

Wong Suit Kam v Tan Beng Wah Benny
[2006] SGHC 56

Case Number : D 1353/2004

Decision Date : 29 March 2006

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Koh Sian Ann (Tan & Au Partnership) for the petitioner; Fong Weng Khai (WK Fong & Co) for the respondent

Parties : Wong Suit Kam — Tan Beng Wah Benny

Family Law – Matrimonial assets – Division – Wife and husband having competing claims as regards division of matrimonial property – Applicable principles for determining equitable distribution of assets

Family Law – Maintenance – Wife – Applicable principles for determining appropriate amount of maintenance

29 March 2006

Judgment reserved.

Judith Prakash J:

Introduction

1 The parties were married on 12 December 1971. By the time the decree *nisi* was granted on 5 October 2004 on the basis that the parties had lived separately and apart for a period of at least four years, they had been married for almost 33 years. They are both now 59 years of age. As the two children of the marriage, both sons, are in their thirties, the ancillary matters before me relate only to the distribution of the matrimonial property and the maintenance of the wife.

2 The husband worked throughout the marriage until his retirement in December 2001. He was first a secondary school teacher, then an officer in the army (for three years while he served full-time National Service) and then a teacher again until his retirement. The wife was also a working woman through much of the marriage. She was not as well educated as the husband and did not earn as much. At various times she worked as a production supervisor, a charge hand, a cook, a member of the kitchen crew in a café and as a canteen vendor. She stopped work in 2000.

3 The divorce was extremely acrimonious. The wife had originally petitioned for divorce on the ground of the husband's unreasonable behaviour. He had then responded with an answer and a cross-petition, also on the ground of unreasonable behaviour. It was only subsequently, in the course of the pre-trial proceedings, that the parties agreed that the wife should proceed with her petition on a different ground. Reflecting the parties' disgruntlement and disillusionment with each other, however, the affidavits filed for the ancillary matters contained numerous complaints about each other's behaviour. Deciding how much credence should be given to these unpleasant allegations was one of the more difficult tasks I faced in coming to this decision.

The matrimonial assets

Joint assets

4 The matrimonial home at Block 323, Jurong East Street 31, #12-210 ("the home") is owned by both parties in joint names. It is a Housing & Development Board ("HDB") executive apartment that was purchased in 1985 for \$114,000. As at the date of the hearing, the loan taken out to buy the home had been paid up in full. The current value of the home has not been determined. According to the wife, a list of resale transactions posted on the Internet by the HDB in July 2005 showed that in June 2005, a similar unit in the same block had been sold for \$337,000 whilst a marginally bigger unit in a different block had been sold for \$305,000. On this basis, the wife estimated the value of the home to be in the region of \$330,000. The husband considered that the highest possible resale price obtainable for the home would be \$370,000 but offered no evidence to support this assertion.

5 Both parties contributed financially to the acquisition of the home. The husband asserted that as at 30 March 2005, he had utilised the sum of \$97,099.47 from his Central Provident Fund ("CPF") account towards its purchase. He had also obtained a renovation loan of \$28,000 from the Ministry of Education and had repaid it over a period of ten years with interest at 6% per annum. The total amount repaid by him was \$36,600. According to the husband, a sum of \$22,000 was utilised from the joint bank account of the parties to pay for the furniture and fittings. He said he had deposited all the money in the account. This was an assertion denied by the wife who herself claimed to have deposited all funds put into the joint account. The husband further said that over 20 years, he had paid about \$14,400 in conservancy fees and \$12,000 in property taxes. He produced only one property tax bill, however, and this did not support a figure of \$600 a year for property tax. It showed that for the calendar year 2003, the property tax payable in respect of the home was \$151.60 after deduction of \$100 for the goods and services tax ("GST") rebate. If the GST rebate is not taken into account, then the most that the husband would have paid for property tax between 1985 and 2005 would have been \$5,032.

6 The wife asserted that as of December 2004, she had paid \$44,469 from her CPF account towards the purchase of the home: she had contributed some \$200 odd towards the loan instalment whilst the balance of \$400 odd had been paid by the husband. From April 2002, when the husband's CPF account ran out of funds, she had had to pay the entire amount of the instalment. In early 2004, the husband starting giving her \$500 a month in cash as his contribution for the mortgage but he had stopped this payment in June 2004 when she filed the divorce petition. Thereafter she had paid the full instalment plus the conservancy and utility charges. The wife, additionally, relied on funds derived from the sale of the parties' first matrimonial home, a flat in Holland Drive. This was paid for from the wife's CPF funds and it was sold for \$40,000 in 1985. The wife said that she used the net proceeds of about \$20,000 to renovate, and buy furniture for, the home on its purchase in 1985.

7 Neither party produced any evidence of the renovations that they had purportedly paid for in respect of the home. The husband did not produce the loan agreement in respect of the renovation loan that he took from the Ministry of Education although he did display a salary slip that showed that some \$300 was deducted from his monthly salary to repay a renovation loan. The affidavits do not contain any renovation contracts or any invoices from any contractors. There is no way of telling at this stage how much was paid for renovations let alone whom the payments came from. This lack of documentary evidence may be why the husband's counsel submitted that each party's financial contributions towards the acquisition of the home should be calculated only on the basis of the moneys taken from that party's CPF account. A calculation on this basis would disregard the payments for property tax and conservancy charges that were not well documented and were also the subject of controversy because the wife asserted that they had been deducted from the joint account that she alone had funded. If the CPF contributions alone are considered, the husband's contributions would have amounted to approximately 68% of the cost of the home while the wife's would have amounted to 32% of the cost. I am willing to accept that in this case, in view of the lack of substantiating documentation in relation to other amounts paid, the parties' respective financial

contributions to the acquisition of the home should be so calculated.

8 The second joint asset is a single storey terrace house in Johor Baru known as 66 Jalan Meranti 13, Taman Rinting S1750, Masai, Johor Baru ("the JB property"). This was purchased in 1991 for RM75,000. In addition, the parties had to pay a levy of RM5,000 and other costs including legal fees, stamp duties and renovations. The husband estimated that the latter amounted to RM6,000 in total. In total, he said, the JB property cost RM86,000.

9 The parties are at variance on who paid for the JB property. The husband said that it was paid for by a sum of \$25,000 taken from the joint account and the proceeds of a \$25,000 loan he took from the Singapore Teachers' Co-operative Society Ltd ("Teachers' Co-operative"). In addition, he had paid \$3,320 in cash towards the purchase. He had also paid maintenance, property tax and land rent and these charges amounted to \$8,500 over ten years.

10 The wife claimed that she had paid for the JB property as well as all legal expenses and put the amount paid by her at \$40,000. The husband, however, had collected the monthly rental and kept it completely for himself. As for the loan, her version was that the husband had insisted that they took a loan of \$10,000 from the Teachers' Co-operative as the interest rate charged by the Co-operative was lower but had made her pay him monthly instalments of \$300 for five years in order to repay this loan.

11 Determining now who paid for the JB property is a difficult task. The parties have not produced any documents showing where the funds to pay for the property came from. Nor have they shown who remitted the funds to the developer of the house. No cheques have been displayed nor has the husband exhibited a copy of the loan documentation relating to the Teachers' Co-operative loan. The only documented information I have relates to the parties' incomes in the relevant period. In 1991, the husband was earning about \$4,500 a month and by 1994, he was earning \$4,625 a month. His income gradually increased thereafter until it reached about \$6,000 a month at the time of his retirement. The wife, on the other hand, had monthly incomes of less than \$1,000 before 1990. In 1990, she earned \$1,085 a month, \$1,165 in 1991, \$530 in 1992, \$1,070 in 1993, \$1,220 in 1994, \$1,330 in 1995 and \$1,370 in 1996. Thereafter, she worked as a canteen vendor and earned about \$1,200 a month. Looking at the situation objectively, therefore, it is quite clear that the wife's means were always much lower than the husband's. She could not have paid \$40,000 for the JB property especially as she asserted that she had already spent the profits of the Holland Road flat on renovating the home. She was also not as well informed about the expenses of the JB property as the husband and admitted that she did not even know where it was located and could not have found her way there without the husband's help. It was the husband who was able to produce what papers there were in the record relating to the purchase of the JB property. The wife had no documents at all relating to this asset. On balance, I consider it probable that the husband paid a substantial part of the cost of this acquisition. There is no evidence on the current value of the JB property. The husband estimated it as being worth RM120,000 but did not produce any valuation in support of that estimate.

12 The final joint asset is the apartment known as 24 Upper Serangoon View, #11-25, Rio Vista, Singapore ("Rio Vista"). This property was purchased in the joint names of the parties and their younger son on 6 February 2002 at a time when they were living apart. It cost \$485,000. The purchase was funded by a loan of \$339,472 and the husband paid a further \$148,000 in settlement of the purchase price and the legal fees. Since then, he has paid all the instalments due in respect of the loan. The wife does not dispute that she has not contributed at all to the acquisition of this purchase. Rio Vista had a market value of \$500,000 in November 2005 and as at 18 October 2005, the outstanding mortgage loan was \$321,972.61.

Assets in the sole names of the parties

The husband

13 The husband purchased the apartment known as 10 Prinsep Street, #10-03, Sunshine Plaza, Singapore ("Sunshine Plaza") in April 2002 for \$475,000. He took a loan of \$200,000 and in October 2005, the outstanding loan amount was about \$139,755.15. The husband paid the balance of the purchase price and all expenses connected with the purchase. Since completion, he has paid all the loan instalments falling due. The wife has not contributed at all to this acquisition. As at November 2005, the indicative market value of Sunshine Plaza was \$420,000.

14 When the husband retired from the Ministry of Education in December 2001, he received a commuted pension gratuity of \$597,873.08. In January 2002, he withdrew a sum of \$216,847.31 from his CPF account. According to the husband, the total amount of \$814,720.39 was used as follows:

- (a) towards the purchase of Sunshine Plaza and other expenses connected with that property – \$363,700;
- (b) towards the purchase of Rio Vista and other expenses connected with that property – \$173,400;
- (c) in payment of property tax and maintenance for the JB property – \$1,000;
- (d) to pay for the monthly mortgage instalments and maintenance expenses related to the home – \$15,000;
- (e) in various payments to the wife between 1 January 2002 and 10 April 2004 – \$189,000; and
- (f) on his personal expenses between 1 January 2002 and 1 May 2005 – \$114,100.

When the above amounts are totalled, they come to \$856,200, some \$42,000 more than the total of the gratuity and the amount taken from CPF. Either the husband had extra assets or some undisclosed income or he did not spend as much as he claimed over this period.

15 The husband disclosed other minor assets. He had three bank accounts: a Post Office Savings Bank of Singapore ("POSB") account with a balance of \$752.72 as at 9 April 2005, an OCBC Bank account with a balance of \$4,899.37 as at 30 June 2004 and a Standard Chartered Bank account with a balance of \$54,016.69 as at 20 July 2004. He owned a second-hand Nissan Sunny motor car that he considered to be worth only \$40,000 although the outstanding payable by him was \$61,000. He also had shares that were worth \$19,750 as at 30 November 2004.

16 The wife did not accept that the husband had made full disclosure of his income and assets. She pointed out that he had never produced any statements showing where his gratuity and CPF payments were deposited. His POSB savings account passbook entries disclosed in his first affidavit showed that between 21 March 2004 and 1 April 2004, his balance increased from \$131,168.44 to \$145,267.82 but that on 7 April 2004, he withdrew \$100,000 from this account and thereafter, the balance in the account decreased quite rapidly. In July 2004, he had between \$10,000 and \$12,000 in the account but by end September 2004, the balance had been reduced to \$3,296.21 and by the time of the last entry disclosed, that for 9 April 2005, there was only \$752.72 in the account. The only other information exhibited thereafter was a statement from OCBC Bank that showed that he

deposited some \$4,700 into his account with that bank in June 2005 and withdrew \$2,783 from the same account so that the account grew that month by about \$1,916. The wife alleged that he had not disclosed his accounts with other banks and produced a document showing that he had an account with Citibank and another one with Standard Chartered Bank in which he had \$54,016.69 in 2004. The husband also had not informed the court that he was receiving an income from the estate of his deceased mother. The wife exhibited a cheque and some correspondence in respect of the tenancy of Sunshine Plaza and accused the husband of not declaring his income arising from this flat. She also asserted that in March and April 2004, significant sums (\$15,808.17 and \$20,000 respectively) had been deposited into the husband's POSB account but he had not given any explanation as to where these amounts had come from.

17 The husband had asserted that he was not working and had limited income although he did have a business card showing him to be a property agent. He had declared that he had monthly expenses of nearly \$7,000 but had not given any explanation as to how he managed his money. Nor had he explained why he had decided not to let out Rio Vista even though he was claiming to be financially strapped. Moreover, despite his protestations about how his finances had depleted, he had purchased a new car in September 2004 for \$61,200 and taken a seven-year hire purchase loan from Maybank that obliged him to pay monthly instalments of \$737. Whilst the husband declared that his stocks were valued at slightly under \$20,000 in November 2004, in about March that year, according to the The Central Depository (Pte) Limited ("CDP") statement produced by the wife, the stocks were worth some \$84,000.

18 The husband did make a partial response to the above allegations. He explained that in 2002, he thought it would be a good idea to join an estate agency as an associate manager. He had not, however, made any money or received any income from this agency as he had not closed any deals. As far as the sum of \$15,808.17 paid into his account on 26 March 2004 was concerned, that represented money received from shares that he had sold in order to make payments due to the developer of Rio Vista. It had been withdrawn as part of the sums of \$100,000 and \$20,000 that were withdrawn from the account on 7 April 2004 and 27 April 2004 respectively for the purpose of such payments. In relation to the Standard Chartered Bank account, he said that that account was closed before the end of 2004 because he had used the money there to meet his "massive housing and vehicle loans" and his monthly expenses. The Citibank account was a "Ready Credit" account and had a balance of \$23.18 in May 2004. The account was inactive as he had not used the credit limit given by the bank because of the high interest rate. The husband did not respond to the wife's allegations in relation to the rental of Sunshine Plaza. He stated that he had sold almost all the shares reflected in the March CDP statement and that the value of the shares was less than the amount that he needed to pay to Maybank should his car be sold. The vehicle was in fact a liability (about \$30,000) but the wife had twisted the facts to make it look as if it was an asset worth \$70,000.

The wife's assets

19 The documents disclosed show that the wife held units in the OCBC Singapore-dollar Annual Payout Fund which were valued at \$60,831.08 at the end of March 2004 and, as at 15 July 2005, had \$65,496.35 in a savings account with United Overseas Bank. As at December 2004, the balance in her retirement account with the CPF was \$24,893.12 and the balance in her ordinary account was \$366.32. In June 2001, the wife bought an insurance policy for which she paid a single premium of \$40,000. The wife herself valued all her assets including her CPF moneys and insurance benefits at \$140,000. She said that this sum included the amount of \$100,000 that the husband had given her in 2002. The husband on the other hand believed that she had at least \$350,000 in cash inclusive of that same \$100,000. He did not, however, justify that amount except to say that it had arisen from cash that he had put into the banks and she had stashed away.

Conclusions on value of the matrimonial assets

20 The value of the matrimonial assets is somewhat difficult to determine accurately as parties have not produced complete valuations for all assets. The best I can do, from the evidence, is to value them as follows:

- (a) the matrimonial home – approximately \$330,000;
- (b) the JB property – approximately RM100,000 (bearing in mind that it was purchased for RM75,000 more than ten years ago) or \$45,000 on current rate of exchange;
- (c) Rio Vista – approximately \$180,000 being the difference between the market value in October 2005 and the outstanding mortgage loan;
- (d) Sunshine Plaza – approximately \$220,000 being the difference between the market value in October/November 2005 and the outstanding mortgage loan;
- (e) the husband's share portfolio – approximately \$20,000;
- (f) the husband's car – approximately \$40,000 (on the basis of his own valuation and bearing in mind that the purchase price was about \$61,000);
- (g) the wife's unit trust holdings valued at approximately \$61,000;
- (h) the wife's cash savings in United Overseas Bank valued at approximately \$65,500;
- (i) the wife's CPF savings of approximately \$25,000; and
- (j) the husband's bank balances totalling \$59,668.78 (in this regard, I have totalled the figures disclosed by the husband and that shown in the Standard Chartered Bank account statement produced by the wife as I do not accept that he could have spent all of that money as he alleged since he had undeclared income which could have met a substantial portion of his expenses).

The total value of the matrimonial assets is therefore in the region of \$1,046,168.78.

21 The wife wanted the following orders to be made in respect of the assets:

- (a) that the husband transfer to her his share of the matrimonial home;
- (b) that he pay the balance of the outstanding loan in respect of Sunshine Plaza and transfer his share in this flat to her;
- (c) that she transfer her share in Rio Vista to the husband;
- (d) that she transfer her share in the JB property to the husband upon his paying her \$40,000 for her contributions to its acquisition;
- (e) that the husband be ordered to repay her a further \$100,000 as balance of the "loans" she made to him throughout the marriage; and
- (f) that she be entitled to retain her own assets.

If these orders were made, the wife would end up with more than the assets are worth. On the other hand, if she were given all that she asked for with the difference that instead of paying the balance of the outstanding loan in respect of Sunshine Plaza, the husband simply transferred his share in that property to her and she took on the mortgage, and she was not awarded the extra \$100,000 she asked for, the wife would still end up with assets worth more than \$740,000, *ie*, equivalent to more than 70% of the total assets.

22 The husband's proposals, naturally, envisaged that the wife would get far less. He submitted that the division should be as follows:

- (a) that the wife should get 32% of the value of the matrimonial home;
- (b) that she should get 10% of the value of the JB property on the basis that she did not contribute more than \$5,000 to its acquisition; and
- (c) that he be solely entitled to Rio Vista and Sunshine Plaza since the wife did not contribute financially to either of these properties.

The husband did not make any suggestion regarding the division of the other matrimonial assets. I assume therefore that his intention is that each party should retain for himself or herself any other assets that may be in their respective hands.

23 Under the present regime governing division of matrimonial assets (s 112 of the Women's Charter (Cap 353, 1997 Rev Ed)), the court has to consider all the circumstances of the case when deciding what would be a just and equitable division between the parties of the matrimonial assets or the proceeds of their sale. The financial contributions made by each party to the acquisition of the assets constitute only one of the factors to be taken into account. Among the other factors are the extent of the contributions made by each party to the welfare of the family, the giving of assistance or support by one party to the other, the ages of the parties and duration of the marriage and 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 as well as any physical disability that either party may be under. I have dealt with the financial contributions above. I now turn to consider the other factors.

Other relevant factors

24 This is a marriage which lasted some 33 years. Although the parties lived apart for more than four years prior to the divorce, their financial affairs remained intertwined until the wife filed her petition for divorce. Up to then, they were still purchasing properties in joint names and the husband was still giving the wife an allowance. He also gave her a substantial sum when he received his gratuity on retirement. From the husband's assertions as to the way he treated his wife and his attempts to reconcile with her one would have thought that his view of her was, basically, benign. The husband, however, made terrible accusations about the wife throughout his affidavits. The wife in turn while refuting the husband's allegations, made her own serious assertions about his behaviour during the marriage. It is difficult to understand how these two parties who each had such bad opinions of the other lived together for 29 years.

25 I think it is necessary to give a brief account of the parties' respective assertions. The husband asserted that the wife had been promiscuous before their marriage and continued to be flirtatious thereafter. He even asserted that in 1972 (some five months after the marriage), she had

had a one-night stand with an old school friend of his. Nine months later, the first son of the marriage (whom I shall call "D") was born. The husband did not believe that D was his son. The husband asserted also that after the parties opened a joint account in 1980, he gave her a monthly allowance of \$600 a month that increased subsequently to \$950 a month and that the wife was supposed to save at least \$200 of this a month in the joint account. She kept the account book from him and he did not know that she had her own sole account into which she put money stolen from the joint account. The husband asserted that he had always given the wife an allowance to meet the expenses of the home and the children and that this had increased over the years until it reached \$1,500 a month.

26 In 1987, the wife went on holiday and according to the husband, spent more than 40 days touring Europe with her total expenses coming to more than \$8,500. This money came from the allowance that he had given her over the years. While she was away, he had to spend more time looking after his children. After that the wife went on many overseas trips on her own and spent thousands of dollars on these trips. More than half the wife's life was spent at working on menial jobs just to escape from household duties. The children were left to her mother when they were young and when they were older, they had to fend for themselves. The wife could not tutor them because she had only primary education and the husband had to undertake this job. The wife left it to him to buy food for the home, to clean the floor and windows and wash and iron the clothes. She spent most of her time watching television or in bed. Throughout the years, he looked after the children, took them to school, bathed them, collected them from the grandmother's home, took them to the polytechnic and army camp and gave them their allowances.

27 In 1994, the wife was diagnosed with breast cancer. The husband gave her moral support and spent lots of money buying her wigs, cosmetics, prostheses, and tonics. She did not appreciate his care but showered him with verbal abuse. Between 1995 and 1999, the wife had a stall at the canteen of the Institute of Technical Education in Dover Road. The husband found her flirting with the staff and older students there. Even in earlier days she would flaunt herself. She criticised the husband; she threatened to poison him and she told him that she would leave him for a taller and better-looking man if she found him unbearable. When the husband was hospitalised in 1990, she did not bother about him and hardly visited him there. She was always pestering him for money and complaining that she did not have enough. Over the years, the husband found the wife to be greedy, unscrupulous, despicable, spiteful and revengeful. If she did not get what she wanted, she would throw a tantrum, use vulgar and abusive words and even threaten to take her own life. She was also a common thief who stole things from department stores. She treated the husband with disrespect and shouted at him and abused him physically and this behaviour became worse after she was diagnosed with cancer. According to the husband, the wife had the habit of kicking him whenever he fell asleep watching television on the floor of the home. In the final stages of the marriage, he had filed an application for a personal protection order ("PPO") against the wife and she had consented to that application.

28 The foregoing paragraphs are an extreme brief summary of the allegations that the husband made against the wife. They do not disclose the full flavour of his affidavits which were bitter, verbose and, often, repetitive in the accusations that he made. The wife in turn had serious grievances with the husband's behaviour but she was more brief in her statements. In her very first affidavit, she asserted that he had treated her very badly throughout the marriage. He had been vicious and violently abusive to her and the children. Apart from cursing them, he would tell her to commit suicide and tell her sons that he was not their father. On one occasion, he had broken the eldest son's finger.

29 The husband was also stingy with his contributions to the household expenses and she had

paid for most of those expenses and the utility bills. She had stopped working at the end of 2001 for health reasons and it was only then that she started asking the husband to contribute towards the household expenses. Despite his good income, the husband never had enough money for the household expenses and "borrowed" money from her to help make the monthly hire purchase payments for the cars they had from time to time. What the husband did was to reduce the allowance he was giving her by an amount of \$300 or so saying that that was her contribution to the cost of the car. The wife asserted that she had provided \$10,000 for the down payment made in respect of the first car that the husband purchased. Thereafter, he had paid for the cars with loans taken from his employer but had deducted money from her allowance to help in repaying the loans.

30 The wife accused the husband of having affairs over many years during the marriage. Even when they went on holiday together, he would go off on frolics of his own. She produced letters that had been written to him by a lady whom she thought was having an affair with him and also many photographs showing him with other women.

31 In 2004, the husband was especially unreasonable and abusive which was why she took the drastic step of applying for a divorce at her advanced age. When she did this, he became so abusive that she had to apply for a PPO in April 2004. The husband then took out a similar application and when both applications came on for hearing, as the wife was not represented and the husband was a smooth talker, somehow the hearing ended with both of them being granted personal protection orders.

32 The wife denied that she had been unfaithful to the husband. She denied that she had had an abortion before they were married. She was very hurt by his accusation that the elder son, D, was not his son. She also asserted that she had done all the housework and that the husband did not help at all. She accused him of having taken some of her favourite personal items and having given them to his friends. She explained that she had not visited him in the hospital in 1990 – 1991 because she had seen the lady she suspected of having an affair with him at the husband's bedside. She also made much of the fact that after the couple had ceased having sexual relations, the husband often brought home combs from Hotel 81.

33 When it came to assessing the truth of the various allegations and counter-allegations, I was in somewhat of a difficult position as neither party's evidence was tested by cross-examination. However, from an examination of the affidavits alone and the rebuttal evidence produced, some of the assertions made by the husband could be determined to be either untrue or exaggerated. For example, the husband had asserted that the wife spent more than \$8,500 when she went to Europe even though she was on a tight budget. The wife had rebutted that assertion by exhibiting her receipts which showed that the total cost of the tour was only \$2,980. Despite that, the husband repeated his allegation in his next affidavit but did not produce any evidence to support it. The husband also attempted to explain away the photographs of him with other women by stating that these photographs were taken between 2002 and 2003 because it was "then that I felt that I had better look for friends and companions who had given me some respect and understanding which was totally void from her". This was not very convincing and the letters that the wife produced though not establishing that the husband had committed adultery, did show that he had a close relationship with another woman who asserted that she loved him. Further, the husband stated in his third affidavit that he had recently bought the wife expensive spectacles and a pair of diamond earrings from Larry Jewelry costing \$7,000. The wife denied he had given her any earrings and the husband gave no proof of this purchase.

34 The most major matter on which the husband's credibility is in doubt is his assertion that D is not his son. He repeated this several times in his affidavit even going so far as to comment on how

different from each other the two boys had looked when they were young. The wife refuted this accusation vehemently. Through her solicitors she informed the husband that D was willing to go for a DNA test and asked the husband to subject himself to a similar test so that the question of D's paternity could be resolved once and for all. The husband did not, however, accept this offer. His solicitors stated that he had accepted D as a child of the family and had fully supported him financially and emotionally throughout the years. Therefore, there was no necessity for the DNA test as that would only cause distress to D. To me, the husband's refusal to accept the wife's proposal of the DNA test indicates that he did not sincerely believe that D was not his son and was making unfounded allegations in order to influence the court in its division of the matrimonial assets. If the husband was really so concerned for the distress that D would have suffered, he would not have made the allegations that he did and repeated them so often.

35 The wife's assertions that she bore at least one third of the household expenses at all times also appear exaggerated. Her income was much less than that of the husband and whilst I can accept that she did bear some share of the expenses, it is unlikely that over the long term she could have paid one third of these. It was also interesting that whilst the wife originally stated that the husband had not contributed at all to household expenses until she stopped work in 2001, in subsequent affidavits, she admitted that he had been giving her an allowance for many years albeit that he deducted money from that allowance in order to pay for his car purchases.

36 There was some support for the wife's assertions that the husband was violent and did not help with the housework. This came in the form of an unsworn statement from the younger son of the marriage. However, her explanation as to why she consented to a PPO order being made against her was not convincing. The husband is apparently estranged from both sons.

37 The affidavits establish that the marriage between the parties was a deeply unhappy one for many years. An equally strong impression from the affidavits is that both parties contributed to this unhappiness. At the same time, both of them worked hard at their respective jobs to earn a living. The husband, as the more educated partner with the better paying job, contributed more in financial terms but the wife at least earned enough to support herself and to contribute to some extent to the family's expenses. She also took on two jobs from time to time. She never shirked from hard manual work. I note that the wife did not contribute to the husband's earnings in any way. She did take care of the children and the household though the extent to which she did this is contested by the husband. The husband's own assertions that he had to do a lot of housework are challenged by his younger son's statement. Further, it is apparent from what he said that his attitude to his elder son caused a lot of unhappiness though he did support the boy financially and in other ways. I should also state that whilst the husband did not hesitate in his affidavits to blacken the wife's character, his accusations were at odds with his behaviour in that he expressed a great deal of anger at her decision to commence divorce proceedings and indicated that he had tried his best to effect a reconciliation. She cannot have been as bad a wife and mother as he made her out to be in his sworn statements.

Conclusion on distribution of assets

38 Taking all the circumstances into account, in particular, the length of the marriage, the fact that the husband has prevented the wife from occupying the home for some time, the efforts that the wife made to support herself and the family as well as the husband's contributions to her care and that of the family and to the acquisition of the matrimonial assets, I think that it would be equitable in this case to make a distribution of the matrimonial assets between the husband and the wife in the ratio of 55:45. The next question is how this division should be effected.

39 The wife has asked that the husband transfer his interest in the home to her. She wants to take over this particular asset because if it is sold, the sale might affect the elder son's home since he bought his property on the basis of a scheme which assists young people who wish to live near their parents. The value of the home is \$330,000 and the wife already has in her hands assets worth \$151,500. Therefore, if the home is transferred to her, the wife will have assets worth \$481,500. The total value of the assets is \$1,046,168.78 and a 45% share of that would be \$470,776. Ordering the husband to transfer his share in the home to the wife free of consideration would mean that the wife would receive an extra \$10,724. In order that the wife does not receive more than the division entitles her to, she should pay him \$10,724 for the transfer of the home.

Maintenance for the wife

40 Since the wife stopped work in 2001, her only source of income has been the husband. He made her an allowance until she filed the divorce petition. Her allowance does not appear to have exceeded \$1,500 per month. According to her list of expenses, she spends about \$3,320 a month, much of that on medical expenses including the cost of medicine. The list of medicines that she gave indicated that many of the items that she buys are vitamins. The wife also spends \$1,000 a month on food because she buys tonics for her health. The wife has asked the court to order the husband to pay her \$200,000 as lump sum maintenance but she has not given any breakdown of this figure.

41 The wife is now 60 years old. She can no longer work due to her various ailments. The husband on the other hand, though almost 60 himself, is in better health and can work as a property agent. He also has income from his mother's estate and the Sunshine Plaza property. He is retaining both this property and the Rio Vista property and should be able to rent out one while living in the other.

42 The wife did not substantiate all her expenses and they appear to me to be somewhat on the high side. Once the wife moves back into the home, she should be able to rent out one or two rooms and could earn \$600 a month or so from this activity. In these circumstances, I think that maintenance of \$1,200 a month would be about the right level. I also bear in mind the husband's liabilities in regards to the mortgages over the Sunshine Plaza and the Rio Vista properties. In this case, it would be reasonable to award lump sum maintenance for ten years in view of the ages of the parties and their health and respective income-earning capacities. On that basis, the wife would get \$144,000 in maintenance.

Conclusion

43 I therefore make the following orders:

- (a) the matrimonial assets are divided between the parties in the proportions 55:45 with the husband getting 55% thereof and the wife 45% thereof;
- (b) the husband is to transfer all his right, title and interest in the home to the wife at the expense of the wife;
- (c) the wife is to transfer all her right, title and interest in the Rio Vista property and the JB property to the husband at the expense of the husband;
- (d) the wife is entitled to retain all assets in her sole name;
- (e) the husband is entitled to retain all assets in his sole name; and

(f) the husband shall pay the wife the sum of \$133,276 being the lump sum maintenance of \$144,000 less \$10,724 due from the wife under [39] above.

As regards order (f) above, I realise that it may take the husband some time to obtain sufficient cash to pay the wife and therefore I will hear the parties on how such payment should be made. I should indicate that the payment period should not be longer than two years. As for costs, each party shall bear his or her own costs.

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