitled to maintenance of $3,700 monthly (the Judgment at [68]). The husband was, however, willing to pay for the children's expenses, including: (a) the school and boarding fees (which amounted to $7,250), and other school-related expenses; (b) medical insurance; and (c) monthly pocket money (about $400 in total).

90 The Judge awarded the wife monthly maintenance of $7,700. Of this, $4,700 was for the rent of the matrimonial home that the wife was residing in with the children (the Judgment at [77]). The remaining $3,000 was for her personal, household and children's expenses (the Judgment at [78]). The Judge said that it was incumbent upon the wife to find full-time employment to defray her personal expenses. The Judge also ordered the husband to pay for the children's school fees, medical insurance and pocket money, as he had volunteered to.

The parties' cases on appeal

91 In this appeal, the wife seeks an increase in the monthly maintenance to $10,200. This comprises (a) $4,500 for her personal and household expenses (up from the $3,000 that the Judge granted); (b) $1,000 for holiday expenses; and (c) $4,700 for rent.

92 The husband, however, argues that the maintenance payable to the wife should be reduced to $5,000 monthly. First, the components of the wife's revised table of personal and household expenses are "[u]nreasonable ... and an arbitrary sum with no supporting documents".[71] Second, the Judge did not take

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[71] Respondent's Case in CA 3/2015 at paras 47–55.

into account his ability to pay maintenance. He claims that after deducting all his payment obligations (including maintenance) he only has $2,909.08 left for himself every month.[72] Third, the wife has access to undisclosed sources of income and also stands in line for a sizeable inheritance.[73] Fourth, the amount the Judge allocated to rent was unjustifiable. The wife has no need to reside in the four-bedroom semi-detached matrimonial home, which has a study and a garden.[74] She effectively lives alone because the children are at boarding school and away most of the time.

Our decision

93 In our judgment, the Judge's decision on maintenance cannot be faulted. It struck an appropriate balance between parties' lifestyles, earning capacities and expenditure. However, her decision was made on the basis that the two children were boarding at the international school they were enrolled in. The children have since ceased boarding, and this change in circumstances necessitates adjustments to the Judge's orders.

94 We will first address the parties' arguments as to whether the Judge's original maintenance order was appropriate in the circumstances of the case. We will then address the adjustments that should be made to the Judge's order in the light of the parties' revised expenses, following from the children ceasing to board at the international school they are enrolled at.

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72 Appellant's Case in CA 5/2015 at paras 112–113.

73 Appellant's Case in CA 5/2015 at paras 114–119.

74 Appellant's Case in CA 5/2015 at paras 120–121.

Whether the Judge's maintenance order was reasonable in the circumstances

95 Section 114(1) of the Women's Charter is the statutory directive for the court to have regard to "all the circumstances of the case" when determining maintenance. These circumstances include the parties' income and assets, present and anticipated financial position, standard of living during the marriage, age, and contributions to the marriage. The court must endeavour, as far as is practicable, to place the parties "in the financial position in which they would have been if the marriage had not broken down", (s 114(2) of the Women's Charter). This is done in a "commonsense holistic manner" in step with the "new realities that follow a failed marriage" (*NI v NJ* [2007] 1 SLR(R) 75 at [16]).

96 The objective of a maintenance order made under s 114(1) of the Women's Charter is to provide the wife with "a fair share of the surplus wealth that had been acquired by the spouses during the subsistence of the marriage" (*Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506 at [22], citing with approval Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2007) at p 476). The wife is, however, not entitled to expect "a full subsidy for her lifestyle" (*Yow Mee Lan v Chen Kai Buan* [2000] 2 SLR(R) 659 at [93]). She must exert reasonable efforts to secure gainful employment and sustain her pre-breakdown lifestyle (*Quek Lee Tiam v Ho Kim Swee (alias Ho Kian Guan)* [1995] SGHC 23 at [22]).

97 In our judgment, the quantum of maintenance ordered by the Judge was appropriate in the circumstances, and we see no reason to disturb it. The figure, viewed at a broad level, and against the husband's earnings, was reasonable. The wife currently receives monthly maintenance of $7,700. If her salary from her part-time job ($2,500) is included, she receives approximately $10,200

monthly. If she is able to obtain full-time employment in a job which, for the sake of argument, pays $4,500, this will bring the monthly figure up to $12,200. This is an eminently comfortable amount for the wife and children, even from the perspective of her pre-breakdown lifestyle (considering the children's school fees, insurance and pocket money is paid for by the husband). The husband, on the other hand, will have to pay approximately $7,700 in maintenance, $7,250 for the children's school fees (the Judgment at [80(a)]), and $400 for the children's pocket money (the Judgment at [80(c)]). This leaves him with $20,650 of his monthly salary, less the children's insurance premiums and other expenses.

98 The wife's argument that her maintenance should be increased because she will not be able to find a suitable job is nothing more than a self-serving assertion. She needs to tell us what efforts she has made to secure an appropriate employment. She argues that she will not be able to get a "banking job" in her "area of specialization" because of market conditions, her age, and because she has been out of touch with the industry for a long time. We think it is unrealistic for the wife to expect to be slotted back into a comfortable and well-paying investment banking job after such a long hiatus from the industry. The question is not whether the wife will be able to find her ideal employment, but rather, whether she can be gainfully employed, and thus defray her personal expenses instead of being entirely dependent on the husband.

99 The wife's argument for the holiday expenses is also unpersuasive. First, her grounds for advancing the argument are incongruous. On the one hand she

says she needs to return to Scotland annually to keep in touch with her roots;[75] on the other, she says she needs to bring the children on holidays to win their affection, because the husband is able to do so.[76] Second, if the wife intends to return to Scotland and needs to keep in touch with her roots or to obtain a holiday, then that is a cost she should bear, by trimming expenses or earning more.

100 The husband's arguments for seeking a reduction of the maintenance for the wife do not fare much better either. He says that the Judge had failed to take into account his ability to pay maintenance. He contends that after he has met all his payment obligations, he is left with $2,909 per month for himself. The calculations he uses to make this point are as follows:

No	Item	Amount	
1	Salary	$36,000	
2	Monthly expenses for children		$14,507
3	Monthly rent in Hong Kong		$9,884
4	Allowance to the husband's parents		$1,000
5	Monthly maintenance to the wife		$7,700
	Remainder	**$2,909**	

The figures in the table are suspect. The startling figure for the children's *monthly* expenses in S/No 2 is particularised at Table A in Annex C of the

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75 Appellant's Case in CA 3/2015 at para 71.

76 Appellant's Case in CA 3/2015 at para 73.

husband's Appellant's Case. Many of these alleged expenses appear unjustifiable. For example, the husband indicates an annual figure of $2,000 for each son for mobile phone bills. He lists an annual figure of $2,026 for each son for the purchase of a MacBook Pro laptop. He lists annual school registration fees of $5,271 for each son. No documentary proof is given for any of this expenditure, nor is any explanation given to justify these sums, or why they will recur yearly. No documentary proof is produced for S/No 3, which is the alleged rent for his Hong Kong flat. Further, the husband's arguments on the wife's undisclosed sources or inheritance of income are unsubstantiated and speculative.

Adjustments to the Judge's maintenance order to take into account the changed circumstances

101 At the hearing of the appeals, it became clear that the Judge's maintenance order had to be revised in view of the fact that the children had ceased boarding. The Judge's maintenance order was premised on the children staying in boarding school, which the husband paid for. That was the reason why the Judge only awarded the wife a minimal sum of maintenance for the children's expenses. The alterations to each parties' expenses as a consequence of these changed circumstances was a matter on which we asked parties to address in the further affidavits and submissions that they were directed to file (see [70] above).

102 The wife's says her expenses have increased by $1,440 monthly because her children are now living with her and no longer boarding.[77]

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[77] Wife's further submissions at para 6; wife's further affidavit at paras 16–18.

103 The husband admits that he now spends only $4,117 monthly on the children's school fees because they have ceased boarding, compared to the previous amount of $7,250 monthly.[78] He nonetheless says that there is "no real monetary savings" because he incurs additional expense travelling to Singapore from Hong Kong to have access to the children. The parties agreed that when the children were in boarding, the husband would only have access to them two weekends a month.[79] When they are not in boarding, he would have access to them three weekends a month. This means that he now flies back to Singapore on an additional weekend every month for access. Because of this additional trip every month, he claims he incurs the following additional monthly expenses: (a) $1,844.32 on his flight; (b) $853.34 on his hotel stay; (c) $300–$400 on meals; (d) $200–$300 on transportation and other activities. He further argues that the wife's claims for increased expenses are unsubstantiated,[80] and that the wife's attempt to obtain maintenance for increased expenses is premature because the children may resume boarding in the next semester.[81]

104 In our judgment, the wife should be granted the full additional sum that she asks for in relation to the children's expenses. $1,440 is a reasonable sum for having to look after two growing teenaged children. The husband's argument is that the reduction in the children's school fees is offset by his other increased expenses. In any event, the husband's claims of additional expenses appear to be wildly exaggerated. Further, if the children should resume

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78 Husband's further affidavit at para 19.

79 Husband's further affidavit at para 21.

80 Husband's further submissions at para 2(b).

81 Husband's further submissions at para 2(c).

boarding, then the husband may make a fresh application for variation of the maintenance for the children.

105 We thus adjust upwards the Judge's original monthly maintenance order for the wife of $7,700 by $1,440 to $9,140.

Conclusion

106 In the result, we dismiss the husband's appeal and allow the wife's appeal. We do not disturb the judge's finding and orders in relation to the division of matrimonial assets. In respect of maintenance for the wife and children, in view of the changed circumstances, the husband shall pay the wife $9,140 monthly with effect from July 2015. We should add that it was not clear from the wife's affidavits, or the husband's, for that matter, exactly when the children ceased boarding and started living with the wife. But it appears to be common ground that the children had stopped boarding by June 2015, and so, we have decided to order the revised maintenance to commence from July 2015. The husband shall also continue to be responsible for the children's school-related expenses and medical insurance.

107 We make no order as to costs.

Sundaresh Menon Chief Justice	Chao Hick Tin Judge of Appeal	Quentin Loh Judge

Ong Ying Ping and K Manickam (East Asia Law Corporation) for the appellant in Civil Appeal No 3 of 2015 and the respondent in

Civil Appeal No 5 of 2015;
Wong Hin Pkin Wendell, Eoon Zizhen Benedict and Goh Mei Shi Valerie (Drew & Napier LLC) for the respondent in Civil Appeal No 3 of 2015 and the appellant in Civil Appeal No 5 of 2015.
