

ABX v ABY and others
[2014] SGHC 33

Case Number : Divorce Transferred No 670 of 2006
Decision Date : 24 February 2014
Tribunal/Court : High Court
Coram : Andrew Ang J
Counsel Name(s) : Kenneth Siow (Temple Counsel LLP) for the plaintiff; Ellen Lee (Ramdas & Wong) for the first and second defendants; the third defendant is unrepresented.
Parties : ABX — ABY and others

Family Law – Matrimonial assets – Division

Family Law – Maintenance – Child

24 February 2014

Judgment reserved.

Andrew Ang J:

1 This judgment is in respect of the ancillary matters in these long and involved divorce proceedings. The plaintiff, ABX (“the Wife”), married the first defendant, ABY (“the Husband”), on 13 August 1998. The second and third defendants are the Husband’s mother, ABZ (“the Mother”); and sister, ACA (“the Sister”), respectively. The Husband, aged 44, is a Singaporean. The Wife, aged 41, is a former Chinese national who acquired Singaporean citizenship in July 2005. [\[note: 1\]](#) They have twin sons, now aged 12 (collectively, “the Children”).

2 An earlier order of court made on 1 March 2013 dealt with the custody and care and control of the Children. The matters which remain are the division of the matrimonial assets and the maintenance of the Wife and Children. I will deal with each in turn.

Background

3 The Husband was the sole breadwinner of the family during the marriage. Until his resignation in March 2005 for alleged ill-health, [\[note: 2\]](#) the Husband was the vice-president of [L], the subsidiary company of a listed company [M] that oversaw the Hong Kong and South China operations of [M]’s group of companies. At the same time, he sat on the boards of eight of the companies in the said group. He stated that his last drawn income in 2005 was S\$10,000 per month (exclusive of a post tied monthly allowance of US\$2,800). [\[note: 3\]](#) He has been effectively unemployed since he quit. [\[note: 4\]](#)

4 The Wife was a housewife during the marriage. The couple lived in Hong Kong in the early years of the marriage as the Husband was posted there for work from 1996 to 2005. [\[note: 5\]](#) She did the household chores with the help of a part-time maid, [\[note: 6\]](#) although the Husband sought to minimise her contributions in this regard.

5 In 2002, when the Children were five months old, the Wife returned to Singapore where she resided with the Mother at the latter’s house (“the Mother’s House”). [\[note: 7\]](#) The Wife claimed she

was fully responsible for taking care of the household chores and attending to the Children, as well as the training and supervision of the maids (there being two, before one went home). [\[note: 8\]](#) The Husband contended that the Wife relied on the maids and the Mother to take care of the Children, and that the Mother was the person who ferried the Children around for their various activities. [\[note: 9\]](#) He also said there was no need for her to train the maids since the first maid, hired and already well trained by the Mother, had helped to train the new maid instead. [\[note: 10\]](#)

6 The family continued to reside in the Mother's House after the Husband returned to Singapore from Hong Kong in 2005. The marriage broke down not long afterwards and the Wife moved out on 14 February 2006 with the Children. [\[note: 11\]](#) The Wife filed her petition for divorce on 20 February 2006 and the decree *nisi* was granted on 23 January 2007.

Division of matrimonial assets

What are the matrimonial assets?

7 Section 112(10) of the Women's Charter (Cap 353, 1997 Rev Ed) ("Women's Charter") defines a "matrimonial asset" as follows:

(10) In this section, "matrimonial asset" means —

(a) any asset acquired before the marriage by one party or both parties to the marriage —

- (i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or
- (ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and

(b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,

but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

8 Broadly summarised, the Husband's position was that there were no matrimonial assets worth dividing, as anything of value that he had in his name belonged in reality to the Mother or were gifts that were not subject to matrimonial division. He relied on the Mother (now aged 69 [\[note: 12\]](#)) to support him financially, being unable to work because of his poor mental state. Even when he was gainfully employed, he never earned as much as the Wife imagined and what money he had was expended on his family and the Wife's allegedly wasteful ways. Each party should simply keep what were in their names.

9 The Wife disputed the Husband's contentions. She submitted that the Husband had not fully disclosed his assets. He had drawn high salaries for more than a decade and was also involved in other big businesses. She also alleged that his claim of unemployment was a sham and that the Husband remained financially and economically productive. Even if he was not working, it was by choice.

10 The Wife maintained that the following four properties were matrimonial assets:

- (a) The flat in [address redacted] ("the Flat");
- (b) The motor car used by the family ("the Car");
- (c) The Husband's AIA Life Insurance Policy ("the Insurance Policy"); and
- (d) The ordinary membership in Tanah Merah Country Club ("the TMCC Membership").

11 In addition to the disputed properties above, the only other asset of significant value is the money in the Husband's Central Provident Fund accounts ("the Husband's CPF Accounts"). His last CPF contribution was made on 14 April 2005. [\[note: 13\]](#)

The Flat

12 The Flat is by far the most valuable of the assets in dispute. It was acquired on 16 December 1999 [\[note: 14\]](#) at the price of S\$1,148,100 by the Husband and the Mother as joint tenants. The option fee of S\$11,481 and the sum of S\$103,329 payable upon the exercise of the option (together comprising 10% of the purchase price) were paid by cheques drawn on the Mother's bank accounts. The Husband and the Mother also contributed S\$100,000 and S\$50,000 respectively towards the purchase price through withdrawals from their CPF accounts. Another S\$428,224.63 was paid at the completion of the purchase by cheque from a DBS account in the joint names of the Mother and the Husband ("the DBS Joint Account"). [\[note: 15\]](#)

13 In addition to the above, a DBS Mortgage Loan ("the Mortgage Loan") of S\$448,000 was taken out to pay the balance of the purchase price. Over time, S\$57,490.10 of the Husband's CPF funds was used towards monthly repayments of the Mortgage Loan. [\[note: 16\]](#) The Flat had an existing tenant and the rent collected was partly used to pay for the Mortgage Loan (as well as property tax, monthly maintenance fees, sinking funds, among other outgoings). The Mother claimed that the Husband was never given any share of the rent although the Husband had declared it as his income "for income tax purpose only". [\[note: 17\]](#)

14 The Mortgage Loan was for a term of 30 years but it was fully discharged on 1 February 2005, just five years into the loan. [\[note: 18\]](#) The Mother said she "only managed to find" copies of three of the cheques used to redeem the mortgage: [\[note: 19\]](#)

- (a) one cheque for S\$83,000 from a Citibank account in the joint names of the Mother and the Sister ("the Citibank Joint Account");
- (b) one cheque for S\$60,000 from an OCBC account in the joint names of the Mother and the Husband's grandmother ("the OCBC Joint Account"); and
- (c) one cheque for S\$24,664 from the DBS Joint Account.

In addition to the three cheques for S\$167,664 in total, the Mother said that she also made repayments "every now and then" in various sums in addition to the fixed monthly sums, but no evidence was provided as to such payments or the source of the funds used. [\[note: 20\]](#)

15 Both the Husband and the Mother asserted that the entire beneficial interest in the Flat belonged to the Mother, and that the Husband was merely holding his share in trust for the Mother. They maintained that the Mother paid the entirety of the purchase price, except for the Husband's CPF contribution. Even so, the Husband characterised his CPF contribution as a "loan" to the Mother, which loan the Mother has repaid through her contributions to the family. [\[note: 21\]](#) The Mother claimed that it was never intended that the Husband should have a stake in the Flat, as it was always an investment for her retirement and that of her husband, if not for the latter's untimely death on 25 October 1999. [\[note: 22\]](#) The Husband's parents had decided to purchase the Flat in the joint names of the Mother and the Husband in order to utilise the Husband's CPF money as the Mother was worried that there would be insufficient money in her CPF account. [\[note: 23\]](#) The Mother chose the manner of holding in joint tenancy with the Husband for the sake of convenience only. [\[note: 24\]](#) The Husband and the Wife never resided in the Flat. [\[note: 25\]](#)

16 The Wife asserted that although the ostensible source of the funds used to pay for the Flat came from bank accounts that were either in the Mother's name or in joint names, the moneys used to pay for the Flat originated from the Husband. The Mother was only responsible for her S\$50,000 CPF contribution towards the principal sum. [\[note: 26\]](#) The Flat was purchased to be the couple's matrimonial home, but after his father's death, they decided instead to live with the Mother to keep her company and to take care of her. [\[note: 27\]](#)

17 In support of the Wife's contention that the moneys for the purchase originated from the Husband, counsel for the Wife, Mr Kenneth Siow ("Mr Siow"), referred to evidence that indicated that the Husband had ample means and the money to pay for the Flat by himself. He highlighted that there were a number of unexplained transfers in the Husband's Hongkong Shanghai Banking Corporation Limited account ("the HSBC Account"), such as the deposit of a total sum of S\$147,896.13 for the month of September 2003 alone. The HSBC bank statements from September 2003 to April 2005 showed that the Husband had withdrawn a total of S\$1,002,913.90 for the 22-month period. This indicated that the Husband had substantial sums of moneys entering the HSBC Account from undisclosed sources. Mr Siow submitted that these unexplained withdrawals were later used for the early redemption of the Mortgage Loan. [\[note: 28\]](#)

18 There was also evidence that the Husband did make a large number of remittances to the Mother, albeit by an indirect route. [\[note: 29\]](#) The Wife adduced bank records to show that the Husband transferred moneys from the HSBC Account to the Wife's parents' respective accounts in Beijing, which moneys the Wife's parents then directed to the Citibank Joint Account (see [14(a)] above) in Singapore just days after the original transfer. These fund movements took place in each of three tranches: between 2 and 8 September 2003, between 26 September and 13 October 2003, and between 30 December 2003 and 6 January 2004. A total of US\$129,400 changed hands in all. [\[note: 30\]](#) The Wife said that the Husband told her the purpose of these transfers was to avoid paying tax on his income. [\[note: 31\]](#) There was another remittance to the Wife's parents of US\$32,300 on 17 September 2002. The Wife asserted that this sum was also remitted to the Mother although she was unable to produce proof of the transaction. However, given the pattern of transfers, I am inclined to believe that this sum was also transferred to the Mother. (If it was untrue, this assertion could easily have been rebutted by the Mother disclosing her bank statements).

19 These were transactions that required explanation. Initially, the Husband claimed that the transfers by the Wife's parents were repayments of substantial loans that the Wife's parents had obtained from the Mother, and that the initial transfers from the Husband's HSBC Account to the

Wife's parents were actually loans of moneys belonging to the Mother, on whose instructions the Husband made those transfers. [\[note: 32\]](#)

20 No documentary evidence in support of the alleged loans was adduced. Moreover, the explanation was unbelievable on its face, considering the close proximity in time between the various transfers within each tranche. It would have meant that each time a loan was made, it was repaid within days. The Wife's parents were retired professors living in Beijing's city centre who lectured in various universities. They appeared reasonably well-off. As will be seen later in [59], they made a gift of US\$52,000 to the Wife to enable her to contribute towards her own family. No evidence was led to show they were in need of financial support from the Husband's family.

21 It is no longer disputed that the Husband did remit funds to the Mother, but the Husband's argument is that he made the remittances for the purpose of paying the living expenses of the Wife and the Children, and not for payments in relation to the Flat. [\[note: 33\]](#) In her written submissions dated 21 January 2014, counsel for the Husband, Ms Ellen Lee ("Ms Lee"), submitted that the money went to the Mother because the Husband did not trust the Wife's "spendthrift nature". The Mother was to then give the Wife a fixed sum each month to pay for some basic necessities. [\[note: 34\]](#) Further, in view of the family's heavy expenses, there could not have been any money left to repay the Mortgage Loan. [\[note: 35\]](#)

22 At a hearing on 7 October 2013, Ms Lee also tendered to the court a "roadmap" regarding the Husband's alleged remittances from Hong Kong to Singapore to pay for his and his family's living expenses in support of these contentions. However, these were only assertions made on behalf of the Husband when what the court needed was evidence in support. I made the following orders:

- (a) that the Mother, who had become a party to the proceedings and claimed to have a majority interest in the Flat, file an affidavit to show her financial contributions towards purchase of the property;
- (b) that the Mother exhibit monthly bank statements from all banks with which she had accounts for the period January 1999 to May 2005; and
- (c) that the Husband file an affidavit exhibiting monthly bank statements from all banks with which he had accounts for the period January 1999 to May 2005.

23 Earlier, on 15 August 2012, I had ordered the parties to back up their respective assertions by producing bank statements. My directions were for the Husband to procure that the Mother produced monthly bank statements from September 1999 to January 2005 and, if requested, to procure that the Mother gave to the Wife letters of consent addressed to banks named by the Wife authorising disclosure of bank statements for the said period. (At that time I was unaware of the Order of the Family Court described in [24] below, adding the Mother and Sister as the second and third defendants. Copies given to me of papers filed by the Husband and Wife did not include the Mother and Sister as parties.) [\[note: 36\]](#) I also ordered that the Wife was to give similar letters of consent to the Husband, if requested.

24 Before my orders mentioned above, there was a court order in the Family Court on 15 June 2011 joining the Mother and the Sister as the second and third defendants respectively and requiring them to furnish bank statements. [\[note: 37\]](#) Even prior to that, at a summons hearing on 25 August 2010 on the Wife's application for discovery *vide* Summons No 2363 of 2010, a court order had been

issued for the disclosure of bank statements. [\[note: 38\]](#)

25 Despite the numerous court orders, the Husband and the Mother failed to produce the relevant bank statements. I had warned the Husband and Mother that if they refused to give evidence the court had no choice but to draw an adverse inference against them. I went on to caution them that it was very unlikely that they would obtain leave to adduce fresh evidence in the event of any appeal: see *Ladd v Marshall* [1954] 1 WLR 1489 as applied in *Tan Hwee Lee v Tan Cheng Guan and another appeal and another matter* [2012] 4 SLR 785 ("*Tan Hwee Lee*") at [20] to [25]).

26 The Husband and the Mother have not given the court any satisfactory excuse for their non-disclosure. Certainly, arguments that the Mother was being "victimised", that the Wife had "no right" to the information and that the Wife was "being ungrateful", and so on, did not excuse non-compliance. [\[note: 39\]](#) As a result, I draw an adverse inference against them that if the statements were produced, they would bear out the Wife's rather than the Mother's or the Husband's assertions as to the provenance of the funds for the purchase of the Flat. As held in *BG v BF* [2007] 3 SLR(R) 233 at [52]:

... the general duty that every party to court proceedings owes to the court to make full and frank disclosure of all relevant information within his or her knowledge is particularly relevant in the context of the division of matrimonial assets. ...

In the absence of full and frank disclosure, the court is entitled to draw inferences adverse to the parties who failed to do so.

27 In this respect, Mr Siow cited the case of *ABP v ABQ (B, Third Party)* [2009] SGHC 192 ("*ABP v ABQ*") where the husband in that case made similar claims. The property in contention in that case was a house jointly purchased by the husband and his mother. The court found that the third party was a "coached witness who testified in order to support the petitioner's claim" (*ABP v ABQ* at [10]) and there was no evidence produced to support the claim that the third party contributed significantly to the purchase of the house. He argued that there were parallels between that case and this one. [\[note: 40\]](#)

28 In the present case, the Mother claimed that she alone:

... provided with [*sic*] all the cash payments needed to complete the purchase of [the Flat] with monies given by my late husband, savings from my salaries and all monies that I was thrifty and had saved over the years as well as the nett sale proceeds from the sale of my 5-room flat at [*address redacted*] sold and completed on 1st July 1998. ... [\[note: 41\]](#)

There was evidence that the net sale proceeds from the sale of the said 5-room flat in 1998 was S\$375,212.69 [\[note: 42\]](#) but the other sources of the rest of the funds were unaccounted for.

29 Despite all this, I am prepared to accept on the balance of probabilities that the Mother did actually pay for the initial 10% of the purchase price of the Flat in 1999. After adding her CPF contribution of S\$50,000 her total contribution was therefore S\$164,810. This is about 14.4% of the purchase price. I find as a fact that the Husband contributed the funds for the remaining 85.6%.

30 For the sake of completeness, I note that counsel for both parties seemed to accept that the equitable interests of the Mother and the Husband in the Flat were proportioned in the same way as their contributions, without addressing the *legal basis* for these adjustments.

31 In situations where two parties contributed unequally to the purchase of property in joint names, a “presumed intention resulting trust” can arise. Where the intentions of the parties are unclear, the presumption is that they intended to hold the Property in their proportionate shares. As stated in *Lim Geok Swan v Lim Shook Luan* [2012] SGHC 18 at [43]:

This type of resulting trust arises as a consequence of a lack of intention to benefit the recipient. There are two ways that it may arise – first, by means of presumption (unless it can be shown that the transfer was *indeed* intended to benefit the recipient); and second, independently of the presumption so long as it can be shown that the transfer was not intended to benefit the recipient. [emphasis in original]

32 This presumption has not been rebutted as it has not been demonstrated that the Husband intended to benefit the Mother. Although the Mother claimed that the Flat was an investment for her old age and that the Husband knew “that this investment was not his”, [\[note: 43\]](#) this was based on the assertion that she paid for substantially the whole of the asset. As the Wife noted, the Husband used almost all his CPF moneys and his savings to fund the purchase of the Flat. [\[note: 44\]](#) The Husband was newly married (with plans for children) at the time the Flat was purchased, and I do not think it was likely he would have intended to make a gift of such magnitude at the material time. The choice of the joint tenancy was likely based on the ordinary expectation that the Mother would predecease the Husband and the whole of the property would then pass to Husband through the doctrine of survivorship.

33 As a result, the beneficial ownership of the Flat was proportioned in the same way as the contributions, *ie*, 85.6% to the Husband and 14.4% to the Mother.

34 Finally, there was also a dispute between the parties as to whether the Flat was the matrimonial home. I do not think a property which the family has *never* used as such can reasonably be considered the matrimonial home. Nevertheless, since the Husband’s beneficial interest in the Flat was acquired during the marriage (and it is not a gift or inheritance), the Husband’s share of 85.6% of the Flat is a matrimonial asset.

The Car

35 The Car was acquired in the Mother’s name under a hire purchase agreement with HSBC dated 31 July 2002 for S\$122,662. The Husband claimed that the Mother paid the deposit on 12 July 2002. [\[note: 45\]](#) It was purchased wholly by the Mother and she has been financially responsible for its upkeep. [\[note: 46\]](#) According to the Husband, his mother has owned cars since the 1970s and has always used the same car plate number for sentimental reasons. [\[note: 47\]](#)

36 The Wife said that the moneys used to pay for the Car belonged to the Husband. She averred that the Husband was the one who drove the Car to work in Singapore and, even when the Husband was not in Singapore, the Mother used it only occasionally. Further, in the Mother’s record of alleged debts owed by the Husband to her, the Mother included various payments she had made relating to the Car. [\[note: 48\]](#) The Wife also claimed that the Husband told her that he had put the Car under the Mother’s name for her to look after in his absence (as he was in Hong Kong). [\[note: 49\]](#)

37 There was little evidence that the Husband paid for the Car or that he had any intention of owning the Car. At the time when the Car was bought, the Husband was still primarily based in Hong Kong. [\[note: 50\]](#) Considering that the Wife and the young Children were in Singapore while the Husband

was away in Hong Kong, I believe the Husband's statement that the Mother used the Car to ferry the Wife and the Children around and helped to do chores for them. [\[note: 51\]](#) Moreover, the Mother was working then (and despite her age, still is). It was reasonable that she needed a car for her use. I would also not place too great a weight on the fact that the Husband got to use the Car when he was in Singapore, since it is not unusual for parents to allow their children to use their vehicle out of goodwill.

38 It is a difficult question but, on balance, I find that it is more likely that the Car belonged to the Mother than the Husband, as it was in her name and she made the payments for its upkeep. I would tend to discount the fact that she had made entries suggesting otherwise. My belief is that these were put in to inflate sums allegedly owed by the Husband without the realisation of the possible adverse inferences that could be drawn therefrom.

The Insurance Policy

39 According to the Husband, the Mother bought the policy for him on 2 January 1985 when he was about 16 years old, [\[note: 52\]](#) although the policy date was 2 January 1987 and the stated issue age was 17. [\[note: 53\]](#) The Husband's first affidavit of assets and means dated 11 September 2009 stated that the surrender value was projected at S\$64,438 when the Husband reached 42 years old (but his Ancillary Matters Fact and Position Sheet gave the updated projected surrender value at 42 years old as S\$62,385). [\[note: 54\]](#)

40 The Mother and the Wife are named in the Insurance Policy as beneficiaries of a 50% share each. The Husband claimed that the Mother was originally the sole beneficiary. [\[note: 55\]](#) On 20 October 2000, the Husband included the Wife as a beneficiary in equal shares with the Mother. [\[note: 56\]](#)

41 Ms Lee submitted that the Insurance Policy was a gift from the Mother to the Husband before the marriage and that the Mother had been paying all the premiums. According to her, the policy should not therefore be considered a matrimonial asset. [\[note: 57\]](#) The Husband said he named the Wife as a beneficiary after marriage "so that she would have some contingency [*sic*]" should some mishap befall him, and that she did not make any contribution to the policy premiums. [\[note: 58\]](#) However, some of the Husband's arguments and evidence in support of his contention that the Insurance Policy was not a matrimonial asset were somewhat contradictory:

(a) First, the Husband exhibited cashier's receipts and cheques as evidence of payments of the premiums by the Mother, [\[note: 59\]](#) but this was undermined by the Mother recording two of these payments as debts owing to her. [\[note: 60\]](#) Moreover, the Husband has listed the annual premium as part of his expenses in his first affidavit of assets and means dated 11 September 2009. [\[note: 61\]](#)

(b) Second, the Husband prayed that the court order the Wife to assign her interest as a beneficiary "back" to the Mother. [\[note: 62\]](#) However, if the Insurance Policy was not a matrimonial asset, the court would have no power under s 112 of the Women's Charter to make the order he prayed for. The Husband did not provide any other possible basis for such an order.

42 After considering the issue and weighing the evidence, I find that the Insurance Policy was *not* a gift from the Mother. It was not a "gift" in the sense of a transfer of ownership because the Mother

was never the owner of the Insurance Policy at any stage. The Insurance Policy was a continuing contract with obligations and it cannot be said that the Mother gifted the entirety of the policy just because she helped to start him off. Even if the Mother paid for some of the premiums, such payments were gifts of *cash* to the Husband and not the gift of the Insurance Policy itself. For the avoidance of doubt, I do not find that the Mother had in fact paid for all the premiums. The Husband is named as the life insured, owner *and payor* of the Insurance Policy, [\[note: 63\]](#) and the Husband has not satisfied the court on the evidence that this was not the case.

43 However, even if it were not a third-party gift, the Husband still commenced the Insurance Policy before marriage and it is perhaps arguable that, but for the inter-spousal gift to the Wife, the Insurance Policy would not be part of the matrimonial assets. Another view is that although the Insurance Policy commenced before marriage, its value was enhanced by premiums paid by the Husband after the date of the marriage. The increase in the surrender value of the Insurance Policy attributable to premiums paid during the marriage should therefore be treated as a matrimonial asset. The apportionment of the surrender value should be based on the ratio of premiums paid before the marriage (which was from 1987 to 1998, about 11 years) to the premiums paid while the marriage was subsisting (which was about ten years, see [62] below). Fortunately, on either view, the result would be approximately the same, namely, that about 50% of the surrender value of the Insurance Policy would be considered as a matrimonial asset.

44 Mr Siow submitted that when the Husband named the Wife and the Mother as beneficiaries in the Insurance Policy, a statutory trust was created in favour of the Wife under s 73 of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) ("CLPA"). Given that the Wife was nominated as a beneficiary before the commencement of s 10 of the Insurance (Amendment) Act 2009 on 1 September 2009, I agree with Mr Siow that s 73 of the CLPA is applicable to the present case.

45 Section 73(1) of the CLPA states:

73.—(1) A policy of assurance effected by any man on his own life and expressed, before the date of commencement of section 10 of the Insurance (Amendment) Act 2009, to be for the benefit of his wife or of his children or of his wife and children or any of them, or by any woman on her own life and expressed, before the date of commencement of section 10 of the Insurance (Amendment) Act 2009, to be for the benefit of her husband or of her children or of her husband and children or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured or be subject to his or her debts.

46 In *Lim Lina v Estate of Quick Cheng Gee, deceased* [2012] 1 SLR 905 at [11]–[12], it was held that there is no fixed format of "expression" required in order for s 73 of the CLPA to be brought into operation, and s 73 of the CLPA need not be expressly mentioned in the policy of assurance.

47 A question arises whether a statutory trust under s 73 of the CLPA can be created over *part* only of the Insurance Policy. Counsel did not cite any case addressing this point, but on principle I am of the view that there should be no legal impediment to this. Accordingly, I find that a statutory trust in favour of the Wife had arisen over a 50% share in the Insurance Policy.

48 The result is that the Husband's nomination of the Wife is not revocable by him alone. This is because the statutory trust under s 73 of the CLPA is irrevocable without the consent of beneficiary of the said trust (see *Saniah bte Ali v Abdullah bin Ali* [1990] 1 SLR(R) 555 at [9]).

49 The Wife's beneficial interest in the Insurance Policy was clearly acquired by her during the marriage. It was, for practical purposes, a "gift" by the Husband to the Wife. An inter-spousal gift is not excluded from the pool of matrimonial assets under s 112(10) of the Women's Charter, *unless* the gift was originally acquired by the donor spouse under a third-party gift or inheritance. As stated in *Wan Lai Cheng v Quek Seow Kee and another appeal and another matter* [2012] 4 SLR 405 ("*Wan Lai Cheng*") at [40]–[41] (as quoted in Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2nd Ed, 2013) ("*Elements of Family Law in Singapore*") at p 601):

40 ... An *inter-spousal* gift embodies, by its very nature, the *initial* effort expended by the donor spouse in, as this court put it in *Yeo Gim Tong Michael* (at [12]), "the original acquisition of [the] gift".

41 ... An *inter-spousal* gift, by its very nature, is always acquired by one spouse during a marriage, and thus falls under s 112(10)(b) of the current Act, ... Therefore, all inter-spousal gifts fall under s 112(10)(b) and are matrimonial assets without the need to satisfy any further conditions ...

[emphasis in original]

50 It was held in *Tan Hwee Lee* ([25] *supra*) at [45]–[49] that the only true (and justifiable) exception to the general rule is that the court can exercise its discretion to exclude *de minimis* inter-spousal gifts from the pool. This is even where the spouses' entitlement to an asset is clear (see *Tan Hwee Lee* at [50]–[52]).

51 I find therefore that the Wife has a 50% beneficial interest in the Insurance Policy and that this interest is a matrimonial asset. The Wife claimed the whole of this interest in the form of 50% of the surrender value of S\$64,438. [\[note: 64\]](#) However, the fact that the Wife has a 50% beneficial interest in the Insurance Policy does not mean the Wife will necessarily receive the whole of that interest when the matrimonial assets are divided since the court has power under s 112 of the Women's Charter to divide the matrimonial assets as the court thinks just and equitable.

TMCC Membership

52 According to the Husband, the TMCC Membership was a gift from his grandmother and the Mother. He averred that they paid the membership fee of S\$98,000 before he started work. [\[note: 65\]](#) Since the Husband started work in 1991, [\[note: 66\]](#) it was implied that the TMCC Membership was a gift made before the marriage. I do not believe that is the case. I find that the TMCC Membership was acquired by the Husband after the marriage for the following reasons.

53 First, the dates do not bear out what he said. The date of registration of membership was 12 December 2003, payments for the membership fee having been made on 1 November 2003. This was long after the Husband had already started work and after the marriage. [\[note: 67\]](#) These facts were only uncovered after a heavily contested discovery application for the Husband to disclose the club application details. [\[note: 68\]](#)

54 Second, although cashier's orders and other supporting documents showed that S\$56,400 was paid from the Citibank Joint Account and S\$41,600 from the OCBC Joint Account, for the same reason that the Mother has failed to comply with court orders for discovery, I make the adverse inference that these moneys were likely from funds transferred by the Husband to the Mother.

The Husband's debt to the Mother

55 One minor issue remains to be resolved before I turn to how the matrimonial assets are to be divided. In his first affidavit of assets and means dated 11 September 2009, the Husband called the Mother his only creditor. [\[note: 69\]](#) The sum of S\$635,342.12 allegedly owing by the Husband to the Mother was also listed as an outstanding liability in the Husband's Declaration of the Value of Matrimonial Assets dated 11 April 2012. The Mother had kept a detailed record of the payments she had made to support the Husband, the Wife and the Children, including the monthly sums of S\$1,500 used as maintenance of the Wife during the marriage. [\[note: 70\]](#)

56 I find as a fact that they were not debts – as least not in the legal sense. In Ms Lee's written submissions dated 14 August 2012, it was clarified that the Husband was not claiming that the sums recorded by the Mother were "debts" in the strict sense of the word. It was also clarified that the Mother had no intention of asking for repayment. [\[note: 71\]](#)

Division in just and equitable proportions

57 The Wife submitted that she should be given a share of at least 35% of the matrimonial assets, [\[note: 72\]](#) while the Husband submitted that the Wife should receive about 10% of whatever is assessed to be the quantum of the matrimonial assets. [\[note: 73\]](#)

58 I have found that the following properties are matrimonial assets that fall to be divided by the court in just and equitable proportions under s 112(1) of the Women's Charter:

- (a) the Husband's beneficial interest (85.6%) in the Flat;
- (b) the Wife's 50% beneficial interest in the Insurance Policy;
- (c) the TMCC Membership; and
- (d) the Husband's CPF Accounts.

59 With regard to direct contributions, the Wife claimed that she had contributed financially to the Flat and the Car (which I have found is not a matrimonial asset). She relied on the fact that her parents had transferred a total sum of US\$52,000 on 23 July 2002 into the Citibank Joint Account, which she claimed was used towards the purchase of the Flat, the Car and the Children's education. [\[note: 74\]](#) She said that her parents contributed the money with the intention that their moneys were paid on the Wife's behalf as her contribution towards her new family in Singapore so that she would not be seen as living off the goodwill of her parents-in-law. This sum was "mixed" with the Husband's money given to the Mother and applied towards the early redemption of the loan for the Flat and for the Car generally. [\[note: 75\]](#)

60 I do not disbelieve that her parents intended to help her contribute financially to the family, but there was insufficient evidence to establish that the money was used for the acquisition of any particular property. It is more appropriate to regard the funds as her share of the general household expenses. Therefore, I find that the Wife had not contributed financially to the acquisition of the Flat.

61 The Husband and the Wife also disputed the length of the marriage. The Wife submitted that the marriage lasted ten years, as there was a 1½ year period of reconciliation after the grant of the

decree *nisi*. [\[note: 76\]](#) The Husband's position was that the effective duration of the marriage was 8½ years, this being the length of time from registration to the grant of the decree *nisi*. Nevertheless, he was willing to concede that there was a period of reconciliation for a year or so (making the effective length of the marriage 9½ years), although the Husband and Wife had not cohabited in that period. [\[note: 77\]](#)

62 In my view, it is appropriate to recognise the indirect contributions of the parties to the marriage during the period when the parties were endeavouring to mend their broken marriage, even if ultimately such an attempt was unsuccessful. However, whether the effective length of the marriage was really about 9½ years or ten years is just hair-splitting. Nothing turns on this difference of a few months.

63 Adopting a broad-brush approach, I award the Wife a share of 25% of the matrimonial assets to reflect her indirect contributions to the marriage. I have no doubt that the Wife did help to take care of the family and the Children, especially when the Husband was absent, although I also recognise that she had the significant assistance of one or two maids as well as the Mother at various points of time. I have also taken into account the fact that she did contribute financially to the household expenses and the care of the Children in the form of the US\$52,000 transfer made by her parents. I also recognise that she has only asked for a nominal sum of S\$1 a month as maintenance for herself. In my view, this is another relevant factor to be taken into account: see s 112(2)(h) of the Women's Charter and *Tan Hwee Lee* at [38] read with s 114(1)(b) of the Women's Charter.

Date of valuation

64 With respect to the Flat, the Husband submitted that the property should be valued as at the date one year after the grant of the decree *nisi*, which is when the reconciliation broke down. [\[note: 78\]](#) I disagree.

65 The Wife's position was that the date for the valuation of the matrimonial assets in this case should be the date of the final ancillary hearing. Mr Siow cited *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 at [39] for the proposition that once an asset is regarded as a matrimonial asset to be divided, then, for the purposes of determining its value, it must be assessed as at the date of the hearing. He also referred to *Anthony Patrick Nathan v Chan Siew Chin* [2011] 4 SLR 1121 ("*Anthony Patrick Nathan*") where it was stated that the date on which matrimonial assets should be valued was at the court's discretion, just as it was when it came to the operative date when the pool of matrimonial assets should be determined. What was critical was to arrive at a just and equitable division in all the circumstances in each particular case (at [29]). As noted in *Anthony Patrick Nathan* at [32]:

In a few situations, where there are protracted hearings or judgment has been reserved and material changes take place in the value of assets in the meanwhile, I have no doubt that the court is entitled to be updated where it would otherwise cause an injustice or prevent a just and equitable division of assets.

66 As Mr Siow pointed out, the value of the Flat has increased very substantially since the date of the decree *nisi*. I agree with Mr Siow that it was the wilful refusal of the Husband and the Mother to make full and frank disclosure of their actual contributions towards the purchase of the Flat which substantially delayed the hearing of these final ancillaries. If not for the delay, the Wife could well have had the benefit and use of such share of the assets much earlier. Moreover, the Husband or the Mother should not benefit by their own default. It would not be just and equitable for the Husband

and the Mother to exclude the Wife from the benefit of the property's appreciation in value in these circumstances.

67 In the result, I make the following orders in respect of the matrimonial assets:

(a) Unless otherwise agreed, the Husband and the Mother shall sell the Flat on the open market and pay the Wife 25% of the Husband's 85.6% beneficial interest in the net sale proceeds of the Flat (*ie*, 21.4% of the net sale proceeds) within six months of this judgment. For the avoidance of doubt, these are the net sale proceeds *before* the refund of CPF moneys by the Husband.

(b) The Wife shall give her assent in writing to the Husband's revocation of trust (or the equivalent instrument required by the insurance company) with respect to her 50% beneficial interest in the Insurance Policy upon the Husband paying the Wife S\$8,055, being 25% of the original projected surrender value of her 50% share in the Insurance Policy, *ie*, S\$32,219. If the Husband so wishes, he can subsequently name the Mother as the beneficiary of the whole of the Insurance Policy.

(c) The Husband shall pay the Wife S\$51,766, this being the sum of the following:

(i) S\$30,000, this being 25% of the TMCC Membership's current market price of S\$120,000. [\[note: 79\]](#)

(ii) S\$21,766, this being 25% of the moneys in the Husband's CPF Accounts as of 28 March 2012, *ie*, S\$87,062.74. [\[note: 80\]](#) For the avoidance of doubt, this would not include the CPF moneys that would be refunded to the Husband's CPF Accounts as a result of the sale of the Flat.

(d) For avoidance of doubt, the parties shall retain all other assets that are in their own names.

68 Before I move on to maintenance, I recognise that my order to sell the Flat would directly affect the Mother's interest, which is not a matrimonial asset. First, I accept that the power of court under s 112 of the Women's Charter is limited to matrimonial assets. However, under para 2 of the First Schedule of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) the High Court has the general power, in any cause or matter relating to land where it appears *necessary or expedient*, to order the land or any part of it to be sold and to give all necessary and consequential directions.

69 Second, the Mother was joined as a defendant and had been given full notice of the Wife's proposal for the Flat to be sold on the open market in the Wife's Ancillary Matters Fact and Position Sheet. The Mother had every opportunity to air her case. Further, there would be no undue hardship to the Mother as she already has accommodation and is financially independent.

Maintenance

Maintenance of the Wife

70 The Wife has asked for a nominal sum of S\$1 a month as maintenance for herself. [\[note: 81\]](#) I award her this sum.

Maintenance of the Children

71 On 1 March 2013, I ordered that the parents were to have joint custody of the Children. As for care and control during weekdays, the Children were to be under the Husband's care and control after school until 6pm when they would return to the Wife's home to spend the night. On Sundays, the Husband was to have care and control during the day until 2pm, whereafter the Wife would take over for the rest of Sunday. The parties have not complied with the court's order. The *de facto* situation is that each parent has the separate care and control of one child. [X] lives with the Husband while [Y] lives with the Wife.

72 In their respective submissions on the maintenance of the Children, both the Husband and the Wife took the *de facto* situation for granted. The Wife has asked for S\$2,970 a month as maintenance for [Y]. That sum was what this court had determined as [Y]'s monthly expenses, including his share of rental, utilities, maid's salary and levy. On his part, the Husband did not ask for maintenance for [X]. His position was that each party should maintain the child residing with him or her. [\[note: 82\]](#)

73 The Wife is earning an income of about S\$6,000 a month [\[note: 83\]](#) and she has only asked for S\$1 as maintenance for herself. It has been argued by the Husband that he is unemployed, [\[note: 84\]](#) but I am not satisfied that this status is not by his own choice. As Mr Siow rightly submitted, even though the Husband tendered two memos by a psychiatrist in Changi General Hospital which stated that he had "Anxiety and Panic Disorder" and "Generalized Anxiety Disorder" respectively, neither memo stated that the Husband was unfit to work. [\[note: 85\]](#) Given the Husband's substantially higher earning capacity and the fact that he will have much more of the net sale proceeds of the Flat than the Wife, he is better placed to pay for the maintenance of [Y] than the Wife.

74 In my view, an award of S\$2,500 a month for [Y]'s maintenance would be a fair amount bearing in mind that, apart from her personal expenses, the Wife will have to bear additional costs like utilities, rentals and other overheads. Therefore, I order that the Husband pay S\$2,500 a month to the Wife as maintenance for [Y] with effect from the date of the judgment. At this juncture, I wish to emphasise that my order must not be interpreted in any way as the court's endorsement of the *de facto* situation. The parties are urged to comply with the court's order for shared care and control as soon as possible whereupon the maintenance of the Children can be revisited.

Costs

75 The Wife has obtained the decree *nisi* and has also substantially succeeded in the ancillary hearing. I award the costs of the ancillary hearing to the Wife, to be taxed if not agreed. I make no order as to costs as regards the Mother and the Sister.

[\[note: 1\]](#) The Wife's affidavit dated 1 Aug 2013 at para 2.

[\[note: 2\]](#) The Husband's affidavit dated 11 Sep 2009 at para 7.

[\[note: 3\]](#) The Husband's affidavit dated 11 Sep 2009 at para 6.

[\[note: 4\]](#) The Husband's affidavit dated 25 Aug 2011 at para 4.

[\[note: 5\]](#) The Husband's affidavit dated 11 Jan 2011 at para 40(o)(i); The Wife's affidavit of 5 Sep 2011 at para 52.

[\[note: 6\]](#) The Wife's affidavit dated 16 Oct 2007 at para 15.

[\[note: 7\]](#) The Husband's affidavit dated 11 Jan 2011 at para 40(i).

[\[note: 8\]](#) The Wife's affidavit dated 16 Oct 2007 at para 15.

[\[note: 9\]](#) The Husband's submission dated 14 Aug 2012 at para 51.

[\[note: 10\]](#) The Husband's affidavit dated 11 Jan 2011 at p 29.

[\[note: 11\]](#) The Wife's affidavit dated 20 Feb 2006 at para 2(p).

[\[note: 12\]](#) See the Mother's affidavit dated 11 Sep 2009, para 27.

[\[note: 13\]](#) The Husband's affidavit dated 11 Sep 2009 at para 18.

[\[note: 14\]](#) The Mother's affidavit dated 11 Sep 2009 at para 10.

[\[note: 15\]](#) The Wife's submission dated 21 Jan 2013 at p 17.

[\[note: 16\]](#) The Wife's submission dated 21 Jan 2014 at p 18; see also the Mother's affidavit dated 11 Sep 2009 at para 15.

[\[note: 17\]](#) The Mother's affidavit dated 11 Sep 2009 at para 15.

[\[note: 18\]](#) The Wife's submission dated 21 Jan 2014 at para 9.

[\[note: 19\]](#) The Mother's affidavit dated 11 Sep 2009 at p 23.

[\[note: 20\]](#) The Mother's affidavit dated 11 Sep 2009 at para 16.

[\[note: 21\]](#) The Husband's submission dated 14 Aug 2012 at para 36.

[\[note: 22\]](#) The Mother's affidavit dated 11 Sep 2009 at para 9.

[\[note: 23\]](#) The Mother's affidavit dated 11 Sep 2009 at para 7.

[\[note: 24\]](#) The Mother's affidavit dated 11 Sep 2009 at para 8.

[\[note: 25\]](#) The Husband's affidavit dated 11 Sep 2009 at para 10.

[\[note: 26\]](#) The Wife's submission dated 21 Jan 2014 at p 11.

[\[note: 27\]](#) The Wife's affidavit dated 29 Oct 2009 at para 13.

[\[note: 28\]](#) The Wife's submission dated 21 Jan 2014 at p 5.

[\[note: 29\]](#) See the Wife's submission dated 1 Mar 2013 at para 13.

[\[note: 30\]](#) The Wife's affidavit dated 26 May 2010 at paras 7 to 15.

[\[note: 31\]](#) The Wife's affidavit dated 26 May 2010 at para 8.

[\[note: 32\]](#) See the Husband's affidavit dated 21 Jul 2010 at paras 13 to 21; see also the Husband's affidavit dated 31 Mar 2010 at para 5.

[\[note: 33\]](#) See, for example, the Husband's submission dated 9 Jul 2013 at pp 8 and 9.

[\[note: 34\]](#) The Husband's submission dated 21 Jan 2014 at para 5.

[\[note: 35\]](#) The Husband's submission dated 21 Jan 2014 at para 6.

[\[note: 36\]](#) See Request to Add/Remove Party filed on 10 Jul 2013.

[\[note: 37\]](#) See Order of Court Obtained in Chambers (Divorce) filed on 1 Jul 2011.

[\[note: 38\]](#) The Husband's affidavit dated 29 Nov 2010 at para 4.

[\[note: 39\]](#) The Husband's submission dated 21 Jan 2014 at para 8.

[\[note: 40\]](#) The Wife's submission dated 21 Jan 2014 at p 6.

[\[note: 41\]](#) The Mother's affidavit dated 11 Sep 2009 at para 11.

[\[note: 42\]](#) The Mother's affidavit dated 11 Sep 2009 at p 18.

[\[note: 43\]](#) The Mother's affidavit dated 11 Sep 2009 at para 7.

[\[note: 44\]](#) The Wife's affidavit dated 6 May 2011 at para 20.

[\[note: 45\]](#) The Husband's affidavit dated 11 Jan 2011 at para 37.

[\[note: 46\]](#) The Husband's affidavit dated 25 Aug 2011 at para 9.

[\[note: 47\]](#) The Husband's affidavit dated 11 Jan 2011 at para 38.

[\[note: 48\]](#) The Wife's affidavit dated 5 Sep 2011 at paras 40(a) and (b).

[\[note: 49\]](#) The Wife's affidavit dated 26 May 2010 at para 19.

[\[note: 50\]](#) The Husband's submission dated 14 Aug 2012 at para 4.

[\[note: 51\]](#) The Husband's affidavit dated 25 Aug 2011 at para 9.

[\[note: 52\]](#) The Husband's affidavit dated 11 Sep 2009 at para 12.

[\[note: 53\]](#) The Husband's affidavit dated 11 Sep 2009 at p 64.

[\[note: 54\]](#) The Husband's affidavit dated 11 Sep 2009 at para 12.

[\[note: 55\]](#) The Husband's submission dated 18 Feb 2014 at para 2.

[\[note: 56\]](#) The Husband's submission dated 18 Feb 2014 at para 3.

[\[note: 57\]](#) The Husband's submission dated 14 Aug 2012 at para 45.

[\[note: 58\]](#) The Husband's affidavit dated 25 Aug 2011 at para 10.

[\[note: 59\]](#) The Husband's affidavit dated 11 Sep 2009 at pp 66 to 70.

[\[note: 60\]](#) The Mother's affidavit dated 11 Sep 2009 at pp 33 and 39; see the Wife's submission dated 18 Feb 2014 at para 8.

[\[note: 61\]](#) The Husband's affidavit dated 11 Sep 2009 at paras 12 and 20(g).

[\[note: 62\]](#) The Husband's affidavit dated 11 Sep 2009 at para 12; see also the Husband's submission dated 21 Jan 2014 at para 15.

[\[note: 63\]](#) The Husband's affidavit dated 11 Sep 2009 at p 64.

[\[note: 64\]](#) The Wife's submission dated 18 Feb 2014 at paras 7 and 9.

[\[note: 65\]](#) The Husband's affidavit dated 11 Sep 2009 at para 19(a)(i); The Husband's affidavit dated 11 Jan 2011 at para 56.

[\[note: 66\]](#) The Husband's affidavit dated 11 Jan 2011 at para 41(a).

[\[note: 67\]](#) The Wife's submission dated 21 Jan 2014 at p 12.

[\[note: 68\]](#) The Wife's affidavit dated 5 Sep 2011 at para 62.

[\[note: 69\]](#) The Husband's affidavit dated 11 Sep 2009 at paras 23 to 27.

[\[note: 70\]](#) The Mother's affidavit dated 11 Sep 2009 at paras 24 to 26.

[\[note: 71\]](#) The Husband's submission dated 14 Aug 2012 at para 46.

[\[note: 72\]](#) The Wife's submission dated 21 Jan 2014 at p 8.

[\[note: 73\]](#) The Husband's submission dated 21 Jan 2014 at para 13.

[\[note: 74\]](#) The Wife's affidavit dated 29 Oct 2009 at para 8.

[\[note: 75\]](#) The Wife's affidavit dated 5 Sep 2011 at para 39.

[\[note: 76\]](#) The Wife's submission dated 21 Jan 2014 at p 8; The Wife's affidavit dated 1 Aug 2013 at para 7.

[\[note: 77\]](#) The Husband's submission dated 21 Jan 2014 at para 12.

[\[note: 78\]](#) The Husband's submission dated 21 Jan 2014 at para 14.

[\[note: 79\]](#) The Wife's submission dated 21 Jan 2014 at p 12.

[\[note: 80\]](#) The Husband's Ancillary Matters Fact and Position Sheet at p 2.

[\[note: 81\]](#) The Wife's Ancillary Matters Facts and Position Sheet at p 7.

[\[note: 82\]](#) The Husband's submission dated 10 Feb 2014 at paras 2 and 3.

[\[note: 83\]](#) The Wife's affidavit dated 1 Aug 2013 at para 11.

[\[note: 84\]](#) The Husband's submission dated 10 Feb 2014 at para 7.

[\[note: 85\]](#) The Wife's submission dated 10 Feb 2014 at p 8, para 9.

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