IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC(A) 29

Civil Appeal No 61 of 2021

Between

CLS

… *Appellant*

And

CLT

… *Respondent*

In the matter of Divorce (Transferred) No 3338 of 2018

Between

CLT

… *Plaintiff*

And

CLS

… *Defendant*

JUDGMENT

[Family Law — Matrimonial assets — Division]

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v
CLT

[2022] SGHC(A) 29

Appellate Division of the High Court — Civil Appeal No 61 of 2021
Belinda Ang Saw Ean JAD, Woo Bih Li JAD and Quentin Loh JAD
28 April 2022

5 August 2022 Judgment reserved.

Woo Bih Li JAD (delivering the judgment of the court):

Background

1 This is an appeal by a husband in respect of the decision of a judge of the General Division of the High Court ("the Judge") on the division of matrimonial assets. The Judge's main decision was delivered on 24 May 2021. She made consequential orders on 12 August 2021. Her grounds of decision in *CLT v CLS and another matter* [2021] SGHCF 29 ("HC/GD") were issued on 13 August 2021. We will refer to the husband and the wife as "H" and "W" respectively.

2 We begin with the undisputed background facts. The parties were married on 17 September 2001. The marriage lasted 17 years, and the parties have one daughter ("Q"). H has a daughter from a previous relationship. H is

69 years old and retired. Before his retirement, he was a successful businessman. W is a 50-year-old homemaker.

3 W had commenced divorce proceedings in 2012 and 2017, but those proceedings were withdrawn with the consent of the parties. W filed a third Writ of Divorce on 18 July 2018. Interim Judgment ("IJ") was granted on 26 February 2019. The ancillary matters were heard on 15 and 18 March 2021 (HC/GD at [3]). As the care and control and access of Q were already subject to a consent order dated 5 July 2019 (HC/GD at [5]), the sole issue before the court below was the division of matrimonial assets.

The decision below

4 In the proceedings below, the parties filed a joint summary of relevant information ("Joint Summary"), setting out the parties' position and valuation of the various assets belonging to them. Parties did not dispute that the assets listed in the Joint Summary were matrimonial assets, except for the following assets:

(a) 175,000 shares in a family company LB ("the LB shares");

(b) 50,000 shares in a family company J ("the J shares"); and

(c) a property at Tanglin Park ("R1").

The present appeal relates to the same three assets as listed here.

The property R1

5 R1 was valued at $2,920,000 and was purchased by H in May 1994, prior to the marriage. However, as H confirmed that the mortgage was paid off in full in 2004 and that the family had used this property for five years (out of

the 17-year marriage), the Judge held that it was a matrimonial asset within the meaning of s 112(10)(*a*)(i) of the Women's Charter (Cap 353, 2009 Rev Ed) ("Women's Charter") (HC/GD at [12]).

The LB Shares

6 LB is a company incorporated in 1974 by H's father. H was appointed a director of LB in 1980. He said that he received 223,400 LB shares from his father and brother prior to his marriage. In 2003, H transferred 148,400 LB shares to various family members (including W). In 2007, 175,000 LB shares were transferred to H from various family members (including W). At the time of the IJ, H held 250,000 LB shares, and it was not disputed that they were worth $8,147,783 (HC/GD at [23]).

7 In the proceedings below, H argued that the transfers of LB Shares in 2003 were "paper transfers" for the purpose of "tax planning" and the transfers to him in 2007 arose when the purpose ended. He claimed that the excess of 26,600 LB shares which he received in 2007 were from gifts to him. No consideration had in fact been paid for any of the transfers. W relied on the consideration stated in the signed share transfer forms and argued that the transfers in 2003 were transactions made at arms-length. For the same reason, she argued that the 175,000 LB shares acquired by H in 2007 were acquired for consideration. The Judge took into account the signed share transfer forms for the transfers in 2003 and in 2007 and the certificates of stamp duty. She was of the view that as it was stated in these documents that consideration had been paid for each set of transfers in 2003 and in 2007, H had acquired 175,000 LB shares in 2007 during the marriage. Accordingly, the 175,000 LB shares, valued at $5,703,448, were included in the pool of matrimonial assets (HC/GD at [31]).

The J shares

8 J is a company incorporated in 1972 by H's father. H was appointed a director of J in 1979, and had acquired 191,600 shares in J (later clarified to be 222,514 J shares) from H's father and various parties who were the friends or associates of H's father prior to H's marriage. H still holds 50,000 J shares. Similar to the LB shares, the number of J shares held by H had varied during the marriage, with various transactions occurring between family members (including W). The transfers were stated to be for the consideration of $1 per J share in the Register of Members and Share Ledger and the Register of Transfers (HC/GD at [32]). Signed share transfer forms for the J shares were not exhibited with any affidavit.

9 Similar to the LB shares, H claimed that the various transfers from him to various family members in 2003 were made for the purpose of "tax planning" and for no consideration. When the purpose ended, the J shares were transferred to him in 2005 and 2007 by various family members also for no consideration. Any excess shares he received were gifts from family members (HC/GD at [34]). The Judge held that as the Register of Transfers showed that consideration was paid in respect of each of the transfers, H had acquired 175,000 J shares during marriage and held 50,000 J shares at the time of the IJ. As H was unable to discharge the burden of proving that his current holding of 50,000 J shares were traceable to his pre-marital assets, the Judge found that that the remaining 50,000 J shares held by H were matrimonial assets. The 50,000 J shares were valued at $5,408,937 (HC/GD at [37]).

The division of matrimonial assets

10 On 24 May 2021, the Judge concluded that the pool of matrimonial assets amounted to $53,485,931 (HC/GD at [59]). She divided the assets in the

ratio of 30:70 in H's favour (HC/GD at [78]). The share of W was $16,045,779 (in round figures). As W held $9,410,266 of the assets in her own name, H was to pay W $6,635,513. As parties could not agree on the consequential orders, the Judge made orders on 12 August 2021, *ie*, that H was to pay W the $6,635,513 as follows:

(a) $635,513 within one month from 12 August 2021;

(b) $2,000,000 within three months from 12 August 2021; and

(c) $4,000,000 within one year from 12 August 2021.

11 The first two payments have been made by H. H then filed the present appeal on three grounds. First, that the Judge had erred by finding that the 175,000 LB shares and 50,000 J shares owned by H are matrimonial assets (the "Share Issue"). Second, that the Judge had erred by including the entire value of R1 in the matrimonial pool (the "R1 Issue"). Third, that the Judge had erred by dividing the assets in the matrimonial pool in the ratio of 30:70 instead of 20:80 in favour of H (the "Division Issue").

The Share Issue

175000 LB shares

12 The details of the shareholding of H in LB and in J and subsequent transfers and re-transfers are set out in H's Appellant's Case with a helpful diagram at Annexes A and B thereof, which we attach to this judgment as Annexes 1 and 2.

13 We first elaborate on the LB shares. According to H, he had received 223,400 LB shares from his father and brother before the marriage as gifts. In 2003, he transferred 148,400 LB shares as follows:

(a) 87,500 shares to W; and

(b) 60,900 shares to his niece, LHJ.

14 In 2007, he received $175,000 LB shares from the following persons:

(a) 87,500 shares from W;

(b) 29,170 shares from LHJ;

(c) 29,170 shares from another niece, LWL; and

(d) 29,160 shares from the wife of H's brother (the "Sister-in-law" and the "Brother" respectively).

15 As can be seen, the end result was that the 87,500 shares transferred by H to W in 2003 were transferred back to him by W in 2007. Additionally, although H transferred 60,900 shares to LHJ in 2003, he received a total of 87,500 shares from LHJ, LWL, and his Sister-in-law (*ie*, an excess of 26,600 LB shares).

16 While W had disputed that the LB shares held by H prior to marriage were gifts from H's brother and father in the hearing below, she accepts that the shares which H originally held were pre-marital assets which are *prima facie* non-matrimonial assets. W's case was that the 175,000 LB shares which H received in 2007 were matrimonial assets as they had been acquired by H during the marriage and were no longer traceable to the original shares H had held prior to marriage. H disagreed that they were matrimonial assets as no consideration

had in fact been paid by him for the acquisition. His position was that the transfers in 2007 could be traced back to his shares in LB which he received as gifts before the marriage, save for the excess of 26,600 LB shares.

17 There were signed share transfer forms for each of the transfers in 2003 and in 2007. Each form showed a consideration of $1 for each share. There were certificates of stamp duty for the 2003 transfers as well as certificates of adjudication of stamp duty for the 2007 transfers.

18 H's position that no consideration had in fact been paid by any transferee when he transferred the shares in 2003 or by him when he received the shares in 2007 was supported by the explanation of an accountant ("the Accountant") who had assisted in the tax planning of H and the Brother.

19 According to the Accountant, who had filed an affidavit, the reason for the transfers in 2003 and in 2007 was as follows. In 2003, dividends were taxable prior to distribution to the shareholders, and if the income tax bracket of the shareholder was below the tax rate imposed on the dividends, the shareholder could claim the difference as a refund from the Inland Revenue Authority of Singapore ("IRAS"). Hence H transferred shares to various relatives in 2003 as those relatives were in a lower income tax bracket. When the law was changed subsequently such that dividends were not taxable, the shares were transferred back to H.

20 We note that even with the Accountant's explanation, there was no satisfactory explanation by the Accountant, or H, as to why he received an additional 26,600 LB shares in 2007.

21 Be that as it may, on the share transfers in 2003, the Accountant claimed that the share transfers recorded in the Register of Transfers of the company were a "paper exercise" and there was no consideration for the transfers.

22 W's case was not that she had paid any consideration in 2003 or received any consideration in 2007 for the LB shares. She maintained that she would routinely sign documents whenever H had requested. However, her signature on the share transfer form transferring the LB shares to H was forged. W did not make good her allegation of forgery. No expert evidence was called, and in any event she disclaimed knowledge of the share transfers. She also did not challenge the Accountant's evidence that in fact no consideration had been paid or the reason for the transfers in 2003 and in 2007.

23 There is no dispute that the transfers in 2003 and 2007 were made during the marriage. W's position is that consideration for each transfer was shown on the signed share transfer forms. As the transfers were made during the marriage, W submits that the LB shares acquired by H in 2007 were assets acquired during the marriage and thus constituted matrimonial assets to be included in the pool of such assets for division between the parties by the court. She argued that the burden was on H to show that the LB shares he received in 2007 were not matrimonial assets while H argued that the burden was on her to show that they were.

Were the share transfers a sale or a gift?

24 The critical question both before the Judge and before us was whether consideration had in fact been paid for the shares, and if not, what was the nature of the transactions in the light of signed share transfer forms and registration of shares in the transferees' names. We asked counsel for H to clarify the appellant's legal position since he maintains that the transfers were only "paper

transfers": did the transferees hold the shares on trust for him in 2003 or did he gift the shares to W and his niece in 2003? H's counsel said that no trust was alleged. Hence, in our analysis and for the reasons explained below, the transactions were in the nature of gifts.

25 The statutory definition of "matrimonial assets" is set out in s 112(10) of the Women's Charter:

> **Power of court to order division of matrimonial assets**
>
> **112.**— ...
>
> ...
>
> (10) In this section, "matrimonial asset" means —
>
> (*a*) any asset acquired before the marriage by one party or both parties to the marriage —
>
> (i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or
>
> (ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and
>
> (*b*) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,
>
> but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

26 Following from the definition of "matrimonial assets" in s 112(10) of the Women's Charter, there are four general categories of assets parties may possess (*USB v USA and another appeal* [2020] 2 SLR 588 ("*USB*") at [19]):

(a) Quintessential matrimonial assets: these are assets which either spouse have acquired using income earned during the marriage or to which either or both spouses have obtained legal title during the marriage with the use of their own money, and the matrimonial home. The entire of these assets go into the pool of matrimonial assets;

(b) Transformed matrimonial assets: these are assets acquired before the marriage by one or both spouses, and have either been substantially improved during the marriage or which were ordinarily used or enjoyed by both parties or their children while residing together for purposes such as shelter, transport, or household use. These assets go into the pool of matrimonial assets;

(c) Pre-marriage assets: these are assets acquired before the marriage by either spouse, and which the other spouse does not improve substantially or which are not used for family purposes. These assets do not go into the pool of matrimonial assets; and

(d) Gifts and inherited assets: these are assets whenever acquired by either spouse, which do not go into the pool of matrimonial assets unless transformed by substantial improvement or use as the matrimonial home.

27 Accordingly, it is not sufficient for W to simply assert that the LB shares were acquired during the marriage. W has to bring the shares within one of the categories of the shares which may be subject to the court's powers of division, by showing *how and when the acquisition was made* or if they have been transformed.

28 The Judge was of the view that there was an inconsistency between the evidence submitted by H and his submission that no consideration was paid for the LB shares he acquired in 2007. This would mean that either all parties involved in the transfers had falsely declared that consideration was paid in respect of the share transfers to aid H in obtaining a tax refund from IRAS, or consideration had been paid such that title and ownership passed in 2003 and in 2007 respectively when the transfers were effected (HC/GD at [29]). She concluded that (HC/GD at [31]):

> 31 Without more, as both parties were relying on the respective share transfer forms and certificates of stamp duty, I accepted these objective documentary evidence as reflecting what transpired. It was stated in the transfer documents that consideration was paid. Thus, as consideration was paid to the Husband for the sale of his *original* pre-marital shares in 2003, he had divested himself of any interest in those shares. Similarly, as declared, consideration was paid by the Husband for the purchase of some 175,000 shares in 2007, and these were shares acquired during the marriage. I included the 175,000 shares valued at about $5,703,448 in the pool of matrimonial assets.
>
> [emphasis in original]

29 We now turn to the affidavit evidence and submissions of the parties in our analysis of the true nature of the transactions. On the first question whether consideration had in fact been paid, we respectfully disagree with the Judge. Our reasons are as follows.

30 While it is true that both parties accepted the existence of the signed share transfer forms and that consideration was stated therein, and that there were certificates of stamp duty in 2003 and certificates of adjudication of stamp duty in 2007, these documents were only *prima facie* evidence that consideration had in fact been paid by each transferee to the transferor and that ad valorem duty were paid on the transfers. They did not necessarily mean that consideration had in fact been paid given the existence of countervailing

evidence. H's accountant, in his affidavit dated 11 March 2021, states that the LB shares had been acquired without consideration. More importantly, W herself did not assert that consideration had in fact been paid and W did not challenge the explanation from the Accountant. W only relied on the signed share transfer forms. In the circumstances, we conclude that in fact no consideration had been paid either in 2003 or in 2007 for the transfer of LB shares then.

31 The next question we have to consider is *the nature of the transactions*. The parties do not dispute that the legal title in the LB shares were reflected in the share register in the company in the names of the transferees, and in order to determine this issue it is necessary to know who has beneficial interest in the LB shares.

32 H was a director of LB. He would have known who in fact received the dividends or, more accurately, who in fact received the benefit of the dividends after the 2003 transfers. Counsel for H had also candidly conceded that it would have been H's burden to produce evidence relating to the dividends. However, while it is trite that the benefit of the shares rightly belongs to the beneficial owner of the shares, a company is not obliged to take notice of the beneficial owner's interest in the shares when paying out dividends by application of s 195(4) of the Companies Act 1967 (2020 Rev Ed) (see Hans Tjio, Pearlie Koh & Lee Pey Woon, *Corporate Law* (Academy Publishing, 2015) at para 5.077). In short, ordinarily, dividends would be paid to the registered shareholder. In this case, W was silent on the receipt of dividends assuming dividends were paid. As mentioned, the evidence is unsatisfactory as H could have provided such information to the court but it was omitted and hence withheld.

33 As mentioned, H's assertion is that the share transfers were "paper transactions". In our judgment, H's case that the transactions were "paper transactions" made for no consideration could have had two possible interpretations. It could have meant that the transactions were only to be recorded in the share register and declared to IRAS in order for the transferees to claim tax refunds, whilst the beneficial interest in the LB shares remained with H.

34 Alternatively, it could have meant that H had transferred *both* the legal and beneficial title of the LB shares when the transferees were registered as shareholders. In that case, the absence of consideration was part of the intention to gift the shares but ad valorem stamp duty was paid. From the affidavit evidence and submissions as detailed above, it was not H's case that he retained the beneficial interests in the shares *after* he had transferred the shares to the various family members in 2003. In fact, before us, counsel for H had accepted that H's evidence did not state whether he retained the beneficial interest in the shares. In the absence of any other evidence, the only documentary evidence we have as to the nature of the transactions are: (a) the Accountant's affidavit which stated that the various family members had used their interest in the shares to claim tax refunds from IRAS; and (b) the signed share transfer forms and stamp duty certificates and certificates of adjudication of stamp duty which represented that beneficial interest had been passed with the transfer of legal title.

35 In our judgment, on the facts, both the beneficial and legal title were transferred together for no consideration This would mean that the transfers in 2003 and 2007 should be properly construed as gifts.

Were the LB shares matrimonial assets?

36 Having found the share transfers in 2003 and 2007 to be gifts, we turn next to consider whether the LB shares in H's possession are matrimonial assets.

37 We note that before the Judge below W had raised an issue with respect to both the LB and J shares: whether the shares that H had held prior to marriage were third-party gifts to him. In this regard, it is pertinent to note that it was not disputed by W then and on appeal that even if the transfer of shares to H before the marriage were not gifts to H, the shares held by H prior to marriage were in any event *prima facie* excluded from the pool of matrimonial assets and W did not substantially improve on the shares. W's contention was that the shares had changed during the marriage only because of the transfers made with alleged consideration.

38 Turning first to the 87,500 LB shares that H had transferred to W in 2003, this would have been a gift between spouses.

39 However, that is not the end of the analysis as there were transfers of the same shares back to H in 2007. In H's submissions filed here and below, he argues that the shares transferred from H to various family members (including W) in 2003 and subsequent transfers back to him in 2007 could be traced back to third-party gifts to him, and that as he had not expended any personal effort in acquiring the shares the nature and the complexion of the shares as third-party gifts never changed, notwithstanding the intervening transfers.

40 In our judgment, on the facts, there is no need to trace the shares back to third-party gifts to H. It would not matter if the transfers of shares to H before marriage were not gifts as, in any event, the shares were initially acquired by H before the marriage. It is now apposite to refer to *Wan Lai Cheng v Quek Seow*

Kee and another appeal and another matter [2012] 4 SLR 405 ("*Wan Lai Cheng*"). In *Wan Lai Cheng,* the Court of Appeal had to consider the question of whether gifts of shares from a husband to the wife could be taken into account in the division of matrimonial assets under s 112(10) of the Women's Charter. The facts of *Wan Lai Cheng* concerned two groups of shares which the husband had gifted the wife during the marriage. The first group of shares were in two companies which had been incorporated to hold two properties which had been gifted to the husband by the husband's father. The second group of shares pertained to a third company which had been incorporated to hold a property purchased by the husband during the marriage.

41 The majority opinion of the court *per* Andrew Phang JA, drew a distinction between "pure" interspousal gifts and inter-spousal gifts that consisted of assets which were originally gifts from third parties or an inheritance (*ie*, "inter-spousal re-gifts"). The court held that "pure" inter-spousal gifts, which would have been acquired by the effort expended by the donor spouse during the marriage, would constitute part of the pool of matrimonial assets as they are not "gifts" within the scope of s 112(10) of the Women's Charter (see *Wan Lai Cheng* at [40]–[46]).

42 However, as regards inter-spousal re-gifts, the court held that as such gifts were obtained without any effort expended by the donor spouse, they were not considered matrimonial assets. In addition, as Parliament likely had not considered the situation whereby a third-party gift or inheritance is subsequently re-gifted as an inter-spousal re-gift, and there was a conceptual difficulty identifying the "other spouse" for the purpose of the "substantial improvement" exception, such gifts could not be "converted" into matrimonial assets by application of the "substantial improvement" exception.

43 At [53], [55] and [56], the court elaborated as follows:

> 53 … [T]he status of an inheritance or a third-party gift acquired by a spouse at any time (whether before or during the marriage) which is subsequently given by that spouse to the other spouse during the marriage arises for consideration. In particular, the issue arises as to whether *these* gifts (referred to hereafter as "inter spousal 're-gifts'" where appropriate) – *ie*, inter-spousal gifts of assets acquired by the donor spouse by way of a third-party gift or an inheritance – can be *"converted" into inter-spousal* gifts which *then* constitute *part of* the pool of matrimonial assets for distribution.
>
> …
>
> 55 … I note that there is *no statutory basis* for such conversion. …. In all likelihood, when s 112(10) was enacted, Parliament probably did not envisage the situation of a third-party gift or an inheritance being subsequently re-gifted as an inter-spousal "re-gift", thus creating a *lacuna*. Pursuant to the language of s 112(10), I am of the view that "conversion" of an inter-spousal "re-gift" into a matrimonial asset cannot take place. In other words, although an inter-spousal "re-gift" would appear, literally, to be an inter-spousal gift and, thus, form part of the pool of matrimonial assets based on the reasoning set out at [40]–[41] above, the asset which is the subject matter of an inter-spousal "re-gift" was *originally a third-party gift or an inheritance* and, thus, no effort would have been expended by the donor spouse (*ie*, the spouse making the inter-spousal "re-gift") in "the original acquisition of [the asset concerned]" (see *Yeo Gim Tong Michael* ([21] *supra*) at [12]). The rationale set out at [40] above for including "pure" inter-spousal gifts in the pool of matrimonial assets for division does not, therefore, apply to inter-spousal "re-gifts". In my view, only "pure" inter-spousal gifts are intended to be excluded from the word "gift" in the Exclusion Clause. Assets which are acquired by a spouse by way of a third-party gift or an inheritance thus fall *outside* the pool of matrimonial assets even if they are subsequently re-gifted as an inter-spousal "re-gift". This is an important qualification to my discussion above (at [40]–[41]) on "pure" inter-spousal gifts.
>
> 56 I would add that the "substantial improvement" exception is, in my view, not applicable to inter-spousal "re-gifts". This is because where a third-party gift or an inheritance is made the subject of an inter-spousal "re-gift", the concept of the "other" spouse (a concept integral to the "substantive improvement" exception) takes on an entirely *different* complexion as compared to situations where a third-party gift

> or an inheritance is not re-gifted. Where a third-party gift or an inheritance is not re-gifted, the "other" spouse would simply be the non-recipient of the third-party gift or inheritance. However, where there is subsequent inter-spousal re-gifting of a third-party gift or an inheritance, there is a question as to who the "other" spouse is. …
>
> [emphasis in original]

44 On the facts of *Wan Lai Cheng*, the court held that the assets underlying the first group of shares were traceable to the husband's inheritance and classified the subsequent gift of the shares to the wife as "an inter-spousal 're-gift' of an inheritance". As the first group of shares were non-matrimonial assets to which the substantial improvement exception did not apply, the shares belonged solely to the wife (*Wan Lai Cheng* at [61]). As for the second group of shares, the court held that the asset underlying these shares was traceable to a property purchased *during* the marriage, and the gift of these shares to the wife was a "pure" inter-spousal gift which formed part of the pool of matrimonial assets (*Wan Lai Cheng* at [62]). As can be seen, the different origin of the acquisition of the assets underlying the different group of shares made a difference in that case.

45 While the court in *Wan Lai Cheng* had not explicitly considered the scenario whereby a donor spouse gifts an asset which had been acquired *before* marriage to a donee spouse, we are of the view that such an inter-spousal gift would also not be considered a "pure" inter-spousal gift for two reasons. First, such gifts would have originated from a non-matrimonial asset (*ie*, the pre-marital assets of the donor spouse). Unless it can be shown that the asset was transformed, the asset remains a non-matrimonial asset. Second, this would be consistent with the tenor of the decision in *Wan Lai Cheng*, which sought to draw a line between assets which were acquired with the effort of either spouse during the marriage from those which were not. This is also broadly consistent

with the principle identified in *USB* at [28], that the "fundamental purpose of the division exercise … is to identify all the *material gains of the marital partnership*" [emphasis added].

46 As it stands, the law regarding inter-spousal gifts is as such:

(a) All "pure" inter-spousal gifts (*ie*, inter-spousal gifts where the subject matter of the gifts was acquired by the effort of one or both of the spouses during the marriage) fall under s 112(10)(*b*) and are matrimonial assets. They are not "gifts" within the scope of s 112(10) (*Wan Lai Cheng* at [41] and [46]);

(b) Inter-spousal gifts which take the form of a "re-gift" of an asset acquired by the donor spouse by way of a third-party gift or an inheritance, are not matrimonial assets as they were obtained without any effort expended by the donor spouse. The "substantial improvement" exception is not applicable to such inter-spousal "re-gifts" (*Wan Lai Cheng* at [55]–[56]); and

(c) Inter-spousal gifts where the subject matter of the gifts was acquired *prior* to marriage, would not be matrimonial assets as they had not been obtained with any effort expended by the donor spouse *during* the marriage. Such gifts which have originated as non-matrimonial assets, would remain as non-matrimonial assets unless transformed.

47 Turning to the facts, if it is accepted that the LB shares which H held prior to marriage originated as gifts from third parties, the original shares would *prima facie* be excluded from the pool of matrimonial assets. Applying the inter-spousal re-gift principle in *Wan Lai Cheng* to this case, H's transfer of 87,500 LB shares to W in 2003 would be an inter-spousal re-gift of an asset originally

acquired by way of a third-party gift. This was not a matrimonial asset. The "substantial improvement" exception would be inapplicable.

48 In the alternative, even if the LB shares H held prior to marriage had been acquired by H prior to marriage by his own effort, the LB shares would also have *prima facie* been excluded from the matrimonial pool (*USB* at [19(c)]). When the 87,500 LB shares were subsequently transferred to W in 2003, this would not be considered a "pure" inter-spousal gift as H had not acquired these shares *during* the marriage. This would have been a gift of non-matrimonial assets by H to W. When these 87,500 LB shares were then subsequently gifted back to H by W for no consideration, they remained as non-matrimonial assets.

49 In either scenario, W did not allege that the LB shares (or the J shares) had been transformed during the marriage by substantial improvement or ordinarily used for family purpose. Accordingly, whether the LB shares H had held prior to marriage had originally been given to him or acquired by his own effort, the original 223,400 LB shares he held were non-matrimonial assets. When H subsequently gifted the 87,500 LB shares to W in 2003 and when W gave back in 2007, for no consideration, these shares remained as non-matrimonial assets.

50 As regards the 60,900 LB shares that H had transferred to LHJ in 2003 from his pre-marital holdings, this was a gift of a non-matrimonial asset. When he subsequently received the 29,170 LB shares from LHJ, 29,170 LB shares from LWL, and 29,160 LB shares from his Sister-in-law, these were third-party gifts which H received during the marriage. As there was no evidence that the shares had been transformed, these 87,500 LB shares do not fall into the matrimonial assets pool.

51 In summary, for the reasons stated above, we are of the view that the 175,000 LB shares that H received in 2007 and now still holds, are not matrimonial assets.

J shares

52 We now come to H's shares in J. The background facts are the same but the details are different.

53 Before the marriage, H had acquired 222,514 J shares. In 2003, he transferred 147,514 J shares as follows:

(a) 87,500 shares to W; and

(b) 60,014 shares to LHJ.

54 In 2005 and 2007, H received 175,000 J shares as stated below.

55 In 2005, W transferred 87,500 J shares to H.

56 In 2007, H received 87,500 J shares from the following persons:

(a) 29,170 shares from LHJ;

(b) 29,170 shares from LWL; and

(c) 29,160 shares from his Sister-in-law.

This was an excess of 27,486 J shares from the 60,014 J shares he had transferred to LHJ in 2003.

57 In 2010, H transferred 175,000 J shares to B Corporation Bhd by way of sale.

58 In 2013, H transferred 25,000 J shares to BB International by way of sale.

59 Thus, as at the dates of the hearing for ancillaries on 15 and 18 March 2021, H held a balance of 50,000 J shares.

60 Again, H's position was that no consideration had been paid for the transfers by him in 2003 of J shares. Likewise, no consideration had been paid by him in 2005 and in 2007 for the transfer of J shares to him. The reason was that explained by the Accountant generally for the transfers of both LB and J shares. Here, W relied on documentary evidence of share transfers to argue that consideration had been paid for the share transfers.

61 For similar reasons as for the LB shares, the Judge concluded that consideration had in fact been paid by H for the J shares transferred to him in 2005 and in 2007 as indicated by the Register of Transfers (HC/GD at [36]) She was of the view that he had purchased these 175,000 J shares. It is not disputed that as at 2008, H held 250,000 J shares. As he had sold 175,000 J shares in 2010 and in 2013, he held a balance of 50,000 J shares.

62 The question before the Judge was whether the 50,000 J shares were shares which H had held initially before the marriage or were shares purchased by him during the marriage. If the latter, then these 50,000 J shares would be matrimonial assets. Since the Judge was of the view that consideration had in fact been paid by H for the acquisition of J shares in 2005 and in 2007, she concluded that H had not discharged his burden of proving that the current 50,000 J shares held by him were traceable to his initial shareholding. For the same reasons stated above at [30], we respectfully disagree. While the Register of Transfers provided *prima facie* evidence that consideration had been paid by

each transferee, W herself did not assert that consideration had in fact been paid nor did W challenge the Accountant's explanation that the transfers were for no consideration. In our judgment, no consideration had in fact been paid for the J shares H had transferred to various family members in 2003 and for the J shares H had acquired in 2005 and in 2007. Similar to the LB shares, H was not claiming that he had retained the beneficial interest in the J shares after he transferred them in 2003. The documentary evidence we have as to the nature of the transactions are: (a) the Accountant's affidavit; and (b) the Register of Members and Share Ledger and the Register of Transfers. These all indicated that beneficial interest had been passed with the transfer of legal title. Accordingly, the transfers of J shares in 2003 and in 2005 and 2007 should be properly construed as gifts.

63 When H had transferred 60,014 J shares in 2003 to LHJ this was a gift of non-matrimonial assets. When H received the 87,500 J shares in 2007 from LHJ, LWL, and his Sister-in-law, these shares were third-party gifts to him, and are not matrimonial assets.

64 As for the 87,500 J shares H had transferred to W in 2003, this was an inter-spousal gift from H to W but not a "pure" inter-spousal gift. For the same reasons as mentioned in the context of the LB shares, it did not matter if the J shares that H held prior to marriage had been the subject of third-party gifts to H or had been acquired by H before marriage. The J shares H held prior to marriage were *prima facie* non-matrimonial assets. The subsequent transfer of the 87,500 J shares from H to W was a gift of a non-matrimonial asset. When these 87,500 J shares were then subsequently gifted back to H by W for no consideration, they remained as non-matrimonial assets.

65 In our judgment, the J shares which were transferred to H in 2005 and 2007 *and* the remaining 50,000 J shares which he currently holds are *not* matrimonial assets. Therefore, the 50,000 J shares are not to be included in the pool of such assets.

66 In this regard, we would also make two further observations. First, it was fortunate for H that W had gifted both the LB shares and the J shares back to H. Otherwise those shares would have belonged to W, as was the case in *Wan Lai Cheng*, and she could have done whatever she wanted with them. Had W not gifted the shares back to H, H would have been left with no recourse.

67 Second, on the facts of this case it is unnecessary for us to decide whether the case of *Wong Ser Wan v Ng Cheong Ling* [2006] 1 SLR(R) 416, which held that because the shares gifted to a party had not fallen below a "base level" of holding the shares did not constitute a matrimonial asset, would have assisted H in establishing that the 50,000 J shares were part of the initial J shares which he had held before the marriage. We would only observe for the time being that in that case, the court did not discuss the principle of "first in, first out".

Conclusion on the Share Issue

68 To summarise, our position on the Share Issue is as follows:

(a) Regardless of whether the LB and J shares that H held prior to marriage were third party gifts or assets acquired by the effort of H prior to marriage, the original shares were *prima facie* non-matrimonial assets;

(b) The transfer of 60,900 LB shares to LHJ in 2003 was a gift, and the subsequent transfers of 87,500 LB shares from LHJ, LWL and H's Sister-in-law in 2007 to H were third-party gifts. All these shares are excluded from the matrimonial pool;

(c) The transfer of 60,140 J shares to LHJ in 2003 was a gift, and the subsequent transfers of 87,5000 J shares from LHJ, LWL and H's Sister-in-law to H, were third-party gifts. All these shares are excluded from the matrimonial pool;

(d) The transfer of 87,500 LB shares to W in 2003 was a gift of a non-matrimonial asset. When these 87,500 LB shares were then subsequently gifted back to H by W for no consideration, they remained as non-matrimonial assets. The 87,500 LB shares are excluded from the matrimonial pool; and

(e) The transfer of 87,500 J shares to W in 2003 was a gift of a non-matrimonial asset. When these 87,500 LB shares were then subsequently gifted back to H by W for no consideration, they remained as non-matrimonial assets. The 87,500 J shares are excluded from the matrimonial pool.

The R1 Issue

69 We turn next to consider the R1 Issue. H does not dispute that while R1 was purchased prior to marriage, it was fully paid up for during the course of the marriage. H's case is that as the property was paid up for three years into the marriage, and the parties had only lived there for about four to five years, even if R1 was to be considered a matrimonial asset, it should be divided differently. H cites *TNC v TND* [2016] 3 SLR 1172 ("*TNC*") at [41]–[42] for the proposition

that properties that were acquired by one party before marriage but treated as matrimonial property by operation of s 112(10)(*a*)(i) of the Women's Charter, can be divided differently if it was used by the family for only a short period of time. H submits that the value awarded to W in respect of R1 should be 5%.

70 W's position is that as R1 was the parties' home for about one-third of the marriage, it was transformed into a matrimonial asset by virtue of s 112(10)(*a*) of the Women's Charter. Further, W argues that H's submission that she is only entitled to 5% of R1, is arbitrary.

71 In our view, the case of *TNC* is distinguishable from the present one, and there is no similar basis for H to ask for a specific variation in respect of R1. First, while R1 was purchased prior to marriage, the mortgage over the property was only discharged after the parties were married (albeit three years after, in 2004). In contrast, the property in question in *TNC* was wholly acquired by the husband prior to marriage. Second, the parties had stayed at R1 for four to five years, which was significantly longer than the case in *TNC* where the family had stayed there for 13 months out of a 13-year marriage. Third, the Judge had already taken into account the fact that R1 was partially acquired by H prior to marriage in applying the broad-brush approach to reach a division ratio (HC/GD at [80]).

72 In the circumstances, there is no basis to vary her decision on R1.

The Division Issue

73 We come now to the Division Issue. The Judge was of the view that while H had not been absent in the lives of his children, this would not in itself devalue W's indirect contributions (HC/GD at [77]). Bearing in mind the length of the marriage, exceptionally large pool of matrimonial assets, the different

roles played by the parties in the marriage and case precedents, the Judge held that a just and equitable division of matrimonial assets was 30:70 in favour of H (HC/GD at [78]).

74 H argues that this court should vary the 30:70 ratio ascribed by the Judge below for three main reasons. First, that the marriage was only moderately lengthy. Second, that the asset pool was very large. Third, that H had made significant indirect contributions to the family. In his submissions, H relies primarily on the case of *VIG v VIH* [2021] 3 SLR 1145 ("*VIG*"), but asks this court to depart from the 30:70 ratio ascribed in that case on the basis that the matrimonial assets in the present case (at between $42m to $53m) is higher than the $36m in the case of *VIG*, that the wife in *VIG* had made direct contributions, and that H had far more indirect contributions in the present case.

75 Further, H submits that the Judge had failed to take into account a letter that W had written in 2002 ("W's Letter") wherein she stated that she had married H for love. H also argues that W had accessed his electronic devices without his consent and that this behaviour had to be considered as her failure to act in good faith. Overall, H submits that a fair and reasonable apportionment of matrimonial assets should be 20:80 in favour of him.

76 W's position is that the Judge had already considered the size of the matrimonial asset pool in deriving the 30:70 ratio, and that her indirect contributions cannot be considered insignificant. In the event that the court agrees with H that either the LB and/or the J shares and/or R1 should be excluded in the matrimonial asset pool, W submits that her share of the pool should be correspondingly increased.

77 In our view, there is no basis for this court to vary the Judge's apportionment of 30:70 in favour of H. First, as H admits, the marriage of 17 years was moderately lengthy and is significantly longer than the marriage in *VIG* which lasted 12 years. Second, while the asset pool involved in the present case is larger than that of *VIG*, both cases involved "exceptionally large pool[s] of assets". It would be very arbitrary to categorise assets upwards of $40m as "more" exceptionally large than assets of $30m. Third, the Judge had expressly contemplated *both* the size of the asset pool *and* the length of the marriage in deriving the 30:70 ratio (HC/GD at [78]).

78 As for W's Letter, we are of the view that the Judge was correct not to take into account W's Letter which was written and signed by W on 15 January 2002, four months after the marriage. In our view, this was not a formal instrument and it was also not signed with the benefit of legal advice. H is not entitled to use it to reduce W's share in the pool.

79 As for the allegation that W had wrongly accessed H's email account, the Judge was entitled not to take that conduct into account to reduce W's share. As stated by the Court of Appeal in *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 ("*Chan Tin* Sun") at [22] and [25], while the court can consider the conduct of parties in exercising its power to order the division of assets, "it only ought to have regard to conduct that is both *extreme* (*ie*, manifestly serious) and *undisputed*" [emphasis in original]. On the facts, we do not consider W's conduct so extreme as to justify a reduction of her share. The conduct of the wife in *Chan Tin Sun*, who had poisoned the husband with arsenic, was very different from the present case.

80 Accordingly, H has not shown that the Judge's decision in ordering the 30:70 division was unjust or inequitable.

81 We now come to W's submission that if any of H's arguments to exclude an asset from the pool is successful, then her share should be correspondingly increased as the Judge took into account the exceptionally large size of the pool of matrimonial assets.

82 We do not agree with that submission. The matrimonial assets as found by the Judge totalled $53,485,931. Excluding the 175,000 LB shares and the 50,000 J shares, which are valued at $5,703,448 and $5,408,937 respectively (total $11,112,385), would leave a pool worth $42,373,546. This would still be considered an exceptionally large pool of matrimonial assets. Accordingly, we see no reason to increase W's share of 30% just because we have excluded the LB and J shares from the pool.

Conclusion

83 In the circumstances, we set aside that part of the Judgment pertaining to the inclusion of the LB shares and the J shares in the pool of the matrimonial assets. The Judge had included their value as follows:

(a) 175,000 LB shares at $5,703,448; and

(b) 50,000 J shares at $5,408,937.

84 As these add up to $11,112,385, the pool is reduced from $53,485,931 to $42,373,546 in light of our decision. As W was given 30% of the pool and we are not varying that percentage, her 30% share of $42,373,546 is $12,712,064 (in round figures). As W held $9,410,266 of the assets, H is to pay the remainder of $3,301,798 to W. As mentioned above at [10] and [11], H has already paid W $2,635,513. He is to pay her the balance of $666,285 by

12 August 2022. This is the same deadline for the third tranche of payments ordered by the Judge.

85 We are mindful that H has succeeded on the Share Issue which is the main aspect of his appeal. Nevertheless, we are not inclined to award H any costs of the appeal because he had not been entirely forthcoming with evidence regarding who actually benefited from the dividends after he had transferred the shares and whether the shares were held in trust for him by the transferees.

86 All things considered, we order each party to bear his or her own costs of the appeal with the usual consequential orders.

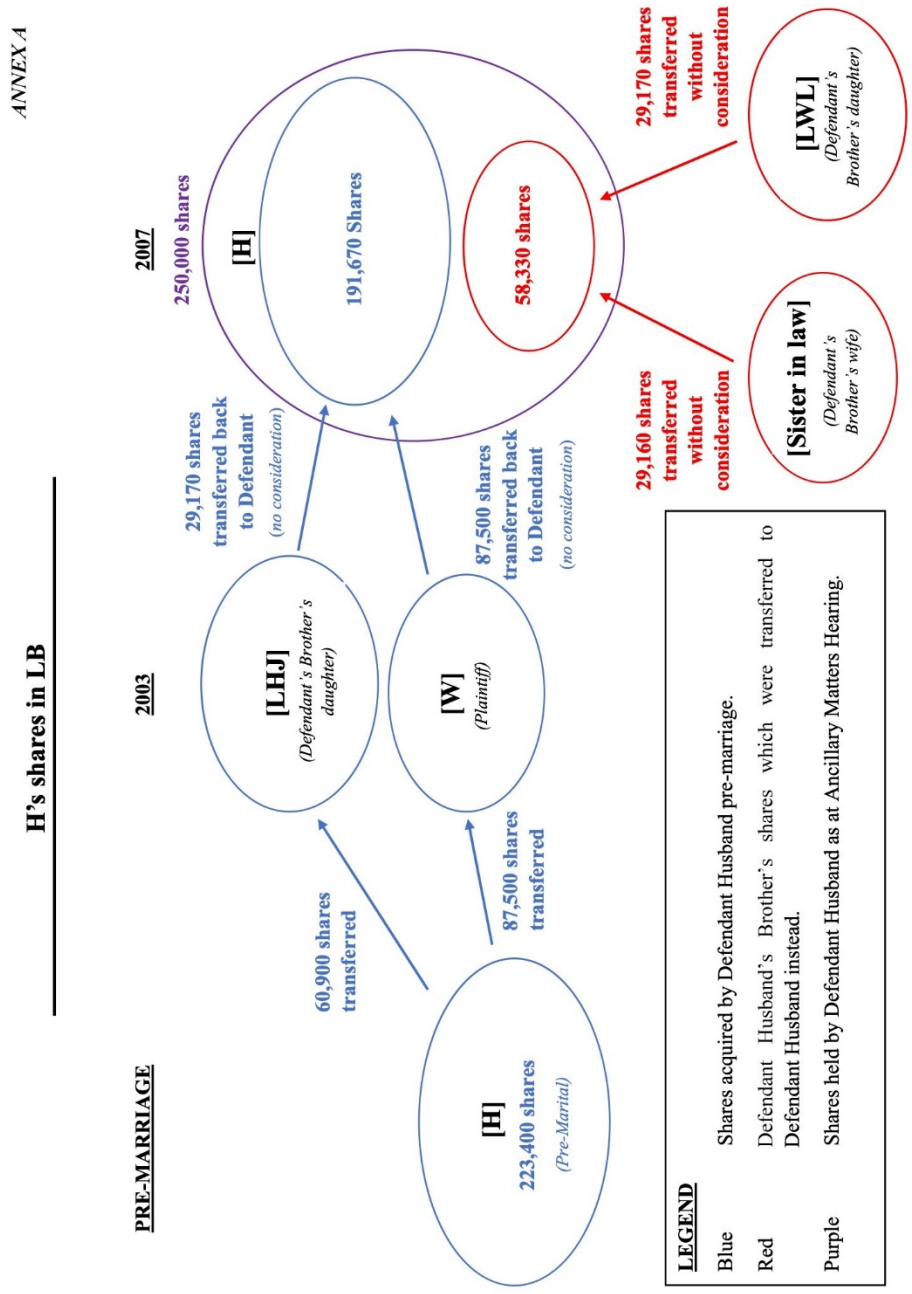
Belinda Ang Saw Ean
Judge of the Appellate Division

Woo Bih Li
Judge of the Appellate Division

Quentin Loh
Judge of the Appellate Division

Looi Min Yi Stephanie and Jheong Siew Yin (Constellation Law Chambers LLC) for the appellant;
Chew Wei En and Koh Tien Hua (Harry Elias Partnership LLP) for the respondent.

Annex 1: Share transfers involving [LB]



Annex 2: Share transfers involving [J]