# UDS *v* UDR
# [2018] SGHCF 3

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| **Case Number** | : HCF/District Court of Appeal No 55 of 2017 and HCF/Summonses No 377 of 2017, 24 and 26 of 2018 |
| **Decision Date** | : 31 January 2018 |
| **Tribunal/Court** | : High Court |
| **Coram** | : Choo Han Teck J |
| **Counsel Name(s)** | : Gill Carrie Kaur, Yoon Min Joo and Phoebe Sim Shi Hui (Eversheds Harry Elias LLP) for the appellant; Vinit Chhabra (Vinit Chhabra Partnership) for the respondent. |
| **Parties** | : UDS — UDR |

*Family Law – Matrimonial assets – Division*

*Family Law – Maintenance – Child*

31 January 2018 Judgment reserved

**Choo Han Teck J:**

1 The parties were married for 13 years before their marriage broke down in 2013. The appellant is 45 years old and was last employed as a director of a technology company during the marriage. He is now a freelance consultant. The respondent is 37 years old and was primarily a homemaker during the marriage. She now works as a consultant. The parties have two sons, one aged 10 and another aged 14.

2 The appellant raises four issues on appeal. First, that the court below erred in finding the ratio of indirect contributions to be 70:30 in favour of the respondent. Second, that the court below erred in giving the respondent a 5.5% uplift in the division of matrimonial assets, in the light of an adverse inference drawn against the appellant. Third, that the court below erred in not taking into account the needs of the children in the division of matrimonial assets. Fourth, and as an alternative to the third submission, that the court below erred in not ordering the respondent to provide maintenance for the children.

3 The court below found that the ratio of indirect contributions was 70:30 in favour of the respondent for the following reasons. First, the appellant, as the sole breadwinner, had enabled the family to live comfortably. Second, the respondent made many sacrifices in her career to care for the children and manage the home, which in turn allowed the appellant to work and maintain an active social life. Third, although the appellant had been caring for the children since the respondent left the matrimonial home in 2013, it was the hostile environment created by the appellant which drove the respondent to leave. The respondent claimed that after she confronted the appellant about his infidelity he began to treat her badly and turn the children against her.

4 The decision of the court below on the indirect contributions of the respondent, given the overall circumstances, is slightly on the high side. However, the ratio awarded is not so high as to warrant variation by this court. Nevertheless, it has a bearing on the third and fourth submissions, as will be elaborated on below.

5 As to the second submission, the court below drew an adverse inference against the appellant on account of his deliberate concealment of the sale proceeds of the matrimonial property. The property was sold for a net profit of about $1.37m, of which $1.2m was transferred by the appellant into a joint account with his father, without the knowledge of the respondent. Over the course of about a year and a half the appellant made several large withdrawals; some to the extent of $300,000. The appellant claimed that these sums were used to repay loans from his father, and as loans to friends and family associates. Despite his claims, the appellant was unable to account for $81,000 of the $1.2m. The court below thus drew an adverse inference against the appellant, and awarded the respondent a 5.5% uplift. The average ratio for division of the matrimonial assets was thus adjusted from 63.5:36.5 in favour of the appellant, to 58:42 in favour of the appellant.

6 Counsel for the appellant submitted that the court should have given effect to the adverse inference by notionally adding the $81,000 to the matrimonial pool, instead of by giving the respondent an uplift. I agree. Adverse inferences are meant to fill in gaps caused by non-disclosure. In the present case, there is no gap concerning the value of the non-disclosed asset. It is thus not necessary for the court to speculate on the value of the non-disclosed asset by awarding an uplift. Instead, all that is required to give effect to the adverse inference is to notionally add the value of the non-disclosed asset to the matrimonial pool.

7 On the third and fourth submissions, the court below did not expressly take into account the children's needs in the division of matrimonial assets. The court also did not order the respondent to provide maintenance for the children, who are under the sole care and control of the appellant. The judge found that it would be better to do away with regulation by the court, and instead, for the respondent to spontaneously provide reasonable maintenance (as she had already been doing) during access sessions. The judge noted that the appellant was a resourceful man, as evidenced by his gross income of about $22,580 per month during the marriage.

8 Counsel for the appellant submitted that the order for no maintenance is contrary to the principle of joint parental responsibility. Counsel for the appellant further submitted that the court below, in relying on the respondent's expenditures during access sessions, failed to consider the apportionment of non-day to day expenses, such as education, medical, dental, and insurance expenses.

9 Counsel for the respondent submitted that the respondent has been spontaneously providing reasonable maintenance to the best of her ability, to the extent that she has resorted to taking loans from her mother and friend in order to provide for the children. Counsel for the respondent further submitted that the respondent has been giving the children pocket money and transport fare, in addition to the expenditures during access sessions.

10 I agree with the submissions of the appellant. I do not doubt that the respondent has been dutifully taking financial responsibility for the children. However, as noted above, the respondent has been awarded a higher than usual ratio for her indirect contributions. Further, I take into account the respondent's capabilities and resourcefulness. Soon after leaving the matrimonial home in 2013, the respondent gained employment as a personal assistant, drawing a salary of $1,800 per month and has since been employed as a consultant, drawing a salary of $4,800 per month. In the circumstances, it is fair for the respondent to provide maintenance for the children.

11 Counsel for the appellant submitted that the respondent ought to pay $1,100 per month as maintenance for both of the children. Counsel for the respondent accepted that a reasonable sum commensurate with the respondent's income would be $1,259.16 per month. I thus order the respondent to pay $800 per month as maintenance for both of the children.

12 In conclusion, the matrimonial pool is to be increased by $81,000, from $1,590,068.60 to $1,671,068.60. The average ratio of direct contributions to indirect contributions is to remain at 63.5:36.5 in favour of the appellant. The appellant is thus to pay the respondent $609,940.04, to be set off against the $46,484.73 worth of assets in the respondent's possession. This works out to $563,455.31. The respondent is to pay $800 per month as maintenance for the children.

13 That leaves me to deal with the three summonses, one of which was filed by the appellant, and two by the respondent. The respondent applied in Summons 377 of 2017 —

> To adduce fresh evidence to refute the Appellant's Appeal, and to set out and/or exhibit the relevant information and/or documents that the Respondent intend *[sic]* to adduce and/or rely on in this regard

in the appeal before me.

14 The evidence sought to be adduced were mainly banking records which showed expenses incurred by the respondent. The respondent claimed that she had in recent months been spending more time with, and hence more money on, the children. There was no objection by the appellant to this application. I made no order as to this application since the appellant was not seriously contesting the claim that the respondent had been spending more time with the children, and his primary argument is that the appellant should contribute towards the major expenses. I have dealt with this in paragraphs 8 and 10 above.

15 The appellant filed Summons 24 of 2018 to strike out parts of the respondent's counsel's submissions on appeal. The respondent reacted by filing Summons 26 of 2018 for leave to file an affidavit stating that her counsel's submissions were true. Both applications are wrong and unnecessary and were, therefore, summarily dismissed. Nothing can be more absurd than to file an application to strike out a submission – except, perhaps, a counter application by the counsel whose submission was sought to be struck out. No one's time and expense ought to be incurred and wasted for that enterprise except the lawyers' own. The proper course of action would have been for counsel to raise her objection or response in her submissions in reply.

16 Counsel for the appellant is to be released from the entire sum of her undertaking as to security for costs. I will hear the parties on costs, if they are unable to agree on costs.