

Au Kin Chung v Ho Kit Joo
[2007] SGHC 150

Case Number : D 600778/2003, RAS 720091/2005
Decision Date : 12 September 2007
Tribunal/Court : High Court
Coram : Belinda Ang Saw Ean J
Counsel Name(s) : Susan Siaw (Siaw Kheng Boon & Co) for Petitioner; Lee Geck Hoon Ellen, Bernice Loo and Jessica Lee (Ramdas & Wong) for Respondent
Parties : Au Kin Chung — Ho Kit Joo

Family Law – Matrimonial assets – Division – Whether there should be equal division of assets – Whether profits derived from sale proceeds of properties disposed of during marriage and rental income should be excluded from computation of matrimonial assets – Whether adverse inference should be drawn and its impact on proportion of assets awarded to parties

12 September 2007

Belinda Ang Saw Ean J

Introduction

1 This was an appeal from the decision of District Judge Teoh Ai Lin (“the judge”) reported in [2006] SGDC 37, whereby it was, *inter alia*, ordered that the petitioner, Au Kin Chung (“AKC”), and the respondent, Ho Kit Joo (“HKJ”), be awarded 30% and 70% of the matrimonial assets respectively. AKC appealed against the decision, contending that (a) he should be awarded 50% of the matrimonial assets, and (b) the pool of matrimonial assets should be increased to include profits derived from the sale of properties in the name of HKJ as well as the rentals collected by HKJ. At the conclusion of the hearing, I dismissed the appeal with costs fixed at \$8,000. AKC has since filed a notice of appeal against the whole of my decision except for the moneys in OCBC Bank, New York, which was affirmed as a matrimonial asset subject to division.

Background

2 AKC is a businessman residing in Hong Kong. HKJ is a homemaker residing in Singapore. At the time of the ancillary hearing, AKC was aged 60 and HKJ was aged 62. There are two children to the marriage, a son Au On Chin, Charles, aged 33, and a daughter Au On Yee, Abby, aged 31. The parties married in 1971, and the decree nisi was granted in 2003, based on four years of separation. This was a long marriage spanning over almost 32 years.

3 The parties met in London. HKJ was then a state registered nurse and AKC was studying hotel management. AKC maintained that, at that time, he was a management trainee and was not, contrary to HKJ’s allegation, working as a night cashier. Nothing turned on this difference in the storyline. After marriage, the parties returned to Singapore. AKC commenced work at the Goodwood Park Hotel as a Food and Beverage Manager and the last position he held was that of Corporate Executive Manager. In Singapore, HKJ first worked for an orthopaedic surgeon and then as a nurse with “Nestle Products”, but moved on to private nursing (with its flexible schedule) to accommodate the arrival of their son in 1972. In the early days, the parties stayed with HKJ’s father. Later on, they lived in a rented house in Sembawang Hills until they moved in 1973 to a two-bedroom apartment provided by the Goodwood

Park Hotel. Their daughter was born in 1974 and two years later, in 1976, they bought a small apartment in Cairnhill Road. This was sold in 1979. The next property was No 37 Oei Tiong Ham Park ("37 OTH"), which was an old house requiring renovations. HKJ was a freelance property agent from 1978-1980. That stint as freelance property agent presumably set the stage for her subsequent personal interest and involvement in property investments, which contributed significantly to the family wealth. According to HKJ, 37 OTH was bought with the parties' combined savings and a bank loan. In addition, about \$75,000 was spent on renovations and another sum of \$35,000 was for related expenses. AKC's version was that the property was bought for \$235,000 with his funds and a bank loan, and a further \$110,000 was provided by him for renovations and other expenses. According to HKJ, the purchase of 37 OTH was a significant acquisition as it provided the seed money for AKC's acquisition of the Cable Car Coffee Shops ("the Cable Car business"). Apart from the balance of the sale proceeds of 37 OTH, HKJ said she gave to AKC a further sum of \$50,000. Out of this \$50,000, a sum of \$30,000 was a loan from her sister and the balance sum of \$20,000 was a gift from her father. Her claims were strenuously contested by AKC. The judge found as a fact that some of the proceeds from the sale of 37 OTH in 1981 assisted with the acquisition of the Cable Car business. The judge went on to rule that the Cable Car business was a matrimonial asset as it was acquired during the course of the marriage. The judge held that HKJ had made direct financial contributions for its acquisition through her share of the funds (from the sale of 37 OTH) remitted to AKC and by reason of her substantial non-financial contributions towards the marriage (see para 51 of the judge's written grounds).

4 Returning to the chronology, AKC left his job at the Goodwood Park Hotel in 1980 and moved to Hong Kong. As he did not intend to work in Singapore any more, HKJ with the two young children followed suit. Sometime thereafter, the property at 37 OTH was sold for \$720,000 thereby making a profit of \$375,000. Soon after, the family moved to London. The parties bought two London properties, namely, 52 Uxendon Hill and 6 Hatherly Grove. The children were enrolled in private schools; HKJ worked part-time as a nurse, while AKC leased and managed a fast food take away business, which unfortunately did not do well and was eventually sold without a profit. In London, AKC occupied himself with some part-time consultancy work. In 1981, AKC returned to Hong Kong. He found a job with the "Watson Group of Companies", and he was assigned to manage a chain of restaurants called the Cable Car Coffee Shops. HKJ and the children again joined AKC in Hong Kong. However, soon thereafter, they all returned to Singapore with AKC staying back in Hong Kong to work. In Singapore, HKJ said she worked in her sister's tailoring business. This was disputed by AKC who contended that HKJ operated a clothing business from his shop unit in Orchard Road and whenever she visited him in Hong Kong, she would make purchases for her business in Singapore. There was something amiss in AKC's version as the shop unit he mentioned was not purchased until 1985 (see [6] below).

5 As stated, sometime in 1983/1984, AKC purchased the Cable Car business and expanded the chain of restaurants extensively. AKC incorporated four related companies, amongst others, Multisectors Ltd ("Multisectors"). At or around this time, the parties purchased an apartment in Hong Kong known as B3 Greenville Gardens ("Greenville property") with two car park lots. This apartment was to serve as their residence. Subsequently, AKC with the consent of HKJ re-mortgaged the Greenville property to obtain more loans. In 1985, one of the properties in London, 52 Uxendon Hill, was sold. In that same year, their son went to study at a boarding school in England. In 1985 alone, AKC in Hong Kong remitted approximately \$250,000 for the family's expenses.

6 In 1987, the parties acquired substantial assets; HKJ bought the property at 2775 Palmerston Avenue, Vancouver, Canada, while AKC acquired properties in Hong Kong, namely two office units in Vincent Commercial Building as well as two factory units in Unison Building. The next year, 1988, was another significant year in that HKJ purchased No 41 Oei Tiong Ham Park ("41 OTH"). It was not

disputed that AKC had contributed \$850,000 towards the purchase of 41 OTH. In that same year, AKC sold part of the Cable Car business by selling 7000 shares in Multisectors. In 1989, HKJ sold the shop unit in Midpoint Orchard which was acquired in the March 1985.[\[note: 1\]](#) HKJ and her daughter moved into 41 OTH in 1989. At that time, the son was in boarding school in England. The following year, the daughter was sent away to boarding school in England and, not surprisingly, the family expenses were significantly increased as a result. The overdraft secured on 41 OTH was increased to help meet the family's expenses. Additionally HKJ wrote to AKC in November 1990 to help reduce the overdraft and money for the family's expenses. Pursuant to this request, AKC said he remitted a sum of HK\$1 million to HKJ. HKJ denied that there was any such remittance. The judge, however, accepted AKC's testimony that HK\$1 million was sent to reduce the overdraft of 41 OTH.[\[note: 2\]](#) At or around this time, HKJ sold the Canadian property. In 1989/1990, AKC also sold the two office units in Vincent Commercial Building, and shortly thereafter, acquired the property in Westland Centre, Hong Kong.

7 In 1991, AKC's second tranche of 2998 shares in Multisectors were sold. The circumstances surrounding the sale and, particularly, the sale proceeds were contentious and this topic will be analysed in more detail below. Furthermore, from 1991 onwards, AKC stopped remitting money to HKJ for the family's expenses. HKJ, in the meantime, vacated 41 OTH in order to earn rental income. In the same year, HKJ bought the property at No 24 Oei Tiong Ham Park ("24 OTH") and carried out renovations. AKC remitted \$1 million to HKJ for this acquisition. However, the judge accepted HKJ's testimony that only \$860,000 was remitted and not \$ 1 million as alleged. The following year, HKJ purchased the property at No 5 St Petersburg Mews, Bayswater, London ("The Mews") and the children occupied the property when they were studying in England from 1994 to 1999. AKC remitted a sum of \$535, 557.54 to reimburse the purchase price which HKJ had raised from her overdraft facilities in Singapore. In 1992, AKC acquired a unit in Commercial Building, Kowloon which he resold in the same year.

8 In 1994, HKJ found that AKC was having an affair with his secretary and was cohabiting with her openly. Realising that the marriage had soured, HKJ bought 11C Queen Astrid Gardens ("11C QAG") as her permanent home. She has been living there ever since by drawing on her own overdraft facilities. AKC did not remit any moneys for this acquisition. Later that year, 24 OTH was sold as HKJ alleged that she was facing severe financial constraints as a result of the escalating family expenses, interests on the overdraft facilities as well as maintenance and upkeep of the properties. HKJ admitted to using part of the proceeds from the sale of 24 OTH to reduce the overdraft in respect of the purchase of 11C QAG.

9 In 1997, HKJ purchased the property at No 80 Mount Sinai Drive, #11-05, ("The Sierra"). HKJ paid up 40% of the purchase price in cash and took out a bank loan for the remaining \$500,000. In 1998, the National Bank of Asia threatened to foreclose the Greenville property as a result of AKC's default. HKJ drew on her own overdraft facility and utilised the funds to redeem the Greenville property as well as the two car park lots. Soon after, the apartment and one of the car park lots were sold and HKJ remitted to AKC, his share of the sale proceeds. In contrast, when AKC sold the remaining car park lot in July that year, he did not share the proceeds with HKJ.

10 Towards the end of 1998, HKJ sold the Hatherly Grove property and admitted that she did not share the proceeds with AKC as she used the money for the family's expenses and on the children. Even though the children had graduated, they continued to rely on their mother to fund their privileged lifestyles and business ventures. In 1999 and 2001, AKC sold the factory units in Unison building. Again, as with sale of the other assets, he retained all the sale proceeds for himself. In March 2003, divorce proceedings were commenced on the ground of four years of separation. The decree nisi was granted in October 2003, and the ancillary matters were heard almost two years later in 2005. The judge delivered her judgment in November 2005. AKC appealed and the judge issued her

written grounds of decision in March 2006.

11 In summary, at the time of the divorce and to the extent of the parties' disclosure, the existing matrimonial assets available for division were: (i) 41 OTH; (ii) 11C QAG; (iii) The Sierra; (iv) The Mews; (v) HKJ's CDP Shares with an agreed value of \$116,490; and (vi) all existing stocks and assets purchased with the sum of US\$155,200 which HKJ remitted to the son on 9 February 2004.

Issues on appeal

12 Two issues were addressed on appeal. The first main issue was on the judge's division of the pool of matrimonial assets at 70% for HKJ and 30% for AKC. Before the judge and at the appeal before me, AKC had advocated an equal division of the matrimonial assets. The residential properties and shares in question were registered in HKJ's name (see [11] above) and AKC sought to show that he provided part of the funds to acquire the residential properties. AKC's challenge was also directed at the extra share percentage (*ie* 20%) awarded to HKJ (bringing her share to 70%) as being the best and most appropriate way to give effect to the adverse inference drawn against AKC for want of full and frank disclosure as to the assets in his name or where he had an interest. The second main issue was on whether, for the purpose of division, the judge was right in excluding from computation of the matrimonial assets, the profits derived from the sale proceeds of properties disposed of during the marriage as well as the rental income collected over the years. I propose to begin with the second issue as it is a short point.

Rentals and profits from the sale of properties

13 It is trite law that the court's power to divide assets extends to those subsisting in the sole or joint names of the parties at the time of the hearing of ancillary matters. As such, assets bought but disposed of during the course of the marriage, would not be included in the pool of matrimonial assets for division. However, as the judge noted at [58] of her written grounds, "the Court would, in dividing the remaining matrimonial assets have regard to any sums or assets disposed of [during the marriage] and not properly accounted for." This statement echoes the views of Judith Prakash J in *Yow Mee Lan v Chen Kai Buan* ("*Yow Mee Lan*") [2000] 4 SLR 466. Prakash J at [69] said:

What the court does is to divide the assets existing at the time of the divorce and assets that were existing at any time prior thereto are not divisible as such. They are only relevant to assist the court in determining whether there has been proper disclosure of the assets presently available for distribution.

14 On the facts of the present case as found by the judge, AKC's inability to account for, *inter alia*, the sale proceeds of the Cable Car business and the various Hong Kong properties were crucial to and formed the basis of the judge's decision to draw an adverse inference against him. That is a separate issue for discussion elsewhere. Reverting to the issue under discussion, I agreed with the judge that there was no legal basis to notionally pool back moneys representing the profits from the sale of properties and rentals collected over the years. With the exception of moneys deposited with OCBC Bank, New York, counsel for AKC, Ms Susan Siaw, did not identify any other asset as representing the accumulated rental and net sale proceeds. Apart from the properties disclosed (see [11] above), AKC had earlier asserted that HKJ also owned other properties in London, Singapore and Australia, an assertion she roundly rejected. It was plain that AKC was not able to substantiate his bare allegation, which appeared to have had its origin in rumours and gossip.

15 In addition, the judge found that the sale proceeds and rental income were from time to time applied towards payment of existing mortgages, overdrafts and property-related expenses as well as

the family's expenses. Whilst AKC remitted funds over the years to HKJ, counsel for HKJ, Ms Ellen Lee who was assisted by Ms Bernice Loo, explained (and this was accepted by the judge) that the bulk of the funds sent by AKC were mostly for property purchases, leaving a total sum of \$250,000 for the family's expenses. AKC did not controvert the explanation that the family's expenses were substantial, particularly after 1985 when the son attended boarding school in England, followed by the daughter in 1990. It was common ground that the landed properties in Singapore were registered in HKJ's name as she was a Singapore citizen. Consequently, the loans and overdrafts for the properties were in HKJ's sole name. She had to service the bank borrowings as well as pay for the upkeep, maintenance and repairs of the investment properties. Those obligations were discharged utilising the rentals from the various properties and sale proceeds. As the judge rightly observed:

[68] By and large after 1985, HKJ was left to manage the expenses of herself and the children as well as the upkeep and the bank debts of the properties on her own.

Besides, an equal division of net sale proceeds and rental income as argued for by AKC would result in double counting inasmuch as the same funds were used to acquire and maintain the properties that were already before the court for division.

16 Notably, AKC had never in the past called on HKJ to account for his share of the proceeds or the sums she had spent on the family and the properties in her name. Having reviewed the evidence, I saw no reason to disturb the judge's evaluation of the level of trust and cooperation the spouses extended to each other, particularly, on money matters. The judge held:

[28] When the marriage was ongoing and the relationship was good, the parties remitted sums to help each other with their acquisitions whenever the need arose. The happier years of their marriage up to at least 1994 was marked by this level of co-operation and trust between them on money matters. Investments had been bought and sold for the common good, sums ploughed back for other investments and living expenses, and the parties themselves had not distinguished whether the funds were his money or her money or asked each other to account for the sale proceeds.

17 AKC's arid demand for his share of the past rentals spanning many years was rightly rejected by the judge who saw it as an afterthought just as the court did in *BJ v BK* [2004] SGDC 87. In that case, the district judge at [15] criticised the husband's attempts to do so in words that are equally applicable to the present case:

If the balance of the rentals collected was not intended as maintenance for the wife, the husband would have asked for his share at the time, or soon after, the rentals were collected. That is what anyone with a genuine claim would have done in the ordinary course. That the husband should seek an account of the rentals collected, dating back 10 years, after the parties are divorced and the apartment sold, appears to me to be in the vein of an afterthought.

Division of assets in HKJ's name

Equal division

18 This case started off no different from the next as to how the matrimonial assets of the spouses should be divided. The problem was that AKC's assets were not known. It was AKC's case that he no longer had any assets in his name, had many unpaid debts and was without income as he had yet to re-establish his business. He was not the successful businessman he once was. AKC sought an equal division of matrimonial assets in HKJ's name. It was AKC's case that he provided the

funds for the property investments.[\[note: 3\]](#) He stated:

Virtually all of this wealth was acquired by way of my money, money that I had earned by working overseas. The whole accumulation of wealth was based on the fact that by working overseas, I could build a business to make money for property investment. My money would start the investments, and mortgages would be financed both by me and the rental income. When the properties were sold, the profits would pay off the mortgages and finance further purchases. Where additional finances were required, I supplied them.

19 In the case of direct financial contributions to the purchase of the landed properties at 24 and 41 OTH and the Mews in London, the judge accepted AKC's testimony that he remitted in percentage terms, 36%, 53% and 100% respectively of the purchase price.[\[note: 4\]](#) As for the rest of his testimony, as between HKJ and AKC, the judge was less than impressed with the evidence of AKC. She remarked:

[45] ... I observed from the whole of [AKC's] affidavits that he had a tendency to exaggerate and in certain instances his evidence was calculated to mislead.

The judge came to that conclusion in the first instance of an equal division of the matrimonial assets, but increased HKJ's percentage share of the matrimonial assets to 70% on account of AKC's failure to give full and frank disclosure of his assets. An equal division of the matrimonial assets in HKJ's name was based on the parties' contributions (both financial and non-financial). The judge's findings and conclusions based on authorities cited in her written grounds were as follows:

[171] The facts of the present case bore some similarities to [*Yow Mee Lan v Chen Kai Buan* [2004] 4 SLR 466]. Like Yow's case, the parties here had built up the family wealth over the years. The Petitioner here, like the husband in Yow's case, was the main income-earner. His industry and enterprise enabled large sums to be paid for many of the property purchases made after the Cable Car business became successful, which in turn financed the lifestyle of the family. *The Respondent played a supporting role by looking after the family and managing their property portfolio.*

...

[173] Here, the Respondent's contributions to the marriage were made consistently over a long period of time as well. *She had contributed substantially towards the welfare of the family. She was the primary care-giver of the children in their earlier years. Despite their being sent to boarding school in their teens, the Respondent continued to visit them regularly and tend to them.*

[174] In [*Wong Ser Wan v Ng Cheong Ling* [2005] SCHC 218], the wife's main contribution was in taking care of the family, and she had been awarded 40% of the assets. *Here [HKJ] had additionally played an active and direct part towards the enhancement of the family wealth.*

...

[177] This was a very long marriage of 32 years, a good number of years longer than the marriages in the three cases cited previously. *HKJ had contributed in different ways from the Petitioner, but her contributions were no less significant...* Nonetheless, *taking a broad brush approach, I would have awarded the respondent a 50% share of the assets she had been managing all these years and a smaller percentage of the other matrimonial assets built up by*

the petitioner outside Singapore.

[Emphasis added].

20 The importance of the different contributions made by the spouses during their marriage has been recognised by the courts. The outcome of the division ought to be as fair and equitable as possible in all the circumstances. Even if the judge had reached the opposite conclusion that HKJ did not use her savings to help acquire 37 OTH, her efforts at creating, enhancing and preserving the family fortune was no less significant. Such contributions have traditionally been given recognition as non-financial contributions in cases like *Ryan v Berger* [2001] 1 SLR 419 and *Yow Mee Lan*. In the former case, an equal division of the matrimonial assets was ordered as the parties started off being “equal partners” both in the business and at home, and notwithstanding the arrival of their first child, the wife continued to identify and work on property investments for the benefit of the family. The court at [27] stated:

It was apparent that the parties had treated their relationship as both a domestic and a business partnership until the circumstances changed and the wife had to take on a more domestic role when she became a mother. Even then, however, she continued her efforts to contribute towards the maintenance and growth of the family assets by identifying and working on property investments for the benefit of the family. Some of these investments were undertaken by the company (at the date of the hearing below, the company owned some five real properties) while others were purchased in the names of the parties or by the wife’s property investment company. The wife’s position was that all profits as well as losses of her property investments were credited or debited as the case may be to the parties’ joint accounts and used to make further investments. It should be noted that up to the time of separation, the wife did not have her own bank account.

21 In the same vein, Prakash J in *Yow Mee Lan* at [42] to [44] observed:

To summarise, the marriage was a long one. The husband was the main income earner. The wife looked after the home and children and played a supporting role in the family business owned by the husband. It appears that she did not have either the knowledge or the talent which the husband did and could not herself have produced the substantial income he was able to generate. In these circumstances, what would be a just and equitable division of the assets? The District Judge placed great emphasis on the husband’s role as the income generator and considered that he should therefore have a major share of the assets.

With due respect, that approach no longer accords with the legislation which takes a wider view. It recognises that a marriage is not a business where, generally, parties receive an economic reward commensurate with their economic input. It is a union in which the husband and wife work together for their common good and the good of their children. Each of them uses (or should use) his or her abilities and efforts for the welfare of the family and contributes whatever he or she is able to. The partners often have unequal abilities whether as parents or as income earners but, as between them, this disparity of roles and talent should not result in unequal rewards where the contributions are made consistently and over a long period of time.

In the present case, the wife contributed to the best of her ability both to the maintenance of the family and to the business. She provided essential backup on which the husband could rely. He was able to travel for long periods safe in the knowledge that both his home and his business were in reliable hands. No doubt someone else could have done the administrative work in Plymat which the wife did (the husband was at pains to denigrate her work as being merely clerical) but

with someone else in charge, he would not have had the assurance that in the office his interests would not be undermined.

Although the wife's contributions to the business in *Yow Mee Lan* were less direct, the judge nevertheless took them into account (for the reasons stated), in awarding her an equal share of the matrimonial assets based on her indirect contributions.

22 Significantly, the recent case decision of the Court of Appeal in *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR 520 went further. The appellate court recognised as direct financial contribution the efforts and ability of the homemaker in the accretion of the family wealth, and that tangible accretion, in turn, increased the value of the matrimonial assets available for division. In that case, the marriage was a long one lasting approximately 30 years. The appellant was a housewife and looked after the welfare of the home and the children of the marriage. The parties did not dispute that the wife made little or no direct financial contribution to the acquisition of the matrimonial home and other assets. In fact, the substantial investments in her name (*ie* exceeding \$500,000) were funded by the husband, in that she had used the moneys given to her for household expenditure and groceries sparingly and proceeded to invest the rest for the benefit of the family. In contrast, the husband, despite being a successful banker and holding the position of Vice President in a few regional banks, was noted to be a "poor investor or saver" and had only accumulated a mere \$230,000 "after almost a lifetime of work" (according to his disclosed assets). The Court of Appeal in reversing the trial judge's award of 60% for the husband and 40% for the wife had considered the wife's savvy investment acumen as a direct financial contribution to the accumulation of the family wealth, which entitled her to a half share of the matrimonial assets. The appellate court noted at [41]:

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

23 Likewise, the matrimonial assets in HKJ's name, the subject of division, were created and built up over the years through HKJ's foray into the property market, her industry and astute management of the properties acquired during the marriage and all that constituted her direct financial contribution towards the creation and accumulation of the family fortune. I must add that her role as investment manager of the properties in her name increased the value of the matrimonial assets available for distribution. Her acumen in buying old houses at choice locations and flair for renovation were pivotal to and did contribute substantially to the spouses' successful foray into the local property market and the profits made generally, and in particular, from the sale of 24 OTH, which were ploughed back to finance further acquisitions (reducing overdrafts in respect of existing properties and acquiring one further property such as The Sierra in 1997). HKJ also appeared to have been successful with her investments in London and Canada which had over time appreciated in value. The properties were purchased in her sole name and the loans and overdraft were in her name, such that she assumed the financial exposure in relation to the funding of the investments.

24 Whilst, staking his claim to the assets in HKJ's name on the basis that the properties existed only because he paid the down payments, AKC, nonetheless, acknowledged HKJ's contributions to the

family and family fortune. He said:[\[note: 5\]](#)

She of course played a significant role in bringing up the children, investing our money and maintaining our properties, but I started it, I financed it and determined the direction in which the investments should go. At a later date it seems she sold some of the properties without my knowledge and made other investments, but it could only have been with our joint assets.

25 Continuing, AKC maintained:[\[note: 6\]](#)

It was the profits on 24 and 37 [OTH] that created the investment possibilities to create our wealth and the rental income on 41 and 24 [OTH] as well as overseas properties that sustained and increased the wealth.

26 HKJ rejected AKC's claim as an exaggeration that he determined the direction of the investments. She maintained that she alone managed the investments.[\[note: 7\]](#) Furthermore, it was out of character for AKC to concern himself with renovations and maintenance of the properties. In my judgment, HKJ was solely in charge of managing the properties in her name, renovations and their upkeep including the maintenance of the family from the rentals. When her finances were tight, she moved out of 41 OTH in 1991 and rented it to generate rental income. In my judgment, HKJ was a homemaker but she still played a markedly valuable part in the accretion and accumulation of the family fortune. HKJ was clearly entitled at the least to an equal division of the matrimonial assets even if, for the sake of argument, there were no findings by the judge (or the judge had erred in her findings) that HKJ had used her savings to help acquire the landed properties and that the cash portion of the acquisitions had all come from AKC. The recent decision of the Court of Appeal in *Lock Yeng Fun v Chua Hock Chye* gave recognition to the homemaker who had created and enhanced the family wealth available for division through her acumen and astute investments. In my judgment, through HKJ's industry and ability, the investment properties increased in number and their value appreciated over the years. In contrast, AKC said he had nothing to contribute to the pool of matrimonial assets as the assets in his name were allegedly all gone. He was no longer the successful businessman he once was and was living on borrowed money from family and friends.

27 Separately, it was incontrovertible, and AKC accepted that HKJ had made non-financial contributions by looking after the welfare of the two children, without the support of the husband as he had been working in Hong Kong for most of their growing years. There is evidence in 1990 that she even wrote out the text of the letter for AKC to send to their son. She also reminded AKC to send a birthday card to the daughter. AKC's good opinion of his children, their accomplishment and personalities as he saw them was an example of the value of HKJ's work in caring for the children.

28 HKJ had also been supportive of the husband. By way of illustration, she allowed the overdraft facilities secured on the Greenville property to be increased for the husband's business ventures. When AKC defaulted on the payments on the overdraft and the bank threatened to foreclose, HKJ drew on her own overdraft facilities to stave off the foreclosure and a mortgagee's sale.

29 In the light of all these factors taken in combination and drawing parallels with the cases referred to above, even though AKC had contributed financing for some of the properties, the judge favoured an equal division of the existing matrimonial assets for her contributions to both the welfare and wealth accumulation of the family. I saw no reason to disturb the judge's assessment even though I might have awarded HKJ a 60% share of the matrimonial assets based on her direct financial contributions and non-financial contributions. Oftentimes, it has been said that the division of matrimonial property is not based on any mathematical exercise (see *Lock Yeng Fun v Chua Hock Chye* at [33]), but rather an application of discretion having regard to all the circumstances of the

case to arrive at a just and equitable outcome. In any case, no adjustment was needed in the light of the approach taken by the judge in awarding HKJ a higher percentage share on account of AKC's withholding information on his assets.

Adverse inference and its impact on the proportion to be awarded to parties

30 Having reached the point of an equal division of the matrimonial assets in HKJ's name, the judge nevertheless increased her share by another 20%. The judge found that AKC had withheld information on his assets and her reasons for awarding HKJ a larger percentage share of the matrimonial assets were as follows:

[181] ... I was of the view that as the Petitioner had not disclosed his assets and that these assets were substantial, it would not be equitable for him to share equally in the Respondent's disclosed assets while he kept his undisclosed assets for himself. In the circumstances I awarded the Respondent a 70% share of her disclosed and ascertainable assets.

31 On AKC's withholding information on his assets, the judge set out in extended form her findings:

[178] I drew adverse inference against the Petitioner. He had not made full and frank disclosure of his assets, and he had among other things failed to satisfactorily account for the bulk of the sale proceeds of the Cable Car business. He had also made crafty attempts to paint a misleading picture of his financial position. I was of the view that he was stonewalling the Respondent by claiming to be living on borrowed monies.

[179] The Petitioner's non-disclosure stood on a different footing and scale from the Respondent's. Whatever assets the Respondent had not disclosed or accounted for could be traced to their property investments as she did not have any independent source of substantial income apart from the properties.

[180] The Petitioner on the other hand was a businessman, and he had business dealings in Hong Kong, China and Vietnam. It was not possible to put a figure on how much his assets were, but even taking into account any business set-backs he may have had, I believed that his undisclosed assets were substantial. He had not satisfactorily explained what happened to the large capital sums he received from the sale of the Multi Sectors shares and the disposal of his other assets, aside from any other undisclosed assets or income he acquired through his other dealings in those many years after the Cable Car business was disposed of. He had been based in Hong Kong all these years engaged in business. He had family and friends there, and he could easily have parked his assets with them or arranged his financial affairs to avoid discovery.

32 The nub of the issue before me was whether the evidence, on analysis, supported the judge's reasons for drawing an adverse inference. I should state that it was open to the judge to draw adverse inferences if there had been withholding of information as was the case here. That is a material consideration in the context of the exercise of discretion under s 112 of the Women's Charter (Cap 353, 1997 Rev Ed). The court's power to divide matrimonial assets embodied in s 112 is premised on the parties' duty to provide full and frank disclosure of the assets acquired throughout the course of the marriage. Without proper disclosure of all matters relevant to the assessment of the financial position of the parties, the court will have difficulty arriving at a just and equitable division of the matrimonial assets. This paramount duty was described by Karthigesu J (as he then was) in the case of *Wee Ah Lian v Teo Siak Weng* [1992] 1 SLR 688 at 698-699 in the following terms:

[T]he position in law is that full and frank disclosure is important and in its absence, the court is

entitled to draw adverse inferences to the husband (in this case) as to his capacity or faculties and to treat him as a man in a position to command a very substantial income.

33 I also fully adopt the observations of Otton LJ in *Baker v Baker* [1996] 1 FCR 567 at 576 on the importance of disclosure for a proper division of matrimonial assets:

[T]here is a duty upon a party in proceedings such as these to make a full and frank disclosure of all matters relevant to the assessment of the financial position of the parties and the relief to which a spouse is entitled. The integrity of the legal process would be severely undermined if a party were permitted (and seen to be permitted) to evade that duty by a deliberate and stubborn refusal to make such disclosure to the other party and, more important, to the court.

34 The non-disclosure, and any inference drawn, has to be a matter which can properly be taken into account in arriving at a fair and equitable division. Needless to say, before drawing any inference, adverse or otherwise, there had to be some evidence pointing towards the inference to be drawn. What weight was to be attached to these factors is entirely for the court to decide. The standard of proof of non-disclosure in ancillary matters is the normal civil standard of proof on a balance of probabilities (see *Al Khatib v Masry and others* [2002] FCR 539).

35 Although there is no blanket rule in relation to the courts' powers upon drawing an adverse inference (see *NK v NL* [2007] SGCA 35), as the cases illustrate, there are two possible ways of giving effect to an adverse inference drawn against a party to the proceedings. The first approach is for the court, pursuant to the adverse inference, to go on to determine the value of the undeclared asset. In *Tay Sin Tor v Tan Chay Eng* [2000] 2 SLR 225, Kan Ting Chiu J at [18] held:

An adverse inference was drawn against the husband that he has not disclosed all his assets. The District Judge should not stop after drawing the inference and should have gone on to determine the value of the undeclared assets. This cannot be done with precision because it springs from a lack of information, but nevertheless, a value should be inferred from the information available and it is for the party who is dissatisfied with it to show that it is unreasonable. This has to be done so that a value for the undisclosed assets can be included in the division. As matters stand, it is not known how much unaccounted assets the husband was deemed to have, and how that influenced the eventual decision.

36 The other approach to giving effect to the adverse inference drawn against a spouse is to order a higher proportion of the known assets to be given to the other spouse. In *NK v NL*, there was no explanation proffered by the husband as to what happened to the particular amount in question (a considerable sum of \$2.7 million) warranting an adverse inference against him. In the circumstances, the Court of Appeal held that it was more just and equitable (and practical) to order a higher proportion of the known assets to be given to the wife.

37 Moving on to Ms Siaw's arguments, her first point was that AKC was not hiding any assets and that the findings of fact against him, which eventually led to the drawing of the adverse inference, were misconceived. This was an argument that was premised purely on AKC's assertion that he did not have any assets or own any property in Hong Kong or elsewhere. [\[note: 8\]](#) I would only be minded to disturb the judge's findings, if AKC managed to persuade me that the said findings were manifestly wrong. Second, Ms Siaw submitted that in any event (notwithstanding AKC's alleged non-disclosures), the judge had failed to give due consideration to HKJ's non-disclosures of all assets and sale proceeds in her name and argued that as a result of this, the adverse inferences against both parties neutralised each other.

38 The approach which the judge had taken by awarding a higher percentage share of the matrimonial assets to HKJ on account of AKC's withholding of information was not flawed. For division, all matrimonial assets were to be pooled but this was difficult as the judge found that there was non-disclosure of AKC's assets. The judge considered the factors set out in s 112 in so far as they were relevant. As stated, the question before me was whether the adverse inference drawn against AKC was justified on the facts. In relation to the sale of the shares of the Cable Car business (effected via sale of the shares in Multisectors), the judge held:

[109] I was of the view that the petitioner had deliberately made selective disclosure of the sale and purchase agreement to bolster his claim that the entire Cable Car group was only sold for \$20.3 million.

39 On his part, AKC merely noted that the first tranche of shares was sold for HK\$20.3 million. The remaining 2998 shares were retained by him, until the company was wound up subsequently in 2001. Hence, he claimed to have received a total of HK\$20.3 million (and not the HK\$33-35 million figure supplied by HKJ and relied upon by the judge) for all his shares in Multisectors. Out of the HK\$20.3 million, AKC said that his entitlement was HK\$10 million as the other half went to his family members who had loaned him money to buy over the Cable Car business in the early days. AKC's arguments at the court below (which the judge helpfully summarised from [99] to [111] of the written grounds) displayed his tendency to vacillate between inconsistent positions. To illustrate, AKC, at the outset, contended that all the shares were sold (in one tranche). He then changed tack, when HKJ discovered that he had retained 2998 shares, saying that he held some shares back after 1989 and Lucky Chain (the buyer of the first tranche) asked him to sign the shares over to them, pending a sale on a third party. Thereafter, he submitted that no buyer was found until 1991, when the company was wound up and accordingly, he did not receive any consideration for these shares. As the judge observed at [107] of the written grounds, the notes (for the transfer of shares) that AKC had enclosed in his affidavit did not lend credence to his version of the facts. First, the note was unsigned and the sale consideration left blank. Second, the named purchaser was "Multi-ways Investments" and not Lucky Chain as AKC had sought to argue. Third, the company searches indicated that when Multisectors was wound up, Multi-ways was the registered owner of 3001 Multisectors shares, which was contrary to and inconsistent with AKC's allegation that (i) Lucky Chain had never found a buyer for his remaining 2998 shares, and (ii) the sale and transfer of the aforesaid shares had not been completed prior to the winding up of Multisectors and thus rendered his remaining shares worthless.

40 There were other material inconsistencies in his testimony which AKC did not explain away and they stemmed from the want of full and frank disclosure. For instance, AKC claimed that he was not the sole shareholder of Multisectors and that his family members as in his mother and siblings were shareholders of Multisectors. Instead of producing a company search on Multisectors, he exhibited a company search on Amber Development Limited. Eventually, HKJ caused searches to be made in Hong Kong on the shareholders of Multisectors. As at 31 December 1988, AKC was the major shareholder of Multisectors with 9998 shares and two other individuals, Ronald Ho Woon Ching and Au Kin Wai held one share each. On 16 March 1989, Au Kin Wai transferred his one share to Au Kin Yau. On 6 April 1989, AKC transferred 7,000 shares to Lucky Chain Investment Limited. In addition, in the extract of the Agreement for the Sale and Purchase of Shares in Multisectors, AKC as vendor was identified as the beneficial owner of the shares to be sold. AKC did not explain this important discrepancy and his claim that half of the sale proceeds of HK\$10 million belonged to his family members must be discredited. Naturally, he had not accounted for this HK\$10 million of the sale proceeds. He also claimed that he sold the two units in Vincent Commercial Building for a profit of HK\$500,000 and bought with a mortgage one factory unit in Westland Centre. He did not provide details of the purchase price of the Westland Centre property and the amount of the mortgage and what was left

vague was the question of whether the profit of HK\$500,000 was used to pay for the Westland Centre property. He subsequently disclosed that the Westland Centre property was owned by Multisectors and this property was sold along with the shares in Multisectors to Lucky Chain. However, that was not the case on an examination of the Hong Kong Land Register which showed that Multisectors sold the property to Man Shing Development Enterprises on 23 January 1995 for HK\$6.2 million. Notably, this 1995 sale took place more than five years after the sale of the Cable Car business to Lucky Chain in 1989. [\[note: 9\]](#) As for AKC's assertion that the property was not vested in him but registered in the name of Multisectors, his disclaimer was facile. The court can pierce the corporate veil and disregard corporate ownership. The court can and will adopt this approach even where there are minority interests (and in this case there were two shareholders with one share each) involved if they are such that they can for practical purposes be disregarded. Another instance of non-disclosure concerned his claim that Flat D, 18th Floor, Sung Fung Mansion, Harbour Heights, Fook Yim Street, North Point, Hong Kong was rented accommodation. This claim was not substantiated despite repeated calls for AKC to produce the tenancy agreement but he chose not to do so.

41 As for AKC's allegations that he was currently unemployed and living on borrowings, the judge had this to say:

[118] He gave a hollow account of what happened to the fortune he made from the sale of Cable Car business. He said that aside from his living expenses over the years, he had some business ventures that failed. He also cited the 1998 economic crisis to support his claim that he had lost everything.

[120] The 1998 economic crisis seemed to be a convenient excuse. When the Cable Car business was sold, the petitioner was barely in his mid-40s and until 1998, when the economic crisis hit, he would have had some nine good years in Hong Kong. He had chosen to remain based in Hong Kong all these years after the Cable Car business was sold, presumably because there was business to be done.

42 The judge did not believe AKC's unsubstantiated assertion that "*he had barely enough success to make ends meet and as time progressed, it got worse.*" AKC's attempt to raise identical arguments before me, did little to advance his case. I agreed with the judge's findings on AKC's finances at the time of the divorce and her disbelief that AKC was living on credit lines. The judge held:

[146] I observed that from 1998 when the petitioner said the marriage broke down irretrievably until the time he filed the divorce petition in 2003, there was a good 5 years for the Petitioner to plan and arrange his financial affairs if divorce had been on his cards. The petitioner had been generally reluctant in his disclosures, and when he did disclose, they were selective disclosures that would bolster his claims. The numerous cash advances he obtained seemed to be self-serving and contrived to support his claim that he was living on borrowed monies. The alleged loans from his family and friends were a convenient tool to explain away any sums that could be attributed to his means or disposal. There was a certain calculated deliberateness in the amounts and the dates in which he supposedly obtained loans and he had not explained why he needed those particular amounts at those times.

...

[153] I rejected the Petitioner's claim that he had used up all these sale proceeds [received for the two factories] for his living and other expenses as well. Looking at the background of what

had taken place at that time and quite aside from his failure to account satisfactorily for what he did with all the Cable Car sale proceeds, I observed that just prior to the sale of the 1st factory unit in 1999, the Respondent had in 1998 remitted the Petitioner HK\$1,150,000 as his share of the Greenville [sale] proceeds. Additionally, he had kept HK\$500,000 from the sale of the 2nd car park lot for himself. There were also the large unexplained withdrawals from his bank accounts.

[154] In fact looking at the totality of all the capital sums he had received from the sale of the Multi-Sector shares, the disposal of his assets and the remittances received from HKJ and the sums run up against the Greenville overdraft, the Petitioner had sizeable monies at his disposal. The capital sums alone would have earned him a reasonable return if they were left in passive investments. It was hardly credible that he would have the need to eat into the capital sums to fund his living expenses as he claimed.

43 AKC challenged the findings on the basis that he had produced all documents in his possession that were relevant to the present case. As with the above findings, I saw no basis to disagree with the findings in light of the analysis undertaken by the judge. It was said that the documents produced were selective and, in turn, the information disclosed was also selective. It is useful, for present purposes, to refer to the Statements of Accounts purportedly for the sale of the two factory units in Unison Building, Hong Kong. The judge had examined the Statements of Accounts and had found the information there misleading. [\[note: 10\]](#) In addition to the judge's reasons, the Statement of Accounts for the sale of the unit on the 13th Floor did not disclose the purchase price. It merely revealed the balance of the purchase price payable. The Statement of Account for the sale of the unit on the 10th floor is more interesting for it disclosed an unusual feature of the sale in that HK\$700,000 of the balance purchase price was to be paid by instalments after completion. This raised questions about the sale such as who was the buyer and whether it was a genuine arm's length transaction to an unrelated party. In addition, no details as to the number of instalments were given. AKC was no doubt an intelligent person and shrewd businessman who had in the ancillary hearing sought to perpetuate the impression that his financial cupboard was bare. If that was indeed the truth, he would have had no difficulty providing complete documentation, but the converse appeared to have occurred.

44 As regards the contention that the judge failed to consider HKJ's non-disclosure of some assets/profits derived from the sale of properties in her name, I dismissed it as wholly unmeritorious. In subsequent affidavits, HKJ made good her initial non-disclosures which were traceable to the properties in her name as she had no separate independent source of income in contrast to AKC's situation.

45 The judge's approach of awarding a higher proportion of the existing assets to HKJ was not only in accordance with principle and a proper exercise of discretion it also served to achieve a just and equitable division of the assets. The fact that AKC was resident in Hong Kong and his assets were situated outside Singapore also weighed on the judge's mind in deciding to award a higher proportion of the existing assets to HKJ. The judge observed at [179] of the written grounds (referred to in [31] above) that having friends and family there, "*he could have easily parked his assets with them or arranged his financial affairs to avoid discovery.*" She drew the conclusion that AKC did not want the court to know his true financial position. In my view, there was sufficient evidence before the judge which clearly entitled her to come to that conclusion. I heard nothing to persuade me to take a different view. Ms Siaw did not at the appeal show that the adverse inferences were unreasonable in that no judge faced with the evidence could have drawn the inferences or awarded the extra 20%. In short, AKC had not succeeded in demonstrating that the 20% uplift was unreasonable or unjustified.

Conclusion

46 For these reasons, I dismissed the appeal with costs fixed at \$8,000.00.

[\[note: 1\]](#)AKC's affidavit dated 22 June 2005 para 15 and 41-45

[\[note: 2\]](#)Para 64 of written grounds

[\[note: 3\]](#)AKC's affidavit dated 23 July 2004 at para 8

[\[note: 4\]](#)Paras 53 and 64 of the written grounds

[\[note: 5\]](#)AKC's affidavit dated 10 February 2004 at para 7.

[\[note: 6\]](#)AKC's affidavit dated 10 February 2004 at para 68

[\[note: 7\]](#)HKJ 's affidavit dated 22 April 2004 at para 9

[\[note: 8\]](#)AKC's affidavit dated 3 December 2003 at paras 12 and 13

[\[note: 9\]](#)ACK's affidavit dated 22 June 2005 at para 9 and pages 8 and 9; HKJ's affidavit dated 29 July 2005 at para 25

[\[note: 10\]](#)Paras 151 to 152 of written grounds