BG v BF
[2007] SGCA 32

Case Number : CA 138/2006, 139/2006

Decision Date : 25 May 2007

Tribunal/Court : Court of Appeal

Coram : Andrew Ang J; Chan Sek Keong CJ; Andrew Phang Boon Leong JA

Counsel Name(s) : Parties in person; Daryl Mok (Drew & Napier LLC) as the Husband's McKenzie friend

Parties : BG — BF

Family Law – Custody – Access – Principles applicable when considering whether to grant access – Whether in best interests of child – Nature of appellate court's role in considering such issues

Family Law – Matrimonial assets – Determining which assets amounting to matrimonial assets – Whether trust property forming part of matrimonial assets – Whether other assets forming part of matrimonial assets

Family Law – Matrimonial assets – Division – Principles applicable when considering proportion by which to divide matrimonial assets – Nature of duty to make full and frank disclosure – Significance of non-financial contributions

Family Law – Maintenance – Wife – Principles applicable when considering amount of maintenance to award wife – Whether wife's and children's needs relevant consideration – Whether husband's ability to pay relevant consideration

25 May 2007 Judgment reserved.

Andrew Ang J (delivering the judgment of the court):

Background

1 The parties, BG and BF ("the Husband" and "the Wife" respectively), were married at the City Hall Marriage Registry, Hong Kong, on 17 March 1995. They have two sons aged eight and ten years old respectively as of 2006. On 17 December 2002, the Wife filed a divorce petition on the ground of the Husband's unreasonable behaviour. On 19 December 2002, the Husband was served with the divorce petition and an application for interim care and control. From 20 January 2003, the parties attended court mediation and then private mediation. On 6 February 2003, the Husband filed a cross-petition based on three years' separation. On 11 February 2003, the Wife was allowed to withdraw her divorce petition. On 11 March 2003, a decree *nisi* was made on the Husband's cross-petition. The ancillaries were adjourned to be heard in chambers. The parties eventually signed an interim agreement dated 15 March 2003 ("the Agreement") which provided for custody, school and public holiday access, an arrangement for a holiday and maintenance. The Agreement was incorporated into a consent order on 20 April 2003 ("the Consent Order"). Final orders on ancillaries were made by District Judge Khoo Oon Soo ("DJ Khoo") in August and September 2005.

2 The Husband and the Wife, each being dissatisfied with certain parts of DJ Khoo's order, appealed to the High Court. The judge below delivered his judgment on 7 November 2006: see *BF v BG* [2006] SGHC 197. In the event, the Husband and the Wife, each dissatisfied with parts of the judge's decision, have now appealed to this court. Before considering the appeals, we should mention that on 22 March 2007, on the eve of the hearing of this appeal, the Husband filed a notice of intention to

act in person in place of his solicitors. Upon the Husband's application before us, we allowed his former solicitor to remain to assist him as a "McKenzie friend" despite our initial reluctance. In part, this was because the Wife was legally trained and had worked as in-house counsel for a bank for some years.

The Husband's appeal in Civil Appeal No 138 of 2006

3 The Husband's appeal in Civil Appeal No 138 of 2006 relates only to the judge's decision on the division of matrimonial assets and on maintenance. Specifically, the orders appealed against are as follows:

(a) Division of matrimonial assets

(i) that the Wife is entitled to 40% of the matrimonial assets instead of 25% as ordered by DJ Khoo;

(ii) that the sum of US$136,354 should be included as part of the matrimonial assets to be divided; and

(iii) that the Husband is not entitled to deduct $59,743.94 of income tax paid by him from the matrimonial assets to be divided, in particular from the credit balance of $175,413.71 in his DBS account.

(b) Maintenance

that the Husband is to pay maintenance as follows:

(i) up to 31 December 2003, according to the terms of the Consent Order;

(ii) from 1 January 2004 to 31 August 2005, according to the terms of the Consent Order, less $1,000 per month; and

(iii) from 1 September 2005, $10,000 a month in addition to school fees to be paid directly by the Husband to the school.

The Wife's appeal in Civil Appeal No 139 of 2006

4 On the other hand, the Wife's appeal in Civil Appeal No 139 of 2006 relates to the judge's decision on access, the division of matrimonial assets *and* maintenance. Specifically, the orders appealed against are as follows:

(a) Access

(i) that, after the 2006 school Christmas holidays, the Husband is to have extended access on alternate weekends as follows: weekends 1 and 3: Friday 8.00pm to Sunday 10.00am; weekends 2, 4 and 5 (if any): Saturday 10.00am to Sunday 10.00am; and

(ii) that, with effect from the 2007 school Christmas holidays, the Wife is to have the children from 10.00am of 24 December to 2.30pm of 26 December and subject thereto the Wife is to have the children for the first half of such holidays and the Husband the second half, provided that the Husband is to return the children to the Wife by 10.00am on the last Saturday of such holidays.

(b) Division of matrimonial assets

(i) that neither the Carlotta property nor its sale proceeds are part of the matrimonial assets;

(ii) that the sale proceeds, and not the investment value, of the Husband's shares in Bionutrics Inc ("the Bionutrics shares") and another company ("the Valencia shares") are part of the matrimonial assets;

(iii) that, in respect of the Husband's Central Provident Fund ("CPF") account, the Husband is to pay the Wife her share of $12,886 and interest thereon when he reaches 55 years; in the meantime, the Husband's CPF ordinary account is charged accordingly;

(iv) that the Wife is to transfer 60% of the shares in In Touch Technologies Holdings Ltd ("Upaid") to the Husband with the Husband paying the expenses of the transfer; and

(v) that the Husband is to pay the Wife her share of the loan of US$10,000 made by the Husband to a couple within 14 days of receipt of repayment and, in the meantime, the Husband is to notify the Wife by 14 January of each year whether he has received any repayment in the previous year.

(c) Maintenance

that the Husband is to pay maintenance as follows:

(i) from 1 January 2004 to 31 August 2005, according to the terms of the Consent Order, less $1,000 per month; and

(ii) from 1 September 2005, $10,000 a month in addition to school fees to be paid directly to the school.

5 We will address each issue in the appeals in turn.

Access

6 Firstly, we deal with access. In this respect, the Wife appealed against two of the judge's access orders, *viz*, (a) that the Husband *is to have extended* access on alternate weekends; and (b) that the Husband is to have access to the children during the second half of their school Christmas holidays, provided that the Husband is to return the children to the Wife by 10.00am on the last Saturday of such holidays: see also [4] above.

The Wife's appeal against the Husband's extended access on alternate weekends

7 By way of background, the Husband and the Wife were awarded joint custody of the children, with the Wife having care and control. Before the High Court and notwithstanding DJ Khoo's order, the mutual arrangement for weekend access was that the Husband had weekend access from Saturday 10.00am to Sunday 10.00am. The Husband appealed for additional access on Friday night on alternate weekends, so that he could have more time with the children. In the event, the judge allowed the Husband's appeal on the main premise that, bearing in mind that the Husband no longer had access to the children on Tuesdays under his order, giving the Husband extended weekend access on an alternate basis was fair and also good for the children: *BF v BG* at [40].

The Wife's arguments

8 The Wife appealed against this order and prayed that it be set aside and that weekend access revert to 10.00am Saturday to 10.00am Sunday every weekend. She submitted that the judge had not given any reason for allowing the Husband extended weekend access except that "it was fair and also good for the children".[note: 1] In any event, she pointed out that the Husband already had access on four days of the week and should not be given more access unless it was conclusively shown to be beneficial to the children. More pertinently, the Wife submitted that extended access for the Husband was in fact *detrimental* to the children. On this point, the Wife emphasised that (a) the Husband often worked while the children were in his care; and (b) there was much disruption caused to the children by their having to swap homes on Friday evenings. Above all, the Wife submitted that even without the Husband's extended weekend access, the Wife, as the children's primary caregiver, had very little unstructured time with the children and that any extended access would only eat into such time.

The Husband's arguments

9 In reply, the Husband submitted that the judge had, in a different context, expressed the view that additional bonding time with him was good for the children and that this justified the extended weekend access as well. In any event, it was self-evident that overnight access would give the Husband and the children a greater opportunity to bond. Finally, the Husband submitted that there was no evidence to support the Wife's bare assertion that he had neglected the children when they were in his care.

Our decision

10 Two areas of enquiry need to be considered before we arrive at a decision: (a) the considerations which a court should bear in mind in deciding a matter bearing upon the welfare of children; and (b) the circumstances under which an appellate court will intervene in a lower court's decision on such a matter.

Children's best interests

11 The purpose of access is to allow the spouse not having care and control of the children to maintain regular contact with them. As this court held in *CX v CY* [2005] 3 SLR 690 at [15], this is an issue which relates to the upbringing of the child and the court must therefore dispose of it on the basis that the child's welfare is the first and paramount consideration. The starting point is s 3 of the Guardianship of Infants Act (Cap 122, 1985 Rev Ed) ("GIA"), which provides:

> **Welfare of infant to be paramount consideration.**
>
> **3.** Where in any proceedings before any court the custody or upbringing of an infant or the administration of any property belonging to or held in trust for an infant or the application of the income thereof is in question, the court, in deciding that question, *shall regard the welfare of the infant as the first and paramount consideration* and save in so far as such welfare otherwise requires the father of an infant shall not be deemed to have any right superior to that of the mother in respect of such custody, administration or application nor shall the mother be deemed to have any claim superior to that of the father.
>
> [emphasis added]

Although the present proceedings are ancillary applications under the Women's Charter (Cap 353, 1997 Rev Ed) ("the Charter"), s 3 of the GIA applies. This is because s 124 of the Charter provides for the making of orders with respect to the welfare of any child as follows:

> **Custody of children**
>
> **124.** In any proceedings for divorce, judicial separation or nullity of marriage, the court may, at any stage of the proceedings, or after a final judgment has been granted, make such orders as it thinks fit *with respect to the welfare of any child* and may vary or discharge the said orders, and may, if it thinks fit, direct that proceedings be commenced for placing the child under the protection of the court.
>
> [emphasis added]

Appellate intervention

12 In relation to appellate invention in cases involving the welfare of children, this court in *CX v CY* at [15] endorsed the House of Lords' pronouncement in *G v G* [1985] 1 WLR 647 of the "limited role" which an appellate court should play in such matters and held (at [17]):

> Having regard to the fact that in such cases, there are often no right answers and the judge below was faced with the task of choosing the best of two or more imperfect solutions, we were in agreement with the above approach. We must stress that an appeal should not automatically succeed simply because the appellate court preferred a solution which the judge had not chosen. In other words, similar to the principles that apply to general appellate intervention, *the appellate court should only reverse or vary a decision made by the judge below if it was exercised on wrong principles, or if the decision was plainly wrong, as would be the case if the judge had exercised his discretion wrongly*. [emphasis added]

Accordingly, this court should be slow to overturn the judge's decision in this regard outside of those limited circumstances.

13 Applying those principles to the present case, it is our judgment that the Wife's appeal ought to be dismissed. It cannot be said that the judge's decision was plainly wrong. Indeed, we agree that extended weekend access with the Husband would likely be in the children's best interests. There is no gainsaying that parental responsibility should not cease even after the marriage has ended; in the area of custody, this court in *CX v CY* endorsed Tan Lee Meng J's decision in *Re G* [2004] 1 SLR 229 that joint parenthood must be the starting point so that both parents can continue to have a direct involvement in the child's life. A child who understands that both his parents have custody of him and continue to be involved in his life is likely to feel more secure. The same must surely apply to access orders. As far as possible, the child should be allowed to interact with both parents so that, despite the breakdown in relations between the parents, he is assured, to the greatest extent possible, of a normal family life with two parents.

14 Although the Wife has, through her written submissions, hinted that the Husband was not the best caregiver, she conceded before us that she did not believe that the children were stressed being with the Husband. In fact, she stated that the children probably enjoyed the company of the Husband. In these circumstances, we cannot attach much weight to her submissions that the Husband was anything less than a competent parent. As we indicated earlier, extended weekend access to the Husband is likely to be in the children's best interests. Furthermore, as the judge pointed out in *BF v BG* at [40], extended access on alternate weekends will not be as difficult or

stressful as the Wife has made it out to be. It will take a bit of getting used to but, eventually, it will become routine and the children should be able to structure their social activities around this timetable.

15 In the premises, the Wife's appeal against the Husband's extended weekend access is dismissed.

The Wife's appeal against the Husband's access during the children's school Christmas holidays

16 The children's school closes for three weeks over the Christmas period each year ("the school Christmas holidays"). The exact dates of the three-week holiday vary from year to year, but they always include the period from 25 December to 1 January. The parties originally agreed in March 2003 (and this was later recorded in the Consent Order) that the Wife was to have the children during the school Christmas holidays from 10.00am of 24 December till 2.30pm of 26 December of each year. Subject to that, the Husband was to have the children for the first half of the school Christmas holidays and the Wife, the second half. Before the judge, the Husband appealed to switch this so that he would have the children over the second half instead, while keeping 10.00am of 24 December to 2.30pm of 26 December intact for the Wife. The Husband's reason was that, as evidenced by a letter from his current employer, he could only take leave from "after Christmas and until the first week of January": see *BF v BG* at [46]. The judge allowed the Husband's appeal, with the proviso that the Husband's access should end at 10.00am on the last Saturday of the second half of the school Christmas holidays to allow the Wife to prepare the children for school the following Monday: see *BF v BG* at [51].

The Wife's arguments

17 The Wife appealed against this order on the basis that it was contrary to the children's best interests. She prayed that the existing school Christmas holidays access arrangements remain as agreed by the parties in the Consent Order. Alternatively, the Wife prayed that the order be varied to allow the Husband access during the school Christmas holidays each year from 2.30pm on 26 December to 10.00am on the Friday immediately before school reopens ("the alternative proposal"). She submitted that the judge had failed to give sufficient weight to her evidence as to why the children should be in her care as far as possible for the latter half of each school break. In particular, she emphasised that it was important that the younger child, who suffers from food allergies and needs to be on a restricted diet, be in her care for the second half of the holidays rather than the first so that she could ensure that he is in good health when the new school term starts in January. Moreover, the Wife submitted that she had reason to believe that the Husband worked while the children were in his care.

The Husband's arguments

18 In response, the Husband submitted that the judge had taken the children's best interests, in particular the younger child's allergy, into consideration. In fact, the judge had made provision for the Wife's concern when he included the qualification that the Husband's access will end at 10.00am on the last Saturday of the second half of the school Christmas holidays. As for the Wife's allegation that the Husband worked while the children were in his care, the Husband submitted that there was nothing in the evidence to support this conclusion. As for the alternative proposal, the Husband submitted that this was erratic and would result in a variable number of days for the Husband depending on when the school Christmas holidays began each year.

Our decision

19 In our view, the paramount consideration here, once again, is the best interests of the children. The judge's existing order allows the Husband access to the children for the second half of the school Christmas holidays, and this was aimed at meeting the Husband's employers' requirement that he takes his leave "*after* Christmas and until the first week of January" (see *BF v BG* at [46]). Although the parties have submitted differing accounts of how the school Christmas holidays will be scheduled in the future, it is clear to us that such evidence was never admitted in the proceedings below, and it is much too late now to admit it. It must also be mentioned that no application whatsoever was made for admitting such evidence.

20 However, notwithstanding the unreliable evidence about the *exact schedule* of the future school Christmas holidays, it is clear to us, from past schedules, that the school Christmas holidays *do not* begin on a fixed date. As such, it could well be that the second half of the holidays may not coincide exactly with the period during which the Husband is able to take leave. In our view, it is important for the Husband to have access to the children when he is able to take leave, for this would represent the only long stretch of time which the Husband would be able to spend with the children in any given year. On the other hand, we are concerned that if the Husband is only able to take leave from Christmas until the first week of January, there may be days within his access period during which he will be unable to care for the children, let alone bond with them. The Wife's alternative proposal is aimed both at ensuring the Husband has the children for the period during which he claims he will be able to take leave, and also to make sure that the children are always in one parent's personal care, given that they are both fairly young. However, it is also clear, as the Husband has pointed out, that this alternative proposal may unfairly prejudice the Husband such that in certain years he may have substantially less than half the holidays to be with the children.

21 In our judgment, taking all these factors into account and having due regard to the children's best interests, the Wife's appeal to vary the judge's order will be dismissed. However, we would add the proviso that if the Husband is unable to obtain leave for any day during the second half of the school Christmas holidays, the children should stay with the Wife for that day.

Matrimonial assets

22 We turn now to the broad issue of matrimonial assets. There are two sub-issues under this heading to be considered, *viz*, (a) which of the parties' assets are matrimonial assets; and (b) the proportion in which the matrimonial assets are to be divided.

Parties' assets which are matrimonial assets

The Husband's sum of US$136,354

Background

23 The Husband appealed against the judge's finding that a sum of US$136,354 existed *apart from* any other declared matrimonial asset and hence was available for division and that there was no double counting. This "double counting" issue arose when the Husband declared in his fourth affidavit dated 16 May 2003 that he had, *inter alia*, US$136,354 invested with Asia Pacific Investment Holdings ("APIH"). The date of investment was listed as December 2002. Subsequently, the Husband's solicitors clarified by a letter dated 6 February 2004 that the amount invested with APIH and the date of investment were incorrect. They said the amount should have been US$143,301.96 and that the date of investment commenced from 27 March 2003. The correction was repeated in the Husband's

answer filed on 29 April 2004. The Husband also produced two documents showing that he had instructed Citibank Hong Kong ("Citibank HK") to transfer two sums totalling US$143,301.96 to APIH: see *BF v BG* at [197]. APIH also stated in a letter dated 26 September 2005[note: 2] that the only funds and deposits received by them from the Husband were those two sums from Citibank HK.

24 On the basis of those facts, DJ Khoo decided that the amount of US$136,354 had come from the Husband's (a) Citibank HK account no 8924xxxx containing HK$868,383.40 as at 8 March 2003; and (b) Citibank HK account no 3803xxxx containing US$31,947.84 as at 11 March 2003 (jointly "the Husband's Citibank HK account"). DJ Khoo concluded that there was double counting when all the three sums were listed by the Wife as part of matrimonial assets.

25 However, upon the Wife's appeal to the High Court, the judge rejected the Husband's argument that he had mistakenly listed US$136,354 as being a sum invested with APIH in December 2002. The judge believed that there was a *separate* sum of US$136,354 invested with a fund manager other than APIH as the Husband had not explained where he had derived the original figure of US$136,354 or the date of December 2002 from. The judge also found that the Husband had not adequately explained how the error had occurred, bearing in mind that the Husband's fourth affidavit was filed shortly after the transfer of the two sums. The Husband appealed against the judge's decision.

Our decision

26 We agree with the judge that the Husband has not adequately explained how the alleged error as to the sum of US$136,354 came about. Although the Husband sought to portray this as an innocent mistake, we agree with the trial judge's view that the specificity of *both* the amount *and* the investment date suggests that there is a separate of sum of US$136,354, albeit perhaps with a separate fund manager other than APIH. Before us, the Husband explained that he had mistakenly put down the sum of US$136,354 because secretaries he had employed on a temporary basis had used the wrong currency exchange rate. However, as the Wife correctly pointed out, that explanation was never provided before. If the Husband had a ready explanation for the sum of US$136,354, he ought to have provided it earlier; the fact that he offered the explanation only at the hearing before us weakened its credibility. Besides, the explanation did not account for the alleged error as to the investment date. Accordingly, notwithstanding the letter from APIH, we uphold the judge's finding that there is a separate sum of US$136,354, and that this forms part of the matrimonial assets to be divided. The Husband's appeal in this regard is dismissed.

Income tax liability of $59,743.94

Background

27 The Husband had a bank account with DBS Bank with a balance of $175,413.71 ("the DBS account") as at 11 March 2003. He sought to deduct $59,743.94 in respect of his income tax liability and $20,000 in respect of legal fees he had paid, leaving a balance of $95,669.77 as part of the matrimonial assets. The judge did not allow the Husband to subtract the sum of $59,743.94 as he was not convinced that this tax was based on income paid into the DBS account (*BF v BG* at [213]). Specifically, the judge thought that the tax of $59,743.94 was based on income from John Doe Southeast Asia Inc (paid on behalf by John Doe International Inc into the Husband's Citibank HK account) and not on income from John Doe Asia (paid into the DBS account). This was because the judge had only referred to the IR8A form in respect of income from John Doe Asia and the tax of $59,743.94 did not tally with the declared income paid into the DBS account. As a consequence of his finding that the tax of $59,743.94 was in respect of income from John Doe Southeast Asia Inc, and

since income from John Doe Southeast Asia Inc was paid into the Husband's Citibank HK account and not the DBS account, the judge held that the Husband should not be allowed to deduct the said sum from the DBS account. The Husband appealed against the judge's decision.

28 The Husband pointed out that the judge erred in thinking that the tax payable was based *only* on income from John Doe Southeast Asia Inc. In particular, the judge was mistaken in thinking that there was only one IR8A Form for 2002 when there were in fact *two* forms: one each from John Doe Asia and John Doe Southeast Asia Inc.[note: 3] It was submitted that the judge thus erred in thinking that the computation of taxable income was in respect only of income from John Doe Southeast Asia Inc when in fact it was in relation to the combined taxable income in both IR8A forms.

29 In addition, the Husband submitted that the judge also erred in thinking that the aggregate of 2002 salary credit entries in the DBS account had to add up to $390,974 on which the tax was based. In this connection, the Husband submitted that the taxable income of $390,974 was based not only on salary received in the DBS account but also on salary received in the Husband's Citibank HK account. Furthermore, the sum of $390,974 comprised gross salary, the value of benefits and other taxable allowances but not the regional responsibility allowance. Not all of those would have been in the form of cash paid into the bank accounts. Therefore, the credit entries in 2002 in the Husband's two said bank accounts (much less the DBS account alone) could not be expected to tally with the gross taxable income in the IR8A forms. In the event, the Husband submitted that the documentary evidence clearly supported his contention that he had a tax liability of $59,743.94, and that that sum should be deducted from the pool of matrimonial assets liable to be divided.

30 On her part, the Wife conceded that there were in fact two IR8A forms. However, she pointed out that closer examination of those forms revealed that the dates of cessation of employment with John Doe Southeast Asia Inc and of John Doe Asia were 5 and 6 April 2003 respectively. Even if a clerical error was assumed and the year should have been correctly stated as 2002, those dates did not agree with the Husband's statement that his salary was paid by John Doe Southeast Asia Inc until 31 May 2002. Moreover, while para 9 of the Husband's fourth affidavit stated that John Doe Asia was incorporated on 16 April 2002, his IR8A form indicated that he started work on 6 April 2002. In effect then, the Wife attempted to cast doubt on the Husband's credibility.

Our decision

31 In our judgment, the Husband's appeal in this regard must be allowed. It is clear that the judge was not aware of the second IR8A form from John Doe Southeast Asia Inc. If the judge had seen it, it would have been clear to him that the Husband's income tax liability of $59,743.94 was based on the salaries he received from *both* John Doe Southeast Asia Inc *and* John Doe Asia.[note: 4] In addition, it is also clear to us that the Husband's taxable income of $390,974 for 2002 included not only salary received in the DBS account but *also* salary received in the Husband's Citibank HK account. Of this figure, the gross salary component was $196,431.70, and this in turn was made up of gross salary of $150,739.39 from John Doe Asia (as reflected in the Husband's first IR8A form[note: 5]), and $45,692.31 from John Doe Southeast Asia Inc (as reflected in the Husband's second IR8A Form[note: 6]). In other words, the taxable income of $390,974.44 clearly included the salary from both John Doe Southeast Asia Inc and John Doe Asia, besides the value of benefits in kind. Accordingly, the sum of $59,743.94 correctly reflected the income tax liability of the Husband for the year of assessment of 2002 based on his declared income. The income tax being an accrued liability on the face of the documentary evidence, the sum of $59,743.94 ought to be deducted from the value of the matrimonial assets.

Carlotta property and sales proceeds

32 The Wife appealed against the judge's order that a property in Sydney, Australia, known as "the Carlotta property" was not part of the matrimonial assets and neither were the sale proceeds thereof. Alternatively, the Wife prayed that, even if this court were to find that there was a valid trust for the purposes of these proceedings and that the Carlotta property accordingly did not form part of the matrimonial assets, this court should grant an order that the children's proportion of the proceeds of sale (40% of the A$1,865,432.86) be paid to her to hold upon trust for the children.

Background

33 The Carlotta property was acquired by the Husband either in December 1994 or January 1995 but in any event before the parties' marriage on 17 March 1995. There are documents to show that the Husband was holding the Carlotta property in a Golden Harvest Trust ("the Trust") for his parents who were unit holders thereof and that the Trust was created before the marriage. The Carlotta property was bought at a price of A$743,000. It was sold for A$2,225,000 just before June 2003. The net sale proceeds amounted to A$1,865,432.86.

34 In the High Court, although the judge doubted the Husband's evidence that he had *not* funded the purchase of the property, he found that the material fact was that the Carlotta property was acquired and the Trust was created before the marriage: *BF v BG* at [175] and [176]. The judge held that the burden was on the Wife to show that the property, or part of it, should be treated as a matrimonial asset. Additionally, the judge found that the Trust was not created surreptitiously and that it was not created to put the Carlotta property out of the reach of the Wife. He also found that whether or not the parties had resided in the property had no bearing on its status if it was trust property. In the event, he ruled that the Carlotta property was not part of matrimonial assets and neither were its sale proceeds.

Our decision

35 In our judgment, the Wife's appeal in relation to the Carlotta property must be dismissed. Although the Wife had referred us to various documents during the hearing of this appeal to show that she had contributed financially to the improvement of the Carlotta property, those were all irrelevant. Section 112(10) of the Charter provides as follows:

> 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.

36 As is clear from s 112(10)(*a*) of the Charter, the *preliminary issue* to be considered for assets acquired *before* the marriage is that it must have been *acquired* by one or both parties. The term "acquired" implies ownership; therefore, if the true owner of the Carlotta property was the Trust and not the Husband, the property would not be a matrimonial asset available for division. In this case, whether or not the Wife had made substantial improvements to the property would not be relevant.

37 As the judge found in *BF v BG* at [176], the Carlotta property was acquired by the Trust *before* the marriage. The evidence showed that the Carlotta property was purchased before the marriage by the Husband as trustee for the Trust. The Trust is a properly constituted trust and it has been acknowledged by the Australian authorities that the property belonged to the Trust.[note: 7] Furthermore, the Trust, as the owner of the Carlotta property, has been assessed by the Australian tax authorities for income tax and land tax in respect of the said property.[note: 8] As such, neither the Husband nor the Wife had "acquired" the Carlotta property. In the result, neither it nor its sale proceeds is a matrimonial asset.

38 Accordingly, the Wife's appeal in this regard is dismissed. We also do not see the need to order that the children's proportion of the proceeds of sale (40% of the A$1,865,432.86) be paid to the Wife to hold on trust for them.

Sale proceeds, not investment value, of the Bionutrics and Valencia shares

Background

39 The Wife appealed against the judge's order that the sale proceeds, and not the investment value, of the Bionutrics and Valencia shares (see [4(b)] above) be part of the matrimonial assets. Instead, she asked for 40% of the *investment value* of each of those shareholdings. By way of background, the Husband held 125,000 shares in Bionutrics Inc. He claimed to have sold the shares at a price of US$0.25 per share net of commission amounting to US$31,250. In relation to the 76,000 Valencia shares, DJ Khoo held that the Wife was entitled to 25% of the current market value of those shares in a court order dated 28 September 2005.[note: 9] The Husband asserted that the shares were sold for US$4,940: see *BF v BG* at [207]. The Husband paid the Wife 25% of those sums, pursuant to DJ Khoo's order. The Wife appealed against DJ Khoo's order and sought an order that the Husband pay her a proportion of the investment price. However, the judge dismissed the Wife's appeal and hence the present appeal before us.

40 The Wife pointed out that whereas the Husband initially invested almost $1.7m in those shareholdings, an "astounding" 96% of their value had been allegedly lost and that the Husband had not produced proper evidence showing their sale price. Given that the Husband is an astute and successful businessman, the Wife submitted that his claim that he needed to sell the shares at the time he did in order to honour his financial obligations to his Wife and children was not plausible. The Wife further alleged that the Husband may have stood back and allowed those investments to lose almost their entire value for the purposes of these proceedings, even at his own expense.

41 On the other hand, the Husband contended that those shares were Nasdaq listed shares and that the prices fluctuated. The Husband submitted that the real issue was whether it was fair to divide the shares based on the value at which they were realised.

Our decision

42 In relation to the Bionutrics shares, we are unable to agree with the Wife that the Husband has not produced proper evidence showing their sale price. On the contrary, the Husband exhibited a

letter he had written to APIH dated 18 June 2004 asking them to sell the shares and a reply from APIH dated 8 July 2004 stating that it had sold the shares at a price of US$0.25 per share net of commission amounting to US$31,250.[note: 10] As such, although the *actual* date of sale of these shares is uncertain, it is at least clear that APIH sold them between 18 June and 8 July 2004. An analysis of the Nasdaq price charts of this stock,[note: 11] which were also produced by the Husband, shows that the price realisation (*ie*, US$0.25 per share) is in line with quoted market prices for this period. As such, we are persuaded that the Bionutrics shares were indeed sold at US$0.25 per share. That being the case, it would be unfair for the Husband to have to pay the Wife her share based on the investment value, as opposed to the sale proceeds. Accordingly, the Wife's appeal in relation to the Bionutrics shares is dismissed.

43 In relation to the Valencia shares, the Husband produced a letter from APIH dated 10 July 2006 stating that APIH had sold 76,000 Valencia shares (known in the letter as "Valcom shares") on his behalf.[note: 12] Before the judge below, the Husband submitted that he had liquidated those shares within the six-month period provided in the court order dated 28 September 2005, and that the 76,000 Valencia shares were sold for US$4,940.[note: 13] The sale price worked out to be US$0.065 per share. However, the Husband did not produce any evidence showing the date on which the shares were sold. Indeed, it is significant that the Husband's 24th affidavit dated 11 October 2005 stated that the price of the Valencia shares was US$0.17 per share on 7 October 2005.[note: 14] This was more than double that of the US$0.065 per share at which the shares were purportedly sold. In our view, given the lack of evidence showing the actual date of sale of those shares, the purported sale price of US$4,940 is not credible. Accordingly, although we will dismiss the Wife's appeal in this regard, we will order that the value to be attributed to the Valencia shares be their price at the close of trading on Nasdaq at the date of the decree *nisi* and if that was not a trading day then the trading day immediately following thereafter.

Charge on the Husband's CPF account

44 The Wife appealed against the judge's order that the Husband is to pay the Wife her share of $12,886 and interest from his CPF account when he reaches 55 years of age, and that the Husband's CPF ordinary account be charged accordingly. The Wife submitted that because the sum is small it would be disproportionately inconvenient and costly for her to obtain payment from the Husband in the future.

Background

45 By way of background, DJ Khoo ordered that the Husband pay the Wife, within six months of his order, 25% of the $12,886 (a little over $3,000) standing in his ordinary account with CPF as at 23 April 2003. The Husband appealed against DJ Khoo's order, arguing that this would be unfair to him as he was not entitled to withdraw the money in his ordinary account yet and he did not have the means to pay without liquidating other assets. On appeal, the judge found that the Husband would undoubtedly have the means to pay the Wife's proportion of this asset without delay. However, the judge also decided that the Husband was well entitled to "[insist] on his strict legal rights" and delay payment until he was 55: *BF v BG* at [220].

Our decision

46 We see no sufficient reason to disturb the judge's decision and accordingly dismiss the Wife's appeal on this issue.

The Wife's 60% of the shares in Upaid

Background

47 The Wife appealed against the judge's order for her to transfer 60% of the shares in Upaid (see [4(b)] above) to the Husband with the latter paying the expenses of the transfer, submitting that, in view of the Husband being in a better position to liquidate the shares, she be paid 40% of the *investment* value of the shares, in return for which she would transfer all her shareholding to the Husband. By way of background, the Wife has in her name certain shares in Upaid. DJ Khoo ordered the Husband to pay her 25% of the value of those shares within six months of his order (that being the Wife's percentage share of the matrimonial assets prior to its increase to 40%). The Husband's appeal before the judge below was that DJ Khoo erred because those shares were not in his name. The Husband sought the Wife's transfer of 75% of those shares to him or payment of the current market value in lieu of such transfer. The Wife was not keen to keep any part of the shares and sought payment for her percentage interest in the shares. Apparently, there is no actual trade in these shares and in an e-mail dated 31 August 2004 from Upaid to the Wife, it was stated that the current theoretical value was approximately US$0.67 per share. In the event, the judge allowed the Husband's appeal and ordered that the Wife transfer 60% of the Upaid shares to the Husband.

Our decision

48 In our judgment, the Wife's appeal on this issue must be dismissed. If neither party wishes to hold all the shares, it does seem unfair to force the Husband in effect to purchase the Wife's 40% of the shares. As the judge held at [223] of *BF v BG*, "it is [not] right to compel either side to buy over the other side's portion of the Upaid shares".

The Wife's share of the loan of US$10,000

Background

4 9 The Wife appealed against the judge's order that the Husband is to pay her share of a US$10,000 loan made by the Husband to a certain couple within 14 days of receipt of any repayment and that, in the meantime, he is to notify her by 14 January of each year whether he has received any repayment in the previous year.

Our decision

50 In our judgment, the Wife's appeal on this issue ought to be dismissed. The loan may or may not be repaid. The Husband should not have to pay the Wife 40% of the loan amount until the loan has been repaid.

Proportion of division of matrimonial assets

51 In the High Court, the judge increased the Wife's share of the matrimonial assets from the 25% awarded by DJ Khoo to 40%. The Husband appealed against this order. The Husband submitted that it was clear from the judgment that the sole basis for increasing the Wife's share of the matrimonial assets from 25% to 40% was his finding that the Husband had not disclosed all his assets which would otherwise form part of the matrimonial assets. However, as the Husband had in fact fully disclosed his assets, the Wife should not be entitled to 40%. Before we deal with the facts relevant to this issue, it would be helpful to first consider the applicable principles of law.

Duty to make full and frank disclosure

52 First, 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. The position in law is that full and frank disclosure is important and in its absence the court is entitled to draw inferences adverse to the party who failed to do so: *Koh Kim Lan Angela v Choong Kian Haw* [1994] 1 SLR 22.

Just and equitable division

53 Secondly, s 112(1) of the Charter provides that the court should aim to divide all the matrimonial assets between the former spouses in proportions that the court thinks "just and equitable". The current judicial approach on what "just and equitable" means is that stated by this court in *Lim Choon Lai v Chew Kim Heng* [2001] 3 SLR 225 ("*Lim Choon Lai*"). In that case, this court rejected the notion that it may be closer to reality to use as a starting point the assumption that both husband and wife have contributed equally to the acquisition of matrimonial property. Instead, this court endorsed the approach of Judith Prakash J in *Yow Mee Lan v Chen Kai Buan* [2000] 4 SLR 466 where she disavowed any starting point but instead read the direction in s 112(1) literally to require consideration of all factors to reach a just and equitable division: see also *Lau Loon Seng v Sia Peck Eng* [1999] 4 SLR 408.

54 In *Lim Choon Lai*, this court also made two points that a court should note when exercising its discretion under s 112(1) of the Charter. First, although the court should consider all financial and non-financial contributions to the acquisition of property, this does not mean that the court should engage in a meticulous investigation and take into account every minute sum that each party has paid or incurred in the acquisition of the matrimonial assets and/or discharge of any obligation for the benefit of any member of the family, and then make exact calculations of each party's contributions. The court must necessarily take a broader view than that. Second, while this court in *Lim Choon Lai* was not prepared to equate non-financial with financial roles in all cases, it observed that non-financial contributions also play an important role, and that, depending on the facts of the case, they can be just as important as financial contributions. In doing so, this court reaffirmed the broad brush approach in *Koo Shirley v Mok Kong Chua Kenneth* [1989] SLR 342.

Our decision

5 5 As is clear from *BF v BG* at [193] and [213], the judge based his decision to award the Wife 40% of the matrimonial assets mainly on his finding that the Husband had only disclosed income from John Doe Southeast Asia Inc and not John Doe Asia. The basis of his finding was that there was only one IR8A form in respect of his employment income earned in 2002. However, as we pointed out above, the judge was mistaken in so thinking as there were in fact two IR8A forms. Based on the *income declared by the Husband* for tax assessment purposes, the sum of $59,743.94 did represent his tax due from income paid into both the Husband's Citibank HK account and the DBS bank account.

Remaining non-disclosures

56 However, notwithstanding this, the evidence shows that there remain certain non-disclosures by the Husband in respect of his income.

57 The Husband explained that *all* his income from John Doe Asia between June and December 2002 had been accounted for. Before us, the Husband applied for the admission of further documentary evidence which showed that, despite the judge's doubt, his September and October 2002 salaries had been paid into the DBS account. The Wife conceded that they had indeed been paid and it was therefore unnecessary to allow his application which would have resulted in the

admission of other evidence which the Wife objected to. Despite the Wife's concession, it appears that his income for June 2002 has still not been accounted for.

58 As the judge noted in *BF v BG* at [214], according to the employment contract, the Husband's employment with John Doe Asia commenced from 1 June 2002, but there was no evidence of the June 2002 salary having been paid by John Doe Asia. The Husband explained that his June 2002 salary was in fact paid by his *former* employer, John Doe Southeast Asia Inc (through John Doe International Inc). The Husband suggested that the US$12,111.64 deposited into the Husband's Citibank HK account on 31 May 2002 represented his salary for June 2002 for work done at John Doe Asia.[note: 15] The underlying premise of this suggestion appears to be that since the Husband had received *two* deposits of identical amounts into the Husband's Citibank HK account in May, one deposit must have been his salary for the following month (*ie*, June 2002), since it could not be that he received *two* salary payments for the same month.

59 There are two difficulties with this explanation. First, it would mean that the Husband's former employer (*ie*, John Doe Southeast Asia Inc) paid his June 2002 salary notwithstanding the fact that he was then working for another entity (*ie*, John Doe Asia). Secondly, an examination of the Husband's answers to the interrogatories filed on 29 April 2004 in relation to the deposits in the Husband's Citibank HK account reveals that he had, on *three* previous occasions between 18 Dec 1998 and 7 January 2003, received *two* deposits in the same month of nearly identical amounts (identified as salary payments from John Doe International Inc, on behalf of John Doe Southeast Asia Inc).[note: 16] Therefore, the *additional* deposit on 31 May 2002 could very well have been salary *from* John Doe Southeast Asia Inc for *May 2002* rather than salary for June 2002 in respect of employment with John Doe Asia. We therefore do not find the Husband's explanation credible.

60 Furthermore, as the Wife pointed out,[note: 17] the deposits in 2002 shown in the DBS account statements which the Husband identified as "salary" total only $64,435.62. Even if the salaries for September and October 2002 were added, the total would still be only $95,241.48, a long way short of the $150,739.39 shown in the Husband's IR8A form,[note: 18] even taking into account allowances, *etc*.

61 The foregoing therefore suggests that the Husband has not disclosed all his salary from John Doe Asia from June 2002.

62 A second instance of non-disclosure by the Husband relates to deposits made into the Husband's Citibank HK account *after* his employment with John Doe Southeast Asia Inc ceased. The Husband explained that after June 2002, the regional management work component of his income paid by John Doe Asia Pacific Ltd continued to be received by him in the Husband's Citibank HK account, but there were no more credit entries in respect of salary by John Doe Southeast Asia Inc. As such, and contrary to the Wife's contention, there was in fact a corresponding drop in the "salary" payments into the Husband's Citibank HK account and this drop corresponded with the beginning of the salary payments into the DBS account.[note: 19]

63 However, in our view, this submission masks the more general picture that *the total* deposits into the Husband's Citibank HK account had in fact *not* dropped. The table below shows the total payment into the said account from April to December 2002, including June 2002, when his salary component supposedly stopped:

Month	Total amount deposited
April 2002	US$24,223.28
May 2002	US$36,334.92
June 2002	US$6,198.57
July 2002	US$0
August 2002	US$44,773.33
September 2002	US$35,435.02
October 2002	US$16,041.67
November 2002	US$22,458.33
December 2002	US$16,041.67

64 As can be seen, the deposit into the Husband's Citibank HK account remained close to the original level *even after* his salary from John Doe Southeast Asia Inc had stopped in June 2002. In fact, the August 2002 payment was higher than the deposits in April and May 2002, which was before his salary payments from John Doe Southeast Asia Inc stopped. An inference that could be drawn from this is that there was *some other source of income* into the Husband's Citibank HK account. On this point, the Husband contended that those deposits after June 2002 were *all* payments for "regional management work" from John Doe Asia Pacific Ltd.[note: 20] He even exhibited a letter from John Doe Asia Pacific Ltd which confirmed that those were in fact payments made to the Husband for "regional management work".[note: 21] The preliminary objection to this submission, as the judge noted in *BF v BG* at [108], is that the Husband has not elaborated on the reason why he was being paid for regional management work by John Doe Asia Pacific Ltd. It is noteworthy that the Husband has not produced any additional evidence other than the letter by John Doe Asia Pacific Ltd before this court.

65 Moreover, this letter from John Doe Asia Pacific Ltd does *not* confirm that *one of the two* deposits made on 30 September 2002 was in fact payment for "regional management work" even though the Husband had marked it as such. It only confirms that *one* deposit was payment for "regional management work". There were in fact *two* deposits on 30 September 2002 for the same amount of US$6,416.67.[note: 22] That this is not a typographical error is shown by the fact that the Wife had listed *two* separate deposits on 30 September 2002 in her interrogatories,[note: 23] and the Husband had, in his answers, identified *both* deposits as being payments for "regional management work".[note: 24] If there had been a typographical error by the Wife in the first place, the Husband would not have implicitly acknowledged in his answers that there were *two* deposits on 30 September 2002 by attributing a reason to *each of them*. Accordingly, notwithstanding the letter from John Doe Asia Pacific Ltd, *one* deposit on 30 September 2002 may not, contrary to the Husband's answers, be payment for "regional management work".

66 The implication from this is that there was *at least* one non-disclosure by the Husband with respect to one deposit into the Husband's Citibank HK account on 30 September 2002. It is unclear what the source of this deposit is. Notwithstanding the fact that regional management work payments are not taxable,[note: 25] the inference could be that there is an additional source of income into the Husband's Citibank HK account which the Husband has not disclosed: see further *BF v BG* at [214].

67 In view of the conclusion reached above that there were other non-disclosures of his financial condition by the Husband, we are of the view that we should, as the judge and DJ Khoo did below, draw an adverse inference against the Husband: see DJ Khoo in *BG v BF* [2006] SGDC 22, in which he noted at [86] that he was "left with doubt as to the size and value of [the Husband's] pool".

The Wife's non-financial contributions

68 Apart from the non-disclosures we have found, in coming to a "just and equitable" division the court should have regard to *other* factors, especially the Wife's non-financial contributions, although the latter of itself would not have been sufficient to justify a 40% share of the matrimonial assets.

69 Although the marriage between the parties was a relatively short one (six years and nine months: see *BF v BG* at [183]), the Wife had effectively given up a lucrative career to be at home to care for the children: *BF v BG* at [184]. The Husband himself acknowledged that the Wife is a good mother. In a note written by the Husband to the Wife on 3 July 2002 he said, *inter alia*:

> I believe you have spent the last five years at home spending time raising children and managing the household. Nobody would ever question that our kids have impeccable manners and routines, thanks almost a 100% to you.

The judge also noted in *BF v BG* (at [191]) that:

> I accept that in addition to being the primary caregiver, the Wife had also taken care of the home where the family were residing in from time to time. She was in charge of the household even though there was a maid.

70 As this court noted in *Lim Choon Lai* ([53] *supra*), non-financial roles can be just as important as financial roles in certain circumstances: see also *Ong Chin Ngoh v Lam Chin Kian* [1992] 2 SLR 414, which was decided under the old s 106 of the Women's Charter (Cap 353, 1985 Rev Ed). Such is the case with the Wife's non-financial contributions. As such, taking these into account with the Husband's remaining non-disclosures, we see no reason to disturb the judge's award of 40% of the matrimonial assets to the Wife.

Maintenance

The Husband's and the Wife's appeals against the order to pay $10,000 per month (and school fees) from 1 September 2005

71 Both parties appealed against the judge's order that the Husband is to pay maintenance according to the Consent Order of 20 April 2003, less $1,000 per month, from 1 January 2004 to 31 August 2005. Prior to the judge's order, the parties had entered into the Agreement in March 2003 (see [1] above), which was later incorporated into the Consent Order. Pursuant to the Consent

Order, the Husband had agreed to pay maintenance of approximately $11,000 per month plus school fees. On appeal by the Husband to vary this amount, the judge held that there was no evidence that there had been any relevant material change in circumstances to warrant reducing the Husband's maintenance obligations below what he had agreed to in the Consent Order. However, the judge decided to take the Wife's earning capacity into account and reduced the maintenance payable by the Husband to $10,000 per month plus school fees.

72 Unsurprisingly, in their respective appeals against this order, the Wife is asking for an increase of the maintenance amount, whereas the Husband is asking for the opposite. Since their arguments overlap substantively, we will address them together.

The legal principles

73 Ancillary to matrimonial proceedings for divorce, judicial separation and nullity of marriage, the court may order the husband to continue to discharge his duty of maintenance of his wife despite the termination of their marriage. Section 113 of the Charter provides:

> The court may order a man to pay maintenance to his wife or former wife —
>
> (*a*) during the course of any matrimonial proceedings; or
>
> (*b*) when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage.

The Charter, in s 114(2), directs that, in the exercise of the court's power to order the husband to maintain his former wife:

> … 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.

The preceding subsection, s 114(1) directs that:

> In determining the amount of any maintenance to be paid by a man to his wife or former wife, the court shall have regard to all the circumstances of the case including the following matters:
>
> (*a*) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
>
> (*b*) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
>
> (*c*) the standard of living enjoyed by the family before the breakdown of the marriage;
>
> (*d*) the age of each party to the marriage and the duration of the marriage;
>
> (*e*) any physical or mental disability of either of the parties to the marriage;
>
> (*f*) the contributions made by each of the parties to the 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.

74 The High Court in *Wong Amy v Chua Seng Chuan* [1992] 2 SLR 360 ("*Wong Amy*") made some crucial observations in relation to these powers: (a) adequate provision must be made to ensure the support and accommodation of the children of the marriage; (b) provision must be made to meet the needs of each spouse; and (c) at the end of the day, it is the court's sense of justice which demands and obtains a just solution to many a difficult issue: see also *Quek Lee Tiam v Ho Kim Swee* [1995] SGHC 23. These principles were recently endorsed by V K Rajah J (as he then was) in *NI v NJ* [2007] 1 SLR 75.

75 Additionally, the courts have exercised the power to order maintenance for the former wife in a manner that is supplementary to the power to divide matrimonial assets. As the High Court observed in *Wang Shi Huah Karen v Wong King Cheung Kevin* [1992] 2 SLR 1025, the court has to take account of each party's share of the matrimonial assets. The order for maintenance of the former wife thus plays a complementary role to the order for division of matrimonial assets. In *Tan Sue-Ann Melissa v Lim Siang Bok Dennis* [2004] 3 SLR 376, this court held that the rationale behind the law imposing a duty on a former husband to maintain his former wife is to even out any financial inequalities between the spouses, taking into account any economic prejudice suffered by the wife during marriage.

Application to the present case

76 With these principles in mind, it must be noted that there are two special circumstances in this present appeal. First, the Wife has not been given a portion of any matrimonial home. Second, the Wife is highly educated and has a good chance of finding gainful employment, as the judge found in *BF v BG* at [150].

The Wife's and the children's needs

77 The first factor for consideration is that the Wife has no share of any matrimonial home and has had to pay rent for accommodation for herself and the children.

78 The need to preserve the Wife's current lifestyle, subject to reasonableness, is recognised by the courts. Indeed, the Wife had accepted a drop in her own living standard and during the period in question the children lived and continue to live in a much smaller apartment.[note: 26] As such, *NI v NJ* ([74] *supra*), a case cited by the Husband, can be distinguished. In that case, the wife had "strenuously insisted that she [was] entitled to maintain an 'expatriate' lifestyle", with the result that Rajah J found her to be "thoroughly unreasonable" and declined to grant her the level of maintenance prayed for: at [11]. This is clearly not the case here.

79 The $11,000 per month (plus school fees) claimed by the Wife is the minimum she believes she will need to continue to give the children a reasonable standard of living, assuming that she will also continue to work and earn beyond her 60th birthday.[note: 27] The judge accepted her evidence (see *BF v BG* at [161]) and only decreased the $11,000 to $10,000 to take into account the Wife's earning capacity. We see no reason to disagree with the judge.

80 The Wife appealed against the reduction of $1,000 in the maintenance. The judge's finding that the Wife will be able to earn $1,000 a month is conservative given her qualifications. This is so despite the fact that the Wife is now almost 52 years of age and has been out of the workforce for most of the past 11 years. In fact, before us, the Wife acknowledged that she could earn $3,000 per

month if she worked full-time. However, in our view, the reduction of $1,000 to take account of income she could earn on a part-time basis is not unreasonable.

Husband's ability

81 The other issue to be considered is the Husband's ability to pay. On this issue, the judge was convinced that the Husband had the ability to pay maintenance of $10,000 a month in addition to paying the children's school fees. Indeed, before us, the Husband candidly admitted that he would be able to earn far more than the $17,000 per month he claims to be currently earning. Nevertheless he sought to reduce the maintenance to only $6,000 a month, excluding school fees, arguing that his health did not permit him to maximise his earnings. We were not persuaded.

82 Accordingly, we do not propose to disturb the judge's finding that the Husband has the ability to pay $10,000 a month on top of paying the school fees. We therefore dismiss both parties' appeals in this regard.

The Husband's and the Wife's appeals against the order to pay maintenance according to the Consent Order less $1,000 per month from 1 January 2004 to 31 August 2005

83 For the reasons discussed above, both parties' appeals in this regard are also dismissed.

The Husband's appeal against the order to pay maintenance according to the Consent Order until 31 December 2003

84 The Husband argued that a material change in the circumstances should have led him to stop paying maintenance according to the Consent Order. The material change in circumstances was when the Husband's payment of salary and benefits from John Doe Asia stopped. In fact, DJ Khoo noted that there was a material change in circumstances from 7 September 2003 onwards when the Husband stopped receiving expatriate benefits.[note: 28]

85 As the judge found in *BF v BG* at [120], according to the Husband's fourth affidavit, his departure from John Doe Asia was not sudden but was negotiated over eight months. Based on what the Husband had asserted, he was aware since July 2002 (eight months before 16 May 2003) that he was likely to leave John Doe Asia. When he agreed to certain maintenance payments in late December 2002, he was aware that he was likely to leave his employment. By March 2003, when he signed the Agreement, he could not have been in doubt about his departure. As the judge observed, if the Husband was not confident that he would be able to meet his obligations in view of his impending departure, he would not have signed the Agreement.

86 In the appeal before us, the Husband did not address the judge's finding on this point save to assert that the cessation of his employment in March 2003 was "somebody [*sic*] which took place abruptly".[note: 29] In the event, we would dismiss the Husband's appeal in this regard.

Conclusion

85 Our decisions in relation to each party's specific appeals are summarised below.

The Husband's appeal in Civil Appeal No 138 of 2006

86 In relation to the Husband's appeal against each of the following orders of the judge, our decision is set out at the end thereof in bold italics within parenthesis:

(a) Division of matrimonial assets

(i) that the Wife is entitled to 40% of the matrimonial assets instead of 25% as ordered by DJ Khoo **[*appeal dismissed*]**;

(ii) that the sum of US$136,354 should be included as part of the matrimonial assets to be divided **[*appeal dismissed*]**; and

(iii) that the Husband is not entitled to deduct $59,743.94 of income tax paid by him from the matrimonial assets to be divided, in particular from the credit balance of $175,413.71 in the DBS account. **[*appeal allowed*]**.

(b) Maintenance

that the Husband is to pay maintenance as follows:

(i) up to 31 December 2003, according to the terms of the Consent Order **[*appeal dismissed*]**;

(ii) from 1 January 2004 to 31 August 2005, according to the terms of the Consent Order, less $1,000 per month **[*appeal dismissed*]**; and

(iii) from 1 September 2005, $10,000 a month in addition to school fees to be paid directly by the Husband to the school **[*appeal dismissed*]**.

The Wife's appeal in Civil Appeal No 139 of 2006

87 In relation to the Wife's appeal against each of the following orders of the judge, our decision is set out at the end thereof in bold italics within parenthesis:

(a) Access

(i) that, after the 2006 school Christmas holidays, the Husband is to have extended access on alternate weekends as follows: weekends 1 and 3: Friday 8.00pm to Sunday 10.00am; weekends 2, 4 and 5 (if any): Saturday 10.00am to Sunday 10.00am **[*appeal dismissed*]**; and

(ii) that, with effect from the 2007 school Christmas holidays, the Wife is to have the children from 10.00am of 24 December to 2.30pm of 26 December and subject thereto the Wife is to have the children for the first half of such holidays and the Husband the second half, provided that the Husband is to return the children to the Wife by 10.00am on the last Saturday of such holidays **[*appeal dismissed subject to proviso in* [21] *above*]**.

(b) Division of matrimonial assets

(i) that neither the Carlotta property nor its sale proceeds are part of the matrimonial assets **[*appeal dismissed*]**;

(ii) that the sale proceeds, and not the investment value, of the Valencia and Bionutrics shares are part of the matrimonial assets **[*appeal dismissed subject to proviso in* [43] *above*]**;

(iii) that, in respect of the Husband's CPF account, the Husband is to pay the Wife her share of $12,886 and interest thereon when he reaches 55 years; in the meantime, the Husband's CPF ordinary account is charged accordingly **[*appeal dismissed*]**;

(iv) that the Wife is to transfer 60% of the shares in Upaid to the Husband with the Husband paying the expenses of the transfer **[*appeal dismissed*]**; and

(v) that the Husband is to pay the Wife her share of the loan of US$10,000 made by the Husband to a couple within 14 days of receipt of repayment and, in the meantime, the Husband is to notify the Wife by 14 January of each year whether he has received any repayment in the previous year **[*appeal dismissed*]**.

(c) Maintenance
that the Husband is to pay maintenance as follows:

(i) from 1 January 2004 to 31 August 2005, according to the terms of the Consent Order, less $1,000 per month **[*appeal dismissed*]**; and

(ii) from 1 September 2005, $10,000 a month in addition to school fees to be paid directly to the school **[*appeal dismissed*]**.

Costs

88 On the issue of costs, we are of the view that each party should pay his or her own costs. The usual consequential orders are also to follow.

[note: 1] *The Wife's Appellant's Case* at 2.

[note: 2] *The Husband's Appellant's Core Bundle*, Vol I at 406.

[note: 3] *The Husband's Appellant's Case* at 38.

[note: 4] *Joint Record of Appeal*, Vol III Part A at 1725 to 1729.

[note: 5] *Joint Record of Appeal*, Vol III Part A at 1727.

[note: 6] *Joint Record of Appeal*, Vol III Part A at 1725.

[note: 7] *Joint Record of Appeal*, Vol III-D at 87.

[note: 8] *Joint Record of Appeal*, Vol III-D at 87.

[note: 9] *Joint Record of Appeal*, Vol II Part E at 1532.48.

[note: 10] *Joint Record of Appeal*, Vol III Part L at 4894 to 4898.

[note: 11] *Joint Record of Appeal*, Vol III Part L at 4898.

[note: 12] *The Husband's Appellant's Core Bundle* at 610.

[note: 13] *Joint Record of Appeal*, Vol IV Part G at 7833.

[note: 14] *Joint Record of Appeal*, Vol III Part P at 6235.

[note: 15] *The Husband's Appellant's Case* at 38.

[note: 16] *The Husband's Appellant's Core Bundle*, Vol I at 185 and 188.

[note: 17] *The Wife's Respondent's Case* at 25.

[note: 18] *The Husband's Appellant's Core Bundle* at 239.

[note: 19] *The Husband's Appellant's Case* at 33.

[note: 20] *The Husband's Appellant's Core Bundle*, Vol I at 192.

[note: 21] *The Husband's Appellant's Core Bundle*, Vol I at 224.

[note: 22] *The Husband's Appellant's Core Bundle*, Vol I at 192.

[note: 23] *The Husband's Appellant's Core Bundle*, Vol I at 172.

[note: 24] *The Husband's Appellant's Core Bundle*, Vol I at 192.

[note: 25] *The Husband's Appellant's Case* at 43.

[note: 26] *The Wife's Appellant's Case* at 59.

[note: 27] *The Wife's Appellant's Case* at 60.

[note: 28] *The Husband's Appellant's Case* at 98 and 99.

[note: 29] *The Husband's Appellant's Case* at 100.