

Sim Kim Heng Andrew v Wee Siew Gee  
[2013] SGHC 271

**Case Number** : Divorce No 2639 of 2012 (Registrar's Appeal from Subordinate Courts No 83 of 2013)  
**Decision Date** : 18 December 2013  
**Tribunal/Court** : High Court  
**Coram** : George Wei JC  
**Counsel Name(s)** : Tan Siew Kim (RHTLaw Taylor Wessing LLP) for the appellant/plaintiff; Thian Wen Yi (Harry Elias Partnership LLP) for the respondent/defendant.  
**Parties** : Sim Kim Heng Andrew — Wee Siew Gee

*Family Law – matrimonial assets – division*

*Family Law – maintenance – wife*

18 December 2013

Judgment reserved.

**George Wei JC:**

1 This is an appeal from the decision of learned District Judge Sowaran Singh in *Sim Kim Heng Andrew v Wee Siew Gee* [2013] SGDC 200 delivered on 10 July 2013 (“the GD”) in respect of ancillary matters in Divorce No 2639 of 2012.

2 The plaintiff (husband) is the appellant and the defendant (wife) is the respondent. The parties were married in February 1974. They have one daughter now aged 37. The appellant left the matrimonial home sometime in February 1993. On 31 May 2012, the husband filed for divorce based on their having lived apart for more than four years. Interim judgment of divorce was granted on 24 July 2012.

3 On 25 June 2013, ancillary proceedings were heard by the learned District Judge concerning the division of matrimonial assets and maintenance of the wife. At the conclusion of that hearing, the learned District Judge ordered that the fully paid-up matrimonial home, an HDB flat, was to be transferred to the respondent with no cash consideration or refund of the appellant’s Central Provident Fund (“CPF”) monies used (this being inclusive of the accrued interest). The transfer was to be effected within 3 months, with costs of the transfer to be borne by the respondent. All other assets that were in their own names were to be retained by the parties. There was no order for maintenance to be paid by the appellant to the respondent.

4 The appellant being dissatisfied with the decision in respect of the matrimonial home has appealed. He seeks an order that the matrimonial home be sold in the open market within 6 months of the final judgment of divorce and that the net sales proceeds (after paying the sales expenses and after refund of both parties CPF monies used for the purchase plus accrued interest) be divided equally.

5 After considering the parties’ arguments, I am of the view that the order of the learned District Judge is just and equitable and the appeal is accordingly dismissed.

## **Background facts**

6 The basic facts are set out in some detail in the GD. Whilst the marriage was of long duration (almost 39 years in total), it is not in dispute that the parties lived apart for a considerable period of some 19 years before divorce proceedings were actually commenced. While there was some dispute over the precise circumstances in which the appellant decided to leave the matrimonial home in 1993, there was no doubt that the decision lay at the door of the appellant alone. At the time the appellant left the matrimonial home, the daughter was already some 18 years old. The court notes that whilst there is some uncertainty as to whether the daughter had already started employment and whether the appellant assisted the daughter in finding a job in 1993, the daughter was already "grown up" and would soon have entered the job market (if she had not already in fact done so).

7 The respondent retired from her job as a telephonist with Singtel in 2001. The matrimonial home has been tenanted out since March 2010 and the respondent who is now 62 years of age is currently living with her daughter's family. There is no dispute that the rental income over the past 3 years has been retained by the respondent.

8 The appellant who is aged 63 is still working as a taxi driver, and suffers from a number of health conditions (high blood pressure and diabetes). As a result, the appellant asserts that he is unable to work full-time. Since leaving the matrimonial home in 1993, it appears that the appellant has been staying at the home of a friend, [XY]. The appellant asserts that [XY] is a friend and that he pays a monthly rent for his room. There is evidence that [XY] has worked as a "relief taxi driver" on occasions for the appellant. The evidence as to the relationship between [XY] and the appellant is "thin" and it is unclear as to how often [XY] has worked as a relief driver for the appellant.

## **The issues before this court**

9 The main issue before this court is whether the matrimonial asset should be divided in the manner as suggested by the appellant (see above at [4]). Applying the broad brush approach, it is necessary to consider the other forms of contributions of the parties throughout the whole marriage in deciding how best to deal with the matrimonial asset. As to be expected in cases where the marriage is long and where the parties have separated for a considerable time, there are many areas of dispute over the facts relevant to the court's assessment of the relationship between the husband and wife, especially as regards the matrimonial assets, household maintenance and expenses. The learned District Judge has set out in some detail the main facts and areas of dispute as gleaned from the affidavits that were filed in the proceedings and argued upon in the submissions. This includes a helpful survey comparing the different positions taken by the parties on the key points in dispute.

10 Given the need to consider the contributions of parties throughout the marriage, my decision is broadly structured in the following manner. What follows first is this court's assessment of the facts relevant to division of the matrimonial home and maintenance based on the learned District Judge's written grounds and the affidavits and submissions. This will be followed by a discussion of the legal principles and finally, the application of these legal principles to the facts.

## **Facts relevant to the division of the matrimonial home and maintenance**

### ***The matrimonial relationship***

#### *Between 1974 and 1993*

11 According to the appellant's Affidavit of Assets and Means dated 3 September 2012 ("the

appellant's AAM"), [\[note: 1\]](#) after the marriage in December 1974, the couple first stayed with the wife's father for a few years. Thereafter, the couple moved to rented accommodation in Toa Payoh before moving in with the appellant's father for a few months. The parties then stayed in other rental accommodation until the purchase of the matrimonial flat in 1983. The appellant stayed in the matrimonial home until he decided to leave in 1993.

12 The daughter of the union, Eleanor, was born in 1975. The affidavits of the appellant and respondent set out in some detail the history of the matrimonial relationship. In coming to the decision on division of assets and maintenance, it is worth bearing in mind that it is usually not helpful to embark on a detailed examination of the events leading up to the breakdown of the matrimonial relationship and that in any case, where the marriage is long with events occurring long ago, there is bound to be some uncertainty and conflict over the details. That said, an overview of the relationship (subject to the caveat mentioned above) may be of some help in providing the context for the court's decision on ancillary matters and property division and maintenance.

13 According to the appellant's AAM (at para 23), marital difficulties began early with quarrels over "financial matters, household matters and issues relating to Eleanor, our respective parents and siblings." The appellant's AAM goes on to assert that even though he provided the respondent with a "sizable portion" of his salary for the family and household expenses, the respondent was not satisfied and complained frequently. The appellant describes an incident which he says occurred on 15 February 1994 when the respondent (allegedly) made a false police report against him for physical abuse occurring during an argument. The court notes that there is some inconsistency as to whether the incident took place in 1993 or 1994. That said, there is no doubt that the incident did take place around that time and resulted in the appellant leaving the matrimonial home. In all likelihood, the incident took place in 1993 (not 1994) although nothing turns on this. After spending a night in the police station, the appellant states (at para 27) that he "left the matrimonial flat for good" and that he "never went back thereafter." The appellant also explains that he did not want to return to the matrimonial flat because he "realised that [he] could no longer live with the [respondent]" and that he was not charged because the police knew that "it was merely a family dispute." According to the appellant's AAM, the appellant first stayed at his mother's home. It is not immediately clear as to when he moved in and/or started to rent a room from [XY] although it has been for a very long time and that is where he is presently staying.

14 According to the appellant's AAM, during the first 20 years of marriage (until his leaving of the matrimonial home in February 1993) the appellant took care of the family and paid for all the major family and household expenses. He asserts that he gave the respondent about S\$300–400 a month (in cash) and that overall he would spend about S\$600 a month on the family. The appellant mentions at para 17(a) of the appellant's AAM that even after he was made a bankrupt in 1984, he continued to provide for the family by doing odd jobs. That said, it is to be noted that the bankruptcy lasted a long time since he was only discharged from bankruptcy on 6 September 1999. During the period of marital cohabitation, the appellant also claims that he took his wife and daughter on holiday trips overseas once a year from 1979 to 1981 (to Penang, Kuala Lumpur and Batam) together with her father and sister-in-law. The appellant also asserts at paras 17(b)–(e) of the appellant's AAM that he gave the respondent S\$1,000 every Chinese New Year as well as sums of monies when he struck lottery. The response of the respondent to these assertions is that whilst the appellant did occasionally contribute towards Chinese New Year expenses, he never shared his lottery winnings and that the three trips (holidays) were the only three during the 19 years that they lived as husband and wife.

15 The respondent in her Affidavit of Assets and Means dated 18 September 2012 [\[note: 2\]](#) ("the

respondent's RAAM") explains at para 20(b) that during the early years of the marriage, she worked full-time at Singtel earning about S\$1,300 per month. Throughout her time at Singtel, the respondent worked shifts and looked after the daughter. The respondent at para 20(c) adds that the appellant had a job at Royal Sporting House during the early years of marriage and that he rarely contributed to household expenses. The respondent confirms that arguments over financial contributions occurred – sometimes escalating into violent arguments during which she would be abused. The respondent asserts that the appellant was an absentee father who led his own active social life and that he did not help out with looking after their baby daughter.

16 Shortly after the purchase of the matrimonial home in 1983, the respondent states that the appellant served a six-month term of imprisonment (for misappropriation of company finances). A newspaper article entitled "Ex-manager jailed" which appeared in the Straits Times newspaper on 27 March 1982 [\[note: 3\]](#) and which the appellant appended to his third affidavit dated 3 April 2013 [\[note: 4\]](#) revealed that he was convicted for criminal breach of trust relating to monies misappropriated by him to pay off gambling debts. During his imprisonment, the respondent stayed with the appellant's father and continued to look after the daughter (who was then nine). She asserts that together with the appellant's father, she helped to discharge some debts he owed to a car rental company as well as some other debts that he was liable for in respect of which loan sharks had made an appearance. The respondent asserts that she took out a renovation loan from her employer (deductible from her monthly salary) to pay for renovations and furnishings. Some invoices bearing her name were annexed to the respondent's RAAM relating to these expenses. The respondent makes the point that after the appellant's release from prison, the appellant changed his jobs frequently and only made intermittent financial contribution to the household expenses. The arguments over financial support continued up to his leaving the matrimonial home.

17 In January 1991, the respondent's father passed away. According to the respondent's second ancillary affidavit dated 2 November 2012 (at para 28), [\[note: 5\]](#) his 3-room flat was rented out at S\$1,000 and the income shared between the respondent and her two siblings. She also discloses that it was with this money and her share of her father's savings that she managed to conduct a second renovation of the matrimonial home in 1994. The father's flat was sold in 2001/2002 and the sale proceeds shared amongst the siblings. Each received the sum of S\$52,000.

18 The appellant in his second ancillary affidavit dated 23 October 2012 ("the appellant's 2nd ancillary affidavit"), on the other hand, estimates that the three beneficiaries would have received about S\$110,000 to S\$128,000 each. This, however, is based on the estimated value of the 3-room flat in August 2012 and is of doubtful relevance.

19 The respondent explains that in 1993 she embarked on further renovations to the matrimonial home (toilets, kitchen wall and flooring, painting, window grills) which she paid for. The respondent was only able to locate one invoice (for an air-conditioner) for this second round of renovation. Sometime in March 1993, an altercation took place at the matrimonial home as a result of which the police were called. The respondent confirms that no charges were brought since she decided not to press charges. It was at this time that the appellant left the matrimonial home, never to return.

20 In the appellant's 2nd ancillary affidavit (in response to the respondent's RAAM), the appellant strenuously denies the allegations that he did not contribute to the household expenses and that he was an absentee father. He also denied any improper association with his "female friend" [XY] and states that whilst he accepts that he did owe money to the car rental company, the debt was repaid solely by his father. Insofar as the first round of home renovations was concerned, he denies that the respondent paid for all the renovations. Rather than coming to some S\$23,000, he asserts that the

total spent was about S\$10,000 to which he paid about S\$5,000. Turning to the second renovation, the appellant's response is that only one invoice has been provided and that this was for an air-conditioner rather than for renovation. He also asserts that the cost of the second renovation was in the region of S\$7,000, towards which he contributed S\$5,000. No documentary evidence was provided by the appellant for his alleged contributions towards these renovation costs.

#### *From 1993 to 2012*

21 In the respondent's RAAM (at para 20(q)), [\[note: 61\]](#) the respondent explains that in 2004 (about ten years after the appellant left the matrimonial home), the third renovation of the matrimonial home took place. At that time, the daughter was still living at the matrimonial home and she helped to contribute towards the total cost of renovation. Invoices attached to this affidavit total S\$53,315.45. The respondent asserts that to the best of her recollection, the total amount spent by her on the three renovations, all in, was some S\$89,000: S\$23,000 for the first renovation; S\$16,000 for the second renovation; and S\$50,000 for the third renovation.

22 However, the appellant strongly disputes the amounts spent by the respondent on renovations in the appellant's 2nd ancillary affidavit. The appellant asserts that in any case, for the third renovation, substantial amounts were contributed by the daughter and that based on the invoices provided and which were in her sole or joint name, she likely paid only some S\$17,331.76.

23 Since leaving the matrimonial home in 1993, the respondent asserts that she single-handedly brought up the daughter. The respondent retired in 2001 and is currently staying at the daughter's home. The matrimonial home has been rented out in the past three years (since March 2010) for a monthly rent of S\$2,500. This is not in dispute. Nor is there any dispute that the rental income has been retained by the respondent. Indeed the respondent asserts that the rental income is her only source of income. This the appellant has denied. In the appellant's 2nd ancillary affidavit at para 5, it is claimed that the respondent receives a monthly salary from helping out at a cooking school set up and owned by the daughter. The daughter is said to be working as a senior marketing manager with a bank and the daughter and her husband are also providing her with a monthly allowance. In response, the respondent has denied being a shareholder or a salaried employee of the daughter's cooking school and she points out that the school only ran for 2 months between June and July 2009.

24 According to the appellant's AAM, the appellant is now unable to work full-time as a taxi driver because of his problem with fatigue arising from high blood pressure and diabetes. It is noted that a short medical memorandum from the Bedok Polyclinic dated 30 November 2012 [\[note: 71\]](#) confirms his medical problems but it also states that his conditions are mostly well controlled. He states that he can only drive a taxi for about four to five hours a day and that his average monthly income is about S\$1000-S\$1,200. In addition, he receives S\$297 per month from his CPF retirement account. The respondent in her 2nd ancillary affidavit dated 2 November 2012 disputes his monthly income and states that the appellant and "his mistress [XY] are the co-lessees of the same cab and there is a possibility that he has not disclosed his full earnings." She also notes that there is no documentary evidence that he has paid any rent to [XY]. In reply, the appellant in his 3rd ancillary affidavit dated 3 April 2013 asserts that he is the sole lessee of his taxi and that [XY] is his friend, landlord and the "registered relief driver" for his taxi, but that she has at most driven the taxi "once or twice for the past three years." The appellant also points to his inability to work full-time since 2004 or 2005 and his low CPF contributions in 2006. He asserts that he pays a token rent of S\$400 per month to [XY] (out of goodwill) and a further S\$100 for utilities expenses.

25 The point can be made that in a long marriage a detailed examination of the *minutiae* of a

matrimonial relationship even when limited to each spouse's contribution towards the matrimonial assets, household maintenance and expenses is seldom straightforward or helpful. Many times a broad brush approach is to be preferred. Independent evidence of indirect contributions (financial or non-financial) will often be thin and contradictory positions may often be taken due to failing memory, the passage of time and indeed because of the intense emotional anguish that may colour episodes (or memories of episodes) of the relationship. That said, in the present case it is to be noted that the daughter of the union, Eleanor Sim, swore two affidavits in support of the respondent in connection with the ancillary proceedings. Without dwelling on the details, her affidavits are strongly supportive of the respondent's position in terms of parenting, contributions to household expenses and maintenance of the matrimonial home. It also supports the respondent's assertion that she was not an employee or shareholder of the daughter's cooking school: which school in any case closed down after only 2 months in July 2009. The daughter also explained that after her marriage in 2008, she asked the respondent to stay with her as she was elderly and did not want her to be alone. The matrimonial home was left vacant for two years until 2010 when it was rented out so as to help the respondent with her expenses. On this, the appellant has complained that since he is a joint owner, HDB rules require the consent of both parties to rent out the flat and that the respondent has ignored this rule by making the on-line application without first informing him.

26 The daughter in her first affidavit dated 2 November 2012 [\[note: 8\]](#) also states that whilst she has recently set up a children's activity centre in Paragon and that the respondent helps out when there is a staff shortage, she does not receive any salary except for a token by way of pocket money of about S\$220 per month as appreciation for her help.

### ***An overview of the matrimonial assets and relevant financial contributions***

27 Given the broad overview of the marriage as described above, I now discuss an overview of the various contributions made by parties to the marriage. In all, there were three broad categories of contributions I took into consideration: (1) contributions towards the matrimonial home; (2) contributions towards household expenses including maintenance of the daughter; and (3) other financial assets the parties had accumulated throughout the marriage.

#### *Contributions towards the matrimonial home*

##### (1) Direct contributions towards purchase of the matrimonial home

28 According to the respondent's Ancillary Fact and Position Sheet filed on 24 April 2013, [\[note: 9\]](#) the matrimonial home, which is fully paid-up, is valued at S\$400,000 as at July 2012. The direct financial contributions by the parties towards the purchase price were as follows:

- (a) Appellant's total CPF contributions: Principal – S\$36,400, Interest – S\$62,420.28.
- (b) Respondent's total CPF contributions: Principal – S\$4,384, Interest – S\$6,873.74.
- (c) Appellant's total cash contribution toward purchase: S\$100.
- (d) Respondent's total cash contribution toward purchase: S\$0.

29 It is noted that the appellant's Ancillary Fact and Position Sheet filed on 22 April 2013 [\[note: 10\]](#) does not state the amount that he paid towards the matrimonial home. That said, the respondent's figures for the appellant's contributions were taken from his supporting affidavit and it does not appear that there is any dispute as to the amount of the contributions from CPF towards the

purchase.

(2) Contributions towards renovation of the matrimonial home

30 As noted above, there is considerable dispute over the contributions made by the parties to the three renovations that were carried out to the matrimonial home. According to the respondent, she paid some S\$83,000 or so for the renovations. The appellant disputes the amount contributed by the respondent. He also claims to have contributed about S\$5,000 towards the initial (first round) of renovations and a similar sum towards the second round of renovations. So far as the third round of renovations was concerned, the appellant had by that time moved out of the matrimonial home and asserts that part of the third renovation was paid for by the daughter.

(3) Appellant's assessment of direct contributions: purchase price and renovations

31 In the appellant's 2nd ancillary affidavit, the appellant at para 55 sets out the table below representing the parties' contributions to the purchase of the matrimonial home and renovations:

	<b>Husband (appellant)</b>		<b>Wife (respondent)</b>
Initial capital payment by CPF	S\$36,400.00	Initial capital payment by CPF	S\$4,384.00
Accrued CPF interest (as at 14 August 2012)	S\$62,420.28	Accrued CPF interest (as at 14 September 2012)	S\$6,873.74
Initial capital payment by cash	S\$100.00		
<b>Sub-total</b>	<b>S\$98,830.28</b>	<b>Sub-total</b>	<b>S\$11,257.74</b>
	<b>89.77%</b>		<b>10.23%</b>
Payment for 1 <sup>st</sup> renovation in 1984	S\$5,000.00	Payment for 1 <sup>st</sup> renovation in 1984	S\$4,000.00
Payment for 2 <sup>nd</sup> renovation in 1991	S\$5,000.00	Payment for 2 <sup>nd</sup> renovation in 1991	S\$2,000.00
		Payment for 3 <sup>rd</sup> renovation	At most S\$ 17,331.76
<b>[Appellant's] total contribution</b>	<b>S\$108,830.28</b>	<b>[Respondent's] total contribution</b>	<b>Less than S\$34,589.50</b>
	<b><u>75.88%</u></b>		<b><u>24.12%</u></b>

(4) Respondent's assessment of direct contributions: purchase price and renovations

32 Whilst the respondent did not set out a comparative table as such in the respondent's RAAM, it is apparent that her figures in respect of renovations are much higher. She also disputes the appellant's assertions as to his contributions towards renovations. Putting the respondent's case at its highest would produce the following result:

<b>Husband (appellant)</b>		<b>Wife (respondent)</b>	
Initial capital payment by CPF	S\$36,400	Initial capital payment by CPF	S\$4,384.00
Accrued CPF interest (as at 14 August 2012)	S\$62,420.28	Accrued CPF interest (as at 14 September 2012)	S\$6873.74
Initial capital payment by cash	S\$100	Initial capital payment by cash	S\$0
<b>Sub-total</b>	<b>S\$98,830.28</b>	<b>Sub-total</b>	<b>S\$11,257.74</b>
	<b>89.77%</b>		<b>10.23%</b>
Payment for 1st Renovation (1984)	S\$ 0	Payment for 1st Renovation (1984)	S\$23,000
Payment for 2nd Renovation in 1991	S\$ 0	Payment for 2nd Renovation in 1991	S\$16,000
		Payment for 3rd Renovation	S\$50,000
<b>Appellant's total contribution</b>	<b>S\$98,830.28</b>	<b>Respondent's total contribution</b>	<b>S\$100,257.74</b>
	<b>49.64%</b>		<b>50.35%</b>

*Contributions towards household expenses including maintenance of the daughter*

33 The appellant's evidence (which has been described generally above) was that during the first twenty years of marriage (up till his departure from the matrimonial home in 1993), he met all the major family and household expenses. In the appellant's AAM, he claims that the respondent was reluctant to contribute and that he provided her with cash of about S\$300 to S\$400 per month. He claims that overall, he spent about S\$600 per month on the family and that this was so even during the period of his bankruptcy which lasted from 1984 till September 1999.

34 The respondent's evidence on the other hand was almost the complete reverse: that she had met the household expenses and that the appellant rarely contributed towards the household expenses. She asserts that after his release from prison in 1984 until he left the matrimonial home, he only made intermittent financial contributions towards household expenses and that he was not able to hold down a fixed job. After he left the matrimonial home in 1993, he did not provide any further payments and it was left to her to meet the costs of up-keeping the flat, paying monthly utilities, and conservancy charges. The appellant has denied being unable to hold down a fixed job. In the appellant's 2nd ancillary affidavit, he refers at para 34 to a table showing where he worked between 1983 and 1994. The table suggests that he had at least 7 different jobs in this period which culminated in his becoming a taxi driver in 1994. It is noted that, for a good part of the period of marital cohabitation, the appellant was a bankrupt and that for a period of two years (1986-1987) the table provided merely states that he undertook "odd jobs".

*Other financial assets of the parties*

35 Aside from his declared monthly income as a taxi driver (S\$1,000 – S\$1,200), the appellant



receives S\$297 per month from his CPF retirement account. He does not own any motor vehicle, insurance policy or shares, bonds, stock options and/or unit trusts. His disclosed bank accounts (August 2012) show sums of S\$60.61 and S\$39.92. As at 14 August 2012, his CPF account was as follows:

- (a) Ordinary account: S\$0;
- (b) Medisave account: S\$37,710;
- (c) Special account: S\$0;
- (d) Retirement account: S\$30,914.71.

36 The appellant declares his monthly expenses as coming to S\$1,250 per month and a debt of S\$22,000 said to be owed to his sister in respect of legal fees in connection with the divorce proceedings.

37 The respondent in the respondent's RAAM declares an insurance policy (Living Assurance Policy) with Great Eastern Life for S\$30,000. The named beneficiary is the daughter and there is no surrender value. The respondent also declares ownership of 3,710 Singtel shares with an estimated value of S\$12,243 as at 30 June 2012. Three bank accounts are listed showing credit amounts of S\$50,481.07, S\$28,869.06, and S\$70,000 (as of July or August 2012). The respondent also has S\$23,340.61 in her Medisave account (as of September 2012). She also has S\$115,739.60 in her retirement account. The respondent is also currently receiving S\$2,500 per month as rental income from the matrimonial flat. Her declared expenses are as follows: household expenses: S\$1,096.67; maid's expenses: S\$732.51, and personal expenses of S\$537. The respondent also states that her sister (aged 61) is dependent on her and that she sets aside S\$1,000 per month for her needs. As to this, the appellant asserts that the respondent's sister is staying with the respondent in the daughter's home where much of the household expenses are met by the daughter and her husband.

### ***The parties' submissions in brief***

38 Before the District Court, the appellant in his written submissions claimed that his direct contributions towards the matrimonial home came to 75% with the respondent's contribution coming to 25% (including S\$4,000, S\$2,000, and at most S\$19,484 for the 3 renovations). On this basis, he asked for an order that the flat be sold and that after payment of the costs of sale and refund of both parties' CPF and accrued interest, the net sales proceeds to be divided 70:30 in his favour. The appellant also asked that he be awarded a just and equitable share of the rental income of S\$83,800 that the respondent had received from March 2010 to date or, alternatively, for his share of the rental income to be factored into the assessment of his share in the matrimonial home.

39 In support of his claim on appeal, the appellant (by way of written submissions) produced further tables comparing the direct contributions made to the matrimonial home (capital cost and renovations). Without delving into the details, the tables are said to demonstrate that the respondent's total direct contribution (depending on how renovations were assessed) ranged from 27.51% to 38.68%. At the same time, the tables are said to show that his contributions were at least 61.32% and possibly 72.49%.

40 The appellant in assessing the value of his direct contributions towards the cost of acquisition included his initial capital payment by CPF of S\$36,400, as well as the accrued CPF interest as at 14 August 2012 of S\$62,420.28. The initial capital payment from the respondent on the other hand was

S\$4,384 and the accrued CPF interest on 14 September 2012 of S\$6,873.74.

41 The difference between the appellant and respondent's assessment of the value of their respective direct contributions comes down to two points: (a) the assessment of the actual payments towards the three rounds of renovation; and (b) whether the accrued interest should be taken into account.

42 The respondent before the District Court argued for an order that the appellant's share of the matrimonial home be transferred to her without consideration or refund of his CPF monies. Her assessment of her direct contributions to the flat was higher and on that basis, together with her long period of indirect contributions, she asserted that she was entitled to a substantial uplift in her share of the matrimonial home. Insofar as maintenance was concerned, the respondent sought the payment of a lump sum of S\$216,000 based on a multiplier of 12 years and a multiplicand of S\$1,500. After reviewing the case law and considering the submissions, the learned District Judge awarded the respondent the matrimonial home based on the wife's evidence as to her direct contributions as well as her significant indirect contributions over a long marriage. The learned District Judge also noted that she was entitled to maintenance of 12 years with a multiplicand of S\$300 giving rise to a lump sum of S\$43,200. The learned District Judge also found that the husband's half share of the rental proceeds (allowing for a reduction of at least 10% for the incidental costs relating to the tenancies) would have come to S\$37,710. This did not exceed the lump sum maintenance that the wife was entitled to. The result was that there was no order for lump sum maintenance and the appellant was not given a half share of the rental income.

43 On appeal, the respondent argues that the learned District Judge rightly decided to exclude the interest element from the computation of the parties respective direct financial contributions since its inclusion would unfairly skew the proportions in favour of the appellant by mere reason of long lapse of time and not because of any actual contributions on his part. If the accrued interest was excluded and renovations assessed based on the actual receipts that the respondent could find (rather than her estimate), the table was said to show that her direct contributions came to 58.1% with 41.9% for the appellant. This indeed was very close to the learned District Judge's assessment of 42% to the appellant and 58% to the respondent.

### **The applicable legal principles**

44 The law pertaining to the division of matrimonial assets is relatively straightforward. I first set out the general legal principles that apply. Section 112(1) of the Women's Charter (Cap 353, 2009 Rev Ed) ("the WC") provides that the court shall have power, when granting or subsequent to the grant of a judgment of divorce, 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*.

45 In exercising the power to order division, s 112(2) of the WC directs the court to have regard to all the circumstances of the case including the following matters:

- (a) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the matrimonial assets;
- (b) any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage;
- (c) the needs of the children (if any) of the marriage;

- (d) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party;
- (e) any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce;
- (f) any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;
- (g) the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business; and
- (h) the matters referred to in s 114(1) so far as they are relevant.

46 Section 114 sets out the court's power to award maintenance. Section 114(1) provides that in determining the amount of any maintenance to be paid by a man to his wife or former wife, the court shall have regard to all the circumstances of the case including the following matters:

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contributions made by each of the parties to the marriage to the welfare of the family, including any contribution made by looking after the home or caring for the family; and
- (g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring.

47 Section 114(2) goes on to state that:

- (2) In exercising its powers under this section, the court shall endeavour so to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

48 Professor Leong Wai Kum ("Prof Leong") in Leong Wai Kum, *Elements of Family Law in Singapore* (Lexis Nexis, 2nd ed, 2013) ("*Elements of Family Law*") at p 500 comments that:

[t]he power to divide matrimonial assets provides powerful practical effect to the exhortation to spouses that their marriage is an equal co-operative partnership of different efforts for their

mutual benefit.

This comment provides a useful starting point when approaching the question of division of matrimonial assets in any particular case.

49 Indeed, a similar point was made by Andrew Phang Boon Leong JA in *NK v NL* [2007] 3 SLR(R) 743 ("*NK v NL*") at [41] where it is said that:

... the social policy underscored by the division of matrimonial assets, the joint product of a marital partnership, is just as important as the final award. The language of a power to "divide" says to the whole society that the law acknowledges the equally important contributions of the homemaker to the partnership of marriage and its acquisition of wealth.

50 To this end, it has been said that three defining principles define the power to divide matrimonial assets: (a) any asset acquired during the marriage (rather than just the matrimonial home) is liable to division; (b) the power is to be exercised in broad strokes (rather than by misguided attempt at mathematical precision); and (c) the aim of the court is to reach a fair and reasonable division of the assets between the spouses: see *Elements of Family Law* at p 505 citing L P Thean J's decision in *Koo Shirley v Mok Kong Chua Kenneth* [1989] 1 SLR(R) 244.

51 Prof Leong points to three decisions of the Singapore Court of Appeal, which in particular represent the approach taken in Singapore towards division of matrimonial assets under s 112. These are *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 ("*Lock Yeng Fun*"); *NK v NL* and *Yeo Chong Lin v Tay Ang Choo Nancy* [2011] 2 SLR 1157 ("*Yeo Chong Lin*"). These cases are said to acknowledge a "community of property" approach towards division of matrimonial assets or what Prof Leong has termed at p 497, "deferred community of property". Under this approach, the courts recognise and require that proper credit be given to non-financial efforts as a contribution towards acquisition of property. Even though the courts recognise that non-financial contributions (such as homemaking and parenting) may be difficult to measure or to quantify, this does not mean that only lip service is to be paid to such contributions. Justice and equity requires that the courts award a share of the matrimonial assets that is commensurate with his or her contributions as a whole. Consistent with this approach, the courts in Singapore prefer a broad brush multi-factorial approach towards assessment of contributions and division. As has often been said, it is better to be roughly right than to be precisely wrong, or as Chao Hick Tin JA put it in *Yeo Chong Lin* at [81] – the broad brush approach "is all about feel and the court's sense of justice."

52 Adopting a broad brush approach does not mean however that a structured approach cannot be taken towards assessment and the exercise of discretion. Indeed in *ATT v ATS* [2012] 2 SLR(R) 859, a structured approach was endorsed by the Court of Appeal. The first step would be to delineate the pool of matrimonial assets to be divided. The second step is to assess the value of the pool so that the court's deliberations can be made with reference to a working quantum. The third step is to consider all the circumstances of the case including but not limited to the specific factors identified in s 112(2), paying particular attention to the direct financial contributions as well as the indirect non-financial contributions of each party. This is the multi-factorial approach to be applied with broad brush strokes that leads to the final step of deciding what is the just and equitable proportion. Thereafter, the court may need to decide what is the most effective way of achieving the desired division in the proportion that has been assessed. At this stage, the desirability of a clean break order (if possible) will often be considered.

***Is there any presumption in favour of any particular starting point when approaching division?***

53 The argument has been raised from time to time that the yard stick of “equality of division” has merits especially in cases where the marriage has lasted a reasonable length of time and a child has been raised – see generally *Elements of Family Law* at pp 616–618. On occasion, it has also been suggested that the law might choose as a starting point the proportion as reflected in the proven direct financial contributions towards the matrimonial assets. Both approaches have been rejected. Consider, for example, *Lock Yeng Fun*, considered in *Elements of Family Law* at p 621. The marriage lasted some 30 years. There were 2 children. The wife was largely the homemaker, although she was a better investor of the parties’ spare monies. The High Court ordered that the wife receive 40% of the net matrimonial assets and S\$60,000 by way of lump sum maintenance. On appeal, her share of the net matrimonial assets was increased to 50%. The order for maintenance was rescinded.

54 The point that Prof Leong makes is that even though the Court of Appeal came down in favour of equality of division of the matrimonial assets, Phang JA made it clear that the conclusion of equality was “the end point of [the court’s] deliberations” and not the starting point. The starting point is always the admonition to reach a just and equitable division of the matrimonial assets. Equality of division was not the norm (as such). If such an order was made in any given case, it would be as a result of applying the multi-factorial approach – which was described by Chao JA in *Yeo Chong Lin* at [81], is rooted in “feel and the court’s sense of justice.”

55 The emphasis on a multi-factorial broad brush approach guided by the court’s feel and sense of justice whilst regularly applied and referred to in case law has not gone without some criticism. Prof Leong at p 626 cites the concern of one commentator that the approach lends itself to uncertainty: “what exactly does this mean, and how does the court actually go about doing this?” The same commentator argues that the practice of taking account of every relevant factor might result in applications for division of matrimonial assets becoming more cantankerous than it needs to be: see Lim Hui Min, “*Matrimonial Asset Division: The Art of Achieving a Just and Equitable Result*” in *SAL Conference 2011: Developments in Singapore Law Between 2006 and 2010* (Yeo Tiong Min, Hans Tjio & Tang Hang Wu gen eds) (Academy Publishing, 2011). Lim suggests that the law should place greater emphasis on effort as opposed to ability and endeavours as opposed to results with the possible result of greater readiness to assume equal efforts between the parties, whether in breadwinning or homemaking or a mixture of the two, for long marriages over ten years and even short marriages of under 10 years, if there are children to the marriage. Prof Leong agrees and writes at p 628 that “[m]arital partnerships, from the perspective of the spouses’ exertion of their efforts, are more similar than they are different” and that such a re-focusing may lead to the conclusion that in many cases, equal division is just and equitable division.

56 Prof Leong further explains that after *Lock Yeng Fun* some courts began upon a different approach using the proportion of each party’s direct financial contributions to the matrimonial assets as the starting point and adjusting this proportion to take account the parties’ indirect contributions and any other relevant factor. The danger with this approach is that it may lead to insufficient weight being placed on indirect contributions. On this, Prof Leong comment at p 622 that the objective of the statutory amendments in 1996 was to equalise non-financial contributions with financial contributions. It, therefore, comes as no surprise that this approach was rejected by the Court of Appeal in *NK v NL*. Section 112 requires the court to pay regard to all types of spousal contributions whether in the economic or homemaking sphere. Both are equally important to the well-being of the marital partnership. It follows that an approach which places too much stress on a mathematical accounting or a balance sheet of figures is inappropriate.

57 The above summary reveals a number of important principles which this court has found helpful in coming to its decision in this appeal. Before turning to the indirect contributions, this court notes again the “debate” over whether the starting point should generally be equality of division – especially

in long marriages. Just because the Singapore courts have not found favour with this approach does not mean that there is any bias against equality of division. Indeed, it could well be that in many cases where the marriage is long and with children involved, that the court will come to the conclusion that equal or near equal division is the just and equitable division.

***Whether the interest element should be excluded from the computation of direct contributions***

58 A secondary point of law which arises is whether the interest element of CPF monies should be excluded when calculating the direct contributions of parties to the matrimonial home. The respondent states that the marriage was a lengthy one and the property purchased decades ago. That being so, it was argued that the interest which accrued on the parties' CPF contributions towards the purchase of the property ended up exceeding the principal amount. The interest that accrued on the appellant's initial payment of S\$36,400 was S\$62,420.28. The interest that accrued on the respondent's initial payment of S\$4,384 was S\$6,873.

59 In support of her case, the respondent cited the decision of Judith Prakash J in *Cheung Kam Yi Betty v Liu Tsun Kie* [2012] SGHC 213. The marriage in this case lasted 36 years and, at the time of divorce, the parties were both 61 years old. The matrimonial home (a semi-detached house) was purchased for about S\$1.98m in 1995. The learned judge in that case held at [46] that the proven direct financial contributions to the acquisition of the property amounted to S\$486,823.46 (excluding interest) from the wife's CPF account and S\$685,040.37 (excluding interest) from the husband's CPF account. Whilst interest was excluded in this case, there was no discussion as to whether exclusion of interest element was as a matter of principle always the preferred approach to be taken.

60 The appellant, on the other hand, submitted that there have been many cases where the Singapore courts have taken accrued interest into account in assessing direct contributions. These include:

(a) *AVT v AVU* [2011] SGDC 379, which involved a 7-year marriage and with 2 children to the marriage. The matrimonial home was an HDB flat with both parties making direct contributions in the form of CPF monies. The CPF interest in this case was taken into account by the District Judge in assessing the percentage of contribution of the parties. The District Judge also held that the liability to repay the CPF sums withdrawn for the purchase of the flat was a personal obligation of each party to be discharged out of his or her own share of the sale proceeds.

(b) *AZJ v AZK* [2012] SGDC 137, which involved a 12-year marriage and with 2 children to the marriage. The matrimonial home was an HDB flat. In assessing the value of direct contributions, the District Court took account of the payment out from the parties' CPF accounts as well as the accrued interest. The District Court in this case also held that using the broad brush approach, the wife was to refund the husband's CPF account with a sum of S\$50,000 in return for the flat (by way of partial refund of monies used to purchase the flat plus accrued interest).

(c) *Tang Ah Moey v Bock Thye Boon* [2012] SGDC 130, which involved a 34-year marriage. Matrimonial home paid for by the wife with the assessment of her direct contribution taking account of both the CPF principal and CPF interest. The court in this case held that the wife was entitled to 75% of the net value of the property and the husband entitled to 25%. The wife (who paid for the flat) was ordered to refund her CPF account including accrued interest from her share of the sale proceeds.

(d) *Woon Wee Lee v Koh Ai Hua* [2012] SGHC 128, which involved a relatively long marriage. The parties were married in September 1975, and interim divorce was granted in July 2011.

Accrued interest was taken into account in assessing direct contributions from the parties' CPF accounts to the purchase of the flat.

( e ) *BCF v BCG* [2012] SGDC 280, which involved a 30-year marriage. The matrimonial home was a 5-room HDB flat purchased in the parties' joint names. Both parties utilised CPF monies to pay for the flat. No cash payments were made for the loan instalments. The husband was found to have paid the lion's share of some 96%. This took account of his CPF principal of S\$116,492 and CPF interest of S\$43,821. The District Court order was that the matrimonial flat be sold and the net proceeds of sale to be divided in the proportion of 40% to the wife and 60% to the husband. Each party was also responsible for their respective refunds to their own CPF accounts of the monies used to purchase the flat including accrued interest.

( f ) *BCW v BCX* [2012] SGDC 335, which involved a 19-year marriage. Assessment of direct contribution again was based on CPF monies withdrawn together with accrued interest.

( g ) *Lau Poh Leng v Ong Ah Seng & Ronald Ong Ying Howe* [2013] SGDC 16, which involved a 28-year marriage. The wife paid from her CPF a sum of S\$14,075 and the accrued interest was S\$3,342. The husband paid from his CPF account the sum of S\$66,239 with an accrued interest of S\$14,586. The co-defendant paid from his CPF a sum of S\$39,737 and the accrued interest was S\$1,757. The court ordered that the matrimonial home was to be sold in the open market and the net proceeds after repayment of the outstanding mortgage loan, refund of all three parties CPF monies used for the purchase plus the accrued interest and all sales expenses be given entirely to the wife.

61 On the question of taking account of accrued interest in respect of CPF payments made towards the purchase price, it is not immediately apparent as to why one method is to be preferred over the other. What is surely important is that the same method is used to assess the direct contributions of both parties. If both parties have contributed sums from CPF, then whether or not accrued interest is factored in, the *proportion* of the contributions of the husband and wife will surely remain the same. Although this may not be the case where the contributions have been by way of CPF contributions and other funds.

62 Where the court decides that the matrimonial home is to be held in unequal shares (for example 80:20), what may be important is whether the obligation (if any) to repay CPF and any interest is to be taken into account in assessing the net proceeds to which the percentage shares are to be applied. In *Tay Sin Tor v Tan Chay Eng* [1999] 2 SLR(R) 385 Kan Ting Chiu J, in an oft-cited statement, held at [11] that:

... it is the flat that is subject to division. If the flat is worth \$x, that value is to be taken into consideration. The value of the flat is \$X whether or not CPF funds are used. The CPF sums are not loans, they are the assets of the parties, like money in the bank, although they may only be withdrawn for authorised purposes, *eg* for the acquisition of real property or shares, and they have to be paid back into the accounts when those assets are sold. Inasmuch as the sums withdrawn from each party's bank accounts are not required to be paid before division, the same must apply to sums withdrawn from CPF accounts. The liability to repay to the CPF sums withdrawn is a personal obligation of each party to be discharged out of his or her share of the sale proceeds.

63 Even though there is much sense in Kan J's decision, I note that the point being made in that decision does not matter in cases where the decision is to award the matrimonial home entirely to one party (such as where one party is ordered to transfer his/her share to the other party). In any case,

as a matter of law, I find that whether or not the accrued interest on payments from CPF is to be taken into account in determining the *percentage* contribution that a spouse has made towards purchase is a matter of discretion for the trial judge dependent highly on the circumstances of the case. What is important as a matter of fairness and mathematical logic is that the percentage contributions of both parties must be assessed on the same basis. In any case, the main relevance of accrued interest relates to the legal requirement that refunded monies are to be paid back into the parties' CPF account with such interest.

### **Application of the Law**

64 There were numerous points raised by parties in arguing their case, and while they may not have been particularly significant to the main issue of the division of the matrimonial assets, for completeness, I will address what I will call these "ancillary points". Broadly, these include:

- (a) the calculation of accrued interest;
- (b) the significance of the rent-free occupation the respondent enjoyed; and
- (c) the inheritance the respondent received.

65 Before addressing these ancillary points, I first set out my general views on the credibility of parties *vis-à-vis* their affidavit evidence. After discussing my views on the ancillary points, I then discuss my findings pertaining the main issue at hand – the division of the matrimonial home.

### **The credibility of parties**

66 In the present case, the matrimonial asset which division is in issue is the matrimonial home which was purchased in 1983 in the joint names of the parties. This is a case where the direct financial contributions toward the purchase price (through CPF monies) are not in dispute. What is in dispute is the amount spent by the parties on renovations as well as the indirect contributions (financial or otherwise) made by the parties during the marriage. The documentary evidence in support of each party's case on renovations is thin: especially so in the case of the appellant. The positions taken in the affidavits filed on the level of financial support which the appellant provided during the first 19 years of marriage were in sharp conflict. The learned District Judge took the view that whilst both parties had not been upfront in disclosing some monies that they were in receipt of, the drawing of an adverse inference was not necessary – even though this meant that there were still gaps in the evidence. For example, whilst the respondent in the respondent's RAAM claimed expenses for a maid, in her supplemental affidavit in response to request for discovery and interrogatories dated 22 January 2013, it is revealed that the maid was employed by her son-in-law, although a large part of her duties involved caring for the respondent and her sister. She also omitted her CPF retirement account in the respondent's RAAM.

67 Even so, like the District Court, I am of the view that, on the whole, the respondent's affidavit evidence was more credible. It is undisputed that the appellant was an undischarged bankrupt from 1984 up to September 1999. Whilst the appellant did work during that period it is also clear that he changed jobs many times and that in respect of a two-year period, he simply discloses that he held "odd jobs". The appellant does not provide any documentary evidence of his contributions to renovations and household expenses and there is no independent evidence at all as to whether he is paying rent for his present accommodation now or at any stage after leaving the matrimonial home. Even though the appellant has alleged that frequent quarrels occurred over financial contributions and other matters, there is no doubt that he left the matrimonial home as a matter of his own choice in



1993 and that after this, he did not provide the respondent with any financial support. While the court notes that the respondent may have enjoyed rent-free occupation of the matrimonial home, as I will elaborate further later at [71]–[73], I found this of little significance in the entire scheme of things.

68 Further, even though there is some uncertainty as to how much monies the respondent spent on renovation, it is reasonably clear that she provided substantial funds for each renovation and was responsible for the household bills, especially after the appellant left the matrimonial home. On the other hand, it is far from clear as to what, if anything, the appellant contributed by way of renovation expenses. This is not to say that the court finds that the appellant did not contribute anything to household expenses. Indeed, the respondent herself accepts that at the very least, he did occasionally contribute towards some household expenses. However, the evidence, without getting mired into detailed accounting, strongly suggests that the respondent's indirect contributions and contributions to household expenses were far higher and much more consistent than those of the appellant.

69 In deciding an appeal from the District Court, even though the evidence is largely by way of affidavits, the court should not readily depart from the views that the District Court has formed on the evidence. In any case, the view that I have formed on the affidavits is similar to that of the learned District Judge. It is far more probable that the respondent contributed more significantly than the appellant to the household. The wife held a regular job until her retirement in 2001. The District Judge rightly points out that even the husband recognised that the respondent was a simple lady leading a frugal lifestyle. Even without the affidavit filed by the daughter, this court would have little difficulty in coming to the view that that the respondent's contributions towards, renovations, household expenses, parenting, and homemaking were far more significant than those of the appellant.

### **Ancillary points**

#### ***Accrued interest***

70 I deal quickly with the issue of accrued interest which parties had raised. As discussed above, there is no one preferred way. In the present case, the appellant contributed S\$36,400 from his CPF. The respondent contributed S\$4,384. In percentage terms this works out to 89.25% to 10.749%. If the accrued interest is factored in the total sums come to S\$98,820.28 for the appellant and S\$11,257 for the respondent. In terms of percentages, the values of the contributions differ by a small value of 0.52%, and remain largely the same. There was, therefore, no significant difference whether or not the accrued interest would be accounted for in considering the contributions of the parties to the matrimonial home.

#### ***The significance of the respondent's rent free occupation of the matrimonial home***

71 Under s 112(2)(f), the court is required to take account of any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party. The appellant, in this case, asserts that the learned District Judge failed to give sufficient weight to the fact that the wife enjoyed 19 years of exclusive possession while the "husband had to rent a room outside [*sic*]." Indeed, in the appellant's written submissions, it is argued that "the period of 19 years for which they had exclusive possession of the matrimonial home and the rental income of S\$83,800 (as of June 2013) must certainly be considered as his indirect contribution as well towards the welfare of the family."

72 The fact that the court is required to pay regard to any period of rent-free and exclusive use of the matrimonial home is part and parcel of the multi-factorial approach that the court takes towards making a just and equitable determination. It cannot be approached on a mathematical basis nor can it be considered in abstract and in isolation. In some cases, it may be a significant factor. In other cases, the significance may be small. In the present case, the District Court rightly points out that it was the husband who chose to leave and it was he who "effectively abandoned the family." The husband has made much of his claim that he has paid rent for the room at his female friend [XY]'s flat: there is, however, no independent evidence supporting his claim. Indeed, the point was made in *BDH v BDI* [2012] SGDC 333 ("*BDH*") that if the wife had to leave the matrimonial home, her needs for financial support and maintenance would have been higher. In any case, the District Court in *BDH* at [41] observed that:

... it was far from clear to conclude that he was forced to leave the flat as there was some evidence, which he did not dispute, that he was spending time with his new girlfriend. It was more likely that he did not find it conducive to continue to live together in the same flat and he himself preferred a different place to live in.

73 In the present case, the appellant has denied that [XY] is his mistress and asserts she is just a good friend. That may be so. It does not change the fact that it was he who decided to leave the matrimonial home. Given that he has not, in any case, paid any maintenance to the respondent over the past 19 years or so, and that it was the respondent who bore the expenses of the matrimonial home, this court agrees that very little weight is to be placed on the respondent's rent-free occupation.

### ***Inheritance of the respondent***

74 The appellant has made much of the fact that the respondent inherited a sum of money from her father's estate. A number of points arise. First, the inheritance is not a matrimonial asset that is subject to division under s 112 of the WC. Under the WC, a matrimonial asset does not include any asset (not being a matrimonial home) that has been acquired by one party by inheritance which has not been substantially improved during marriage by the other party

75 Second, the court is required by s 112(2)(h) to take account of the matters referred to in s 114(1) insofar as they are relevant to division of matrimonial assets.

76 Third, under s 114(1) the court is directed, *inter alia*, to take account of the financial resources which each party has or is likely to have in the foreseeable future. Her financial resources (even if strictly not a matrimonial asset) may be relevant in determining her entitlement to maintenance (and possibly her share in other matrimonial assets on a just and equitable basis).

77 The respondent did not mention the inheritance in the respondent's RAAM but did set out the details in her second ancillary affidavit in response to the appellant's AAM. The respondent's father passed away in 1991. He left behind a flat that was to be shared between the respondent and her 2 siblings. Her evidence is that she saved her share of the rental proceeds from the flat (S\$330) together with her share of her father's savings. It was from these savings that she was able to embark on the second renovation of the matrimonial home in 1994. The father's flat was sold in 2001 or 2002 and the respondent's share came to S\$52,000. This court notes the claim by the appellant that the respondent's one-third share was much higher, but finds that the claim is unacceptable as it is based on the value of the flat in August 2012. There is little reason to doubt the respondent's assertion that her share of the sale proceeds (the total proceeds being shared amongst her siblings) was S\$52,000. Based on the affidavit evidence, this court prefers and finds more credible the

respondent's statement as to how much she received from the sale of her deceased father's flat and how this enabled her to pay for the second round of renovations.

78 That said, this court also finds itself in broad agreement with the view of the District Judge stated at [33] of the GD that:

... unlike the husband, the wife had worked hard and as he put it, she was from day one a simple lady leading a frugal lifestyle. In these circumstances, it would not be right ... to give him any share of her hard earned savings which the simple and frugal lady had squirreled away for a rainy day.

## **The main issue – findings relating to the division of the matrimonial home**

### ***A holistic approach in considering division and indirect contributions***

79 I now move on to consider the main issue before this court, which is the division of the matrimonial home. As observed above, there is some dispute as to the direct contributions to the matrimonial home (including the renovations). I will return to those issues after considering the parties' indirect contributions with a bit more detail.

80 Before embarking on an analysis of indirect contributions, it is to be noted that s 112(2) does not actually use the terms "direct" and "indirect" contributions in respect of the factors to be taken account of in determining a just and equitable division on the facts. What it does is it sets out a *non-exhaustive* list of factors in eight sub-paragraphs. Some of these factors can be directly assessed in terms of a monetary value such as the monetary contribution towards the acquisition of the matrimonial asset as well as monies spent on improving or maintaining the asset. Debts incurred for the benefit of the children of the marriage are also directly quantifiable in monetary terms.

81 There are also many factors which cannot be easily assessed in monetary terms, such as, for example, contributions towards caring for the family. Indeed the factor identified in s 112(2)(c), *viz*, "the needs of the children", does not necessarily refer only to financial needs such as education fees, *etc*. The need for stability in terms of a familiar place of residence can be an important factor. The emotional needs are also important. How can a monetary value ever be placed on such factors?

82 A review of the case law reveals that much effort is often expended on pigeon-holing contributions into direct financial and indirect contributions. Accepting the danger of over-generalisation, much of the emphasis tends to be placed on financial contributions that are directly linked to the cost of acquisition (down payments, deposits, cash payments and monthly repayments, *etc*). That said, monies spent on renovation are also important. In some cases, the renovations are substantial and may add a lasting value to the property. In other cases, the monies spent on renovation may blur into maintenance or household expenses such as re-painting, repair of electrical wiring, *etc*. Other financial contributions which are not attributable to the value of the matrimonial asset (say a home) include monies spent on fittings such as furniture and the like. The list is endless. Does it matter whether the financial expenditure can properly be attributed to the cost of acquiring or improving (in the sense of adding lasting value) the property? The answer must be a resounding "no". Contributions to the matrimonial household extend far beyond the home as a physical and economic asset. Monies spent on maintenance of the home are relevant to the division of the matrimonial assets alongside contributions to the welfare of the family. These contributions may be of a financial nature, as for example, where a spouse pays for the children's school fees. Often times, they will be incapable of any sensible measurement in monetary terms, such as where a spouse devotes time towards looking after an aged or dependent in-law.

83 Classifying contributions as direct financial contributions, indirect financial contributions, and indirect non-financial contributions is convenient and may be helpful in taking a structured approach. But, at the end of the day, the classifications must not rule the decision. What rules the decision is the court's assessment of all the contributions made by each spouse which are relevant so as to achieve a just and equitable division. It cannot be assumed that any particular factor will always be given more weight. Whether it does or does not must depend on the court's assessment of the factors as a whole. A holistic approach is what the legislation requires.

### ***Indirect Contributions***

84 The appellant in his written submissions referred to several cases in support of his general claim that even in long marriages, the Singapore courts tend to limit their awards for indirect contribution to 5%–17.2%. These include the following:

(a) *Lim Choon Lai v Chew Kim Heng* [2001] 2 SLR(R) 260 ("*Lim Choon Lai*"), which involved a 30-year marriage and two children to the marriage. There the wife bore the brunt of supporting the family and providing for its welfare. The wife's contribution to the matrimonial home was fixed at 45%. To this she was awarded a further 15% for her indirect contributions.

(b) *Tai Neok Lian (m.w.) v Tan Hai Thiam* [2009] SGDC 6 ("*Tai Neok Lian*"), which involved a 29-year marriage and two children to the marriage. The wife's direct financial contribution was fixed at 53.3%. A further 17.2% was awarded for her indirect contributions.

( c ) *BCB v BCC* [2012] SGHC 144 ("*BCB*"), which involved a 15-year marriage and three children to the marriage. 5% was awarded for indirect contribution with direct contribution assessed at the ratio of 34.9:65.1 in favour of the wife.

(d) *Soo Lian Kiag v Chew Lee Shee* [2012] SGDC 26 ("*Soo Lian Kiag*"), which involved a 22 - year marriage and two children to the marriage. Direct contribution was assessed at 28% for the husband and 72% for the wife. The wife was given another 13% for indirect contribution. The court in this case declined to divide the matrimonial home in a manner that would leave the husband incapable of surviving.

85 Of the above cases, particular stress was placed on the decision of the District Court in *Soo Lian Kiag*. In that case, the two children were adults at the time of the divorce proceedings. The husband was a retiree aged 63. The wife was unemployed aged 60. During the marriage, the parties had run a joint business selling garlic to restaurants, hawker stores and suppliers. The matrimonial flat was a five-room HDB purchased in the parties' joint names. Both parties had used their CPF to pay for the flat. After examining the documents, the District Court found that the percentage of direct contribution (CPF principal, CPF interest, cash instalments, renovation expenses, conservancy and property tax) was 28% to the husband and 72% for the wife. Turning to indirect contributions, the District Court found that the wife had made considerable indirect contributions to the family business and the family. The wife was found to have borne the bulk of the responsibilities in terms of care of the family (although it was also accepted that the husband did make some contributions to the family). In coming to the decision on indirect contributions, the District Judge noted that there was no doubt that the proceeds from the garlic business had been the source of the wife's ability to pay for household expenses and family expenses through her careful allocation of the net business takings.

86 This was the context in which District Judge Lim Choi Ming stated at [45] that in coming to his decision on the percentage to be allocated to the matrimonial home, it was necessary to consider

that:

... both parties would henceforth have to survive on what they would receive from their share of the sale proceeds of the Flat. I felt that it would be unfair to divide the sale proceeds of the matrimonial home in a manner which could render the Husband incapable of surviving. I therefore do not agree with the Wife's proposition that the Flat be transferred wholly to her with no CPF refunds to be made to the Husband. Neither did I agree with the Husband's submissions that there should be an equal share of the net proceeds of the Flat.

87 The wife in that case was awarded 85% of the valuation price of the Flat: 72% for her direct contribution and a further 13% for her indirect contributions.

88 Even on a broad brush stroke basis, the present case is rather different in terms of the factual matrix. The appellant and respondent did not run or operate a joint business or work together in any form so as to generate income. Instead, it is clear that the respondent ability to work as a telephonist and to earn an income to support the family and household was independent from the work and income of the appellant. The appellant held numerous jobs during the first 19 years or so of the marriage before becoming a taxi driver. Indeed, this court is reminded that for many years the appellant was an undischarged bankrupt. This is not a case where husband and wife worked together in a family business for the benefit of the family as a whole. This was a case where whatever each spouse contributed (in terms of monies) was attributable to that spouse's efforts and labour. Of course, this scenario is not in itself uncommon. Many households today comprise two income earners (husband and wife) wherein the income earners have quite separate and independent careers. The important point is whether each spouse has made substantial contributions (by way of effort and results) to the running and maintenance of the household. Did each spouse make a real effort to contribute to the best of his or her ability? If so, the fact that one spouse may have contributed more in absolute terms (eg, because of a better paying job) should not mask the fact that the other spouse put in the same or similar effort although he or she may have contributed less (at least in absolute terms) in terms of dollars and cents to household expenses. In *Soo Lian Kiang*, the husband and wife had for many years ran a joint business. Even though the wife had made the lion's share of the contributions, the court rightly points out that the husband did make some contributions and that it was from the proceeds of the business that they ran that the wife was able to make her indirect contributions. In these circumstances, the District Judge rightly stated at [45] that "it would be unfair to divide the sale proceeds of the matrimonial home in a manner which could render the Husband incapable of surviving."

89 In the present case, the appellant argues in his submissions that this was not a case where the husband had walked out of the family, leaving a young child for the wife to support. The daughter, he points out, was already 19 years old. The appellant also points to the fact that the wife was then working as a telephonist, was in good health, was self-sufficient and in any event was a higher income earner. The appellant points to the fact that he does not enjoy a high income, is in poor health and that the matrimonial home is his only asset. The appellant submits that by ordering that there be no claim of rental (of S\$83,800 as at June 2013), that the rental be wholly retained by the respondent, and that the whole matrimonial home be transferred to the respondent, the appellant is effectively financially crippled and that no regard would have been given to his direct contributions and "the fact that he *allowed* the [respondent] and their daughter exclusive possession of the matrimonial home for the past 19 years while he incurred rental outside [*sic*]." [emphasis added]

90 Whilst there is some dispute as to whether the daughter was already earning a wage at the time when the appellant left the matrimonial home, it is clear that she was no longer an infant and was soon to become of age. There is no doubt that the marriage was long and that the period of

marital cohabitation lasted from December 1974 to February 1993 or 1994. Even if there is some uncertainty as to the exact date when the appellant left the matrimonial home, it is clear that the period of cohabitation was long and that the daughter was "more or less" grown up when he left.

91 The respondent in her submissions denies that the appellant made any contributions towards the renovations. The respondent accepts that since the appellant left the matrimonial home, she has enjoyed "rent free occupation" but as noted already, this has to be seen in the context that it was the appellant who chose to leave and that after his departure it is clear that he did not pay any maintenance to the respondent and daughter nor make any contributions towards the outgoings of the flat. All the outgoings and the third round of renovation were borne by the respondent with some help from the daughter (especially as regards the third round of renovation).

92 So far as the period from 1974--1993 or 1994 is concerned, the court notes the severe disagreement between the parties as to whether and how much contribution the appellant had made towards family and household expenses. The appellant has not provided any documentary evidence supporting his assertion of monthly payments in the region of S\$600. The fact that there is no documentary evidence does not mean that the court is bound to hold that no contributions were made. The period is a long time ago and it is not altogether surprising if parties to a marriage do not keep full and proper accounts of their respective financial contributions. That said, the court is bound to take note of the fact that the appellant (i) had served time in prison for embezzlement; (ii) was an undischarged bankrupt for a considerable period of the matrimonial co-habitation; and (iii) held numerous jobs including, by his own words, "odd jobs".

93 On the affidavit evidence, it seems clear that the appellant was only able to hold down a job for an extended period when he became a taxi driver sometime in 1994. That, of course, was around the time when he decided to leave the matrimonial home. The view that this court takes is that whilst the appellant did make some financial contributions towards household expenses and family maintenance during 1974-1993 or 1994, it is clear that the respondent made far greater efforts in this regard and was likely to have contributed the lion's share to the household and to the maintenance of the family out of her own earnings (as opposed to earnings from a family business). The District Judge's conclusion at [31] that the appellant had not contributed much towards the family is not at odds with the affidavit evidence.

94 In any event, the point has been noted already that Singapore law does not approach division of matrimonial assets on the basis that the starting point is equality of division. If equality of division is ordered in any given case, this is only because that is the just and equitable order after proper consideration of all the relevant factors. There is no statutory directive that the objective of division of assets and/or maintenance is to equalise the parties' net worth or financial positions. Indeed, it must be said, that even if there was a presumption in favour of equality of division based on a concept of community of matrimonial assets, this would only be a presumption or a starting point for analysis. In the present case, matrimonial cohabitation has ceased for some 18 years. Whatever contributions the appellant had made towards household expenses and maintenance of the respondent and the daughter took place over 18 years ago. This does not mean that this court is blind to the appellant's contributions in the first 19 years of marriage. For the avoidance of doubt, this court does accept that the appellant had made some financial contributions in the first 19 years of the marriage. Even though these were likely to have been irregular and of uncertain amount, the court accepts that financial contributions were made and that the appellant also made some contributions as a father towards looking after the daughter.

95 Section 114(2) of the WC states that in exercising its powers on maintenance that the court should:

endeavor so to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

This provision is directed towards maintenance rather than division of matrimonial assets. That said, it is worth underscoring that the provision looks at the position in which the parties would have been if the marriage had not broken down. The provision is readily understandable: especially so in cases where ancillary proceedings (after divorce) are brought within a reasonable period of the breakdown of marriage. But where we have a case where matrimonial co-habitation ceased some 18 years ago and the marriage has broken down for at least that length of time, if not even longer, the relevance of what the parties' position would have been, if the marriage had not broken down, when they finally divorce some 18 years later, is questionable. This is especially so where there has been very little contact between the parties in the intervening 18 years during which the parties lived separate lives in separate households. The fact this took place, as gleaned from the affidavits, was the choice of the appellant alone. To be clear, the court is not saying that the contributions made by the parties during the years of actual matrimonial co-habitation are irrelevant. That would be unjust and wrong in principle.

96 The point made is that when a court is asked to consider what is a just and equitable division of matrimonial assets and maintenance some 18 years after the parties effectively separated and during which each led separate lives and took responsibility for their own well-being and expenses, the court must take some account of the long period during which the parties have been living in separate households. If the party who left (through no fault of the other party) finds after 18 years that his or her household is "less prosperous" than that of his (ex)-wife or (ex)-husband: this is hardly a fact which on its own will earn much sympathy from the courts.

### ***Other cases can be distinguished***

97 Insofar as the case authorities cited by the appellant are concerned (and as summarised above), the respondent submits that the circumstances in each case were rather different. A survey of the cases will show that to a large degree, the respondent is correct in this submission.

### ***Lim Choon Lai***

98 In *Lim Choon Lai*, the marriage lasted 30 years. About 40% of the cost of the matrimonial home was paid for by a Government loan of S\$90,000. The remainder, S\$139,000, was paid for by the parties. The District Court eventually held that the husband's direct financial contribution was 58% while the wife's was 42%. The actual order was that the matrimonial home should be divided equally. An appeal to the High Court was dismissed (although the High Court did state that the correct calculation of the percentage contribution should have been 55% and 45%). This resulted in the further appeal to the Court of Appeal. So far as the direct contributions to the matrimonial home were concerned, the Government loan of S\$90,000 was repaid over 18 years with each party making equal contributions. Insofar as the balance of S\$139,000 was concerned, the Court of Appeal noted that the evidence as to payments was conflicting but eventually agreed that the fairer view would be that the parties made substantially equal contributions towards the purchase price of the matrimonial home. The question then was what impact the parties' other financial and indirect contributions made to their entitlements to a share of the matrimonial home. The Court of Appeal noted that the husband had paid for 4 years of the daughter's medical course at university together with some other contributions to household expenses. That said, L P Thean JA (delivering the grounds of judgment of the Court of Appeal) also noted at [23] that the wife claimed that throughout the marriage she was

the one who shouldered the bulk of the household expenses, did most of the housework, and looked after the welfare of the family. In particular, it was noted that "her earnings over that period were significantly higher" and that she was the one who "was able to provide the family with a comfortable living by paying for their overseas holidays, purchases of cars and branded goods." On the facts of that case, it was clear that the husband's income was meagre. Nevertheless, the Court of Appeal agreed that the husband's indirect contributions had to be recognised, and stated at [26] that "he did what his level of income permitted him to, and he paid for the lesser expenses." As far as indirect (non-financial) contributions were concerned the Court of Appeal at [27] accepted that the wife, being a school teacher, would likely have had more time to spend with the family and children whereas the husband, who worked as a clerk (on a nine-to-five basis) would not have been as likely to spare the time. On this basis, the actual holding was that the District Court had been too generous to the husband and had given him too much credit for his financial contributions towards the daughter's education, etc. These were said to hardly match the level of input of the wife. For this reason, the Court of Appeal allowed the appeal and awarded the wife 60% of the matrimonial home (rather than equal division). Counsel for the appellant in the present case submitted that the effective uplift in respect of indirect contributions was 15%. In actual fact, it would appear that the uplift was closer to 10% since the Court of Appeal had opined that the correct percentages for the direct contributions was 55% to the husband and 45% to the wife.

99 Whilst the percentage attributable to the indirect contributions in *Lim Choon Lai* appears to be 10%, it bears repeating that the task the court faces in determining what is a fair and equitable division is not to be equated with a mathematical exercise. The Court of Appeal did not in fact discuss the impact of the indirect (non-financial) contributions in terms of percentages. What was said at [27] was that the wife probably had more time to spend with the family and children whereas the husband, because of his fixed hours of work, would not have been as likely to spare the time. With due respect, this statement is somewhat ambiguous. At the very least, it is unclear as to whether the Court of Appeal accepted that the husband had made little or negligible non-financial indirect contributions. Indeed on the facts (as reported), the Court of Appeal at [24] did note that the husband had asserted that because the wife was busy with her career, he did most of the housework and was the main caregiver for the children.

100 In any case, in the case at hand, it is clear that the respondent bore the brunt of the household expenses throughout the 19 years or so when the parties were cohabiting and that she was very likely the main (if not sole) caregiver to the daughter. It is accepted that the appellant may have provided some monies from time to time: but there can be little doubt that the respondent's job and income were the backbone of the family's resources. Not only did the respondent take care of the majority of household expenses, it is clear that she played the leading role in raising the daughter. In saying this, this court is well aware that there is no evidence from outside of the family (ie, parties other than the appellant, the respondent, and the daughter) as to the nature of the familial relationship when the appellant was staying at the matrimonial home. The daughter's affidavit, whilst strongly supportive of the respondent's averred role, must be given its proper weightage: the evidence has not been tested by cross-examination and the appellant has also asserted that he did play his part in taking care of the family. That said, the objective facts (in the appellant's AAM) show and reveal that during the years of marital co-habitation, the appellant did serve time in prison, was an undischarged bankrupt for a substantial part of that period, and held numerous jobs including some (covering a 2-year period) that were merely labelled as "doing odd jobs". This does not necessarily mean that the appellant did not attempt to fulfil his role as a father. It does not, however, inspire confidence. Thus, whilst I am prepared to accept that the appellant did perform some family duties including taking the respondent's father to hospital when the latter suffered a heart attack, occasional contributions towards Chinese New Year expenses, a few overseas trips to Penang, Kuala Lumpur and Batam, and occasionally fetching the daughter to and from school, the bulk of the efforts



in this regard, likely came from the respondent.

101 In *Lim Choon Lai*, the Court of Appeal found that the husband contributed less by way of indirect financial contributions, but this was because he earned far less. The Court of Appeal accepted at [26] that the husband did what his level of income permitted him to and he had paid for lesser expenses. These lesser expenses, it must be said, included 4 years of tuition fees for the daughter's medical course at university. In the present case, the evidence as to the appellant's indirect contributions is, at best, thin. In addition, the appellant left the matrimonial home over 18 years ago during which time he failed to provide the respondent with any maintenance at all: whether for her personal expenses or by way of upkeep of the matrimonial home.

#### *Tai Neok Lian*

102 In *Tai Neok Lian* the parties divorced after a 28-year marriage. There were two children. The District Court found that the direct contributions to the matrimonial home were 53.3% (wife) and 46.7% (husband). The District Court also found at [15] that the wife's indirect contributions to the welfare of the family and taking care of the children and their needs were rather considerable and far outweighed whatever indirect contributions made by the husband. In this case, the wife wanted to retain the matrimonial flat and, in return, she was prepared to refund his CPF account the monies used by him for the purchase together with the accrued interest plus an additional sum of S\$20,000 in cash. She was also prepared to waive maintenance for herself. Alternatively, the wife proposed that the matrimonial home be divided 80:20 in her favour together with a further lump sum of S\$40,000. District Judge Jocelyn Ong, in this case, found that the wife's first proposal was fair and that it would mean that she was effectively being awarded 17.2% for her indirect contributions in looking after the home and bringing up the children. The appellant urges me to take this case as an indicator that even in long marriages the uplift to be accorded in respect of indirect contributions should be no higher than about 20%. Even if I was to accept that *Tai Neok Lian* is authority in support of that proposition, it is important to stress that there is no principle of law that even in long marriages the maximum for indirect contributions (in terms of effect on division of matrimonial assets) is about 20%. In any case, the decision in *Tai Neok Lian* rested on the proposal made by the wife: a proposal which counsel for the respondent in the present case, rightly stresses was regarded as one that was more than fair to the husband. In fact, the learned District Judge went out of her way to say at [18] that the proposal was "quite generous".

103 Of greater relevance to the present case is the learned District Judge's holding at [19] that while she did consider the fact that the wife had more assets than the husband (in CPF monies and savings), she "accepted that those assets were accumulated by the wife's own hard work and were not due in any way to the husband's contribution." In the present case, it is clear that the fact that the respondent is today in a more comfortable financial position as compared to the appellant has nothing to do with anything that the appellant has done. Indeed, the affidavit evidence suggests that the respondent has done "well" *in spite of* the appellant and *not because of* his assistance.

#### *BCB*

104 The third case relied on by the appellant (summarised briefly above at [84(c)]) is *BCB*. This was a case where the marriage lasted 15 years. The High Court held that a fair award for indirect contributions of the wife was 5%. This was a case where there were three children of the marriage (aged 18, 14 and 9 at time of the hearing). In the High Court, Lee Seiu Kin J awarded joint custody with care and control to the wife and reasonable access to the husband. The High Court found that the husband, who was self-employed, earned about S\$7,000 per month. The wife was earning a net income of S\$4,350 per month. Nominal maintenance was awarded to the wife. There were two

properties forming the matrimonial assets. The High Court ordered both properties to be sold and the net sale proceeds to be divided in the proportion of 30% to the husband and 70% to the wife.

105 The High Court, in this case, found that the ratio of direct contributions by the husband and wife was 34.9:65.1. As for the indirect contributions, the High Court awarded an extra 5% to the wife on account of:

- (a) the length of the marriage (15 years to the separation in 2006);
- (b) the birth of three children;
- (c) the fact that the husband had been “as much involved in the upbringing of the children as the Wife”;
- (d) the fact that the husband travelled frequently during which time the wife had to care for the children on her own; and
- (e) that when the husband’s business was not doing so well, the family relied principally on the wife’s income.

106 On appeal (see *BCB v BCC* [2013] 2 SLR 324 (“*BCB (CA)*”)), Phang JA (who delivered the judgment of the Court of Appeal) held that too much emphasis had been placed on direct contributions and that more attention should have been paid to the husband’s indirect financial contributions. For this reason, the Court of Appeal varied the division to 40% to the husband and 60% to the wife. In the court’s judgment, Phang JA, after surveying a number of Singapore cases on the division of matrimonial assets for marriages lasting ten years or longer in which both parties were working and in which the couple had children, comments at [27] that the trend that emerged was that for:

... marriages of moderate lengths of time ... or for marriages which have lasted for a very long time ... and where there are children to the marriage and both parties are working and have made direct and indirect contributions to the marriage, the courts would recognise *all* these contributions *despite* arguments to the effect that one party had made *more direct* financial contributions. [emphasis in original]

107 The appellant, in this case, cites the *BCB (CA)* decision in support of the argument that an additional 5% award to the respondent for her indirect contributions was “not unjust” applying the broad brush approach, considering the respondent’s superior present financial position, the age of the appellant, his ill health and the apparent fact that he has no other assets. With respect to counsel’s submission, this court is unable to accept that the cases are comparable. In *BCB (CA)*, the Court of Appeal observed that they were dealing with a case where it was the wife who had provided greater direct financial contributions and that it was the wife who had argued before the court that the Judge was correct in taking that 65% direct contribution and adding a “premium” of 5% for her indirect contributions. This was a case where the husband was appealing.

108 A key issue was whether the High Court had given proper weight to the Husband’s indirect contributions. On this, Phang JA, with respect, rightly observes at [34] that regardless of who provides more direct contributions, the court is bound to consider all direct as well as indirect contributions furnished by both parties to the marriage “in a broad-brush fashion.” The Court of Appeal in this regard held at [37] that whilst the husband’s indirect contributions in a general sense (for example, his relationship with his children) had been taken into account, the High Court did not

take sufficient account of the husband's indirect financial contributions, viz, his substantial contributions to family expenses especially in the early years of the marriage before the he fell on hard times. It was for this reason that the Court of Appeal allowed the appeal and ordered the net sale proceeds to be divided 40% to the husband and 60% to the wife.

109 It follows that *BCB (CA)* is not authority or support for the proposition that a 5% award to the respondent in the present case is "not unjust". Indeed, with respect, the submission that 5% might be just is quite remarkable in the circumstances. In *BCB*, the wife on appeal was defending the award (65.1% for direct contribution plus 5% for indirect contribution). It was the husband who was appealing on the basis that insufficient credit had been given for his indirect financial contributions. The husband succeeded on a broad brush basis. It is apparent that *BCB (CA)* was ultimately decided on the basis that both husband and wife had provided significant indirect contributions: financial or otherwise. The fact that the end result turned on a 5% difference does not mean that the Court of Appeal (or indeed the High Court) was stating that in a moderate or long marriage direct contributions are more important and that the weightage for indirect contributions are relatively less important. Instead, what *BCB (CA)* demonstrates is that in many marriages of moderate or long length, both parties will have made substantial indirect contributions: financial or otherwise. An assessment as to which party has contributed more can be made even more difficult when each spouse makes different forms of indirect contribution at different times according to his or her circumstances and ability.

110 To take a trite example: an employed wife whose career has momentarily fallen on hard times may not be able to contribute as much towards household expenses or holidays and presents, etc. But this does not mean that she is unable to contribute in other ways such as interaction with and care of children, other family members and more. The reverse of course is equally true. In *BCB (CA)*, the Court of Appeal was not by any means saying that the husband's indirect contributions merited a mere 5%. Instead the Court of Appeal was saying that on a *comparative* basis, considering that both parties were working and had contributed financially and in other ways, the value of the husband's indirect contributions had been relatively undervalued. *BCB (CA)* would be far more relevant in cases where the court finds that both the husband and wife made substantial and consistent indirect contributions over a long period of time. In the present case, I agree with the respondent counsel's submission that the parties' indirect contributions were "not even close to being equal."

### ***A summary of the case law as discussed above***

111 Viewing the question of the division of matrimonial asset broadly, it appears that the courts often approach the assessment of the parties' contributions by starting with the direct contributions to the cost of acquiring the assets and their improvements. In the case of the matrimonial home, such as an HDB flat, this will usually comprise (i) the down payment (or deposit), if any; (ii) any cash contribution; and (iii) the monthly payments from CPF. In addition, monies spent on renovations (as opposed to routine household expenses or consumables such as electricity, conservancy charges, furniture, etc) are also relevant as these may (but not always) add value to the property. In saying this, this court however repeats the earlier observation that contributions (financial or otherwise) that are not directly related to the cost of asset acquisition or improvement are also relevant under s 112.

112 Where the court is determining the relative percentage for the division of the matrimonial property, it goes without saying that what is important is the percentage that is eventually determined. For example, suppose that the husband is found to have contributed 60% in terms of direct contributions to the deposit, repayments, and renovations. The wife has 40% direct contributions. If, on a broad brush basis, the court assesses that the indirect contributions in totality are about equal: it does not matter whether the parties each contributed S\$1,000 per month or

\$20,000 per month. The overall percentage will remain the same if the indirect contributions are (as a whole) the same or closely similar. It will remain 60:40 or thereabouts. *BCB (CA)* appears to be just such a case where both parties made substantial indirect contributions over a long period. What was in issue before the Court of Appeal was the question whether the High Court had underestimated the value of the husband's indirect contributions. To answer that question, especially on a broad brush basis, guided by justice and fairness, it is necessary to consider his contribution in the context of the broadly assessed contributions of his wife. It is this court's view that this is the proper context for the Court of Appeal's decision in *BCB (CA)*. If this interpretation of *BCB (CA)* is correct, it must follow that in cases where there is an obvious substantial disparity in the indirect contributions, *BCB (CA)* cannot stand as an authority for the proposition that 5% is not unjust on the facts before the court.

113 The court takes this opportunity to again repeat the point that s 112(2) refers to the court's *duty* to consider a broad range of factors in exercising its powers on division of matrimonial assets. As discussed above, not all are concerned with financial contributions or contributions which can be sensibly valued in monetary terms. For example, s 112(2)(d) directs the court's attention to "the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party." The WC does not accord any bias in favour of any particular factor or set of factors: financial or otherwise. Indeed, the list of factors, extensive as they are, is not even exhaustive. The relative weight to be accorded to any factor or set of factors must depend on the circumstances of each case and is guided by the ultimate goal of reaching a just and equitable division.

114 It goes without saying that, when a marriage breaks down, it will not be often that a "perfect" solution can be found when dividing matrimonial assets. Even where the parties are able to negotiate a settlement, the settlement will usually be based on compromise and concession. The longer the marriage, the more complicated the task is likely to be. This does not mean that the question of division can be determined by "judicial whim." There are principles to be followed and applied. One clear principle is that court must take account of non-financial contributions and it cannot (indeed should not) be assumed that these are to be accorded less weight than direct financial contributions. Where both parties claim to have helped to care for the family and household, the court must do its best to evaluate the merit of the contributions. This is done on a broad brush basis and the court must be careful not to devalue one party's efforts (say, looking after the children) simply because it was he or she who caused the break-up of the marriage. Non-financial contributions (especially in a long marriage) will cover a broad range of matters. They include: looking after and interaction with the children, care of aged or infirm relatives or dependents (of either party), running the household such as involvement in marketing, shopping, cooking of meals, etc. Oftentimes, couples will consciously or sub-consciously gravitate towards a natural division of time and labour. The husband may take responsibility for weekend meals, the wife may undertake the weekday cooking, both may do the groceries and washing of clothes, the wife may prefer to take care of the garden whilst the husband may take an active part in taking the children out for sporting activities. The permutations are endless and will often change (and evolve) over time. That is why it is especially important to take a broad brush approach with indirect contributions. Taking a broad brush approach does not mean that the indirect non-financial contributions are to be paid only lip-service. The case law makes clear that these contributions must be given proper consideration.

#### *When evidence is challenged*

115 The practical difficulty, however, is that where the contributions (financial and non-financial) are found solely in affidavits (and the exhibits if any) that the judge may find it hard to reach a considered view: even where a broad brush approach is taken. Much will depend on the quality of the affidavit evidence. In any case, the affidavits must be read bearing in mind that the assertions have

not been tested by cross-examination. Resolving conflicts as to indirect non-financial contributions on affidavits may not be easy. In some cases, the court may well reach the view (notwithstanding conflicts in the affidavits) that the parties' indirect non-financial contributions are broadly equal. In such a case, the extent and nature of the financial contributions (direct or indirect) will obviously assume greater importance in the overall assessment of what is just and equitable. In other cases, the court may reach the view that one party has clearly undertaken the lion's share of the effort and responsibility in looking after the family and household. In such a case, it would not be fair or just that the division of the matrimonial assets is driven primarily by the percentages assessed for the direct financial contributions. To do that will be to give inadequate weight to non-financial indirect contributions: contributions which are just as real as the repayment of monthly mortgage payments due, *etc.*

116 There will always be a residue of cases where the affidavit evidence does not enable the court to reach any clear conclusion as to the parties' indirect contributions (financial or otherwise). It is of importance that parties and their legal representatives prepare the affidavits with as much supporting evidence so as to assist the court to reach a proper determination. To be clear, no criticism is made of the affidavits in the present case although the general concern of the learned District Judge has been noted. At [35] of the GD the learned District Judge held that whilst he was not prepared to draw any adverse inferences:

... both parties had not been upfront in disclosing some of the sums that they were in receipt of. The discovery process had enabled both sides to unearth more details. Nevertheless there were still gaps that remained unanswered by both [parties] ...

117 In those cases where the parties are in broad agreement that both have made substantial and broadly equal indirect contributions, then this should be made clear to the court. In other cases where there is no (or little) consensus at all on indirect contributions, it must follow that the parties should present the best evidence (in the circumstances) to substantiate the assertions. In saying this, the court does recognise that in many marriages there will be gaps in documentary records in terms of bills, receipts, invoices, *etc.*

118 Where it is clear that a party has not been forthcoming or has concealed relevant information as to his or her assets, means and contributions, the court may have no alternative but to draw adverse inferences. As mentioned in *Elements of Family Law* at pp 529–530:

The Court of Appeal in *Wee Ah Lian v Teo Siak Wen* [[1992] 1 SLR(R) 347] stated that full and frank disclosure is important and, in its absence, the court is entitled to draw adverse inferences adverse to the party who failed to make full and frank disclosure.

...

The courts demonstrated readiness in several cases to make adverse inferences where facts are proven to raise the suspicion that the party may have failed to make full and frank disclosure.

119 Compliance by the parties with their duty to make a full and frank disclosure of information relevant to division and maintenance (for the latter, see *Elements of Family Law* at p 668) is critical to the court's ability and duty to reach a just and equitable conclusion. In a very real sense, the duty is owed not just between the parties but is also owed to the court.

120 That said even where the parties have been able to locate some invoices or receipts, these documents may not indicate who paid or made the arrangements for the service or goods to which

the receipt or invoice relates. Bank statements may be incomplete for a variety of reasons. In any case, such statements are mainly helpful in establishing financial contributions (direct and indirect). Documentary proof of contribution to housework, care of children, *etc*, would be rather unusual. Sometimes, photographs of family events may be exhibited. In general, these will only provide a snapshot of a single moment and may not help at all in drawing broader (general) conclusions. Affidavit evidence from outsiders (friends, school teachers, family doctors, religious counsellors such as a family priest, other family members, *etc*) may help although the court will surely need to be wary of possible bias (intentional or unintentional).

### ***The law as applied to the present case***

121 In the present case, this court agrees with the learned District Judge that the affidavit evidence on the whole (and on a broad brush basis) supports the respondent's case that she was, at the very least, the principal caregiver and homemaker during the marital period leading up to the appellant's decision to leave the matrimonial home in 1993. The indirect contributions (as a whole) of the appellant at best appear to have been sporadic in nature. In saying this, I am mindful of the view (mentioned above) that due emphasis should be given to each party's *efforts* as well as the results. If a party has contributed or made efforts to the best of his or her abilities (accepting that this may be hard to determine in many cases), then the fact that his or her efforts were "quantitatively" less because of his or her more limited abilities or resources may be less significant as a negative factor on a just and equitable basis, bearing in mind the admonition of the courts that marital life is a partnership. To take a hypothetical example, a spouse who is handicapped (confined to a wheel chair) but who looks after the children to the best of his or her ability, notwithstanding the limitations imposed by his or her handicap (such as being unable to take the children to school, to participate in family play, family walks, perform housework, *etc*) should not be "prejudiced" or "handicapped" as such when the court assesses the parties' indirect contributions in terms of care of the family. The handicapped spouse may have been able to contribute in other ways: reading to the children, giving parental advice, playing board games with the children, using the computer to maintain household accounts, to conduct on-line household banking, preparation of annual tax returns, *etc*. In such a case, the fact that the handicapped spouse put in his or her best *efforts* is rightly an important factor when using the broad brush approach in assessing the indirect contributions. The fact that the able-bodied spouse was able to do more, in this hypothetical, especially in terms of routine physical chores including household shopping, *etc*, does not mean that the court is unable to take the view that both have made substantial indirect contributions which, broadly speaking, are equal. Of course the fact that the other spouse also has to spend time and resources caring for the handicapped spouse is a factor which, in all fairness, is likely to result in the court recognising that, overall, the able-bodied spouse's contributions were higher. But, in doing this, the court should be careful not to devalue the best efforts of the handicapped spouse.

122 Bearing in mind the above, I found the decision of Woo Bih Li J in *Yam Lai Lin Angeline v Campbell Harvey Llewellyn* [2010] SGHC 102 instructive. In that case, the matrimonial division concerned the matrimonial home (an HDB flat). The learned judge began with the principle (noted earlier) that the apportionment should be made first and that the parties should then use their respective shares to reimburse their own CPF accounts and interest. The parties were married for about 21 years. There were two children. In 1997, the wife obtained a personal protection order against the husband (by consent). This order was rescinded in February 1998 (also by consent). In June 1998, the wife obtained another personal protection order for herself and their 8-year old son. The parties were eventually divorced in 2004. The ancillary proceedings in that case took a long time and were only heard by the District Court in 2009. Before the District Judge, the wife sought apportionment of 80:20 in her favour. The husband sought a 50:50 division. The District Judge found in favour of the wife. The husband appealed. Woo J referred to the District Judge's finding that the

wife's direct contributions was S\$48,187.50. The evidence as to the husband's direct contributions was very thin and inadequate. The District Judge had no alternative but to find that the husband had not made a frank and full disclosure and that an adverse inference was to be drawn in assessing his direct contributions in determining the appropriate percentages.

123 Turning to the indirect contributions, the District Judge noted, *inter alia*, the following (which Woo J referred to at [22]): (i) the husband's repeated acts of violence (personal protection orders); (ii) an affidavit filed by the daughter (then aged 22) corroborating the wife's assertion of violence by the husband as well as the fact that the wife had brought up the 2 children single-handedly and had protected the children from the husband. As for the direct financial contributions, Woo J found (after allowing the husband to file an affidavit on his contributions) that the husband's direct financial contributions were in fact slightly higher than the wife's direct financial contribution (43% to the wife and 57% to the husband). Nevertheless, Woo J's conclusion was that "bearing in mind the parties' indirect contributions and the poor and irresponsible conduct of the Husband in discharging all his responsibilities as a husband and father", the District Judge was correct in apportioning the sale proceeds 80:20 for the wife and husband respectively. In effect, the Court had assessed the indirect contributions as justifying an uplift of 37% to her share of the matrimonial home.

124 In the present case, whilst the respondent did not seek or apply for personal protection orders, she has made assertions (in her affidavits) that whenever she asked the appellant for money that it would usually escalate into a fight and that the appellant would become violent. A police report (dated 28 November 1986) was exhibited in which a complaint was made that the appellant had punched the respondent and threatened to throw acid on her face. No charges were preferred and the appellant was not prosecuted. The respondent has also asserted that on the day that the appellant left the matrimonial home, there had been an altercation between the appellant and the daughter which resulted in the respondent's sister being stabbed with a pair of scissors. The police were called and the appellant was kept overnight at the police station. Thereafter, he left the matrimonial home. Once again, no charges were actually preferred. The response of the appellant to his conviction for embezzlement in 1982 and the alleged acts of violence is quite revealing. In respect of the conviction, the appellant states in his third affidavit that the investigating officer had told him "just to say that [he] embezzled the money to pay for 'gambling debts' when [he] tried to explain that [he] took the money for expenses for [himself] and [his] family." The appellant added that he did not have legal representation and agreed to "whatever the IO told [him]."

125 This attempted explanation is far from satisfactory and is not credible. Insofar as his bankruptcy is concerned, the appellant "explains" in his third affidavit that the bankruptcy was initiated by his former employer sometime after his prison sentence and that he was declared bankrupt in 1984 and was discharged from bankruptcy in 1999.

126 In respect of the alleged acts or threats of violence, the appellant in the same affidavit admits raising his voice when he lost his temper but he asserts that he never hit or physically abused the respondent or the daughter. He asserts that if had done so, the respondent and the daughter would have left the matrimonial home and/or applied for a personal protection order. He also asserts that he was unaware that the respondent had made what he calls a "false police report" in 1986. With respect, the fact that the wife did not apply for a personal protection order is hardly evidence supporting the appellant's assertion that the acts of violence did not take place. A decision to apply for such an order or to press criminal charges is a very serious matter – especially in a matrimonial setting where the goal must be to make the marriage work.

127 The only other evidence before this court on the family relationship is the two affidavits filed by the daughter. As mentioned earlier, the daughter's affidavits support the respondent's position.

Indeed in her first affidavit, she refers to an occasion when the appellant in a "drunken rage" used a "parang" to "chop" an overnight bag which the respondent had prepared. Overall, the daughter states that she has no recollection of growing up with a father. In response to the daughter, the appellant filed another affidavit in which he makes general denials of involvement in gambling and being an abusive and absent father, *etc.* Whilst he admits that he spent a night at the police station, he is quick to add that the fact that he only spent a night at the police station and was released the next morning "clearly shows that [he] did not hurt the [daughter] or the [respondent's sister] as alleged." Instead he describes the incident "merely as a family dispute in which no one got hurt." Whilst a detailed examination of the allegations made by the parties is unlikely to be helpful, I am in full agreement with the learned District Judge's holding at [32] of the GD that the evidence of the wife and daughter was (especially when viewed broadly or in the round) much more credible and that the complaints about the husband indulging in gambling, drinking, *etc.*, were more likely to be true as these were also borne out by the daughter. The appellant's assertion in his affidavit, in reply to the daughter, aside from setting out specific denials, states his belief that the appellant had brainwashed her and had influenced her to think that he was a "bad and violent father who did not care about her." This may be the appellant's belief. The court, however, notes that the daughter, who swore two affidavits in support of the appellant, was 37 years of age at the time of making of her affidavits, married, and employed as a senior marketing manager at a well-known bank.

128 In the circumstances, I am in agreement with the holding of the learned District Judge at [31] of the GD that the appellant had not contributed "much" towards the family during the period when he was living at the matrimonial home. As for the years between 1993 (when he left the matrimonial home) up till the divorce in 2012, there is no doubt that he did not provide any monetary support to the wife or the daughter. Indeed there appears to have been little contact at all during that period. In respect of this period, the main point made by the appellant is that the respondent has enjoyed the matrimonial home, rent free, for many years whereas he has stayed in a room rented from a female friend who was his landlord and (according to him) a very occasional relief taxi driver. That he stayed with the female friend does not appear to be in dispute. Whether it was subject to rent is a matter in dispute. The assertion of the appellant that he pays rent (whether commercial or by way of token) at best is nothing more than a bare assertion.

129 As a matter of law, there is no doubt that the HDB property in question was the matrimonial home. This court notes the dispute as to the direct contributions but finds no reason to upset the learned District Judge's holding at [33] of the GD that "accepting the wife's evidence", the appellant paid about 42% towards the flat whilst the respondent paid about 58%. The learned District Judge would have been fully entitled to find that the respondent's indirect contributions merited a substantial impact on the overall award. Indeed, his finding at [33] was that the respondent was entitled to "at least another 50% to 60%" given the length of the marriage with one child of the marriage. On this basis the respondent would be entitled to the entire interest in the matrimonial home.

130 Whilst this court would have gravitated towards an assessment of about 40% for the respondent's indirect contributions, it does not as a whole, disagree with the learned District Judge's order. Even on that more conservative basis, the respondent's share on a mathematical basis would approach some 98%. The court in any case reminds itself that division of matrimonial assets must not to be reduced to a mathematical exercise of addition, subtraction and percentages. A holistic approach must be taken.

131 The court is bound to take note that the appellant has not provided any monetary support for the respondent since about 1993. Since her retirement in 2001 the respondent's principal source of income comes from the rental of the matrimonial home. The rental started in 2010. Whilst the



respondent is presently staying with her married daughter the fact remains that if she has to find a place of her own, she would likely have to move back to the matrimonial home. In that eventuality she would lose or have a severely reduced income. The appellant is staying at the home of his female friend [XY]. Whether she is a mistress does not really matter. He has been staying with her for most of the time since he left the matrimonial home in 1993. He is still working as a taxi driver. His landlord and female friend is his registered relief driver. The extent to which she helps as a relief driver is in dispute.

132 The court accepts that at 62, the appellant is no longer young and that he has certain health problems. It is also noted that the doctor's memorandum states (albeit in 2012) that the conditions were under control although it noted that the appellant himself asserted that when he drives often or for long durations, his blood pressure rises. This is not a statement from the doctor that the appellant is unfit to drive long hours or more frequently. There is not even a medical statement showing how long hours of driving increase the appellant's blood pressure. It is in reality nothing more than an unsubstantiated statement from the appellant himself that he notices that his blood pressure would rise. This court is unable to place much weight, if any, on this; aside from taking note of the appellant's age, the fact that he does have hypertension, hyperlipidaemia and diabetes and that on 30 November 2012, the examining doctor reported that his "conditions were mostly well controlled" and that the appellant was regular in his follow up appointments.

### **Maintenance**

133 Finally, as for maintenance, this court notes that whilst the learned District Judge did not make any separate award for maintenance (backdated or prospective), the respondent's claim was effectively "absorbed" into his decision to allow the respondent to retain the accrued rental income of some S\$83,000. Bearing in mind that the appellant had not provided any financial support since his departure in 1993, the respondent's present financial position (needs, commitments and expenses), I am unable to conclude that the learned District Judge had made any error or mistake in his decision to award the respondent the matrimonial home with no cash consideration or refund of the appellant's CPF monies used and the accrued interest.

### **Conclusion**

134 These ancillary proceedings concern the division of a matrimonial asset (and maintenance for the respondent). The marriage (or more than 30 years) is long: but in reality, the matrimonial home over which much has been said ceased to be a matrimonial *home* a very long time ago. The HDB flat in question is of course still a matrimonial asset of the long failed marriage. The parties are now senior citizens. The respondent is retired whilst the appellant still works as a taxi driver (albeit there is a dispute over his actual working and earning capacity in the light of his age and health). In the circumstances this court agrees with learned District Judge's conclusion that a clean break was in the best interest of the parties. The order of the learned District Judge is just and equitable and the appeal is accordingly dismissed.

135 Given that the respondent has succeeded in the appeal, the appellant is ordered to pay costs to the respondent.

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[\[note: 1\]](#) RA vol 2, Part 1, p 50.

[\[note: 2\]](#) RA vol 2, part 1, p 149.

[\[note: 3\]](#) RA vol 2, part 2, p 475.

[\[note: 4\]](#) RA vol 2, part 2, p 420.

[\[note: 5\]](#) RA vol 2, part 2, p 269.

[\[note: 6\]](#) RA vol 2, part 1, p 163.

[\[note: 7\]](#) RA vol 2, part 1, p 299.

[\[note: 8\]](#) RA vol 2, part 1, p 275.

[\[note: 9\]](#) RA vol 3, p 570.

[\[note: 10\]](#) RA vol 3, p 564.

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