Lock Yeng Fun v Chua Hock Chye
[2007] SGCA 33

Case Number : CA 116/2006

Decision Date : 26 June 2007

Tribunal/Court : Court of Appeal

Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Lim See Wai Victor (Hoh Law Corporation) for the appellant; The respondent in person

Parties : Lock Yeng Fun — Chua Hock Chye

Family Law – Matrimonial assets – Division – Principles governing division of matrimonial assets – Significance of (direct) financial contributions – Whether equal division warranted on facts

26 June 2007

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

1 This is an appeal by the petitioner wife against the ancillary orders made by the trial judge ("the Judge") in *Lock Yeng Fun v Chua Hock Chye* [2006] SGHC 230 ("GD") with respect to both the division of matrimonial assets as well as maintenance. On appeal, the appellant focused her challenge on the decision of the Judge with respect to the former issue (where the matrimonial assets were divided in the proportion of 60% to the husband and 40% to the wife).

2 The respondent husband did not file any notice of appeal against the Judge's decision.

3 We allowed the appeal in part (in so far as the issue relating to the division of matrimonial assets was concerned). In particular, we ordered an equal division of all the matrimonial assets available for distribution. However, in so far as the issue of maintenance was concerned, we found it appropriate, in the circumstances, to rescind the order made by the Judge. We now give the detailed grounds for our decision.

Background

4 The facts are not in dispute and can be simply stated.

5 The parties were married for almost 30 years. Their marriage was registered on 4 September 1975, the divorce petition was filed on 12 May 2005, and the decree *nisi* was granted subsequently, followed by the decree absolute.

6 The appellant is currently 55 years old and the respondent is 56 years old.

7 There are two children of the marriage, a daughter (aged 29) and a son (aged 28). They are both working adults and are not dependent on their parents. They do not provide any form of financial support to the respondent, but give the appellant about $400 a month in total.

8 The appellant has been a homemaker from the start of the marriage and only ventured to work (and even at that, merely a temporary job) for four months when the respondent was retrenched in 1992.

9 The respondent, on the other hand, enjoyed a successful career as a vice-president of three foreign banks. His employment required him to be based overseas for a substantial period of time, and during this period, the appellant single-handedly cared for the household and children.

10 After the respondent was retrenched in 2000 from his position at an insurance group, he started a training and consultancy business, which, unfortunately, did not succeed and incurred losses amounting to some $25,000.

11 In 2002, the respondent, together with a partner, started another training and consultancy business, which, as with the previous start-up, suffered severe losses and was eventually wound up in 2005.

12 The respondent currently operates a training and consultancy business from home, from which he claimed to be earning a monthly income of approximately $600 to $800.

13 The respondent also claimed (which was accepted by the Judge and was not challenged by the appellant, on appeal) that he had made various investments in the stock market and had made a loss of approximately $300,000 on these investments.

The circumstances surrounding the divorce

14 The ground for divorce was that the marriage had irretrievably broken down. The acrimony and bitterness between the parties were clearly evident from the (hurtful) allegations and accusations they hurled against each other. However, whilst this was unfortunate, we found that all this was irrelevant to the decision of this court in the present appeal, not least because these allegations and accusations cast no real light on the legal issues before us. At this juncture, it is apposite to make a brief note of the matrimonial assets available for division between the parties, after which we will proceed to set out the significant factors that were integral to and formed the basis of our decision to award, between them, an equal division of the assets acquired throughout the 30-year marriage. We will then consider each of the main issues, *viz*, the division of matrimonial assets and maintenance, in relation to the relevant facts and legal principles.

Matrimonial assets available for division

15 The matrimonial assets to be divided comprise the following:

(a) the sale proceeds of the matrimonial home at 16 Namly Garden;

(b) the wife's assets including, but not limited to, investments and the surrender value of insurance policies; and

(c) the husband's assets.

16 It would suffice to note that the value of assets (a) and (c) are not in dispute. However, the parties hotly contested the total value of assets in the wife's name. We will deal with the respective values of these assets at [25]–[31] below.

17 We now proceed to set out the unusual features of this case which, as we shall see, impact significantly on the resolution of the issues in the present appeal.

Unusual circumstances of the present case

18 Admittedly, the appellant was a homemaker throughout the marriage and did not contribute financially (in any significant respect) to the acquisition of the matrimonial home. The respondent was the sole breadwinner throughout the marriage and supported the appellant and their children financially. Although the respondent did not have a tertiary education, he was undoubtedly very successful in his career, rising steadily through the ranks and eventually reaching the position of vice-president in three foreign banks.

19 However, and this is the first unusual circumstance in the present case, we note that the family never employed any domestic help and hence the appellant shouldered, solely, the burden of looking after the household and the growing children. This was particularly so during the relatively long periods between 1984 and 1985 and between 1992 and 1998, when the respondent was based overseas in Malaysia and Indonesia, respectively.

20 Secondly, apart from caring for the respondent (when he was in Singapore), the home, and the children of the marriage, the appellant also managed to amass a sizable sum of close to $500,000 from her investments (albeit from the moneys given to her by the respondent for household and miscellaneous expenses). On the other hand, based on the disclosed investments in the husband's name, it would appear that he was a poor investor or saver, having only accumulated $230,000 "after almost a lifetime of work": see GD at [20].

21 Thirdly, another pertinent fact to be noted is that the respondent, being 56 years old and suffering from arthritic limbs and vision problems, has little or almost no prospect of a higher earning capacity. The monthly income from his training and consultancy business of approximately $600 to $800 can hardly be considered a steady source of revenue, bearing in mind the fact that the business itself has no intrinsic value. This was a relevant factor in our decision to rescind the maintenance order made by the Judge.

Ancillary orders made by the trial judge

22 In the court below, the Judge made the following ancillary orders:

(a) The matrimonial property is to be sold in the open market within 12 months of the Judge's order. The *net proceeds of sale*, but before Central Provident Fund ("CPF") deductions, are to be divided in the ratio 60% to the respondent and 40% to the petitioner. The respondent is to refund his own CPF moneys from his share of the proceeds of sale.

(b) For the other assets, the division of such assets shall also be in the ratio of 60% to the respondent and 40% to the petitioner. The net difference is to be deducted from the division of the sale of the matrimonial home from the petitioner's share of proceeds.

(c) The respondent is to pay the petitioner maintenance of $60,000 in a lump sum. This amount may be paid from the proceeds of sale of the matrimonial home.

23 We turn now to consider the two main issues raised in this appeal, *viz*, the division of matrimonial assets and maintenance.

Division of matrimonial assets

Introduction

24 Counsel for the appellant, Mr Victor Lim, and the respondent (who appeared in person)

agreed that the case law supported the decision arrived at by the Judge in giving the husband and the wife in the present proceedings 60 per cent and 40 per cent of the matrimonial assets, respectively.

25 However, Mr Lim argued that the appellant wife should be entitled to retain her own assets. In this connection, we should take another look at the precise value of these assets. They were assessed by the Judge to have a value of $577,000. This amount included a sum of $127,000, being the total value of various insurance policies. However, the Judge valued one of these policies at $70,000. As the respondent argued (correctly, in our view), this amount of $70,000 was the insured value of the policy and not its surrender value, which was the relevant value the court ought to have taken into account. The surrender value was, in fact, only $21,457.12, as confirmed by a letter from the insurer itself, which the respondent tendered to the court.

26 On a related point, the appellant also sought to argue that two other insurance policies purchased by the appellant using money from her CPF were double-counted and their total value should be deducted from the sum of $127,000 referred to in the preceding paragraph. We find, however, that apart from mere assertion, the appellant produced no evidence to support this point.

27 In the circumstances, we find the total value of the insurance policies to be $78,457.12 (taking into account the fact that the value of one of the policies was only $21,457.12 instead of $70,000, as noted above). The total amount of the appellant's assets would accordingly have a value of $528,457.12 (instead of $577,000).

28 It is also appropriate, in this connection, to describe the *other* assets that would form part of the pool of matrimonial assets available for division under s 112 of the Women's Charter (Cap 353, 1997 Rev Ed) ("the Act").

29 The first comprises the proceeds from the sale of the matrimonial property (less the expenses connected with the sale). The matrimonial property was sold for $2.45m.

30 The second comprises the respondent husband's assets. The Judge found these to have a total value of $230,000. This finding was not controverted by the appellant.

31 In summary, therefore, the assets that form part of the pool of matrimonial assets available for division by the court comprise the following:

(a) the proceeds from the sale of the matrimonial property ($2.45m), less the expenses connected with the sale.

(b) the wife's assets valued at $528,457.12; and

(c) the husband's assets valued at $230,000.

The issue

32 The main issue before us was a simple one: Should the decision by the Judge in dividing the above assets in the proportion of 60 per cent to the respondent and 40 per cent to the appellant be disturbed?

Our decision

33 It is axiomatic that the division of matrimonial property under s 112 of the Act is not – and, by its very nature, cannot be – a precise mathematical exercise. As was recently pointed out in the Singapore High Court decision of *Chen Siew Hwee v Low Kee Guan* [2006] 4 SLR 605 at [66]:

> It is now widely acknowledged that the court's discretion is to be exercised in broad strokes rather than by way of an unrealistic mathematical approach (see *Halsbury's Laws of Singapore* [vol 11 (LexisNexis, 2006 Reissue, 2006)] at paras 130.757 and 130.759, citing the Singapore High Court decision of *Koo Shirley v Mok Kong Chua Kenneth* [1989] SLR 342 and the Singapore Court of Appeal decision of *Yeong Swan Ann v Lim Fei Yen* [1999] 1 SLR 651). The focus is also on achieving a fair and reasonable division (see *Halsbury's Laws of Singapore* at paras 130.760 and 130.761). All this is undoubtedly not only consistent with the existing case law but is also both logical and commonsensical. But there is no substitute for a careful consideration of all the relevant facts and factors in the case at hand.

34 Even more recently, V K Rajah J (as he then was) observed, in a similar vein, in the Singapore High Court decision of *NI v NJ* [2007] 1 SLR 75, as follows (at [18]):

> The division of matrimonial assets is a subject to be approached with a certain latitude; it calls for the application of sound discretion rather than a purely rigid or mathematical formulae. All relevant circumstances should be assessed objectively and holistically. Generally speaking, however, when a marriage ends a wife is entitled to an equitable share of the assets she has helped to acquire directly or indirectly.

35 Reference may also be made to the observations of this court in *Lim Choon Lai v Chew Kim Heng* [2001] 3 SLR 225 ("*Lim Choon Lai*") (discussed at [58] below).

36 Bearing in mind the general guidelines as well as the approach above, we are of the view that an appellate court should not interfere with a trial judge's exercise of discretion except in only very exceptional circumstances.

37 We were persuaded, in the final analysis, that there were exceptional circumstances in the present appeal and we therefore ordered that the matrimonial assets (at [31] above) be divided between the parties in equal shares instead. Let us elaborate.

38 It will be recalled that Mr Lim had argued, on behalf of the appellant wife, that she ought to be allowed to retain her own assets (which totalled $528,457.12 (see above at [31])). In particular, he argued that the appellant had painstakingly accumulated these assets by setting aside the housekeeping money that she had received from the respondent and had invested such money wisely, thus accumulating a considerable amount of assets. Further, this was accomplished even though she had to look after the needs of every member of the family (including the respondent and their two children). As the Judge aptly observed (GD at [22]):

> The petitioner [the appellant in the present appeal] looked after the home and bore the children; indeed for a few years she did it alone while the respondent [the respondent in the present appeal] was based overseas.

39 In this regard, we also endorse the following views expressed by Debbie Ong Siew Ling & Valerie Thean, "Family Law", (2005) 6 SAL Ann Rev 259 at para 13.31:

> It could be contended that in most cases where one party experiences great financial success, the other often bears a heavy burden in respect of the children and home; in some cases this

> entails the sacrifice of any potential for career development. Non-financial contributions are impossible to measure, and success on that front, intangible and difficult to define. It is hoped that this would not stand in the way of courts according due regard to the fact that the financial aspect is but one facet of the many demands that husband and wife must have weathered if a family has had many years together.

Our examination of the case law shows that the courts might not have given sufficient recognition to the value of factors like homemaking, parenting and husbandry when attributing to them a financial value in the division of matrimonial assets. This ought *not* to be the case. It is true that, by their very nature, such kinds of contributions to the marriage are, as pointed out in the quotation above, difficult to measure because they are, intrinsically, incapable of being measured in precise financial terms (we assume that this is what the authors meant when they said that such contributions were impossible to measure). Difficulty in measuring the financial value of such contributions has never been – and ought never to be – an obstacle to giving the spouse concerned his or her just and equitable share of the matrimonial assets that is commensurate with his or her contributions, taking into account (of course) the other relevant contributions and factors.

40 Although Mr Lim's arguments (as set out briefly at [38] above) were intuitively attractive, we were unable to accept them based on legal principle. A broad-brush approach is not a licence for the court to ignore the spirit and intent of the legislative framework. In particular, if accepted, such an argument would undermine the very basis upon which s 112 of the Act was premised: that matrimonial assets are not to be viewed as belonging to the husband or the wife exclusively, to be dealt with accordingly upon a divorce. On the contrary, the legislative mandate to the courts is to treat all matrimonial assets as community property (or, as one writer put it, "deferred community of property" inasmuch as the concept of community property does not take place until the marriage is terminated legally) to be divided in accordance with s 112 of the Act (and see generally Leong Wai Kum, *Halsbury's Laws of Singapore: Family Law*, vol 11 (LexisNexis, 2006 Reissue, 2006) ("*Halsbury's Laws of Singapore*") at para 130.751).

41 Furthermore, in addition to the non-financial contributions of a spouse (more often than not, the wife), attention must be given to his or her direct financial contributions through his or her efforts in increasing the total value of the matrimonial assets. This contribution must be taken into account for the purpose of increasing the proportion of matrimonial assets to be awarded to that spouse. This is not only logical but is also eminently fair. This is, in fact, the situation in the present case where the wife not only looked after the home and the children for 30 years, but also, by her own efforts and investment skills, increased the value of the family assets considerably to an amount much larger than that brought in by the husband. In the circumstances, she must be given due credit for this direct financial contribution in the division of matrimonial assets. It is principally for this reason that we decided that a fair and equitable distribution of the matrimonial assets would be on the basis of an equal distribution.

42 We turn now to the issue of maintenance.

Maintenance

43 It will be recalled that the Judge ordered a lump sum payment of $60,000 in lieu of monthly maintenance, which amount represented, in his view, on a multiplier of 16 years, a multiplicand of about $300 per month.

44 The respondent argued before us that the multiplier of 16 years was wrong and ought to have been 13 years taking into account the current life expectancy of Singaporeans. We accepted

this argument but having regard to our disposition of this issue, it was an irrelevant argument. We turn, instead, to the nub of the matter, which is as follows.

45 We note that, given his present age, various physical disabilities and his present employment situation, the present, as well as future, income expectations of the respondent could only be modest. This fact probably accounted for the Judge's order that the respondent pay a lump sum maintenance of $60,000 to the wife.

46 We also note that, in the court below, the appellant had asked for a lump sum of $144,000, whereas the respondent proposed the payment of a lump sum of $18,000.

47 An order of maintenance is, as s 113 of the Act clearly states, within the discretion of the court, taking into account the various matters mentioned in s 114(1) of the Act (which matters are, we note, not exhaustive). Section 114(1) of the Act itself reads as follows:

> **Assessment of maintenance**
>
> **114.**—(1) In determining the amount of any maintenance to be paid by a man to his wife or former wife, the court shall have regard to all the circumstances of the case including the following matters:
>
> (*a*) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
>
> (*b*) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
>
> (*c*) the standard of living enjoyed by the family before the breakdown of the marriage;
>
> (*d*) the age of each party to the marriage and the duration of the marriage;
>
> (*e*) any physical or mental disability of either of the parties to the marriage;
>
> (*f*) the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family; and
>
> (*g*) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring.

48 In our view, having regard to all the relevant circumstances, and in particular our decision to order an equal distribution of the matrimonial assets, the proper order to make is that there should be no order as to maintenance at all. This would give effect to the general purpose and tenor of s 114(2) of the Act, which reads as follows:

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

Remaining matters

49 The respondent sought to argue that the appellant had actively concealed her assets and that she had also utilised funds from a bank account to purchase a new property after the decree *nisi* had been granted but prior to the grant of the decree absolute. He argued that the property should have been brought into the pool of matrimonial assets for division. However, we rejected his arguments as they constituted mere assertions without any evidentiary foundation.

A coda: No starting point of equality

50 The decision in the present appeal is one of the occasions when this court has decided that an equal division of matrimonial assets is just and equitable on the facts of the case (the others being *Lim Choon Lai* ([35] *supra*), *Yow Mee Lan v Chen Kai Buan* [2000] 4 SLR 466 ("*Yow Mee Lan*") and *Ryan v Berger* [2001] 1 SLR 419). This was the *end point* of our deliberations in this case, and not the starting point. However, it appears that the contrary proposition (to the effect that an equal division of matrimonial assets should be the starting point or presumption or norm) is still being advocated in academic circles: see, for example, *Halsbury's Laws of Singapore* ([40] *supra* at paras 130.817–130.821) and, by the same author, "The Just and Equitable Division of Gains between Equal Former Partners in Marriage" [2000] Sing JLS 208 as well as "The Laws in Singapore and England Affecting Spouses' Property on Divorce" [2001] Sing JLS 19 (*contra*, Debbie Ong Siew Ling & Valerie Thean, "Family Law" (2001) 2 SAL Ann Rev 226 at para 13.31). Such a proposition cannot, with respect, be accepted, as the legislative framework set out in s 112 of the Act neither expresses nor implies the idea of equality of division as a starting point or presumption or norm from which either spouse can either chip away or bolster the division in his or her favour. In the past, some judges have leaned towards the idea of equality as a starting point (see, for example, *Soh Chan Soon v Tan Choon Yock* [1998] SGHC 204 and *Louis Pius Gilbert v Louis Anne Lise* [2000] 1 SLR 274), but these decisions are outnumbered by those which have decided otherwise (see, for example, *Lau Loon Seng v Sia Peck Eng* [1999] 4 SLR 408 ("*Lau Loon Seng*"), *Yow Mee Lan* (*supra*), *Ryan v Berger* (*supra*) and, most importantly, this court's decision in *Lim Choon Lai* ([35] *supra*)).

51 In England, where the idea of equality in the division of matrimonial assets is probably more prevalent among the judges, the House of Lords held in *White v White* [2001] 1 AC 596 ("*White*") (at 605–606) that the concept of equal division should be used as a *check* (rather than as a substantive starting point, though Lord Cooke of Thorndon (at 615) doubted whether the labels "yardstick" or "check" would produce any result different from "guidelines" or "starting point") against the tentative views reached, and, only then, to ensure the absence of discrimination between husband and wife and their respective roles. Indeed, Lord Nicholls of Birkenhead, who delivered the main judgment of the House in that case, stated (in no uncertain terms) that the suggested approach "is *not* to introduce a presumption of equal division under another guise" [emphasis added] (at 605; see also at 606). The learned law lord, in fact, observed that such a presumption could only be introduced by *Parliament* (see *White* at 606). Indeed, Lord Nicholls emphasised the fact that *fairness* was the main focus in so far as the division of matrimonial assets was concerned (see, for example, *White* at 599–600, 604 and 605 as well as (generally) observations to the same effect by the same law lord in *Miller v Miller* [2006] 2 AC 618 at [1]–[20]). Significantly, the House in *White* did *not* decide on an equal division of matrimonial assets based on the facts and circumstances of that particular case.

52 Under our law, it is doubtful whether it is even proper for the courts to use the concept of equality of division of matrimonial assets in the way that the law lords in *White* have proposed. The reason is that our Parliament appears to have decreed otherwise. The pre-legislative materials make it clear what Parliament had intended when it enacted s 112 of the Act. Prior to its enactment in 1996 as an amendment to the existing law, the amendment Bill was taken through a Select Committee at which representations were made in favour of a presumption of equality of division of matrimonial assets. These views were *rejected* by the Select Committee in its *Report of the Select Committee on*

the Women's Charter (Amendment) Bill [Bill No 5/96] (Parl 3 of 1996, presented to Parliament on 15 August 1996). The relevant paragraph of the report (at p viii, para 5.5.4) reads as follows:

> *The Committee, having considered the arguments, disagrees with the proposal to restore the principle of equality.* The Committee is of the view that any law that has to be enforced effectively must be devoid of inherent inconsistency. The law must also provide for all cases, ie marriages of long as well as of short duration with their own set of circumstances. Where a marriage is of short duration with no children, the law must not put judges under constraint to incline towards equality when what is equal may not be just. Since the provisions call for judges to take into account all circumstances and to order the division according to what is just and equitable and that the circumstances for consideration have also been enlarged and clarified, the provisions in the Bill are fair. The Bill also makes explicit the recognition of the home-making efforts of a spouse regardless of whether the spouse is working or not. [emphasis added]

53 More importantly, the Minister in charge of the amendment Bill, the Minister for Community Development, Mr Abdullah Tarmugi, made it clear beyond any doubt that the presumption in favour of equality of division of matrimonial assets was *not* part of the scheme of s 112 of the Act when, in moving the Third Reading of the Women's Charter (Amendment) Bill, he said: (see *Singapore Parliamentary Debates, Official Report* (27 August 1996) vol 66 at cols 526–527):

> Sir, the [Select] Committee recommends the retention of the provisions in the Bill relating to "Division of Matrimonial Assets", after taking into consideration the comments of the representors as well as the Members in the House. The Committee is of the view that any law that has to be enforced effectively must be devoid of inherent inconsistency. *The proposed provisions in the Bill allow the court to divide the matrimonial assets in a just and equitable manner after taking into consideration all circumstances of the case, including a homemaker's contributions. The Bill has also enlarged and clarified the circumstances which the court should take into consideration. As such, it would seem inappropriate that the court would still be required to incline towards equality*.
>
> *Sir, the law must provide for all cases, ie, marriages of long as well as of short duration, and marriages under unusual sets of circumstances. For example, where a marriage is of short duration with no children, the law must not put judges under constraint to incline towards equality when what is equal may not be just. The Committee is of the view that the provisions of the Bill are fair. Indeed, it is a better formulation than the current one.*
>
> [emphasis added]

The Minister continued as follows (*id* at col 542):

> I would like to respond to Mdm Yu-Foo. She asked whether it would be possible in the current amendment that *working women* could indeed get a bigger share of the matrimonial assets. *The possibility is there, because the court will take into consideration all the circumstances leading to the divorce, including the non-monetary contribution to the home*. [emphasis added]

54 This is not, in fact, the first time that the courts have referred to the valuable materials cited above. In the Singapore High Court decision of *Lau Loon Seng* ([50] *supra*), Kan Ting Chiu J also referred to these materials (at [16]–[18]).

55 We would also like to add that the experience of the courts in dealing with division of matrimonial assets shows that equality of division is *not* the norm (see above at [50]); indeed, in the

large majority of the cases decided by the courts, equality of division was not achievable on the facts. This is not surprising given the current social conditions in Singapore, notwithstanding the fact that more and more women work and there is generally more equality in the workplace. We emphasise, however, that the focus of the court is always on the attainment of a *just and equitable* division of matrimonial assets (as required under s 112(1) of the Act). We have, consistent with this aim, in fact emphasised (at [39] above) the importance of giving the *fullest* effect to the non-financial contributions of the spouse concerned.

56 On a general note, whilst there are common guidelines which are embodied within s 112(2) of the Act (although these are not exhaustive), nevertheless, because fact situations will obviously vary, different courts may arrive at different results. However, whilst such *literal* differences will undoubtedly exist, it does not necessarily follow that these different results are unprincipled and based on the (unacceptable) exercise of "palm tree justice". On the contrary, as was observed in the Singapore High Court decision of *Chua Kwee Chen, Lim Kah Nee and Lim Chah In v Koh Choon Chin* [2006] 3 SLR 469 (at [25]):

> *[L]egal practice* (*viz*, the sphere of practical application) *necessarily* involves *discretion*. In this particular sphere, discretion is in fact not only necessary but also *a great strength*. … [T]he exercise of judicial discretion is generally not only unavoidable but is also desirable, especially in situations such as these. As [was] observed in *Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR 117 at [102], "[t]he courts also exercise discretion virtually all the time and exercise such discretion in a structured and fair manner", citing the very pertinent observations of Chao Hick Tin JA (as he then was) in the Singapore Court of Appeal decision of *Chwee Kin Keong v Digilandmall.com Pte Ltd* [2005] 1 SLR 502 at [81] in relation to the application of equitable principles, and where the learned judge opined that "[t]he courts here, as well as in other common law countries, have been applying equitable principles from time immemorial"; he added that "[w]hile certainty is desirable, it is not an object which should prevail in all circumstances, even against the dictates of justice" and that "[i]t is not more difficult to determine what is 'equitable' than what is 'reasonable' at common law". [emphasis in original]

57 We observe that until Parliament changes its mind with regard to s 112 of the Act and amends it accordingly, we would wish to discourage the perpetuation of the proposition to the effect that equality of division is either the starting point or the norm in any given case, as this could induce in the judge concerned a state of mind that seeks to achieve equality as the norm as the end point, regardless of the actual facts and merits concerned. This would be wrong in law as it is contrary to the legislative intent.

58 Finally, we would observe that whilst equality of division of matrimonial assets in our courts is not the *norm*, the courts would nevertheless not hesitate to award half (or even more than half) of the matrimonial assets if such a decision is justified on the facts. In this regard, this court's decision in *Lim Choon Lai* ([35] *supra*) is instructive. In that case, the learned district judge had ordered an equal division of the matrimonial home as between the parties (this was, in fact, the only matrimonial asset in issue in this particular case). This decision was affirmed by the High Court, and the wife appealed. This court allowed the appeal, ordering a *60%* share of the matrimonial home to the wife and a corresponding 40% share of the same to the husband. In arriving at this decision, the court found that the direct financial contributions by the parties towards the purchase of the matrimonial property were substantially the same. *However*, it then proceeded to find, in so far as the *other* financial and non-financial contributions were concerned, as follows (at [26]–[27]):

> *We had no doubt that in the course of the 30-year marriage, it was Mdm Lim [the wife] who bore the main burden of supporting the family and providing for its welfare.* She was a

determined woman who had worked very hard for her family, and she strove to improve herself in her career. She took on extra work and assignments, such as relief teaching and marking examination papers, in order to augment the family income. From the available evidence, which was not disputed, it could be observed that by May 1996, Mdm Lim's gross monthly income was about $5,000 while Mr Chew's [the husband's] was only about $1,800. Although the parties could not be said to be high income earners, the family was nonetheless able to enjoy a comfortable living. They bought cars and went on packaged tours overseas, and it was apparent that these material comforts were provided largely by Mdm Lim. Of course, due recognition should also be given to Mr Chew for his contributions. He did what his level of income permitted him to, and he paid for the lesser expenses. *In our view, the district judge had been too generous towards Mr Chew and had given too much credit to Mr Chew's financial contributions.* Whilst he may have paid for part of his daughter's university education, this could hardly be matched with the level of financial input which Mdm Lim had contributed to the welfare and maintenance of the family.

As for the indirect contributions made by the parties, we believed that Mdm Lim, being a school teacher, would most probably have had more time to spend with the family and children, whereas Mr Chew, who worked as a clerk, would have had a nine to five vocation and would not have been as likely to spare the time.

[emphasis added]

In the event, the court concluded thus (at [28]):

After taking into consideration all the various factors and weighing the contributions, both monetary and non-monetary, made by each party, we were of the view that Mdm Lim deserved greater credit for the comparatively larger contributions she had made to the family and marriage. Consequently, we held that *a just and equitable* division would be for Mdm Lim to receive a 60% share in the sale proceeds of 83 Namly Avenue [the matrimonial home] and for Mr Chew to have a 40% share. In the result, we allowed Mdm Lim's appeal. [emphasis added]

Conclusion

59 In the premises, we allowed the appeal in part (in so far as the issue of the division of matrimonial assets was concerned). However, in so far as the issue of maintenance was concerned, we found it appropriate, in the circumstances, to rescind the order made by the Judge. We also ordered that each party bear its own costs both here and below, with the usual consequential orders to follow.

60 We had initially also ordered that the sum held as stakeholders by Sterling Law Corporation be released to the parties equally. However, after having considered a subsequent letter from Mr Lim on behalf of the appellant detailing the various sums involved and payments to date, as well as the respondent's reply, we find it appropriate to order that this entire sum be released to the appellant. However, we are also of the view that in the light of the fact that we have held that there should be no order as to maintenance, the total sum hitherto paid by the respondent to the appellant as monthly maintenance should be refunded by the appellant to the respondent.