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v

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[2017] SGHCF 28

High Court — Divorce Transfer No 1997 of 2013

Foo Tuat Yien JC

10 June, 11 August, 22 November 2016; 27 January, 19 April, 28 July 2017

Family Law — Matrimonial assets — Division

21 November 2017

Foo Tuat Yien JC:

Introduction

1 The present matrimonial proceedings arose from the breakdown of a long-term marriage of about 21 years between the Husband and Wife.¹ They have an adopted son, born in 2001 and who was 16 years of age when the case came before me for determination of the ancillary matters on (a) care and control of, and access to, the son; (b) maintenance for the son; (c) the division of matrimonial assets; and (d) maintenance for the Wife. Both parties were legally

¹ Joint Summary of Relevant Information filed on 20 April 2016 (“JSRI”) at p 1, S/No 1.

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represented, and after considering all the arguments and evidence, I made my orders on these ancillary matters on 28 July 2017.²

2 The Husband subsequently filed an appeal against my order on the division of matrimonial assets. I now set out my grounds of decision on this issue.

Background facts

3 The Husband and Wife married in 1992, when they were both about 35 years old. They were about 60 years old when I heard the matter. The Wife, who was employed as a legal secretary in a law firm, left this role in 1999 when she became pregnant with the parties' child (who was subsequently miscarried).³ They then adopted the son after he was born in 2001.

4 In 2003, the Husband set up a business through [CP] Pte Ltd ("CFPL"), of which he was the sole shareholder and executive director. The Wife was appointed as a director of CFPL in June 2003⁴ and remained in this position till 28 November 2011, when she was replaced by the Husband's younger brother.⁵ This was after the marriage had deteriorated. There was a dispute over the Wife's role in CFPL, and in particular whether she was actively working for the company or was a director in name only. I return to this issue later as the determination of whether the Wife was a homemaker, as she claimed, or a

² Minute Sheet dated 28 July 2017 for HCF/DT 1997/2013.

³ Plaintiff's Written Submissions dated 10 June 2016 at para 19(d).

⁴ Defendant's 2nd affidavit dated 2 May 2014 at p 19.

⁵ Plaintiff's Written Submissions at para 19(e).

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businesswoman, as the Husband asserted, was relevant in the approach that was taken in assessing her contribution to the marriage.

5 When the parties' marriage deteriorated, the Wife, around June 2011, moved out of the matrimonial bedroom to share a room with the son.⁶ Later, in January 2013, the Wife left their matrimonial home at [D] Road ("the D Road property") with the son.⁷ She filed for divorce on 19 April 2013, and Interim Judgment was granted on 4 November 2013 based on each party's unreasonable behaviour. This was hence a marriage of almost 21 years up to the date of the Interim Judgment.

Orders made on care, control and access and maintenance for the son

6 Although the Husband has only appealed against my orders on the division of matrimonial assets, for completeness and context, I briefly set out the orders which I made relating to the son:

- (a) The parties agreed on joint custody of the son. I granted care and control to the Wife with reasonable access for the Husband;
- (b) The Husband was to pay: (i) monthly maintenance for the son of \$1,350 to the Wife; (ii) for the son's tuition and enrichment fees directly to the relevant service providers capped at \$650 per month; and (iii) for the son's tertiary education fees and related expenses until completion of his first tertiary degree.

⁶ Statement of Particulars dated 19 April 2013 at para 1(h).

⁷ JSRI at p 2, S/No 2.

7 I ordered that there be no maintenance for the Wife. I will deal with this point later.

Division of matrimonial assets

Was the Wife working for CFPL?

8 The first issue, relevant in the approach to be adopted for ascertaining the Wife’s contribution to the marriage, was whether the Wife was working for CFPL or was a director in name only. I found that the Wife was a director in name, and that her primary role was that of a homemaker.

9 The Wife’s case was that she had been made a director of CFPL to comply with the then legal requirement that a company must have at least two directors under the Companies Act (Cap 50, 1994 Rev Ed) and that she had stopped working to take care of the son. She acknowledged that she had received fees as a director. Her position was that these were monies which the Husband, as the controller of the company, gave to her for the expenses of the household of about \$1,500 per month. I accepted the Wife’s account.

10 First, that the Wife had stopped working to take care of the son was borne out by the Wife’s Notices of Assessment (“NOAs”) by the Inland Revenue Authority of Singapore (“IRAS”) for her income earned in the calendar years 2000 to 2002.⁸ The NOAs showed that she had no employment in these years. After CFPL was set up on 23 June 2003, the Wife’s NOAs showed that from calendar year 2003 to 2011, she had annual earnings ranging from a low

⁸ Plaintiff’s Bundle of Documents filed on 3 August 2016 at pp 2–5.

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of \$17,600 in the calendar year 2011⁹ to a high of \$45,000 in the calendar years 2004 and 2005.¹⁰ I noted that these sums, which were attributable to her fees as a director of CFPL, indicated that she was receiving more than the \$1,500 per month that she claimed were given to her for household expense. But the difference in quantum did not undermine her case that the director's fees, which were declared as her sole income, were maintenance monies rather than remuneration for a director's work.

11 The Husband, in contrast, produced no evidence to show that the Wife played an active role in the management of CFPL, of which he was the executive director. His further claim that the Wife was a businesswomen as she was involved in two other companies was disproved by his own evidence, which showed that the Wife's involvement in these two companies had ceased a number of years before marriage.¹¹

12 On the evidence before me, I was satisfied that this was a traditional marriage where the Wife was the keeper of the hearth and main child-carer rather than a dual-income marriage where both spouses were working and able to make financial contributions to the household. As the Wife had been working during the earlier part of the marriage but not the later and larger part of the marriage, I had regard to the approach taken by the Court of Appeal in *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ*") and *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 ("*TNL*") as well as the case precedents prior to these two cases in deciding the division of the assets.

⁹ Plaintiff's Bundle of Documents at pp 13.

¹⁰ Plaintiff's Bundle of Documents at pp 6–7.

¹¹ Defendant's 2nd affidavit at p 19.

Ascertainment of assets forming the matrimonial pool

13 Next, I had to ascertain the assets which formed the matrimonial pool.

14 In the course of the proceedings, I found that there were serious issues of credibility arising from the Husband's position on his assets and means. I deal with each disputed asset in turn. I believe that the main issue in this appeal by the Husband is my decision to include the net equity of the matrimonial home at D Road at a value of \$2,341,391.48 (see [27]–[36] below) within the matrimonial asset pool. I declined to deduct an outstanding mortgage loan amount of \$1,091,625.14 when determining the net equity of the property to be included in the matrimonial asset pool. This was a further loan for “personal use” secured on the matrimonial home, for which no information was given by the Husband on how he had used the monies.

15 One of the Husband's main arguments was that properties acquired by him and in his sole name during marriage should not be included in the matrimonial pool for division because the Wife had made no contributions toward the purchase of these properties nor visited or stayed in any of them. This argument was premised on a mistaken notion of matrimonial property, which in the light of section 112(10)(b) of the Women's Charter (Cap 353, 2009 Rev Ed), includes “property acquired by *either* or both spouses' personal efforts during the course of their marriage” [emphasis added] (*Halsbury's Laws of Singapore* vol 11 (LexisNexis, 2006 Reissue) at para 130.806).

BL property

16 The Husband purchased a property in the [BL] cluster house development in Johor Bahru, Malaysia (“the BL Property”) in 2012, which he claimed to have then sub-sold to one [GS] pursuant to a sale and purchase

agreement dated 13 April 2013 (“the BL SPA”).¹² The BL SPA was not witnessed and there were several problems in the evidence which led me to conclude that the sale was not *bona fide*.

17 To begin, the logistics of the sale were contrary to how one would expect a sub-sale to be effected. The BL SPA provided that the Husband was to be paid a “profit” of RM21,750: the difference between the price at which the Husband bought the property from the developer and the sale price under the BL SPA. However, the Husband admitted, in both his affidavit of 2 May 2014¹³ and his written submissions dated 5 May 2016, that he had not been paid this profit.¹⁴ According to him, this substantial delay in payment was because the property was still under construction and could only be transferred to GS upon the issue of the temporary occupation permit (or “Full Completion” as stated in the BL SPA). This explanation does not square with the fact that under the BL SPA, GS was to bear all instalment payments, which were to be paid to the developer through the Husband. In addition, the BL SPA provided that all profit and loss in the property were to be borne by GS. In other words, GS purportedly took on all the benefits and burdens of ownership without making any payment at all to the Husband for over three years. This was odd.

18 I also noted that the BL SPA was stated to have been entered into only a few days before the Wife filed her writ of divorce on 19 April 2013. More importantly, that the sub-sale was not *bona fide* was corroborated by the Husband’s own evidence in the form of a facility letter from Maybank Islamic

¹² Defendant’s 2nd affidavit at p 52.

¹³ Defendant’s 2nd affidavit at para 34.

¹⁴ Defendant’s Written Submissions dated 5 May 2016 at para 118.

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Bank Berhad (“Maybank Islamic”) to him dated 30 May 2013¹⁵ approving a loan for his purchase of the BL property one and half months after the date of the BL SPA. This loan would have been wholly unnecessary if the sub-sale of 13 April 2013 had indeed taken place.

19 For these reasons, I found that the BL SPA was not a *bona fide* agreement and that the Husband was still the substantive owner of the BL property. The parties agreed that the net equity of this property was RM236,888.00 (\$78,000.00).¹⁶ I thus included the value of this property in the matrimonial asset pool.

One-third share in VU unit

20 The Husband had a one-third share in a commercial unit at the [VU] development in Singapore (“the VU unit”) which he owned together with his two brothers (who each had a one-third share). The unit was bought on 3 May 2011, and the Husband’s share of the net equity was \$164,560.00.¹⁷ His case was that his share in the property was: (a) a gift from his two brothers; (b) the purchase monies for the unit came from a Standard Chartered Bank joint account which he held together with his two brothers (“the Joint SCB account”); and (c) the monies in that Joint SCB account belonged wholly to his two brothers. In other words, the Husband claimed that his two brothers paid for the VU unit and included his name in the property out of brotherly love.

¹⁵ Defendant’s 2nd affidavit at p 33.

¹⁶ Further Revised Joint Summary of Relevant Information in Supplementary Bundle of Documents (Part 3) filed on 5 May 2017 at pp 15–44 (“Further Revised JSRI”) at p 17, S/No. 3.

¹⁷ Further Revised JSRI at p 16, S/No. 2.

21 It is well-established that the onus is on the party alleging that the asset was a gift to show that it originated from the generosity of a third party in order to prevent it from being divided upon divorce (*Ang Teng Siong v Lee Su Min* [2000] 1 SLR(R) 908 at [11]). The Husband did not produce evidence that his share of the VU unit was a gift, apart from his bare assertion of brotherly love. The payment cheques exhibited by the Husband for the purchase of the property evidenced that he alone had signed the cheques.¹⁸ He was also a party to the relevant mortgage agreement,¹⁹ and was liable thereunder together with his two brothers. In the circumstances, there was simply insufficient evidence for me to make a finding that the VU unit was a gift. I thus included the Husband's share of this property in the matrimonial asset pool.

One-third share in UJ unit

22 The next property was a condominium unit in Johor Bahru, Malaysia ("the UJ unit"), which was also jointly purchased by the Husband together with his two brothers, with each of them owning an equal one-third share. The unit was bought in June 2010, and the Husband's share of the net equity was worth \$7,000.²⁰ Again, the Husband claimed that his two brothers paid for the UJ unit and included his name in the property out of brotherly love.

23 Just as with the VU unit, there was no evidence to support a finding that the Husband's share in the UJ unit was a gift. In fact, the Husband was the principal purchaser named in the sale and purchase agreement for the UJ unit.²¹

¹⁸ Defendant's 2nd affidavit at pp 110–111.

¹⁹ Defendant's 2nd affidavit at p 112.

²⁰ Further Revised JSRI at p 18, S/No. 4.

²¹ Defendant's 2nd affidavit at p 54.

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In addition, the payment receipts by the developer, although made out in the joint names of the Husband and his two brothers, solely identified the Husband's address.²² The Husband was also a party to the relevant mortgage agreement with Maybank Islamic.²³ Finally, the monies for the loan repayments came exclusively from the Husband's bank account with Maybank Islamic.²⁴ Hence, it was clear that the Husband's claim of gift was untenable and purely self-serving. I thus included the value of the Husband's share of the UJ unit in the matrimonial asset pool.

Alleged liability arising from loans from two brothers and another relative

24 The Husband also claimed that he had borrowed substantial monies of more than \$1.06m from his two brothers and another relative as follows: (a) \$575,000 from one of his brothers from 2000 to September 2012; (b) \$214,030 from his other brother from November 2011 to April 2013; and (c) \$274,140 from one of his relatives from November 2011 to November 2013. The only evidence in support of these loans, however, were three notes.²⁵ I observed that these notes were dated 26 March 2014, which is after the grant of Interim Judgment and just two days before the Husband affirmed his first affidavit of assets and means dated 28 March 2014. No supporting affidavit was made by the three purported lenders. The Husband did not clarify or produce documentary evidence on the receipt and use of these monies when queried by the Wife on these loans.²⁶ Hence, there was simply insufficient basis for me to

²² Defendant's 2nd affidavit at pp 55–58.

²³ Defendant's 2nd affidavit at p 60.

²⁴ Defendant's 3rd affidavit dated 7 July 2014 at pp 48–71.

²⁵ Defendant's 1st affidavit of assets and means dated 28 March 2014 ("Defendant's 1st AM affidavit") at pp 205–209.

²⁶ Defendant's 7th affidavit dated 25 September 2014 at para 8.

accept that these loans were genuine. In my assessment, these alleged loans were simply a naked attempt by the Husband to inflate his liabilities, and thereby decrease the net pool of his assets available for matrimonial division.

One-third share of net sale proceeds of JDI units

25 The Husband, together with his two brothers, owned two commercial units at [JDI] in Singapore (“the JDI units”), with each owning a one-third share in the units. The two units were sold sometime in July 2013,²⁷ and the Husband’s share in the net sale proceeds of \$244,353.17²⁸ was deposited on 9 July 2013 into the Joint SCB account.²⁹

26 The Husband stated that the \$244,353.17 had been used to offset the loans totalling \$789,030 that he had taken from his two brothers (see [24] above). Significantly, I noted that if the Husband’s claim was true, then this amount of \$244,353.17 should have been deducted from the total loan amount of \$789,030 and the reduction ought to have been reflected in the notes signed by his two brothers, some eight months later on 26 March 2014 (see [24] above). However, the two notes did not indicate that there had been any set-off. They simply stated that the brothers had “demanded the repayment of the loans and [the Husband] has promised to pay [them] back upon the completion of the divorce”.³⁰ In fact, the alleged use of the \$244,353.17 to reduce the Husband’s total debts to his two brothers was only first raised in his voluntary affidavit

²⁷ Defendant’s 9th affidavit dated 13 March 2015 at pp 241–242.

²⁸ Defendant’s 9th affidavit at para 49.

²⁹ Defendant’s 9th affidavit at p 245.

³⁰ Defendant’s 1st AM affidavit at pp 206– 207.

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made on 13 March 2015,³¹ almost a year after he had filed his first affidavit of assets and means on 28 March 2014 in which he asserted that he owed a total of \$789,030 to his two brothers, without any mention whatsoever that these loans had been reduced by the net sale proceeds of \$244,353.17. This belated shift in position raised serious doubts about the Husband's credibility. As I had already decided to include the value of Husband's one-third share in the Joint SCB account (\$477,716.80 as at 4 November 2013) in the matrimonial asset pool (see [42] below) and as the inclusion of the whole of the \$244,353.17 could lead to double-counting, I reduced the latter amount by one-third to arrive at the approximate figure of \$162,902 to be included separately as part of the Husband's assets. I did this as the Husband would, in all probability, have drawn on part of the \$244,353.17 (which I estimated at two-thirds) from the time of deposit of these monies in July 2013 and November 2013 for his business purposes.

D Road property and concealment of Mortgage One loan account

27 I now turn to the parties' matrimonial home at D Road. As earlier stated in [14], I had declined to deduct an outstanding mortgage loan amount of \$1,091,625.14 secured on this property when deciding on the net equity of the property to be included in the matrimonial asset pool. This was a further loan for "personal use" secured on the matrimonial home, for which no information was given by the Husband on how he had used the monies. The sequence of events that follow will show that the Husband had deliberately chosen to pass off this loan as part of a "housing related" loan, when it was in fact a loan for "personal use".

³¹ Defendant's 9th affidavit at paras 49–51.

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28 In his first affidavit of assets and means of 28 March 2014, the Husband’s position on the mortgages secured on the D Road property was that:³²

(a) the outstanding loan amount as at 21 January 2014 was \$2,611,051.07;

(b) there were two mortgage loans under two loan accounts with Standard Chartered Bank (“SCB loan account ending 095” and “SCB loan account ending 109”, respectively); and

(c) he was paying \$3,673.38 per month for the mortgage under the SCB loan account ending 095 and \$3,702.78 per month for the mortgage under the SCB loan account ending 109, totalling \$7,300 per month.

29 As evidence, the Husband exhibited two letters from Standard Chartered Bank dated 24 August 2012 offering a new re-pricing package for the two SCB loan accounts.³³ He also exhibited a Standard Chartered Bank letter dated 21 January 2014 stating that the total principal outstanding on the housing loan for the D Road property was \$2,611,051.07.³⁴

30 The Husband, *in all of his affidavits*, made no mention of any other mortgage loans save for the two which were under the SCB loan accounts ending 095 and 109.

³² Defendant’s 1st AM affidavit at paras 5(ii) (f) and 13(n).

³³ Defendant’s 1st AM affidavit at pp 109–115.

³⁴ Defendant’s 1st AM affidavit at p 116.

31 At the hearing of 11 August 2016, I directed that the amount of the mortgage loan secured on the D Road property be looked into further as it was clear that:

(a) the outstanding loan amount of some \$2.61m secured on the property was *more than* the purchase price of \$1.1m and the stated reconstruction and renovation costs of about \$745,000 estimated by the Husband in his first affidavit of assets and means;³⁵ and

(b) the loans secured on the D Road property had been refinanced in 2012 for reasons unrelated to the property itself. The purchase of the D Road property was completed on 30 July 2007,³⁶ with the reconstruction and renovations completed by 2010.³⁷

32 The Husband eventually revealed in November 2016,³⁸ well after commencement of the hearing of the ancillary matters on 10 June 2016, that instead of two loans as he originally stated, there were three loans granted by Standard Chartered Bank secured on the D Road property. These three loans were as follows (as at 21 October 2016):³⁹

(a) the loan under the SCB loan account ending 095 with an outstanding amount of \$577,115.12;

³⁵ Defendant's 1st AM affidavit at para 18(ii).

³⁶ Defendant's 1st AM affidavit at p 95.

³⁷ Defendant's 1st AM affidavit at pp 246–253.

³⁸ Letter by Plaintiff's counsel dated 17 November 2016; Supplementary Bundle of Documents (Part 1) filed on 17 November 2016 at pp 29–30

³⁹ Letter by Plaintiff's counsel dated 14 December 2016 at pp 7–8 containing Standard Chartered Bank Consolidated Statement dated 21 October 2016.

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- (b) the loan under the SCB loan account ending 109 with an outstanding amount of \$581,493.40; *and*
- (c) a loan tied under a Mortgage One loan account with an outstanding amount of \$1,091,625.14.

33 The bank facility letter dated 2 May 2012 for the Mortgage One loan expressly stated that the loan of about \$1.33m was granted for “personal use”.⁴⁰ It was then disclosed that the outstanding loan amount under the Mortgage One loan account as at 21 November 2013 was \$1,2273,598.81, which was being serviced with a monthly repayment of \$6,650.02.⁴¹ The bank statements revealed that the consolidated mortgage loan statements showing all three loan accounts were addressed solely to the Husband and sent to his business address and not the matrimonial home at D Road. The Husband thus could not claim to have forgotten about this third loan under the Mortgage One loan account when he filed his first affidavit of assets and means of 28 March 2014. Being a businessman and well aware of the need for cash flow to meet recurring monthly obligations, he could not possibly have forgotten this third loan account for which he was paying and would have to continue to pay around \$6,650 per month on top of the \$7,300 per month for the housing loans under the SCB loan accounts ending 095 and 109 (see [28(c)] above). The irresistible inference was that the Husband had deliberately failed to disclose the Mortgage One loan account to avoid having to account for his use of the mortgage monies, and to give the misleading impression that the total outstanding loan of about \$2.61m as at 21 January 2014 was purely a housing related loan.

⁴⁰ Supplementary Bundle of Documents (Part 1) at p 90.

⁴¹ Supplementary Bundle of Documents (Part 1) at p 29.

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34 The next question was the value of the net equity of the D Road property to be included into the matrimonial pool. Parties agreed that the property's value was \$3.5m.⁴² The Husband's position was that the property's net equity was \$1,260,786, being \$3.5m less the total mortgage loan amount outstanding to Standard Chartered Bank as at 23 November 2016 of \$2,239,214.87⁴³ (comprising all three SCB loans, including the Mortgage One loan). This position was untenable as the Mortgage One loan had been borrowed for the Husband's personal use and he had not accounted for the use of these monies. After the existence of the account was belatedly disclosed at the hearing of the ancillary matters, the Husband, although given an opportunity to clarify the use of the monies obtained through this third loan, failed to provide any explanation or account of the use of the loan monies or the assets acquired therewith. The failure by the Husband to disclose the Mortgage One loan was clearly not inadvertent. Together with the lack of information or clarification on the use of the loan monies, this meant that there was no basis for me to deduct the outstanding Mortgage One loan monies in calculating the net equity of the Boundary Road matrimonial home. I thus declined to do so.

35 In reaching this conclusion, I acknowledged that the Wife, as the co-owner of the D Road property, had signed the facility letter dated 2 May 2012 for the Mortgage One loan.⁴⁴ The fact remains that the facility letter expressly stated that the loan was for personal use rather than for the property. I accepted the Wife's assertion that although she would have signed the facility letter, she did not realise that there was a third loan under the Mortgage One loan account

⁴² Further Revised JSRI at p 9, S/No. 1.

⁴³ Letter by Plaintiff's counsel dated 14 December 2016 at p 4 containing Standard Chartered Bank Letter dated 24 November 2016.

⁴⁴ Supplementary Bundle of Documents (Part 1) at p 97.

of about \$1.33m and did not know what the monies had been used for. Her lack of awareness of the Mortgage One loan account was evidenced by her acceptance throughout the proceedings of the Husband's position that there were only two mortgages secured on the D Road property. In her first affidavit of assets and means, for instance, she said that the amount which the Husband paid towards the mortgage loans of the D Road property was "unknown" to her.⁴⁵ The Wife's lack of awareness of the loan and the use of the loan monies is understandable because the consolidated loan statements had been addressed solely to the Husband and sent to his business address, as I noted earlier.

36 Therefore, I agreed with the Wife that only the amounts outstanding under the SCB loan accounts ending 095 and 109 – \$577,115.12 and \$581,493.40 respectively as at 21 October 2016 (see [32] above) – should be deducted from the value of the D Road Property of \$3.5m to ascertain the net equity of the property, which I therefore found to be \$2,341,391.48.

Under-declaration of income

37 Another factor relating to the Husband's credibility was the information provided by him on his income. In his first affidavit of assets and means of 28 March 2014, the Husband declared that his take home monthly income was \$9,343.00.⁴⁶ He also stated that he did not have any other source of income.⁴⁷ Similarly, in his third affidavit of assets and means dated 18 December 2015, he exhibited his NOA for the calendar years 2013 and 2014 which only reflected

⁴⁵ Plaintiff's 1st affidavit of assets and means filed on 20 December 2013 at para 5(f).

⁴⁶ Defendant's 1st AM affidavit at para 3(c).

⁴⁷ Defendant's 1st AM affidavit at para 4.

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his director's fees from CFPL of \$120,000 per annum and some rental monies giving a net monthly income of about \$11,900 for those two years.⁴⁸ The figures plainly did not add up. Based on his declared income, the Husband could not have been able to service the monthly mortgage payments for the three Standard Chartered Bank loans secured on the D Road property, which totalled \$13,950 (\$7,300 for the two earlier SCB loans plus \$6,650 for the Mortgage One loan). On top of that, he was paying monthly maintenance of about \$2,650 for the Wife and the son, his personal expenses, the household expenses for the D Road home (where his mother and sister lived), and the mortgage payments for his other properties.⁴⁹ Therefore, the Husband clearly had not declared his sources of income in full.

Non-disclosure of bank accounts

(A) Half-share of monies in OCBC bank account

38 In his first affidavit of assets and means of 28 March 2014, the Husband stated that he only had a joint OCBC bank account with one of his brothers ("the OCBC bank account") with \$3,463.26 as at that date.⁵⁰ It was later disclosed that, as at 4 November 2013 (*ie*, the date of Interim Judgment), there had in fact been \$173,480.18 in that account,⁵¹ with the Husband's half-share amounting to \$86,740.09. The Husband also initially avowed that he did not have any bank accounts overseas. However, it later transpired that he did in fact have various other bank accounts which he had failed to disclose. I included the Husband's half share of the monies in this bank account in the matrimonial asset pool.

⁴⁸ Defendant's 3rd affidavit of assets and means dated 18 December 2015 at p 10.

⁴⁹ Defendant's 1st AM affidavit at paras 13 and 14.

⁵⁰ Defendant's 1st AM affidavit at para 9.

⁵¹ Supplementary Bundle of Documents (Part 1) at p 38.

(B) SCB E-Saver account

39 The account which was disclosed most belatedly was a Standard Chartered Bank E-Saver account (“the SCB E-Saver account”) held by the Husband. This account was only uncovered late into the hearing of the ancillary matters, and well after the close of discovery, when the Husband was compelled to disclose the consolidated loan account statement dated 21 November 2013 for the three Standard Chartered Bank mortgage loans secured on the D Road property (see [33] above).⁵² From the consolidated loan statement, it appeared that, at least as at 21 November 2013, the Husband was using this account to pay the recurring mortgage payments for the SCB loan accounts ending 095 and 109.

40 Pursuant to my directions of 22 November 2016, the Husband disclosed that the SCB E-Saver account was opened in his sole name on 14 June 2011.⁵³ It was also uncovered that, as of 6 November 2013 (*ie*, just after the grant of Interim Judgment), there was \$19,700.12 in the SCB E-Saver account.⁵⁴ I included the monies in this bank account in the matrimonial asset pool.

(C) Maybank Islamic, Emirates Islamic and Joint SCB accounts

41 During discovery and interrogatories, it was also admitted by the Husband that he had two overseas bank accounts, a Maybank Islamic account (“the Maybank Islamic account”) in Malaysia with RM290,342.73 (\$96,780.91)

⁵² Supplementary Bundle of Documents (Part 1) at p 29.

⁵³ Supplementary Bundle of Documents (Part 2) at p 9.

⁵⁴ Supplementary Bundle of Documents (Part 2) at p 44.

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as at 15 November 2013⁵⁵ and an Emirates Islamic Bank (“the Emirates Islamic account”) in Dubai with AED 181,679.65 (\$60,559.88) as at 18 November 2013.⁵⁶ I included the monies in this bank account in the matrimonial asset pool.

42 In addition, there was also the Joint SCB account which the Husband held with his two brothers, which I referred to earlier at [20]. This account had a total of \$1,433,150.66 as at 4 November 2013, with the Husband’s one-third share amounting to \$477,716.89.⁵⁷ Just as with the other bank accounts mentioned above, this account was not initially disclosed by the Husband. I included the monies in this bank account in the matrimonial asset pool.

Payables due to directors of CFPL and Husband’s shareholdings in CFPL

43 The financial statements of CFPL for the year ended 31 December 2013 stated that there were payables due to the directors of the company of \$650,952.⁵⁸ At the hearing on 19 April 2017, I directed that the Husband clarify, by way of an affidavit, to which of the two directors of the company (*ie*, the Husband or his younger brother) these monies were due, the reasons for these payments, and why they were due. The Husband, instead of addressing these concerns directly, merely referred me to a letter dated 3 May 2017 from his accountant, which baldly stated: “Directors have an amount of \$650,952. This item relates to the amount due to Directors.”⁵⁹ No clarification was provided on the amounts due to each of the two directors, why these payments were to be

⁵⁵ Supplementary Bundle of Documents (Part 1) at p 41.

⁵⁶ Supplementary Bundle of Documents (Part 1) at p 43.

⁵⁷ Defendant’s 9th affidavit at p 72.

⁵⁸ Defendant’s 9th affidavit at p 283.

⁵⁹ Defendant’s 13th affidavit dated 5 May 2017 at p 7.

made and why they were due. In the light of the Husband's silence and non-answer on this issue, I drew the inference that, at the very least, the majority of the payables due to the directors of CFPL were due to him, as he was the sole shareholder and executive director of the company. However, I did not regard the \$650,952 as an asset due to the Husband to be added to the pool. This was because CFPL had been making losses, based on its financial statements for the financial years 2011 to 2013,⁶⁰ and was therefore unlikely to be able to pay the Husband these monies. Accordingly, I assessed that it was preferable to take this amount of \$650,952 in the round when deciding on the division of assets. For the same reason, I formed the view that there was no value to be attributed to the Husband's shares in CFPL. In essence, this was a trading company without fixed assets.

Other assets

44 There were several other assets which were in dispute.

(A) One-third share in MS unit

45 First, there was a commercial unit in [MS] ("the MS unit") which the Husband co-owned in equal one-third shares with his two brothers. The unit was bought on 21 June 2010,⁶¹ and the Husband did not dispute the ownership of his share in the MS unit. He also did not allege that it was a gift. It was agreed that the Husband's share of the net equity in the unit was worth \$83,912.00.⁶²

⁶⁰ Defendant's 1st AM affidavit at pp 24–78; Defendant's 9th affidavit at pp 263–290.

⁶¹ Defendant's 1st AM affidavit at p 138.

⁶² Further Revised JSRI at p 15, S/No. 1.

(cont'd on next page)

(B) One-sixth share in ER apartment

46 Next, there was an apartment in Dubai (“the ER apartment”) which was purchased by the Husband in 2003.⁶³ After considering the relevant evidence, including a joint affidavit dated 5 May 2017 filed by the Husband and his five immediate family members, I was satisfied that the Husband was the beneficial owner of a one-sixth share in the ER apartment and that he held the remaining five-sixths on trust for his family members. A contemporaneous agreement dated 1 October 2003 signed by the six family members evidenced this arrangement.⁶⁴ I also took into account the fact that the arrangement involved family members, where a certain informality would be expected. I included the value of the Husband’s share of this property the matrimonial asset pool.

47 I accepted that the down payment for the ER apartment came from the sale of a family inheritance property in 2002/2003 following the death of the Husband’s father.⁶⁵ These were inheritance monies which had to be discounted in determining the value of the Husband’s share in the ER apartment to be included in the matrimonial pool. The rest of the purchase price, however, was funded by a mortgage loan to which each family member contributed equally even though the mortgage payments came only from the Emirates Islamic account in the Husband’s sole name. After discounting the inheritance monies and the outstanding loan monies as at December 2013, the net value of the Husband’s one-sixth share in the ER apartment was assessed as \$42,686.22.⁶⁶

⁶³ Defendant’s 2nd affidavit at para 56.

⁶⁴ Defendant’s joint affidavit dated 5 May 2017 at pp 10–11.

⁶⁵ Defendant’s joint affidavit at paras 9–22.

⁶⁶ Further Revised JSRI at pp 20–22, S/No. 6.

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(C) Car registered in Wife's name

48 There was a car registered in the Wife's sole name on 4 October 2011,⁶⁷ with an agreed net equity of \$7,610.51 as at 12 November 2013.⁶⁸ Although the car was registered in the Wife's name, I found that it was not beneficially owned by her. In the hire purchase agreement with the bank, both the Wife and her brother were named as the main hirer and joint hirer, respectively.⁶⁹ The Wife produced a letter from the bank dated 12 October 2012, which was addressed solely to the Wife's brother and sent to his address alone.⁷⁰ She also produced a letter from the Housing Development Board dated 30 June 2016,⁷¹ which stated that her brother had purchased season parking at the car park near his home address for the car since October 2011 (*ie*, the date of registration of the car). As these letters substantiated that it had been the Wife's brother who was paying for and using the car, I accepted that the Wife was not the beneficial owner. I thus did not include the car in the matrimonial asset pool.

(D) F Road flat

49 There was a HDB flat at [F] Road ("the F Road flat") which was jointly purchased by the Husband and Wife in 1995.⁷² It was accepted that the net value of this flat was \$650,000 and that the Wife had contributed to its purchase price

⁶⁷ Plaintiff's Voluntary Affidavit filed on 18 July 2014 (Tab H of Plaintiff's Bundle of Affidavits) at p 9.

⁶⁸ Further Revised JSRI at p 14, S/No. 3.

⁶⁹ Plaintiff's Voluntary Affidavit filed on 18 July 2014 at p 13A.

⁷⁰ Plaintiff's Voluntary Affidavit filed on 18 July 2014 at p 12.

⁷¹ Supplementary Bundle of Documents (Part 2) at p 2.

⁷² Defendant's 1st AM affidavit at p 86.

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through her CPF monies of \$135,778.14.⁷³ It was not disputed that in October 2012, the Husband settled the outstanding mortgage loan of \$79,047.⁷⁴

Summary of the matrimonial pool

50 The matrimonial pool is summarised in the table below.

Matrimonial Pool				
S/No	Asset/ Ownership	Joint names	Husband's	Wife's
1	Net equity of D Road property	\$2,341,391.48		
2	F Road flat	\$650,000.00		
3	Wife's POSB account ⁷⁵	-	-	\$2,034.27
4	Wife's CPF monies ⁷⁶	-	-	\$68,900.01
5	BL property	-	RM236,888.00 (\$78,000.00)	-
6	One-third share in VU unit	-	\$164,560.00	-
7	One-third share in UJ unit	-	\$7,000.00	-

⁷³ Further Revised JSRI at p 7, S/No. 1.

⁷⁴ Defendant's 1st AM affidavit at para 18(i)(c).

⁷⁵ Further Revised JSRI at p 14, S/No. 1.

⁷⁶ Further Revised JSRI at p 14, S/No. 2.

8	Adjusted share of net sale proceeds in JDI units	-	\$162,902.00	-
9	One-third share in MS unit	-	\$83,912.00	-
10	One-sixth share in ER apartment	-	\$42,686.22	-
11	One-third share of monies in Joint SCB account	-	\$477,716.89	-
12	Half-share of monies in OCBC account	-	\$86,740.00	-
13	Maybank Islamic account	-	RM290,342.73 (\$96,780.91)	-
14	Monies in Emirates Islamic account	-	AED181,679.65 (\$60,559.88)	-
15	Monies in SCB E-Saver account	-	\$19,700.12	-
16	Husband's scooter ⁷⁷	-	\$3,500.00	-
17	Husband's CPF monies ⁷⁸	-	\$187,955.05	-

⁷⁷ Further Revised JSRI at p 24, S/No. 12.

⁷⁸ Further Revised JSRI at p 25, S/No. 13.

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18	Husband's country club memberships ⁷⁹	-	\$22,000.00	-
17	Husband's shareholdings in CFPL	-	\$0	
Total		\$2,991,391	\$1,494,012 (\$539,060 from real property plus \$954,952 from other assets) ⁸⁰	\$70,934
		\$4,556,337		

Division of matrimonial pool

51 In deciding on division of the assets, and as the Wife had been working during the earlier part of the marriage but not the later and larger part of the marriage, I had regard to the approach taken by the Court of Appeal in *ANJ* as well as *TNL*. I also took into account case precedents prior to these two cases.

52 As outlined above, the marriage was 21 years long, and the Wife had stopped working in 1999 and left her career to focus on raising the son and running the household. Although she was appointed as a director of CFPL in 2003, this was a nominal position, and the director's fees that she received were, as I found, housekeeping monies from the Husband.

⁷⁹ Further Revised JSRI at p 26, S/No. 14.

⁸⁰ Minute Sheet dated 28 July 2017 at p 5.

53 I also took into account various factors including the parties' direct and indirect contributions to the marriage, the Husband's persistent lack of disclosure throughout the proceedings, and the risk of and therefore the need to avoid double counting in determining the division to be effected in the particular circumstances of this case.

Parties' direct and indirect contributions

54 Starting with the parties' direct financial contributions, it was not disputed that that except for the F Road flat and the period when the Wife was working before she stopped in 1999, it was the Husband who had largely funded the acquisition of the assets in the matrimonial pool and contributed to the family's financial expenses. In addition, and as noted above at [49], the Husband also redeemed the mortgage of the F Road flat in October 2012. Although this point was not raised by him, I took into account, in the round, the possibility that these redemption monies may have come from the Mortgage One loan taken in May 2012.

55 The Wife did contribute to the purchase price of the F Road flat through her CPF monies of \$135,788.14, which was about 35% of the total contributions towards the property by both parties of \$387,904.57.⁸¹ This meant that her share of the \$650,000 value of the flat was \$227,500. Added together with her other contributions to the matrimonial pool of \$70,934 (comprising her CPF monies and the monies in her POSB account), her direct contribution to the matrimonial pool was \$298,434, or 6.55% of the overall matrimonial pool of \$4,556,337.

⁸¹ Further Revised JSRI at p 7.

56 I was aware of the need to discount the Wife's direct financial contributions because she had stopped working sometime during the marriage to look after the son, and the contributions that she made towards the F Road flat through the use of her CPF monies came from the director's fees which she received in her nominal role as a director of CFPL. These monies were household expenses rather than salary. Hence, it would not be entirely accurate to characterise all of the payments made from the Wife's CPF monies as the Wife's own direct financial contributions to the marriage. In substance, this was a single income marriage since at least 1999, some 18 years ago.

57 It was clear that insofar as indirect contributions were concerned, when the Wife was working, she would have contributed to the household financial expenses. More significantly, after the son was adopted, she was the main caregiver for the son, who was 16 years old when I heard the matter, and the primary spouse managing and taking care of the household needs. It follows that I rejected the Husband's position that he did the housework, cleaning and washing, prepared meals for the family and child, and was the parent who was taking care of the son's needs and performance in school, including giving him tuition.⁸² These assertions were implausible as the Husband was an active businessman who had many business interests to handle. Furthermore, it is not disputed that the parties had a maid to assist them with the household chores.

Persistent non-disclosure by the Husband and risk of double counting

58 I also had regard to the persistent non-disclosure by the Husband of his assets and means. I will just highlight the SCB E-Saver account and the Mortgage One loan account which were deliberately not disclosed by him until

⁸² Defendant's 1st AM affidavit at para 19.

well into the hearing of the ancillary matters in November 2016, and only at the court's direction. At the same time, I was mindful not to double-count the Husband's assets and considered the possibility that the assets acquired after the Mortgage One loan was taken in May 2012 may have been purchased using the monies disbursed under this loan. In this regard, I noted that all of the Husband's interests in real properties (leaving aside those which he purchased with the Wife) were acquired before 2012, save for the BL property. All the properties, apart from the initial deposit, were acquired with bank loans secured on each of those properties.

Conclusion on the division of matrimonial pool

59 In the case of *Chan Yuen Boey v Sia Hee Soon* [2012] 3 SLR 402. Steven Chong J (as he then was) observed at [34] that, from his review of the cases, the proportion awarded to homemaker wives who had made modest financial contribution to marriages lasting 17 to 35 years with children ranged between 35% to 50% of the total matrimonial assets. At [35] Chong J observed that the exceptions, where the apportionment in favour of the wife was less than 35%, typically involved cases where the total pool of matrimonial assets had been very substantial in excess of \$100m. In those exceptional circumstances, the apportionment to the wife had nevertheless been substantial in absolute terms. Taking into account all factors in the round, and bearing in mind the value of the assets in the matrimonial pool, the fact that the Wife had made some direct financial contributions to the pool (albeit qualified by comments at [56] above), the Husband's demonstrated proclivity to be less than open about his income and assets, and the concern not to double count, I held that it was just and equitable to award to the Wife 45% of the assets in the matrimonial pool, giving a ratio of 45:55 in favour of the Husband.

Orders made on division of matrimonial assets

60 To execute the division of the matrimonial assets, I made the following orders:

(a) The Husband and Wife were to retain the assets in their sole names, which were worth \$1,494,012 and \$70,934, respectively.

(b) The Husband was, within three months of the date of my order, to transfer his estate and title in the F Road flat valued at \$650,000 to the Wife without consideration and without refund of the Husband's CPF monies to his CPF account. The Wife was to bear the costs and expenses of the transfer.

(c) The value of the Wife's share in the D Road property was therefore \$1,329,417 (*ie*, her proportion of the matrimonial pool of \$2,050,351.65 less the value of the assets in her sole name and the value of the F Road flat). I therefore ordered that this was the amount which the Husband was to pay the Wife if he wished to take over her estate and title in the D Road property (less the Wife's half-share of the valuation costs for the F Road flat and the D Road property). The Husband was to inform the Wife within six weeks of the date of my order whether he wished to take over the D Road property. The costs and expenses of the transfer to the Husband were to be borne by him. The order provided for the payment logistics.

(d) If the Husband wished to sell the D Road property, he was to do so within six months of the date of my order under a sale and purchase agreement (albeit that completion may take place three months after the date of that agreement). The Wife was to transfer her estate and title in the property to the purchaser(s) nominated by the Husband upon

payment to her of \$1,329,314 (less the Wife's half-share of the valuation costs for the F Road flat and the D Road property). The costs and expenses of sale were to be borne by the Husband, who was to have sole conduct of the sale.

Maintenance for the Wife

61 Given my orders on the division of the matrimonial pool, particularly the fact that the Wife would be receiving monies of about \$1.3m and have shelter in the form of the D Road flat, I made no order for her maintenance.

Costs

62 The Wife was represented by counsel assigned by the Legal Aid Bureau. After hearing counsel for the Wife, I ordered the Husband to pay the Director, Legal Aid costs of \$12,000 (inclusive of disbursements). This order was justified, in my assessment, because most of the hearings were spent on extracting information from Husband that he failed to properly disclose. The proceedings were unnecessarily prolonged and complicated by Husband's non-compliance with his duty of full and frank disclosure, his deliberate concealment of facts, and his unwillingness to provide information, even when directed by the court. There was much work that the Wife's counsel had to do, and did do, to sort out the issues and to assist the court in ascertaining the assets in the matrimonial pool.

Foo Tuat Yien
Judicial Commissioner

Gurmeet Kaur d/o Amar Singh (Harjeet Singh & Co) for the plaintiff;
Sarbrinder Singh s/o Naranjan Singh (Sanders Law LLC) for the
defendant.
