Shih Ching Chia James v Swee Tuan Kay
[2002] SGCA 2

Case Number	: Civil Appeal Nos 600047 & 600056 of 2001
Decision Date	: 10 January 2002
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
Counsel Name(s)	: Goh Phai Cheng (instructed) (James Chia & Co) for the appellant; George Lim (Wee Tay & Lim) for the respondent
Parties	: Shih Ching Chia James — Swee Tuan Kay

Judgment

GROUNDS OF DECISION

Introduction

1. These two appeals before us cap a long and acrimonious dispute relating to the division of matrimonial assets of a former married couple, Mr Chia Shih Ching James ('Chia') and Ms Kay Swee Tuan ('Kay'), upon the dissolution of their marriage. On 9 September 2000, the District Court made an order for the division of matrimonial assets between them. Being dissatisfied with the decision, both parties appealed to the High Court which dismissed both their appeals. Against the decision of the High Court, both parties now appeal.

Background

2. Chia and Kay are both advocates and solicitors. They started their courtship in 1977. In 1978, Kay set up her legal practice under the name and style of S T Kay & Co. Chia was then the head of the legal department in the Inland Revenue Department. In 1981, while still working there, Chia was charged with and was convicted of the offence of cheating under s 420 of the Penal Code. He was sentenced to one day's imprisonment and was fined $3,000. Subsequently, disciplinary proceedings were initiated against him by the Law Society of Singapore, and in September 1984 he was ordered by the High Court to be struck off the roll of advocates and solicitors. In June 1985, however, the order was set aside by the Privy Council on appeal on jurisdictional grounds: see *Chia Shih Ching James v Law Society of Singapore* [1984-1985] SLR 53.

3. Kay stood by Chia during those difficult times, providing emotional, moral and probably financial support. It was therefore no surprise that they were married on 27 July 1983, while Chia was still facing serous problems in his legal career. At that time, Chia's service with the Inland Revenue Department had been terminated and he was apparently without a job. The disciplinary proceedings against him were still pending. After his successful appeal before the Privy Council, Chia joined Kay in her law firm of S T Kay & Co and was made an equal partner of Kay in the firm without any payment. They remained as partners until June 1998, when following the breakdown of their marriage, Chia left the firm and set up a separate firm of his own.

4. Whilst Chia and Kay were together in their legal practice, Chia handled the litigation business and was in charge of the accounts of the firm of ST Kay & Co, and Kay handled the corporate and conveyancing aspects of the practice. Kay was also actively engaged in business, spending a lot of time on her numerous business interests, both locally and abroad. She was a director of many companies, and in some of these she took on executive or managerial roles. In particular, from late

1980 to early 1990, Kay was an executive director of a Malaysian public company, Insas Bhd ('Insas'), whose shares are quoted on the Kuala Lumpur Stock Exchange. Chia and Kay appeared to complement each other well on the professional and business sides; they did well in their legal and other businesses. In the course of their long marriage of nearly 15 years (prior to the breakdown), they amassed substantial assets either in their joint names or singly in his or her own name. Apart from the matrimonial home, 5 Tanglin Hill, which is jointly owned by both of them, each party has his or her own car, CPF monies, bank accounts, club memberships and other assets.

5. The couple have two sons, aged 15 and 11 respectively. The marriage began to turn sour in 1996 and eventually broke down in December 1997, when Kay, together with the two children, left the matrimonial home. On 26 June 1997, Kay filed the petition for divorce based on alleged unreasonable behaviour on the part of Chia. On the same day, Chia also filed the petition for divorce based on alleged unreasonable behaviour and adultery on the part of Kay. Both petitions were hotly contested. On 23 November 1998, the District Court struck out the allegations of adultery in Chia's petition. Subsequently, after several sessions of mediation, the parties agreed, on 22 February 1999, not to contest each other's amended petitions that were based only on unreasonable behaviour. At the hearing of the petitions before the District Court on 12 March 1999, a decree nisi was granted with the following ancillary matters, namely, maintenance, custody and access of children, and division of matrimonial assets being adjourned to be heard in chambers. Agreement was subsequently reached between the parties on the maintenance, custody and access of the children, and only the division of matrimonial assets was contested. In respect of this issue, numerous affidavits were filed by both parties. At the conclusion of the hearing, the district judge ordered, inter alia, as follows:

> (a) that the matrimonial home, 5 Tanglin Hill, be valued by the valuers, DTZ Tie & Leong, on the basis of an open market value as at 9 September 2000;
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> (b) that the property be divided between Kay and Chia in equal shares, and Kay transfer her share and interest in the property to Chia without any payment;
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> (c) that Chia be entitled to 50% of the value of the property free of any encumbrances, and that accordingly, as the property was mortgaged to Oversea-Chinese Banking Corporation Ltd ('OCBC') for securing the joint overdraft account of the parties, Kay pay to Chia the difference between the overdraft balance and the 50% of the value of the property, and that Chia be responsible for the payment of the overdraft account;
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> (d) that Kay pay the amount ordered to be paid to Chia within 9 months, and in the meanwhile pay interest monthly on the overdraft as charged by the bank, and should she default in such payment, the entire sum due is to be paid 'within 14 days of default or 4 months from the date of the valuation report, whichever is the later';
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> (e) that each party keep his or her other assets in their respective names.

The orders made by the district judge on the division of the matrimonial assets were affirmed on appeal by the High Court. The High Court substantially agreed with the conclusion and reasoning of the district judge.

6. The hearings before the district judge and on appeal before the High Court were conducted wholly on the basis of the affidavits filed and the documentary evidence produced. There was no cross-examination of any of the affidavits filed by the parties, and no viva voce evidence was given

by either of the parties or any person on behalf of either party. For this reason, we are in as good a position as the judges below in making findings of fact and drawing inferences therefrom.

The appeal

7. We consider first the appeal by Kay. The issues raised by her centre mainly on the following:

> (a) the division of the matrimonial home, 5 Tanglin Hill, as made by the district judge;
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> (b) the imputed profits or sums of money as having been made or earned by Kay from her dealing in Insas shares; and
>
> (c) the adverse inference drawn by the district judge against Kay for having failed to produce or disclose the bank statements of her account with the branch of Citibank NA in Kuala Lumpur, and the consequential inference by the district judge that Kay had assets in total amounting to $4 to $5 million as at the date of the hearing.

As the division of 5 Tanglin Hill was made on the basis of the assets imputed to Kay and the adverse inference drawn against her by the district judge, we turn first to examine the judge's findings on these matters.

Insas shares

8. One of Kay's main complaints is the district judge's findings on certain holdings of Insas shares. The lots of Insas shares in issue may, for the purpose of clarity, be divided into three groups, namely: first, those shares which are presently held by Kay; second, those shares which were said to have been purchased by Kay and subsequently sold or disposed of; and third, those shares in which, under the Malaysian Companies Act, Kay was deemed to have an interest.

189,150 Insas shares

9. Belonging to the first group is a lot comprising 189,150 Insas shares. These are still held by Kay in her name. The annual reports of Insas showed that, as at 30 June 1996, Kay had a direct interest in 504,400 shares; that, between that date and 30 June 1997, 315,300 shares were sold leaving a balance of 189,100 shares, and that as at 30 June 1998 the number of shares in which she had a direct interest was 189,150 shares. There was probably an error in that the figure should be '189,100' and not '189,150'. Nothing of any consequence arises from this discrepancy.

10. Kay's explanation was this. From time to time, her mother and some of her friends and she herself bought Insas shares, but all these shares (including the 315,300 shares) were later sold and disposed of. The remaining 189,150 (or 189,100) Insas shares, which are still held in her name, belonged to the broker, Peter Leow Thang Fong, to whom she had given the shares in payment for the work done by him on behalf of her family. This explanation was not accepted by the district judge, who found that the 189,150 (or 189,100) Insas shares belong to her legally and beneficially. We agree with this finding.

11. The value of this lot of shares is comparatively small. It is common ground that at the date of hearing, i.e. 18 July 2000, the price for the Insas shares was only 36.5 cents per share and accordingly the total worth of the 189,150 shares was $69,000 (rounded to the nearest $1000). This was also the finding by the district judge: see 46 of her grounds of decision.

2.425 million Insas shares

12. Within the second group of Insas shares were three lots of Insas shares: the first lot comprising 2.425 million Insas shares; the second comprising 3.5 million Insas shares; and the third comprising 315,150 Insas shares. We consider first the lot of 2.425 million Insas shares. It was alleged by Chia that these shares were purchased and sold by Kay through the company, Dasarmas Sdn Bhd ('Dasarmas'), and he imputed a sum of $3.639 million as the proceeds from the sale of these shares. He imputed these sale proceeds by taking the price of $1.501 per share based on the average closing price of the shares on the Singapore Stock Exchange for the period from 1 November 1993 to 10 November 1995. Chia further said that the amount of proceeds of sale was banked into Kay's account with Citibank NA in Kuala Lumpur. There was, among other things, an agreement exhibited by him which showed that Dasarmas purchased 1.85 million and 3 million Insas shares (totalling 4.85 million shares) at RM0.50 per share from Perwira Habib Bank Malaysia Bhd on 31 May 1990. The share capital of Insas was said to have been subsequently reorganized by the consolidation of two shares of RM0.50 each into one share of RM1.00 each, and hence the 4.85 million Insas shares had become 2.425 million shares. Documents were also exhibited which showed that Kay had issued a guarantee in the sum of RM1.5 million for payment of the shares under the agreement. The district judge appeared to have accepted Chia's allegations. She said at 51 of her grounds of decision:

> 51 … I believed Chia that there was such a purchase in view of the agreement exhibited by Chia. Kay did not exhibit any document to support her allegation that the sale was aborted and did not explain why the sale to Dasarmas was aborted while the sale to Eric Lim and Dr Lim was proceeded with. She also did not explain why the guarantee in respect of the purchase price was put up by her if she did not have any interest in the purchase.

13. That there was an agreement made by Dasarmas for the purchase of the shares was not disputed. But Kay's evidence was that the purchase was later aborted and Dasarmas did not proceed with the purchase of the shares, and that the purchase was taken over by one Eric Lim. That was confirmed by a Malaysian law firm of Lim Kian Leong & Co in their letter dated 12 February 1992, which, inter alia, said:

> 2. Perwira Habib Bank Bhd
>
> (a) Eric Lim Yew Tou (7M Shares)
>
> > We attach 3 sets of new Sale and Purchase Agreement for Eric Lim Yew Tou for 4,000,000 shares and 3 sets for 3,000,000 shares. Please arrange for him to execute them and return them as soon as possible.
> >
> > We understand that Mr Eric Lim will be buying not only the shares presently contracted by him, but also those contracted by Dasarmas Sdn Bhd, amounting in all to 7M. It is therefore more convenient to sign new agreements and

treat the old agreements as lapsed as the proportions are different.

There was no evidence that Kay had paid for these shares or that Kay had received the huge amount of proceeds of sales of the shares. The bank statements from Citibank NA of her accounts with the branch in Kuala Lumpur (which were later produced and admitted by the High Court) did not show that vast sums were paid into her account as alleged by Chia. In the light of this evidence, we are inclined to accept Kay's evidence that the proposed purchase of the Insas shares by Darsamas had been aborted. In our judgment, no proceeds of sale or any profit ought to be imputed from this lot of 2.425 million Insas shares.

14. It should be noted that the sale agreement for the purchase of the 2.425 million shares was made in 1990 and that was some seven years before the breakdown of the parties' marriage. It seems to us that if any significant profits had been made from such purchase and sale of this lot of shares, Kay being an enterprising businesswoman as she was, would undoubtedly have made use of the amount for business and other purposes and probably would have ploughed back the amount into investments. Those were the happier times of their marriage, when the parties were together and there was very much trust and understanding between them, and there was no need for each to account to the other the amount he or she had spent or invested. In the circumstances, we do not think that it is realistic now to impute, on the basis of these alleged transactions, a substantial amount as still being held by Kay. Nor do we think it appropriate that an investigation in the form of a tracing exercise should be conducted to find out how she had spent or what she had done with the moneys, even assuming that the shares were purchased and sold through Dasarmas and huge amounts of proceeds of sale were realized.

3.5 million Insas shares

15. We turn to the second lot comprising 3.5 million shares, which it was alleged by Chia were purchased in early 1993. That purchase was admitted by Kay. The shares were purchased in early 1993 and were paid for by Kay by withdrawing two amounts, namely, $1,580,005 on 4 January 1993, and $647,696.75 on 19 February 1993, from the joint account with OCBC. According to Kay, these 3.5 million Insas shares were investments made by her family, and that the two amounts withdrawn by her were partly repaid by two sums of $1,072,146.75 and $500,450 deposited with the joint account on 26 February and 16 March 1998 respectively, leaving a balance of $655,105. The withdrawal of the two amounts $1,580,005 and $647,696.75 by Kay from the joint account for the purchase of 3.5 million shares and the subsequent repayment by her of the two amounts of $1,072,146.75 and $500,450 into the joint account were admitted by Chia in his statement of claim in Suit No. 1481 of 1998, in which, among other things, he claimed against Kay the sum of '$655,555'. There was probably an error in the figure of '$655,555' which should be $655,105. These withdrawals and repayments were also supported by the bank statements produced in evidence.

16. The district judge found that the 3.5 million shares purchased with the money from the joint OCBC overdraft account were jointly owned by Kay and Chia. She did not accept that these shares were the investments of Kay's family, as claimed by Kay. We think that the district judge was justified in making this finding, and we agree with her.

17. Next, the district judge imputed a profit of $3.673 million as having been made by Kay from the sale of these shares between November 1993 and November 1995 based on the average of the closing price of Insas shares on the Stock Exchange of Singapore during this period: see 62 – 65 of her grounds of decision. The district judge referred to Chia's argument on how the imputed profits

were arrived at. She said at 62:

> 62 Based on the imputed price of $1.501 per share, the sale of 3.5 million shares would fetch $5.2535 million. As only about 1.58 million was paid back into OCBC joint account, he [Chia] claimed that there was an outstanding amount of 3.67 million not accounted for.

She then adopted Chia's formula for imputing the profit of $3.673 million. She said at 65:

> 65 This investment differed from other personal investment of Kay as Chia had taken an active role in its procurement rather than leaving the matters to Kay as in the case of Kay's other business ventures. I thus found that the 3.5 million Insas shares were their joint assets. As Kay did not produce any evidence on the sale and the sale price, the imputed price by Chia would be adopted. The profits made from the sale would then be imputed to be $3.673 million.

18. It is this imputed profit which is now seriously challenged. Kay's evidence was that these 3.5 million Insas shares were disposed of in 1993 through her broker one Peter Leow Thang Fong in the following manner: 2,497,000 shares were sold between 8 April and 18 May 1993 and the total amount realized was RM3,633,002, which was paid into her account with the branch of Citibank NA at Kuala Lumpur; and the balance 1,000,000 shares were given to certain parties as commissions for facilitating the sales, and one of such parties was Peter Leow. As the sales took place more than six years ago, the contract notes were not available and hence no copies of such contract notes could be produced. The only evidence Kay adduced was a letter dated 9 November 1999 written by Peter Leow giving the particulars of the sale and disposal of the 3.5 million shares on various dates between 8 April and 18 May 1993 and the various amounts realized and banked into Kay's account with her bank in Kuala Lumpuir. According to this letter the total amount realized from the sale of 2,479,000 Insas shares was RM3,633,002. The district judge, however, did not accept this letter on the ground that it was pure hearsay. At that time, Kay apparently was unable to obtain the bank statements from her bank in Kuala Lumpur. On appeal before the High Court, Kay managed to obtain the relevant bank statements and these statements were then admitted in evidence. These bank statements showed that between 8 April and 18 May 1993 various sums totalling RM3,633,002 were paid into Kay's bank account. It is significant that the amounts shown in the bank statements as paid into her account tallied exactly with the amounts given by Peter Leow in his letter. The statements certainly corroborated Kay's evidence with regard to the payments into her bank account. If these bank statements had been produced before the district judge, she would, in all probability, not have imputed the profit of $3.673 million to Kay. In our judgment, this imputation of $3.673 million cannot be sustained.

19. There were profits made by Kay from the disposal of the 3.5 million Insas shares, but the profits were nowhere in the region of $3.673 million. The total proceeds realized from the 2,497,000 shares (sold between April and May 1993) were RM3,633,002. In May 1993, the rate of exchange between S$ and RM was $0.628 to RM1, and the amount of RM3,633,002 was therefore equivalent to approximately S$2,281,525.20. Taking that figure as the net proceeds of sale, the profits were as follows:

Proceeds of sale RM3,633,002 equivalent to	S$2,281,525.20
Less	
Amount withdrawn on 4/1/93 from the joint account	S$1,580,005.00

Amount withdrawn on 19/2/93 from the joint account	S$647,696.75
Net proceeds	S$53,823.45

Thus, on this basis, the net profit made from this lot of Insas shares was only $53,823.45. And even if we do not accept Kay's evidence that the 1,000,000 Insas shares had been given as commissions to the brokers and others for facilitating the sales, we could only impute that these shares are being still held by Kay. In that event, the value of these shares at 36.5 cents per share, being the price of the share at the date of hearing, would be about $365,000. In our judgment, there is no basis for treating these 1,000,000 Insas shares as having been sold between 1993 and 1995 at the imputed price of $1.501 per share, yielding a total sum of $1,501,000.

20. Again, the transactions relating to the purchases and sales of this lot of 3.5 million Insas shares took place in 1993, some four years before the breakdown of their marriage. Whatever profits that had been made must have been spent or utilized by Kay for business or other purposes. We do not think that we can now impute the total proceeds of sale of these shares as still being retained and held by Kay. As shown from the bank statements, the proceeds of sales were paid into the account of Kay with Citibank NA at Kuala Lumpur and were subsequently made use of by Kay for her own or other purposes. That was in 1993. There was certainly no such huge credit balance in her account at or about the time of the breakdown of the marriage or at the date of the hearing.

315,150 Insas shares

21. The third lot of shares falling within the second group comprised 315,150 Insas shares. There is a minor discrepancy in the number of shares comprised in this lot – whether it should be 315,250 or 315,150 or 315,300. In 47 of her grounds of decision, the district judge referred to Chia's argument in which the number of shares was stated to be 315,250. In 53 and 54, the number of shares given was 315,150. And according to the annual reports of Insas, Kay had a direct interest in 315,300 shares, and these shares were sold between 1 July 1996 and 30 June 1997. However, nothing of any importance turns on this.

22. As we have narrated, Kay's evidence was that these shares were bought by her mother and some of her friends and also herself from time to time, and they were subsequently sold. The district judge did not find her evidence sufficient, and in the circumstances Kay 'was held to have owned them and to have received the benefits of the sale proceeds', and as she did not produce any evidence on the sale proceeds, 'the imputed value' given by Chia was relied on. The imputed value as given by Chia was $473,040 at the price of $1.501 per share based on the average closing price of the share on the Singapore Stock Exchange for the period 1 November 1993 to 10 November 1995. We are unable to accept this imputation. According to the annual report, the sale took place between 1 July 1996 and 30 June 1997, and there is no valid reason for using a price which was based on the average closing price for the period long before the sale. At any rate, even assuming that she had realized this amount of proceeds of sale, we do not see any legal basis for her to account for this sum for the purpose of the division of the matrimonial assets. The sales took place sometime before the breakdown of the marriage, and what she received she was entitled to spend it and we do not think it is right now to impute that amount as being retained and still being held by her.

Deemed interest in Insas shares

23. We now turn to the third group of Insas shares, i.e. shares in which under the Malaysian

Companies Act, Kay was deemed to have an interest. Falling within this group were two lots comprising 834,111 and 875,189 Insas shares. On these lots of shares, the district judge said at 53 – 55 of her grounds of decision as follows:

> 53 Kay's position was as follows:
>
> > (1) 834,111 shares did not belong to her (but this was a bare denial without any further explanation);
> >
> > (2) 875,189 shares belonged to Wistara;
> >
> > (3) 315,150 shares owned by her mother, some of her friends and herself and managed by Mr Leow for which he was given the 189,150 shares now still held by Kay;
> >
> > (4) 1,115,664 shares had been transferred to Wistara and belonged to Wistara (But she did not give any other supporting evidence for her allegation. However, there was also not sufficient evidence from Chia why these shares held originally under Singapore nominees were owned beneficially by Kay).
>
> 54 In respect of the 834,111 shares, 875,189 shares and 315,150 shares, the Annual Reports of Insas stated that Kay had either direct or deemed interest in them. Kay had not given sufficient evidence to show otherwise. Under the circumstances, she was held to have owned them and to have received the benefits of the sale proceeds. She did not produce any evidence on the sale proceeds and the imputed value given by Chia would have to be relied upon. I excluded the 1,115,664 shares from the assets of Kay.
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> 55 It should however be noted that although Chia alleged that Kay earned a lot of monies through the sale of the shares, there was no allegation that Kay made use of any joint funds or funds of Chia to purchase these shares.

24. It is clear to us that the figures of 834,111 and 875,189 were taken from the 1994 annual report of Insas and the relevant part of the report showed that Kay was deemed to have an interest through a company, Wistara Sdn Bhd ('Wistara'). The relevant part of the report was as follows:

Deemed Interest	At beginning	Bought	Sold	At end of year
Kay Swee Tuan (1)	1,709,300	-	834,111	875,189

The note (1) stated that these shares were held through Wistara. It is submitted by counsel for Kay that Chia merely plucked the figures of 834,111 (being the shares sold) and 875,189 (being the balance shares at the end of the year) from Insas' 1994 annual report and added the two figures together, and then alleged that Kay owned these shares and had sold them. That was all the evidence relied upon by Chia.

25. The annual report did not show that Kay owned these shares in Insas at that time. A person, who is deemed under the Companies Act to have an interest in certain shares of a company, may not

have any beneficial interest in the shares. Much depends on the circumstances under which he is deemed to have that interest.

26. Kay's evidence was that these shares were owned by Wistara, in which Kay's sister, Kay Swee Ee ('Swee Ee'), and her husband, Dr Bhinyo Paniypan, owned 70% of the shares, and they had given her a power of attorney over their properties and assets including shares in companies. By reason of this, under s 6A(6)(d) of the Malaysian Companies Act, Kay was deemed to have an interest in the 1,709,300 Insas shares, as she exercised or controlled the exercise of a right attached to the shares. According to the report, Wistara held 2,441,856 Insas shares; however, Swee Ee and Dr Paniypan owned 70% of Wistara, and 70% of 2,441,856 shares came to 1,709,300 shares, and for this reason Kay declared that she had a deemed interest in 1,709,300 shares in Insas.

27. In support of Kay's evidence, Swee Ee swore an affidavit on 17 November 1999, in which she said that she and her husband, Dr Bhinyo Paniyan, are the sole beneficial owners of 70% of the shares in Wistara and that the balance of the shares in that company is owned by one Tengku Puteri Seri Kamala Pahang Tengku Hajja Aisha bte Sultan Haji Ahmad Shah, SIMP, and that Wistara was the vehicle they used to purchase shares in Insas. Further, until 1992, Wistara was one of the largest shareholders in Insas and Kay represented their interest and for that reason was appointed a director of Insas. Swee Ee confirmed that Kay had no interest in Wistara, and that from time to time Kay assisted Wistara in selling some of the shares and the proceeds of sale were paid to her (Swee Ee). Swee Ee also exhibited a copy of the power of attorney dated 1 August 1986, which she and her husband gave to Kay and which conferred on Kay very wide powers to deal with any of their properties or assets, including stock and shares in companies. We are satisfied from the evidence, to which we have referred, that Kay had no beneficial interest in the two lots of Insas shares, namely, 834,111 and 875,189 shares.

28. With respect, the district judge was clearly in error in imputing to Kay any gains from the sales of these two lots of Insas shares, namely, 834,111 and 875,189 (totalling 1,709,300) Insas shares, which at all material times were held by Wistaria. At 41 of her grounds of decision, the judge found, inter alia, that Kay had 'a deemed interest of 2.441 million share through a nominee Wistaria', and at 45, she held that the 2.441 million shares did not belong to Kay. The 2.411 million Insas shares included the two lots of Insas shares (834,111 and 875,189), as we have explained in 26 above.

Imputation of profits

29. In 117 of her grounds of decision, the district judge held:

> There were imputed Insas shares profit of $6.733 million earned by herself [Kay] and $3.673 million earned from funds in the joint account around 1993 to 1995.

In respect of the imputed profits of $6.733 million, the judge accepted Chia's allegations and imputed this sum as having been earned by Kay from the following lots of Insas shares: 2.425 million shares, 834,111 shares, 875,189 shares and 315,250 (or 315,150) shares. The sum of $6.733 million was arrived at by adding these lots of Insas shares, and multiplying the total number of shares by the price of $1.501 per share, which was based on the average closing price of the share on the Singapore Stock Exchange for the period between 1 November 1993 and 10 November 1995. With respect, for the reasons we have given, we are unable to accept this imputation for the purpose of the division of matrimonial assets between Chia and Kay. Nor can we accept the imputation of the $3.673 million as profits from the 3.5 million Insas shares which we have discussed in 18 above.

Master Penguin and Sketchley shares

30. In February 1991, Kay in her name bought a company called Master Penguin's Drycleaning & Laundry Pte Ltd ('Master Penguin') for $875,000 using funds from the joint account with OCBC. According to Chia, she only repaid to the joint account $795,000 leaving a balance of $80,000. Master Penguin in turn held 760,000 of the 860,000 shares in another company, Sketchley Services Pte Ltd. Kay also held in her name 99,999 shares in Sketchley leaving one share being held by a third party. Thus, directly or indirectly through Master Penguin, Kay wholly owned Sketchley Services Pte Ltd ('Sketchley'). Sketchley was the sole proprietor of a laundry business carried on under the name of Laundryland, and owned ten shop units at Bayshore and three vans and operated its business in 5 outlets. The ten shop units were mortgaged to Citibank NA to secure the overdraft and other facilities granted to Sketchley, and in addition, Kay herself executed a personal guarantee to the bank to secure these facilities. She was the manager of Laundryland.

31. Kay claimed that the shares, which she held in Master Penguin and Sketchley were held on trust for her own family, but there is no evidence that the source of the funds for the acquisition of these shares came from her family. The district judge held that she had not discharged the burden of showing that the beneficial interest in the shares did not belong to her. We agree with the district judge's finding that the shares in Master Penguin and Sketchley belonged to Kay and were part of the matrimonial assets.

32. The laundry business had not been successful. In early 1999, Sketchley and Kay were sued by Citibank NA. On 7 May 1999, the bank obtained a judgment against both of them for the sum of $2,169,475.57 with interest, and an order for possession of the ten shop units (mortgaged to the bank) was also obtained by the bank on the same day. Kay said that she was then desperate and arranged for the sale of all the shares in Sketchley to Vincent Tan, who is the son of the co-respondent, for $2.4 million and the sale was made on 17 September 1999. Copies of two sale agreements dated 17 September 1999 were produced in evidence: one made between Master Penguin and Vincent Tan and the other between Kay and Vincent Tan. According to Kay the sale was a 'rescue sale'.

33. The district judge was not too impressed by Kay's candour in respect of the financial position of Sketchley and the sale. She said at 37 of her grounds of decision:

> 37 It was undisputed that there were three judgments against the company by Citibank amounting to around $2.4 million including interest. However, there was no history that the company was in financial difficulties. Instead, it appeared that the company simply allowed a default position to occur.

We have difficulty in agreeing with this inference drawn by the district judge. First, there was evidence that Sketchley had been in financial difficulties. The accounts of the company made up to 31 March 1995 showed that it made a trading loss of $446,353 for the year 1995, and had an accumulated trading loss in the amount of $1,126,590 in 1993 and $1,602,334 in 1995. The accounts of the company for later years were not produced. However, for the bank to have initiated proceedings against the company to enforce the mortgage over the ten shop units, the company must have repeatedly defaulted in making payments due to the bank. From the documents produced, it appeared that, on 7 December 1998, the bank wrote to Sketchley demanding payment of the amount of $498,003.39 which was overdue. Apparently Sketchley failed to pay the amount as demanded. On 23 December 1998, the bank informed Sketchley that it had terminated the facilities extended and demanded repayment of all the outstanding sum.

34. Secondly, whatever may be the financial position of Sketchley, it would be foolhardy for Kay, who wholly owned the company, to 'allow a default position to occur'. Particularly, in this case, she claimed that the shares in Sketchley belonged to her and her family and were not part of the matrimonial assets.

35. Lastly, Kay is an advocate and solicitor and it could be quite damaging to her professionally to have a judgment for such a huge sum as $2.4 million entered against her and remaining outstanding. In particular, under s 28 of the Legal Profession Act, a solicitor, who has one or more outstanding judgments against him amounting in aggregate to $100,000 or more, which he has been unable to satisfy, will be disqualified from applying for a practising certificate. Presumably, it was for this reason that, after the full payment of the amount due to the bank, Kay caused to be filed in court a consent to entry of satisfaction of the judgment signed by an officer on behalf of Citibank NA. This document would provide an incontrovertible record that the judgment has been fully satisfied.

36. That having said, we think that there were grounds for the district judge to hold that the sale of the shares in Sketchley by Kay to Vincent Tan was suspect. The numerous affidavits filed in the course of the divorce proceedings showed that Kay was very close to the co-respondent and his family. The co-respondent and his son live in the Philippines, and the son apparently was then still a student at a university. It does not appear to us that there was any sound commercial reason for the co-respondent and/or his son to purchase the entire shares in Sketchley, a company engaged in laundry business. It appears that after the purchase a letter was sent by Sketchley to Eastbay supermarket, which occupied some of the Bayshore units owned by Sketchley, requesting Eastbay to forward future rental payments to 80 Robinson Road, #10-01B, which is the address for Kay's law firm, ST Kay & Co. No reason was proffered to explain why Kay was still receiving rental payments for Sketchley's properties. It seems to us more likely that the co-respondent by this arrangement was providing some financial assistance to Kay, with which she was then able to discharge her personal liability to the bank.

37. Having held that the sale was suspect, the judge made the following finding:

> 37 ..... The valuation report [of Sketchley] relied on by Kay was also much to be desired. It was based on outdated accounts of the company. The 4 shop units were sold at a later time. There was no evidence introduced by either party to show the difference in price which could be attributed to the difference in time.
>
> 38 Taking the evidence as a whole, I agree with Chia that the sale to Vincent Tan was suspect and Kay had not disclosed the real worth of the company shares she sold.
>
> 39 Knight Frank desktop valuation of the 10 units as at 28 Oct 1999 was $2.7 million. In the accounts, there was also $517,000 disclosed as current assets. The sum of $2.7 million and $517,000 would be $3.217 million. In the absence of any other better evidence, I took the value of the shares to be so. The net value after deducting the liability of $2.4 million would thus be $817,000.

Although we agree with the district judge's view that the sale of the shares by Kay to the son of the co-respondent was suspect, we find it difficult to agree with her determination of the net value of the shares. She took the figure of $517,000 as the current assets from the valuation given by the firm of accountants, H S Lim & Co, who valued the shares in Sketchley as 'zero'. She added this figure to the sum of $2.7 million, which was the valuation of the property as given by Knight Frank and deducted only the liability owed to the bank, which was in the region of $2.4 m. She did not take into

account and deduct, which she should have done, the other liabilities of Sketchley, which obviously there were. Unfortunately, there were no accounts of the company made up to 1998 available, and the only accounts produced were the balance sheet and profit and loss accounts of the company as at 31 March 1995. And according to the balance sheet of the company as at 31 March, 1995, the total amount of liabilities, including the amount owed to the bank and secured by the mortgage, was $3,818,946.65. On the basis of the accounts of Sketchley made up to 31 March 1995, the shares in Sketchley had a negative value. In our opinion, the net value of these shares as at the date of hearing might not be negative as valued by the accountant, but our inference is that it was certainly far less than $817,000 as determined by the district judge. For the year ended 31 March 1995, the company had an accumulated trading loss of over $1.5 million. On the basis of its inability to discharge its liabilities to the bank in 1998, which resulted in the action being taken by the bank to enforce its security, and the 1995 accounts of the company, our inference is that the business of the company had not been a successful one, and as at the date of hearing the net value of the shares of the company could not be considerable. For our purpose, it is not necessary to determine a definite sum as the net value of these shares.

Adverse inferences against Kay

38. The district judge found that Kay had not made sufficient efforts to disclose the bank statements of her account with the branch of Citibank NA in Kuala Lumpur and other documents required for the purpose, and drew an adverse inference against her. She said at 71 to 73 of her grounds of decision:

> 71 Kay said that the monies in the Citibank (Singapore) account were transferred from her Citibank (Malaysia) account. However, there was no documentary proof. In Mar 94, RM9,561,656 was withdrawn from the account. Kay exhibited a letter from Citibank (Singapore) dated 4 Jan 2000 stating that the withdrawal was utilised to repay term loans and overdraft. No details were given by Kay of the loans and overdraft repaid. The statement however showed that $1.291 million was paid into the overdraft account and that the term loan disappeared that month. Thereafter the deposit was reduced to RM1.7 million. In November 1994, RM1.7 million was withdrawn. There was no evidence given as to what it was used for.
>
> 72 Upon the application of Chia for discovery, Kay was ordered on 2 June 1999 to produce 26 items of documents. Chia said that Kay had only produced 11 items. The documents not produced by Kay despite the court order included the following:
>
> > (1) the monthly bank statements of Kay's account with Citibank (Singapore) from January 1990 to February 1993;
> >
> > (2) the monthly bank statements of Kay's account with Citibank (Malaysia) from January 1990 to March 1999;
>
> Kay said that she had written to Citibank (Malaysia) for the statements but the bank did not furnish the statements. Her counsel submitted that his firm had also written to Citibank (Malaysia) but received no reply. Chia said that Kay was not to be believed. She was a preferential customer of the bank and it was inconceivable that the bank would ignore her request. Kay said that though she

> was a preferential customer in the past, she was no longer so. I found the omission puzzling. The explanation also did not cover why the statements for the Citibank (Singapore) accounts prior to Mar 93 were not produced. The account was in the name of Kay and the order required her to furnish the statements. She had the responsibility to ensure that the statements were furnished in court as ordered. On the evidence, I did not think she had made sufficient effort to secure the statements and therefore adverse inference should be drawn against her.

39. We have the following observations. The bank statements sought by Chia relate to transactions which took place some six years ago before the hearing of the ancillary matters. We for our part do not find it surprising that Kay met with difficulties in seeking to obtain these statements. We note that the account with the Singapore branch of Citibank NA was closed in 1996, and that the bank statements of this account for the period 1993-96 were produced. As for her account with the branch of Citibank NA in Kuala Lumpur, she produced the statements for the period between February 1994 and December 1998 and they showed that only a credit balance of RM10,126.67 remained in the account. It was explained by Kay that the account had been inactive since 1996, and that she had written to the bank many times for the bank statements covering the earlier period, but she had had no response. She had also instructed solicitors in Kuala Lumpur to write to the bank but equally her solicitors met with no success. As her account with the Singapore branch of Citibank NA was closed in 1996, and her account with the branch of the bank in Kuala Lumpur had been inactive for several years and there was only a credit balance of RM10,126.67 in her account, she could hardly qualify as a preferential customer, such that the bank would go out of its way and helpfully provide with due expedition copies of bank statements of her account some six to seven years ago. To obtain such statements from the bank would normally take a long time. At any rate, the bank statements were eventually obtained and were produced at the hearing of the appeals before the High Court and were admitted in evidence.

40. The judge in the High Court, however, did not accept fully the bank statements. He said at 16:

> 16. … I was uncomfortable in relying on her statements from the Citibank. I was not at all sure that the account was the only account which Kay had maintained. There could have been other accounts where the imputed profits were banked. Kay had been so reluctant to furnish the documentary trail and I am compelled to share the district judge's inclination to infer against her by reason of her lack of candour.

With respect, we do not find that there is any ground for this misgiving or scepticism on the part of the judge. We for our part can find no reason for not relying on these bank statements. In particular, there was no evidence to show that Kay had any other account with Citibank NA or any account with any other bank in Kuala Lumpur. If she had, we think that most likely Chia who, as the judge found, knew of Kay's commercial venture 'intimately', would be aware of it.

41. There are two other matters which we should bear in mind in drawing any inference against Kay. First, the monetary transactions which Chia sought to prove took place some three to four years before the breakdown of their marriage. As we have said, those were the happier times, when there was a great deal of trust and understanding between Kay and Chia. In those circumstances, each party must have drawn funds from their own respective accounts and also the joint account freely without any thought that each had to account to the other the amount or amounts withdrawn and spent. Secondly, Chia is a meticulous and careful man, while Kay was rather carefree and must have been quite lax when the task involved keeping of records and accounts. In this connection, it is

helpful to remember what the district judge said at 106 and 107 of her grounds of decision:

> 106 Chia was a meticulous person keeping a good record of past transactions and paper documents and was very attentive to details. He was a cautious man. He made some sound investment in real property and he did not get into many business ventures. Kay on the other hand was deeply involved in business. She was more carefree with monies and more daring in her investment. She entered into business deals involving big sums of monies and high risks.
>
> 107 They had shared a great deal of love, trust and understanding. It was no doubt in part because they had gone through together the rough patch in Chia's life when he was faced with the criminal conviction. Unfortunately, the relationship subsequently turned sour.

The judge in the High Court expressed similar views. He said at 5 of his grounds of decision:

> Until the firm's dissolution in June 1998 Chia managed the law firm solely while Kay spent a major part of her time pursuing commercial opportunities. I agree entirely with the district judge that she had invested and pursued every commercial opportunity for the benefit of the marriage and the children. . . . . [O]n the evidence, I also agree with the district judge that Chia was meticulous and careful in the management of the financial resources or the undertaking of commitments to the banks. He held the cheque books and knew of the issue of the cheques, many of which he had signed himself as the authorized signatory. It would not be open to him to assert that he was not aware of Kay's commercial ventures. In fact, I had no doubt that he knew of them intimately and approved every one of those investments. Kay had also operated the investments of her mother, siblings and the estate of her late father. Those were kept quite separate. Undoubtedly, Chia knew what assets and ventures were those undertaken by them as husband and wife and those which Kay conducted on behalf of her mother and siblings.

We agree with them entirely.

42. Having regard to the above and to what we have decided on the Insas shares, we do not think that there is sufficient underlying basis for drawing an adverse inference that Kay must have had hidden substantial assets which she had not disclosed. For the reasons we have given, we are unable, with respect, to accept the district judge's inference that Kay had 'total assets, known or undisclosed, amounting to $4 to $5 million altogether at the time of hearing'.

43. It should also be borne in mind that Kay has a personal account with OCBC, which is an overdraft account with a debit balance of $5.6 million as at September 1999 and the overdraft is secured by a mortgage of No. 68 Andrew Road, which was owned by her father and after his death the property now belongs to her mother. If indeed she had such assets as inferred by the district judge, it is somewhat surprising that she did nothing to make use of at least some of these assets to reduce the overdraft account.

5 Tanglin Hill

44. We are now in a better position to determine the division of No. 5 Tanglin Hill, which was the

matrimonial home of the parties. The property is a detached double-storey house standing on a plot of land having an area of about 16,000 sq ft. It was bought in 1984 for $1.7 million by Kay through her family connections. Kay made the initial payment of $316,902 and Chia contributed a sum of $300,000, with the remaining amount of $1.1 million borrowed from OCBC on an overdraft facility secured by a mortgage over the property. The district judge found that the renovation costs were contributed by the parties. The property was conveyed or transferred solely to Kay. However, there was a deed of trust executed by Kay stating that she held half share of the property in trust for Chia; it was dated 30 October 1984 but stamped on 19 December 1990. There was a dispute whether it was executed on 30 October 1984 or 19 December 1990, but nothing of any consequence turns on it. On 27 May 1992, pursuant to the deed of trust, Chia was registered as a joint owner of the property with Kay.

45. The overdraft account of Kay was subsequently converted into a joint account which continued to be secured by the mortgage over the property. The property was rented out from 1984 to 1989, and the rentals were used to service the mortgage payments. During that time the parties lived at Marina House arranged by Kay and subsequently at her sister's house free of rent. In 1989, they moved to their own home. The overdraft used to finance the matrimonial home was cleared at one stage, but Chia and Kay continued to draw on the account for personal as well as business purposes. At the time of the hearing before the district judge, the joint overdraft account was overdrawn to the order of $5.22 million or thereabouts.

46. The district judge made an equal division of 5 Tanglin Hill between Chia and Kay: each to be entitled to 50% of the property. However, having made that division, she further ordered (i) that Kay transfer her half share to Chia without any payment; and (ii) that Kay pay to Chia the difference between the overdraft amount outstanding and 50% of the value of the property, thus giving Chia 50% of the property unencumbered. She said at 118 and 119:

> 118 The bungalow was worth between 8 m to 9.7 million. The average valuation was $8.7 million. The overdraft of $5.5 million was incurred by Kay. The net value of the bungalow based on the average valuation was $3.2 million. Chia had about $450,000 in his other assets.
>
> 119 I could only take the broad brush approach. The overdraft was at one stage cleared meaning the bungalow was at one stage unencumbered. Parties already at that stage owned the bungalow fully. I thus felt that Chia should have half the value of the bungalow unencumbered, taking into account what Kay ought to pay to Chia or account to the joint account in respect of the Sommerville property, Master Penguin and Sketchley shares, Insas shares and US 137,000 etc. The cars, club membership and other assets they each own could remain so. That was in my view a just and equitable division taking into account all the circumstances of the case.

47. The amount outstanding and owing to the bank at the date of hearing was in the region of $5.22 million or thereabouts. By ordering Kay (i) to transfer her half share to Chia free of any payment and (ii) to pay Chia the difference between the overdraft amount and the 50% of the value of the property, the judge was in effect making Kay solely responsible for the payment of the overdraft amount. In our opinion, the net effect of the district judge's order would, with respect, be giving much too much to Chia.

48. It is clear to us that the order for the transfer of Kay's half share and the payment by Kay was made on the basis of the huge amounts of profits the district judge imputed to Kay arising from her

dealings in the Insas shares, which we have already discussed above, and the judge's inference that Kay had hidden such profits in her account with Citibank NA in Kuala Lumpur which Kay had failed to disclose. The district judge said at 116 and 117 of her grounds of decision:

> 116 In respect of the imputed profits, it was pertinent to note that they related to profits made around 1993 and latest in 1995. I believed that in 1993 or 1994, when Kay was involved in the restructuring of Insas, she earned quite a lot of money from buying and selling Insas shares and her Citibank accounts probably had huge deposits. But I did not accept Chia's allegation that she earned RM20 million from Datuk Thong as there was no evidence to support the allegation. Kay however started to invest in Isedecor in 1994. I believed that the project made tremendous losses. It was not disputed that the permit to operate the plant was never obtained and that substantial funds had been dumped into the project. I also accepted that none of her other business ventures had done well after 1996.
>
> 117 Apart from the share in the bungalow at 5 Tanglin Hill, her known assets came to about $1.6 million. There were other assets of unknown value. I concluded that she would have total assets, known or undisclosed, amounting to $4 to $5 million altogether at the time of hearing. This was a figure, admittedly, based very much on general impression and gut feel, arrived at to the best of my estimation. There was simply no sufficient information given during proceedings.

49. Apart from the equal contributions made by the parties towards the acquisition and maintenance of the property, we should also take into account the fact that the property was purchased at a good price from Kay's family friend, that Kay had given Chia a half share in the law firm free from consideration, and that Kay had the custody, care and control of the two children. All these are relevant considerations in deciding on the division of the matrimonial home. Further, after the breakdown of the marriage, Chia had the benefit of occupying the house free of rent for the period from January 1998 to June 2000. In June 2000, Chia finally rented out the house at $16,000 per month, and probably since then he alone had been having the benefit of this rental, apart from using it to service the mortgage payments.

50. In view of what we have decided with respect to the imputed profits from the sales of the Insas share, the value of the shares in Sketchley, and the adverse inference against Kay, we find that there is no basis for making the order requiring Kay to transfer her half share of the property to Chia free of any payment and to pay the difference between the overdraft amount outstanding and 50% of the value of the property. This order and the consequential order for payment of interest to OCBC by Kay in the event of default and other consequential orders cannot stand and should be set aside. We so order.

51. We agree with the district judge that the property should be divided equally between them. With respect to the amount outstanding and owing to OCBC on the overdraft account, both parties should bear equally the liability for payment of such amount. It may be that the liability was incurred by the withdrawal by Kay of huge amounts totalling $4.49 million which were for investment, and in particular for investment in a company in Johore, Isedecor Sdn Bhd ('Isedecor'). On the other hand, Kay had given evidence that, between 1990 and 1995, she had deposited vast sums of money totalling about $6.28 million into the joint account. As the district judge found and we agree, Kay made tremendous losses in that project and none of her business ventures had done well since 1996. If the investments had been successful, Chia and the family would be enriched and benefitted. These withdrawals were made at the time, when the parties were together working jointly to create wealth

for the family, and, in our view, Kay should not be held solely responsible for making the repayment to the joint account with OCBC.

Chia's appeal

52. We now turn to Chia's appeal. Chia raises several issues before us. Some of these have been dealt with and the only remaining issues we need to consider are the following. First, he contends that the High Court erred in holding that the Arcadia penthouse belonged to Fuelcon Pte Ltd, rather than to Kay. Secondly, Chia claims that the district judge erred in holding that the $4.49 million withdrawn by Kay from their OCBC joint overdraft account was for investment in Isedecor. He asserts instead that the amount was a loan to Isedecor or alternatively was withdrawn by Kay for her other purposes.

Arcadia penthouse

53. During the appeal to the High Court, Chia adduced further evidence with a view to showing that Kay bought a penthouse in Arcadia Garden. The judge found, however, that the property was owned legally and beneficially by Fuelcon Pte Ltd, a company largely owned by the co-respondent, in which both Kay and the co-respondent were directors. There was affidavit evidence of independent third parties showing that Kay was acting as a solicitor and the money for the purchase of the penthouse came from her client and not from Kay. We agree with this finding, and there is nothing we can usefully add to it.

Isedecor

54. The next contention of Chia relates to Kay's investment in Isedecor. Kay was a director of Isedecor, owning 1 million Isedecor shares through Euroshield Sdn Bhd, which she controlled. Isedecor was a joint venture between Petroleum Technology Resources Corporation, which was owned by the co-respondent, and Johor State Islamic EDC. Kay's evidence was that the Isedecor shares had become worthless as Isedecor was not issued a licence to operate its sludge treatment facility in Johor. The judge found that Kay withdrew $4.49 million from the joint account and used it for her investment in Isedecor and that Kay lost a lot of money in this investment. Chia contends that the money was advanced to Isedecor as a loan instead and not to acquire shares in the company. He also says that the money was used by Kay for other purposes.

55. We reject this contention. Chia in his affidavit of 9 September 1999 asserted that the $4.49 million was withdrawn by Kay for her investment in Isedecor but later in his affidavit of 28 April 2000 and at trial he said that the $4.49 million was never paid to Isedecor at all but was used by Kay for other purposes. He appears to us to have changed courses when he discovered that the investment in Isedecor had failed and was not worth anything. Both the district judge and the judge in the High Court held, and so do we, that the investment by Kay in Isedecor was a failed investment and that the $4.49 million was irrecoverable. At any rate, Kay has consistently maintained that she is prepared to transfer half of her Isedecor shareholding to Chia, an offer which Chia has declined to accept. It is obvious to us that Chia knew that the investment in Isedecor had failed.

Division

56. We now turn to the division of the matrimonial assets. The main asset for division between Chia and Kay is 5 Tanglin Hill, which is in their joint names, subject to the mortgage in favour of OCBC which secures their joint overdraft account. We agree with the district judge that the property should be divided equally between them. With respect to the amount outstanding and owing to OCBC on the overdraft account, both parties should bear equally the liability for payment of such amount. We therefore order that 5 Tanglin Hill be divided equally between the parties after deducting the amount outstanding and owing to OCBC. To give effect to this division, we order that the property be sold in the open market within the next twelve months or such extended time as the parties may agree, and upon such sale, the proceeds, less expenses incurred in such sale, be applied in repayment to OCBC of the amount owing, and subject to that, the balance be divided and distributed to Chia and Kay in equal proportions. In the meanwhile, all rentals from the said property are to be paid to the joint account with OCBC in or towards reduction of the overdraft. Neither Chia nor Kay is hereafter permitted to withdraw any sum therefrom, save and except for payment of any outgoings payable on the property. It is hoped that, with the benefit of advice or assistance from their respective counsel, the parties can reach agreement on the mode of sale, the price at which it is to be sold, and all other incidental matters pertaining to the sale. In default of such agreement, the parties are at liberty to apply to the district court for the necessary directions for the sale.

57. There is one other property, which should be subject to division between Chia and Kay, namely, the Sommerville apartment. Both parties had contributed to the acquisition of this property. The district judge apportioned 67.5% thereof to Kay and 32.5% to Chia. We affirm this apportionment. However, the judge, although she apportioned the value between the two of them, did not order a specific division of this asset on that basis, but took the apportionment into account in making the division of 5 Tanglin Hill: see 119 of her grounds of decision which we have quoted above. We think that a more equitable way of division is to treat this property separately for the purpose of making a division between the two of them. At the time of the hearing, the net value was $507,391 or thereabouts, and that is the value to be adopted for the purpose of this division. Since then, presumably the net value would have increased owing to the reduction of the mortgage payments by Kay. We order that the property is to remain with Kay, subject to her payment to Chia of $164,902 representing the 32.5% of that value. This payment is to be made only after the sale of 5 Tanglin Hill by way of deduction of that sum from the portion of the proceeds of the sale of 5 Tanglin Hill, which is to be paid to Kay.

58. Apart from 5 Tanglin Hill and the Sommerville apartment, each party has other assets in his or her name. Chia's assets in his own name include a Midland Bank account with a balance of 4000, CDP shares valued at $68,304 as at December 1998, CPF balances of $120,969, Mercedes Benz worth $40,000, American Club membership valued at $48,000, SICC membership valued at $139,999 and Laguna club membership worth $90,000 (with $30,000 transfer fee). The district judge found that the value of these assets came to bout $450,000. This, however, did not include the amount of $164,902, which we now apportion to him as his interest in Sommerville apartment.

59. Kay's assets in her name (apart from 5 Tanglin Hill and Sommerville apartment) are the following:

Master Penguin & Sketchley	Value unknown but not considerable

189,160 Insas shares	189,160 Insas shares held by Kay, valued at $69,000.
Technology Resources shares in Kay's CDP	• 25,000 shares which are valued at $30,000
Kay's Premtec shares	• 800 shares which are valued at $800.
Kay's Premtec Marine shares	• 80,000 shares which are valued at RM80,000.
Genting View apartment	• The district judge found that the value was RM 82,800.
Kay's Malaysian Citibank Account	• The credit balance of RM10,126 in her account with the branch of Citibank NA in Kuala Lumpur.
Kay's other accounts	• An ICB account with a credit balance of $6,599 balance. • An OUB account overdrawn by $10. • A Natwest London account – balance is undisclosed.
Kay's Club membership (before deduction of transfer fee)	• Raffles Marina Club ($16,000 with $12,390 transfer fee).
Kay's insurance policies	• 2 Cigna travel insurance policies with no surrender value.
Kay's car	• Lexus – unknown value – bought in 1996 by Kay for $320,000 with $167,821 outstanding loan.
Kay's CPF	• $26,021 balance.

60. The district judge found that the value of the assets in Kay's name, apart from her share in 5 Tanglin Hill, came to about $1.6 million. But this included the amount of $817,000 being the imputed value of Kay's shares in Sketchley. As we have held, the value of these shares was nowhere near

that sum. Also included in that computation was her entire interest in Sommerville apartment, of which we now apportion to her only 67.5%.

61. Subject to what we have specifically ordered in 56 and 57 above, we order that each party keep his or her assets. Apart from the obvious practical advantages, such an arrangement is also a just and equitable way of separating the parties' assets.

Conclusion

62. In the result, Chia's appeal fails and is dismissed. To the extent we have varied the order made below, Kay's appeal is allowed. Arising from our determination of the several issues above, there may be consequential orders which are required to be made by reason of the lapse of time between the order made by the district judge and this judgment. Parties are at liberty to submit, within seven days from the date hereof, a request in writing for such consequential orders for consideration.

Costs

63. We now turn to the question of costs. The order for costs made by the district judge should stand and is to remain intact. Chia has failed in his appeal but Kay has succeeded substantially in her appeal, and we do not see why costs of the appeals to the High Court and before us should not follow the event. Accordingly, we award to Kay the costs of the appeals before the High Court and before us, but as both the appeals were heard together there should be only one bill of costs for both the appeals, as if there were only one appeal. The deposit as security for costs, with interest, if any, in Chia's appeal is to be paid to Kay or her solicitors to account of costs, and the deposit as security for costs, with interest, if any, in Kay's appeal is to be refunded to her or her solicitors.

Sgd:

YONG PUNG HOW
Chief Justice

Sgd:

L P THEAN
Judge of Appeal

Sgd:

CHAO HICK TIN
Judge of Appeal