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

**[2022] SGHC(A) 6**

Civil Appeal No 27 of 2021

Between

VOD

… *Appellant*

And

VOC

… *Respondent*

Civil Appeal No 28 of 2021

Between

VOC

… *Appellant*

And

VOD

… *Respondent*

In the matter of Divorce (Transferred) No 3470 of 2018

Between

VOC

… *Plaintiff*

And

VOD

… *Defendant*

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# JUDGMENT

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[Family Law — Matrimonial assets — Division]
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**[2022] SGHC(A) 6**

Appellate Division of the High Court — Civil Appeals Nos 27 and 28 of 2021
Belinda Ang Saw Ean JAD, Woo Bih Li JAD and Quentin Loh JAD
30 September 2021

18 February 2022 Judgment reserved.

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

## Background

1 These are two appeals by a husband and a wife in respect of the judgment ("the Judgment") of a judge of the General Division of the High Court ("the Judge") on the division of matrimonial assets and maintenance for a son of the marriage. The Judgment was issued on 28 January 2021. We will refer to the husband and the wife as "H" and "W" respectively. H is the appellant in AD/CA 27/2021 ("CA 27") and W is the appellant in AD/CA 28/2021 ("CA 28"). Much reference was made to H's father and some reference was made to H's mother in respect of various gifts or loans. We will refer to H's father and H's mother as "F" and "M" respectively.

2 Before we continue, we set out the undisputed background facts. The parties were married on 3 January 2015. Their son was born in November 2015.

On 28 September 2017, W and the son moved out of a property, where they had resided for about 33 months. W filed a Writ of Divorce on 25 July 2018. Interim Judgment ("IJ") was granted on 25 January 2019. The first hearing date of the ancillaries was on 1 July 2020.

3 H and W are dissatisfied with different aspects of the Judgment on the question of division as well as on maintenance. Most of the disputes revolved around the division of matrimonial assets where the Judge decided first as to which assets should be included in the pool of matrimonial assets and then, if included, the value of these assets. He then decided how the included assets were to be apportioned between the parties.

4 The appeals cover many assets and the burden is on each appellant to show why the Judge had erred on each asset. We will discuss only those assets which either party has succeeded on to some extent in his/her appeal and those which merit some comment. Therefore, the appeal on any asset which is not specifically addressed in our judgment may be treated as dismissed for not satisfying the standard of review to warrant appellate interference.

## Matrimonial assets

### *Tokio Marine Policy and Credit Suisse Accounts*

5 We first consider the findings of the Judge where he inferred that two sums of S$205,566.59 and US$116,736.15 (or S$166,263.35) were paid by H to partially discharge a loan which he took from Credit Suisse ("CS") to purchase a Tokio Marine ("TM") insurance policy. The Judge found that the source of these sums was the sale of Astrea SGD bonds and Astrea USD bonds

belonging to H.[1] Since the sales of the Astrea bonds were done in March 2017 during the marriage, he treated these two sums as proxies of the value of the TM policy and included them as matrimonial assets held by H.[2]

6 Likewise, after the payments mentioned above, there was a balance of S$45,817.81 and US$85,259.92 from the sale of the Astrea SGD bonds and USD bonds respectively. H had transferred these two sums to F in December 2017. As the Judge had treated the sale proceeds as matrimonial assets, he also included these two sums as matrimonial assets held by H.

7 On appeal, H contends that the Judge had erred because in the first place, he had to borrow money from CS to buy the Astrea SGD and Astrea USD bonds. H accepted that when these bonds were sold, a certain sum from each of the sale proceeds (as found by the Judge) was used to pay a loan. However, each was used to pay the balance outstanding on the initial loan to buy the Astrea bonds and not to pay the loan to buy the TM policy for which a large sum of S$863,403.53 was still outstanding as at January 2019.[3]

8 The explanation in H's Appellant's Case ("HAC for CA 27") was different from the explanation proffered below to the Judge. At that time, H had said that the S$45,817.81 was derived from dividends of 4.181 million shares in Company X. However, as the Judge noted, the sum came from the sale of Astrea SGD bonds which H accepts on appeal.

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1 Judgment at [60].

2 Judgment at [66].

3 HAC for CA 27 at paras 35 and 36.

9 It appears that a similar "confusion" also arose in respect of the use of the proceeds from the sale of the Astrea USD bonds and the balance of US$85,259.92.

10 Accordingly, the Judge was given a different explanation below and the existence of loans to buy the Astrea SGD and USD bonds was also not disclosed. H suggested that he had no opportunity below to elaborate on the Astrea bonds which had not been specifically discussed then. However, this was because it was H who gave the incorrect explanation below that the source was the dividends from shares in Company X, and it was the Judge who then learnt that that explanation was untrue after the Judge examined statements of account from CS which had been disclosed by H.

11 Indeed, W argues that the explanation offered by H on appeal was contrary to H's explanation below. The latest explanation was being offered by H's solicitors and not by H on affidavit. Yet W was willing to accept the Judge's findings which were based on an examination of statements of accounts alone. She herself had no other explanation.

12 Since the explanations offered on appeal were not bare allegations but could be supported by reference to the entries in the statements of accounts which were already part of the evidence but not fleshed out until at the hearing of the appeals, we were of the view that in the interest of justice, the explanations on appeal should be considered. It was open to W to show discrepancies in the explanations.

13 Despite a fairly laborious explanation by H's counsel, we are in the end satisfied that the contemporaneous documentary evidence satisfactorily

supported H's position that he had taken out a loan from CS to buy each of the Astrea SGD and USD bonds.

14 In the case of Astrea SGD bonds, he purchased them in June 2016 for S$250,000. There was a credit of S$41,810 in his CS account (which he alleged came from dividends from Company X shares). The balance of S$208,190 was funded by a loan from CS. There was a coupon payment of S$4,915 in January 2017 which was used to partly pay the loan. In March 2017, the Astrea SGD bonds were sold. The Judge noted that the sale proceeds of S$251,422.26 were credited into H's CS account on 31 March 2017.[4] On 4 April 2017, S$205,566.59 was used to pay the principal amount and S$37.86 was to pay interest. The balance was S$45,817.81 which was then transferred by H to F in December 2017, as mentioned.

15 In the circumstances, we are of the view that H has established that the S$205,566.59 from the sale of the Astrea SGD bonds was used to pay the balance of a loan taken to buy those bonds and not to pay the loan used to purchase the TM policy ("the CSTM loan"). Likewise, the US$116,736 from the sale of the Astrea USD bonds was used to pay the balance of a loan taken to buy those bonds and not to pay the CSTM loan. H's CS financial statements adequately disclose the USD and SGD Astrea Bond transactions that comport with H's explanation. Thus, neither of these sums should have been included by the Judge as proxies for the value of the TM policy.

16 As for the balance of S$45,817.81 from the sale of the Astrea SGD bonds, H has showed that it is likely connected to the initial deposit of S$41,810 credited to his account with CS on 20 May 2016. However, the mere credit entry

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4 Judgment at [58(a)].

of S$41,810 does not show the source of that sum. Accordingly, we find that he has not discharged his burden to establish his allegation that the source was the dividends from his shares in Company X, and the subsequent S$45,817.81 should be included in the matrimonial assets as an asset held by him.

17 As for the balance of US$85,259.92 from the sale of the Astrea USD bonds, this is likely to be connected with an earlier payment of US$80,000 to partially pay the loan to buy the Astrea USD bonds as contended by H. However, H has accepted that because he has no documentary evidence to establish the source of the earlier payment of US$80,000,[5] the subsequent sum of US$85,259.92 should still be included in the matrimonial assets as an asset held by him.

18 We now address the TM policy. It was bought in September 2014, *ie*, before the marriage. The premium was a lump sum of S$1,385,434.80. According to H, it was paid as follows:[6]

(a) cash of S$388,000 from F;

(b) cash dividends of S$83,620 from shares in Company X;

(c) a loan of S$914,000 from CS. This is the CSTM loan mentioned above.

19 W pointed out that the three components added up to S$1,385,620. There was a difference of S$185.20. While W acknowledged that this was "a minor discrepancy", she argued that it was "nevertheless suspicious since H has cited these three figures so precisely and has relied on specific documents in

5 HAC for CA 27 at para 40(c).

6 HAC for CA 27 at para 29.

support of these figures".[7] She also pointed out that H did not show how the CSTM loan was applied.[8]

20 W's questions were random and irrelevant as she did not elaborate on what inference she wanted the court to draw. Was she suggesting that there was no such loan or that the TM policy was paid by some other means? If so, by what other means? The Judge had accepted that the CSTM loan was used to partially pay for the TM policy.[9] Since she was supporting the Judge's eventual findings without suggesting any other reason for her support, it follows that she was also accepting that the CSTM loan had been used to partially pay for the TM policy. It is also useful to bear in mind that her cross-appeal does not seek any further benefit from the TM policy. For example, she has not suggested that much of the premium of the TM policy was paid from matrimonial assets after the date of the marriage and hence she should be entitled to a portion of the value of the TM policy on that basis, which is a different basis as compared to what the Judge had concluded. Accordingly, we proceed on the basis that the CSTM loan was used to pay part of the premium of the TM policy as alleged by H.

21 H's case was that in or about May 2015, S$125,430 was received from dividends from his shares in Company X. This was used to reduce the CSTM loan, which was then S$922,686.43, to S$797,256.43. With interest of S$1,384.79, the total loan was S$798,641.22 as at 29 June 2015.[10] Thereafter with interest accruing, the total outstanding as at January 2019 was

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7 see Respondent's Case for CA 27 ("WRC for CA 27") at para 16.

8 see WRC for CA 27 at para 19.

9 Judgment at [63] to [66].

10 HAC for CA 27 at para 34(c).

S$863,403.53.[11] In other words, there is still a large sum outstanding on that loan.

22 W did not accept that the CSTM loan was still outstanding in view of some perceived discrepancies. For example, she said that the reference number and interest rate for the loan as at January 2019 was different from that when the loan was initially made. She pointed out that H had said that the loan had not been refinanced when technically it had been in the sense that the loan had been rolled over from time to time. Furthermore, H had not provided evidence of the source of payment of S$125,430 to support his allegation that the sum came from the dividends from his shares in Company X.[12]

23 Again, W's arguments did not elaborate on what it was that she wanted the court to infer. For example, did she want the court to infer that the S$125,430 payment came from matrimonial assets? If so, her cross-appeal should have included a claim that this sum be included as part of the matrimonial assets held by H. However, her cross-appeal did not ask for this sum to be included.

24 Secondly, if the S$863,403.53 was not the outstanding sum due under the CSTM loan but under some other loan, was she claiming that the balance of the CSTM loan had already been paid during the marriage using matrimonial assets so that whatever balance should be included as part of the matrimonial assets held by H? Again, this was not claimed in her cross-appeal.

25 Furthermore, what then of the S$863,403.53 debit in H's account with CS as at 31 January 2019? That loan would then have to be taken into consideration to reduce the assets held by H but it was not.

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11 HAC for CA 27 at para 34(d).

12 WRC for CA 27 at paras 20 and 21.

26 Accordingly, as there has been no cross-appeal by W with regard to any other payment in respect of the TM policy or with regard to the value of the TM policy, the only issues to be determined based on the TM policy are whether the sums of S$205,566.55 and US$116,736.15 (from the sale of the Astrea SGD and USD bonds) had been used to pay the CSTM loan which had been taken to pay for part of the premium on that policy. We have earlier concluded that they had been used to pay off loans to purchase the Astrea SGD and USD bonds and not the CSTM loan. We agree with H that there is still a large sum outstanding on the CSTM loan and that the total outstanding as at January 2019 was S$863,403.53.

***H's one-third interest in a Bukit Timah property ("the Property")***

27 H, M and H's brother are joint tenants of the Property which was bought in January 2004.[13] F paid for the Property but it was registered in the names of these three persons. Apparently, F was not eligible to own certain types of residential property in Singapore at that time. F does not claim any interest in the Property and H accepts that he has a one-third interest in the Property. No other co-owner has suggested otherwise. F and his family lived in the Property since it was bought.

28 After the parties married in January 2015, they resided in the Property.[14] W alleged that much effort and moneys were expended to renovate two bedrooms in the Property for the exclusive occupation of W and H and in preparation for the arrival of their son when she became pregnant.[15] However, W does not dispute that neither of the parties paid for the renovations.

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13 HAC for CA 27 at para 7.

14 HAC for CA 27 at para 8.

15 WRC for CA 27 at para 8.

Furthermore, she does not allege that because of her involvement with contractors on the renovations she had substantially improved the Property. The basis of her claim to include H's one-third interest in the Property as part of the matrimonial assets is that the one-third interest comprises their matrimonial home.

29 H disagrees that the Property should be considered as the parties' matrimonial home. He raises two points. In his appeal, he argues that it is untenable to treat the Property as their matrimonial home simply because the parties had stayed there while they continued to search for their matrimonial home. The reality was that the Property was his parents' matrimonial home and not the matrimonial home of the parties.[16]

30 His second point is that the concept of a matrimonial home does not apply to a part-interest in a property.[17] As a matter of law, H is not correct. W has cited authorities applying the concept of a matrimonial home to a part-interest in a property which H did not controvert.[18] It is a separate question whether on the facts H's one-third interest constitutes a matrimonial asset, being a matrimonial home, which is subject to division.

31 Even though W does not dispute that H's co-ownership of the Property was acquired by gift before marriage, H as the party asserting that the asset was acquired by gift bears the burden to prove the existence and character of the gift at the time of divorce.

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16 HAC for CA 27 at paras 20 and 21.

17 HAC for CA 27 at paras 22 to 24.

18 WRC for CA 27 at para 11.

32 It is convenient to begin with a brief mention of the various types of matrimonial assets under s 112(10) of the Women's Charter (Cap 353, 2009 Rev Ed) ("WC"). Matrimonial assets include:

(a) Assets acquired before the marriage which were:

(i) used by one or both parties or their children for a certain purpose, for example, shelter, or

(ii) substantially improved by one or both parties during the marriage.

(b) Assets acquired by one or both parties during the marriage.

33 However, an asset acquired by gift or inheritance at any time is excluded from the definition of matrimonial assets unless:

(a) it has been substantially improved by the other party or by both parties during the marriage; or

(b) is a matrimonial home.

34 In this case, H's one-third interest in the Property acquired by gift in 2004 existed at the time of divorce with no change in form whatsoever. W does not assert, and rightly so, that s 112(10)(*b*)(ii) of the WC applies because the gift was acquired before and not during the marriage.

35 In addition, W also does not allege that either of the parties made substantial improvement to the Property. However, W claims that H's one-third interest qualifies as a matrimonial asset that is subject to division in a divorce because the Property was their matrimonial home having resided there for 33 months.

36 As aptly put by Debbie Ong J in *TXW v TXX* [2017] 4 SLR 799, who considered whether the properties in that case could be deemed matrimonial assets, "[e]ach case ought to be determined on its own facts" (at [16]). The same approach applies when considering whether it is fair and reasonable for a property to be considered the parties' matrimonial home, and the court will have regard to all the relevant facts and circumstances.

37 It is undisputed that the parties had lived in the Property and raised the son there, albeit for a short time. W had lived there since the marriage on 3 January 2015 and left the residence about 33 months later, on 28 September 2017, with their son. It is also not disputed that F's family lived in the Property since 2004 and, after the marriage of the parties, W moved in to live with F's family, namely F and M and another son, on 3 January 2015. Even then, and ever since 2004, it had been F who had been paying mortgage payments and the running expenses of the Property. When the relationship between H and W broke down, W moved out on 28 September 2017.[19] Thereafter, F, M and H continued to reside in the Property, and F continued to finance the Property as it was still encumbered by loans.

38 In addition, in practical terms, F and M were the master and mistress of the household. This is particularly significant when one considers a salient fact in the present case: that the Property was indisputably F and M's matrimonial home. Importantly, W in her affidavits and submissions, did not aver that she had dominion over the Property, that she was the mistress of the household, or that she was helping to run the household. Instead, F took charge of all financial decisions relating to the Property. He paid for the Property, as well as all expenses related to the Property. M kept the household running. She maintained

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19 HAC for CA 27 at para 13.

the Property, purchased groceries and kept the household in order, using money that she received from F. These facts were averred by M in her affidavit, and W has not pointed to evidence to the contrary. Indeed, F and M even paid for the renovations to accommodate W's residence in the Property, and W's involvement in this regard was limited to corresponding with contractors regarding the renovation of their bedroom and the son's nursery in the Property. On the facts, H's inability to show that the living arrangement was temporary as the couple intended to purchase their own property did not improve W's case.

39 In our view, H owns a one-third interest of the parents' matrimonial home. Put differently, the parties lived in an extended household. Whether or not other people have lived in the property and how it was used such that it served as their home instead of a matrimonial home for the parties is a relevant circumstance.

40 The factual scenario here is similar to *TQU v TQT* [2020] SGCA 8. In that case, the wife contended that a property located in Pender Court was a matrimonial asset as the parties had lived in it as the matrimonial home from the date of the marriage (*ie,* 6 March 1990) till late 1991. The husband argued that the parties had never used the Pender Court property as their matrimonial home. The Court of Appeal held that the Pender Court property was not a matrimonial property for two reasons (the latter of which being more important for present purposes). First, given that the Pender Court property was a gift from the husband's father, the burden was on the wife to show that it was used as a matrimonial home and thus transformed into a matrimonial asset, this burden was not discharged. Second, and more importantly, the wife did not dispute the Husband's assertion that his mother and sisters were living in the Pender Court property even before and at the time the marriage was registered. Accordingly, the Court of Appeal opined that the Pender Court property was used "*more as a*

*home for the Husband's family rather than a matrimonial home*" [emphasis added] (at [53]–[54]). It should be noted that in that case, the parties had only lived in the Pender Court property for a short period prior to moving into another property at Bukit Batok which was agreed to be their matrimonial home for the bulk of the marriage.

41 Given the salient facts set out above, with respect, we disagree with the Judge's view that H's one-third interest in the Property is to be included in the pool of matrimonial assets because we are of the view that it was not their matrimonial home. It is not a matrimonial asset as it was a gift from F. We accordingly exclude H's one-third interest in the Property from the pool of matrimonial assets. Having so concluded, the issue of the value to be attributed to H's one-third interest does not arise for consideration.

42 The above analysis shows that a legal interest coupled with residence will not necessarily mean that the property in question constitutes a matrimonial home to be included as a matrimonial asset for the purpose of division. *A fortiori,* mere residence alone is generally not enough. For example, if the parties stay at a property rented from a third party or which belongs entirely to another member of the family, that property will not be part of the matrimonial assets available for distribution even though, from a layperson's point of view, that property may be considered as their matrimonial home.

***SICC membership***

43 The Judge had included H's membership in the Singapore Island Country Club ("SICC") valued at S$200,000 in the matrimonial assets held by H.

44 H argues that the SICC membership should not have been included because it was a gift from F before the marriage.[20]

45 W argues that H has not established that it was a gift from F before the marriage. However, she also argues that even if it were a gift, it had been transformed into a matrimonial asset under s 112(10)(*a*)(i) WC because the membership was ordinarily used or enjoyed by both parties during the marriage.[21]

46 On the other hand, H argues that W was not entitled to rely on s 112(10)(*a*)(i) as it was subject to a proviso that matrimonial assets would not include any asset (not being a matrimonial home) that has been acquired by gift that has not been substantially improved during the marriage. H's argument meant that it was not sufficient for W to say that the membership had been ordinarily used or enjoyed (for recreation or social purposes) by the parties during the marriage. She had to also show that she had substantially improved the membership during the marriage since the SICC membership was a gift from F.

47 The Judge concluded that H had failed to establish that the SICC membership was a gift by F before the marriage. There was no evidence as to when the membership was acquired which would have been a straightforward matter of objective evidence from SICC. Also, F's affidavit did not address the question of the SICC membership. There was no other evidence as to who paid for the membership.

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20 HAC for CA 27 at para 56.

21 WRC for CA 27 at paras 43 and 44.

48 We agree with the Judge's analysis and we accept the Judge's conclusion on the SICC membership. While it could well be that the SICC membership was acquired before the marriage and paid for by F, it was for H to prove this which he failed to do.

***The S$1m Gift***

49 It was common ground that on the day of the parties' wedding, F handed a cheque of S$1m to H ("the S$1m Gift") at the tea ceremony for their marriage. The issue was whether this was a gift to both the parties or to H only.

50 The Judge found that it was the latter as that was the intention of F. We state the Judge's reasons below.

51 First, the Judge accepted that the fact that W had received jewellery from M at the same tea ceremony did not necessarily mean that the S$1m Gift was for H only. However, the Judge considered that it may be useful as an indication of F's intention since it forms part of the context in which the S$1m Gift was made.[22]

52 Second, F had affirmed an affidavit to the effect that the S$1m Gift was intended for H alone. In that affidavit, F gave his reasons. He said that W would be receiving jewellery worth about S$20,000 from M at the tea ceremony and had already received a car and would not be paying for the expenses of the wedding dinner. In addition, H had already bought W more than S$100,000 worth of jewellery. F expected H "to use the remainder towards the benefit of

[22] Judgment at [44].

his own future".[23] F trusted H to know how best to use the money, however he deemed fit.

53 Third, the Judge found that the parties' subsequent conduct was consistent with F's account.[24] The money was deposited in H's sole account and never deposited into a joint account. While that was equivocal, it was another factor in favour of H's position in the context of evidence from H and F.

54 Fourth, in so far as W had said it was inconsistent for F to make the S$1m Gift to H when H purportedly owed F money (under loans from F to H) without making any deduction for the loans, the Judge said that as there was no deadline to repay the loans from F, it was not odd for F to make the gift to H without requiring repayment of the outstanding loans.[25]

55 Fifth, in so far as W relied on a recording of a conversation between the parties sometime in July 2017, the Judge found that there was no admission by H whose response was consistent with his position.[26] Although H did not deny W's assertions, he was equivocal in his responses. H was redirecting the conversation rather than admitting to W's assertion that the S$1m Gift was for both of them. In any event, even if H had made some concessions, the key issue was the intention of F and not H.[27] Furthermore, the conversation had taken place more than two years after the wedding and was not contemporaneous evidence. It took place at a time when the relationship between the parties was

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23 Supplementary Joint Core Bundle Vol 2 207 at para 28.

24 Judgment at [47].

25 Judgment at [48].

26 Judgment at [49].

27 Judgment at [50].

already breaking down. Both parties would be ensuring that the evidence would favour their positions.

56 H supported the Judge's decision for the same reasons as the Judge. W argued that the Judge erred in his assessment of the evidence.

57 We are of the view that the Judge had erred as he placed too much weight on some evidence and not enough weight on the occasion when the S$1m Gift was presented and on the substance of the recorded conversation.

58 First, F could have handed the cheque to H before or after the wedding. However, he chose to do so at the tea ceremony for the marriage. This is a significant occasion where the parties pay their respects to senior members of the family. The overt act of presenting a gift during such a ceremony would be viewed objectively as a gift to the couple in the absence of evidence to the contrary, and unless the nature of the gift suggested otherwise. The fact that the gift was in the form of a cheque in the name of H and handed to H was equivocal. What was more significant was that it was handed to H in the presence of both parties at that ceremony.

59 Second, the S$1m Gift was unlike the jewellery given by M to W because by its nature, the jewellery would be intended for W alone and H did not contend otherwise. As the Judge accepted that the gift of jewellery was equivocal in respect of the S$1m Gift, he erred in treating it as a useful indication of F's intention.

60 Third, F's affidavit was self-serving. He had executed it for the purpose of the ancillaries hearing and he would naturally favour H over W. It was unsurprising for F to come up with reasons to support H's contention that the

S$1m Gift was for H alone. Furthermore, this was one of the few occasions when the Judge accepted F's evidence when the Judge had rejected other evidence of F about some loans to H (except for a car loan which the Judge also accepted). No reason was given by the Judge as to why F's evidence on the S$1m Gift was more convincing than the evidence of F in respect of other loans to H which the Judge rejected.

61 Fourth, we take the parties' subsequent conduct and the substance of the recorded conversation together. We are mindful that W had recorded the conversation without H's knowledge and thus she had that advantage over him. Nevertheless, the substance of the conversation showed that W had explicitly asserted to H more than once that: (a) the S$1m Gift was for both of them; and (b) their intention was to place the money in a joint account of theirs but H had failed to do. H did not correct W by asserting that the S$1m Gift was for him only. Instead, he responded by giving other reasons, for example:

(a) that he had used the money for investment, after paying wedding expenses;

(b) that the gift was for their son (which W challenged);

(c) that it was for H to decide what to do with the money (which is different from saying that the gift was for him only); and

(d) that it was too complex to put the money into a joint account.

62 Indeed, at two points of time, H even admitted that the money was for both of them although after that he began to imply that it was for him only by

suggesting that F would have issued two cheques if F intended for the gift to be for both of them. We set out below the pertinent parts of the conversation:[28]

| | |
|---|---|
| Woman: | Anyway, what happened to the…what happened to the one mil that your dad gave us? I thought we were supposed to invest it? |
| Man: | Yeah, we did ah, I invested…I invested almost everything ah. |
| Woman: | You invested the all the…all the one mil your dad gave us our wedding? |
| Man: | No, we paid almost three hundred thousand for wedding expenses, if you didn't realise. |
| Woman: | Mmhmm. |
| Man: | And then, invest the rest la, that's all invested. |
| Woman: | So the rest of the seven hundred thousand dollars is invested? |
| Man: | Ya…everything is invested. |
| Woman: | Invested in what? |
| Man: | Stocks…mixture. |
| Woman: | What do you mean? |
| Man: | Mixture of stocks, bonds, whatever, long term, short term. Anyway, that money's not for us. |
| Woman: | What do you mean that money's not for us? |
| Man: | kept it for cubs. I don't intend to touch the most… [*Unintelligible*] |
| Woman: | Yeah, but I thought you said we put the money in our joint account and for us…for us to invest in whatever. That's why, that's why we open a Stand Chart joint account what. |
| Man: | No but, anyway, the Stand Chart thing is, we're closing everything. |
| Woman: | Yeah, but then that's what you told me. That's why you ask me to open a Stand Chart joint account cause you said that will put, you will put the one mil inside then after that we'll invest it |

[28] JRA 219 to 225.

from there, in our joint account. Isn't that what you said?

Man: Ya but…is…is not tenable for the Stand Chart bank account….we should move out. Because they've been charging us so much money.

Woman: Then you move it to where?

Man: UOB.

Woman: But shouldn't it be both…under our- both our names?

Man: Why?

Woman: Because that's what your dad gave us what.

Man: Mmmm…it's- it's for Cubby-

Woman: But it's not under Cubby's name either.

Man: Yeah.

Woman: No what, your dad didn't say. Didn't say it was for Cubby, your dad said it was-

Man: It's for me to decide, love.

Woman: What do you mean it's for you to decide? So…so your dad gave us one mil and then it's for you to decide what you want to do with it?

Man: Mmhmm.

Woman: Under your own name, not under our name?

Man: Mmhmm.

Woman: How does that make sense?

Man: Why not?

Woman: Because you was the- you were the one that told me that you wanted to open a joint account to put the money that your dad gave us inside!

Man: Mmhmm.

Woman: Yeah la, so then…

Man: But it's not working out for Stan Chart.

Woman: Yeah…so if not working out for Stan Chart, we should open another joint account for UOB and just put the money inside there la!

Man: It's too…complex.

Woman: Why is it too complex?

Man: Because I got my own personal stuff inside and got the wedding…the angbao that my dad gave me on wedding inside too, so it's just there and-

Woman: What do you mean?

Man: Because I have all my savings there then I have all my…I mean the angbao my dad gave me there, then I use the same money to invest and then I just don't intend to touch those…intended to be for Cubbs, that's what I'm trying to do.

Woman: No but then why do you suddenly have this decision that it's for Cubs and then you suddenly never tell me?

Man: It's always been at the beginning for Cubbs, so everything [*Unintelligible*].

Woman: Since when…I mean, but then said, but then the thing you told me it was going to be a joint account but then suddenly you just moved it out to your own account! Then you never even— you also never tell me.

…

Woman: Yeah, but then like, you know. Things like, you know. How we're going to invest our money and then like, you know. Our joint account— our joint account thing also. You cannot just like that, like that mah. And then just tell me it's not my right to know anything, and I don't need to know anything. Then it's like, huh?

Man: First of all, okay. Very first of all, when my dad gave me the ang bao, **yes you are right in the sense that it's for us** …

Woman: It's for us for our wedding what!

Man: Huh?

Woman: It's for us for our wedding what. That's what your dad gave us for tea cere— for tea ceremony,

Man: Yeah whatever you want to put it as.

Woman: [*Cuts in*] But that's what you told me!

| | |
|---|---|
| Man: | **It's for us, yes**. But it's also for me to be the one that make the decision. That's a reason why he gave me the money... |
| Woman: | Aiya. |
| Man: | So— |
| Woman: | [*Cuts in*] Yeah but then— |
| Man: | That's the way it just is. Why didn't he write two cheques? 500 thousand each? |
| Woman: | Because it was supposed to be for our joint account and by then we didn't have a joint account. |
| Man: | There's no such thing, he always can give you a second cheque what. |
| Woman: | He doesn't even know what's my name! Obviously we're getting married right. So obviously, if we're getting married— |
| Man: | You really think the reason why he didn't write separate cheque is because he doesn't know your name? |
| Woman: | But you were the one that told me, that you were going to put it in a joint account. That's why you told me— that's why you asked me to open Stand Chart. |
| Man: | Yeah, that's why I wanted to open joint account, but it became too complex. Then…end of the day, you don't go and bother about all this money stuff. Let me go and do it. |

[emphasis added in bold underline]

63 In our view, the Judge had been too charitable to H in his assessment of H's responses. Furthermore, the Judge should not have given any allowance for any concession by H on the basis that it was F's intention that was the key consideration. This was not a case where H had said that he was unaware or uncertain of F's intention. H would not have agreed in the conversation that the gift was for both him and W if he had been uncertain. In other words, H's concessions were in fact indicative of F's intention, as known to H.

64 The Judge should also not have placed much weight on the fact that the conversation was about two and a half years after the S$1m Gift had been made. This was not a case where W's or H's memory of what had transpired might have lapsed with such time so that it was unsafe to rely on what had been said in July 2017.

65 In the circumstances, the conversation reinforced W's version. We hold that the S$1m Gift was for both the parties. In W's Appellant's Case in CA 28 ("WAC for CA 28"), she submitted that the money had been used in various ways and if the S$1m Gift was for both of them, then an aggregate sum of S$1,038,116.55 (and not just S$1m) should be included in the matrimonial assets.[29] While H contested the purpose of the S$1m Gift, he did not address this part of WAC for CA 28. In the circumstances, we hold that S$1,038,116.55 should be added to the pool of matrimonial assets as an asset held by H.

***H's shares in Company Y***

66 H has 2,000 shares in a private company referred to as "Company Y". F had transferred the shares to H around 23 August 2016 for S$1. This was during the marriage. The shares were transferred back by H to F in March 2019, *ie*, after the IJ date, also for S$1.

67 The threshold issue is whether the initial transfer of shares from F to H was a gift. If so, then neither the shares nor the dividends accruing from the shares would be matrimonial assets.

68 The Judge said that a court will not inquire into the adequacy of the consideration to determine if a contract has arisen. In view of the S$1

[29] See para 49 of WAC for CA 28 which incorrectly refers to $1,038,166.55.

consideration, the share transfer could not be treated as a gift.[30] However, the primary asset of Company Y was shares in a listed company, *ie*, Company X. The trading of such shares had been suspended and Company X was being restructured. In the absence of more evidence than just the accounts of Company Y, it was speculative to assess the value of its shares at the date of the ancillaries hearing, *ie*, 1 October 2020. Accordingly, the Judge declined to ascribe a value to the shares.[31]

69 However, based on accounts of Company Y, the Judge concluded that US$14,915,558 had been declared as dividends between 2016 and 2019. As H's 22,000 shares comprised 10% of the issued shares in Company Y, H would have received US$1,491,544.80 which worked out to S$2,073,247.27. This figure was added to the matrimonial assets as assets held by H.[32]

70 H's appeal on this item rests on two points. First, that the Judge should have treated the transfer of shares to H as a gift and consequently, any dividends accruing from the shares would also be a gift and thus not a matrimonial asset.[33] Secondly, that the Judge erred in his conclusion on the amount of dividends declared by Company Y and purportedly received by H, as no dividends were declared in 2019 and any dividends declared for 2016 should be apportioned over that year as the transfer to H was in August 2016.[34]

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30 Judgment at [71].

31 Judgment at [72].

32 Judgment at [74].

33 HAC for CA 27 at paras 42 to 45.

34 HAC for CA 27 at paras 46 to 54.

71 W's cross-appeal on this item was that the Judge should have given a value to the shares, as the assets of Company Y were not restricted to shares in Company X.[35]

72 As mentioned above, the threshold question is whether the transfer of shares was a gift from F to H notwithstanding the consideration of S$1. While there was no direct evidence on the value of the 10% shares at the time of the gift in August 2016, it must have been considerably more than S$1 in the light of a dividend of US$4,441,617 that was declared for 2016, even if other years were not taken into account.

73 While it is a principle of contract law that the adequacy (or inadequacy) of the consideration does not affect its validity, there is also the requirement that there must be an intention to create a legal relationship between the parties to support the existence of a binding contract between the parties. In the present circumstances, the relationship between F and H (F had not asserted a beneficial interest at all) and the nominal sum of S$1 really point the other way, *ie*, that there was no intention to create a legal relationship and that there was no contract. It was in reality a gift.

74 Therefore, the Judge should not have included any dividends accruing to the shares as part of the matrimonial assets, and the sum he had included, *ie*, S$2,073,247.27 is to be excluded.

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[35] WAC for CA 28 at paras 51 to 56.

***W's BMW car***

75 W owned a BMW car with an agreed value of S$100,000.[36] It was bought for W in March 2014 as an engagement present before the marriage. It was not disputed that the car was paid for by using F's credit line. The total consideration was S$274,650.[37] The question was whether this sum was a gift or a loan from F to H which H then subsequently repaid between December 2017 and January 2018.

76 W argued that the alleged loan was false.[38] The loan was not disclosed in H's Affidavit of Means ("AOM"). The payment of S$274,650 was part of a deluge of money transferred by H to F totalling S$1,209,969.22 under the guise of loan repayments to dilute H's assets. As the Judge had found that H's payment of the other sums were not legitimate repayments, the Judge should not have accepted that the S$274,650 payment was for a legitimate reason. There was no objective evidence of the loan and no evidence that F even acknowledged receipt of the money as a repayment of a loan. An affidavit from F was self-serving.

77 H argued that his AOM did not disclose the loan because it was filed on 19 March 2019, more than a year after the repayment.[39] He supported the Judge's reason that if the car was a gift from H to W, then payment would have come from H and not F, but payment had been made by F.[40]

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36 HAC for CA 28 at para 16.

37 H's Respondent's Case ("HRC") for CA 28 at para 3.

38 WAC for CA 28 at para 12.

39 HRC for CA 28 at para 13.

40 HRC for CA 28 at para 11.

78 Besides the fact that F had paid for the car, the Judge took into account the evidence of H and F that the payment was a loan and was of the view that there was no evidence that it was a gift. Hence the Judge included the S$100,000 value of the car as a matrimonial asset held by W and did not include the S$274,650 payment from H to F as an asset held by H (since it was legitimately paid by H to F).[41]

79 We are of the view that the Judge had erred. The fact that F paid for the car was equivocal. As far as W was concerned, it was a gift from H to her as an engagement present. It did not matter to her whether the money came from F or H. In fact, she knew that F paid for it as she alleged that she had thanked him and F did not clarify that it was H who was paying for it. While the Judge did not place much weight on the lack of any clarification from F, there were other factors which militated against the existence of a loan.

80 As discussed, this was not the only loan from F claimed by H. The Judge had not accepted the existence of the other loans and there was no reason for him to distinguish the car loan from the other loans except that it appeared inconsistent to the Judge that W was claiming a gift from H when it was F who paid for the car. We have said that that was equivocal.

81 Secondly, there was no prior or contemporaneous documentary evidence of the car loan from F to H when payment for the car was made to the vendor. There was no record by H to remind him of his obligation to repay this outstanding loan to F. On the contrary, it appeared that this was another occasion in which F had simply allowed H to use F's credit facilities without any expectation of repayment.

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41 Judgment at [35].

82 Thirdly, when payment was made from H to F, there was no message from H to F to state the purpose of the payment and no acknowledgement by F of repayment of any loan.

83 Although it is true that it was a father and son relationship, one would expect some discussion and documentary evidence about the loan when it was made and/or when it was repaid, if it were truly a loan. In all the circumstances, we hold that there was no car loan from F to H. The car was a pre-marital gift and should be excluded. Consequently, the S$274,650 payment from H to F should be included in the matrimonial assets as an asset held by H. Adding this sum to the figure of S$48,815.93 which the Judge had initially included, the aggregate is S$323,465.93.

***H's Maserati car***

84 H had bought a Maserati car in January 2016 for S$606,000. This was paid in the following manner:

(a) a trade-in value of S$220,000 from a previous sports car used by H;

(b) a downpayment of S$50,000 using H's supplementary credit card which was linked to F's credit card;

(c) a cheque from H for S$36,100; and

(d) the balance was paid via a hire purchase loan which F paid for.

85 The Judge found that as H's contribution to payment for the car was S$36,100, then only S$36,100 should be attributed as an asset of H. He divided S$36,100 by the purchase price of S$606,000 to derive a fraction and applied it

to the value of S$300,000 for the car which was the value as at the date of hearing of the ancillaries. This worked out to S$17,868.34 which the Judge included as a matrimonial asset held by H.[42]

86 In W's appeal, W argued that the full value of the car, *ie*, S$300,000 should have been included as a matrimonial asset held by H instead of just S$17,868.34. She argued that one cannot give a portion of a car and that although F had effectively paid for the balance price of the car, this should have been treated as a gift of cash which H used to buy the car. When H used the cash, the gift was then "converted" to an asset, which was the car, which was for family use and thus a matrimonial asset.[43]

87 We do not agree that, in law, one cannot give a portion of a physical asset. If a parent pays for, say, 75% of an asset for a child and the payment is a gift, then the law treats 75% of the asset as a gift from the parent to the child. Indeed, W was claiming a portion of the Property as a gift from F to H and yet was arguing that this was not possible for H's car.

88 We also do not agree with W's attempt to "convert" the gift to a matrimonial asset. It was a gift by F to H whether F made payment direct to the vendor/a financial institution or gave the money to H who then used it to pay for the car.

89 It is a separate argument whether the car had been transformed or converted into a matrimonial asset because it had been for family use. As this was a point raised below but not in WAC for CA 28, we need not say any more about it.

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42 Judgment at [77].

43 WAC for CA 28 at para 58.

90 In the circumstances, W's appeal for the entire value of H's car to be included as a matrimonial asset must fail.

**Division of matrimonial assets**

91 After taking into account the variations mentioned above, we set out the matrimonial assets held by W and H as initially decided by the Judge and after our decision in Annex A attached. The total of the matrimonial assets is S$2,443,942.18.

92 The next step is to decide how to divide the matrimonial assets between the parties who agreed that the structured approach in *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ*") would apply. As the Judge elaborated at [127] of his Judgment:

> 127 … Under this approach, the court first arrives at "a ratio that represents each party's direct contributions relative to that of the other party, having regard to the amount of financial contribution each party has made towards the acquisition or improvement of the matrimonial assets": *ANJ* at [22]. Next, the court considers the parties' indirect contributions and ascribes a second ratio which represents the contributions of each party to the family's wellbeing relative to the other. The court then derives an average percentage contribution for each party, at which point further adjustments may be made to account for other considerations: see *ANJ* at [27].

93 However, before applying this approach, the court has to consider whether the same apportionment applies generally to all the assets or there should be a difference because the assets should be classified under different categories. The former is referred to as the global assessment method and the latter as the classification method. The Judge was of the view that the global assessment method was appropriate as almost all the matrimonial assets were assets for which there was no direct financial contribution by W. Hence there was no good reason to attempt to classify the assets into different sub-groups of assets.

94 W supports the Judge's approach. However, H disagrees. He argues that the Judge erred and should have classified the assets into the following groups:

(a) Group A: Assets from F

(b) Group B: Inter-spousal gifts

(c) Group C: All other assets

95 As it turned out, there was no valid reason to distinguish between Groups A and B. H attempted to do so because he argued that the Group A assets, being gifts from F (or emanating from such gifts) should not be considered as matrimonial assets in the first place. However, that was a separate consideration. If they were excluded, then there would be no need to consider applying the global assessment or classification method to them in the first place. On the other hand, if any of those assets were to be included as matrimonial assets, then they would come under the same category as Group B in that these were assets for which there was no direct financial contribution by W. Indeed, the HAC for CA 27 accepted as much.[44] The distinction therefore would only be with Group C but, as the Judge observed, most of the matrimonial assets were assets for which there was no direct financial contribution in the first place (*ie*, Groups A and B). There was therefore no good reason to distinguish Group C.

96 Secondly, we note that the Judge's application of the structured approach would also apply to Groups A and B as he drew no distinction between all the assets. So the question is whether his application was correct. If so, it would apply to Groups A and B as well. If the Judge's application was not correct in any way, then there should be an adjustment in the apportionment.

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[44] HAC for CA 27 at para 88.

But this would be because his application was not correct and not because Groups A and B should be distinguished from Group C.

97 Thirdly, we note that under the subject of applying the classification method, H has made elaborate calculations for various scenarios to reach an outcome which would mean that upon the division of assets, it is W who should pay H a sum in cash and not the other way around. This was intuitively surprising since H holds most of the matrimonial assets. As we elaborate below, the outcome was "confirmed" through various significant adjustments to components in H's calculation which had little to do with the classification method in the first place.

98 First, H had reduced the value of his assets to S$1,741,559.40, whereas the Judge had assessed the value to be S$5,082,822.19. This was a significant adjustment made by H presumably on the basis that most or all of his arguments about the exclusion of assets from his holdings would be accepted which is not the case. We have assessed it to be S$2,210,511.53: see Annex A below. More importantly, this adjustment had nothing to do with the classification method.

99 Second, H had increased the value of W's assets by S$52,000 based on an amount which we do not accept and it is unnecessary to elaborate on. Furthermore, we have reduced the assets held by her by S$100,000 as we are of the view that her BMW car should not be included as a matrimonial asset. While the attempted adjustment of S$52,000 by H was not significant in absolute terms, it again had nothing to do with the classification method.

100 Third, H attributed 100% for his direct contribution for Group A and B assets and 70.6% for his direct contribution for Group C assets whereas the

Judge attributed 96.8% across all the assets. While this was an application of the classification method, it would not affect the calculations significantly.

101 Fourth, H adjusted the indirect contribution ratio to 75% for himself whereas the Judge had attributed 40% to him. This was another significant adjustment by H which also had nothing to do with the classification method.

102 Fifth, H adjusted the weight between the collective direct and indirect contributions to 75% for direct contributions instead of the usual 50:50 average ratio often applied. This was to take into account the short marriage. We note that any adjustment of weightage due to the short marriage has nothing to do with the classification method unless the adjustment was applied to specific categories.

103 In the circumstances, H's desired outcome was mainly due to adjustments he had made which had nothing to do with the classification method. His arguments for that method and his elaborate calculations were a distraction. There was no good reason to vary the Judge's decision to use the global assessment method. We now move to the next stage after our decision on the identification and value of the matrimonial assets.

***Direct contributions***

104 As mentioned, the Judge attributed a ratio of 96.8:3.2 in H's favour for direct financial contribution across all the assets. H did not dispute this figure if the global assessment method was correctly adopted by the Judge. However, in the light of the variations we have made, the ratio should be 92.9:7.1 in H's favour. We arrive at this ratio using H's direct financial contribution to W's direct financial contribution in respect of their assets. For H, his direct financial contribution was S$2,270,511.53 (S$60,000 + S$2,210,511.53, see Annex A

below), compared against W's direct financial contribution (S$173,430.65). We round up the ratio of direct contributions so that it is 93:7 in H's favour.

***Indirect contributions***

105 As mentioned, the Judge attributed a ratio of 60:40 in W's favour for indirect financial contribution across all assets. H is arguing for 75:25 in his favour.[45]

106 H's argument is two-fold. First, he alleges that he was an involved father and caring husband. Second, he alleges that W had a complete disregard and lack of concern for the son's well-being when she abducted him from the Property. He alleges that W rebuffed him in his attempts to persuade her to bring the son home. For ten days his requests were refused and finally when he was allowed to bring the son home, the son was "clearly confused" but happy to see H and his family.[46]

107 W disputes that H was an involved father as:[47]

(a) H continued to travel overseas frequently even after the birth of the son;

(b) there was evidence in the form of several messages to H to spend more time with W and son; and

(c) H was spending time with girlfriends, an allegation which was supported by private investigation reports.

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45 HAC for CA 27 at para 105.

46 HAC for CA 27 at para 103.

47 WRC for CA 27 at para 80.

108 W disputes that she had abducted the son. She brought him along when she left the Property because she was the primary caregiver, even though they had a domestic helper. She alleges that she had quickly proposed an access arrangement for H which was reached within about a week and H never expressed any urgency in seeing the son.[48]

109 It is not necessary for us to go into any more detail about the allegations and counter-allegations of the parties. It suffices for us to say that H had exaggerated his role as a spouse and father. He was not quite the involved and supportive person he had portrayed himself to be. His allegation about W's callousness in abducting the son was also an exaggeration. There was also some merit in W's argument that he was spending time with girlfriends. On the other hand, this was a short marriage.

110 In the circumstances, we are also of the view that the ratio should be 60:40 in favour of W for indirect contributions but in reaching this view we have taken into account certain factors as elaborated below.

111 Based on an equal weightage for the collective direct and indirect contributions, the Judge arrived at an average ratio of 68.4:31.6 in H's favour. For convenience, we set out the Judge's table at [139] of the Judgment.

| | **Husband** | **Wife** |
|---|---|---|
| Direct | 96.8 | 3.2 |
| Indirect | 40 | 60 |
| Average (unadjusted) | 68.4 | 31.6 |

[48] WRC for CA 27 at paras 86 and 87.

However, after taking into account the short marriage, he placed more weight on the direct contributions and adjusted the average ratio to 75:25 in favour of H.

112 In other words, after attributing 96.8% to H for the collective direct contributions and 40% to H for the collective indirect contributions, the Judge had to decide whether to place more weight on either of these collective contributions. When he initially placed equal weight of 50:50 to the collective direct and indirect contributions, he only had to take the average of the two as shown in the table above which led to 68.4% in favour of H. However, because he decided to place more weight on the collective direct contributions, the average ratio was adjusted from 68.4% to 75% in H's favour.

113 When the Judge adjusted the equal weightage because of the short marriage, he was presumably applying the approach mentioned by the Court of Appeal in *ANJ*. In that case, the court had referred to the equal weight of the collective direct financial contributions and collective indirect contributions of the parties to mean that non-financial contributions are as important as financial ones and both types of contributions are to be put on an equal footing (at [26]). The court also said that there will be instances where the court should tweak or calibrate what the court referred to as the "average ratio" where one component assumes greater importance than the other on the facts to reflect a just and equitable result. The court had then suggested at [27] that there are at least three (non-exhaustive) broad categories of factors that should be considered in attributing the appropriate weight to the collective direct and indirect contributions:

(a) the length of the marriage;

(b) the size of the matrimonial assets and its constituents; and

(c) the extent and nature of indirect contributions made as not all indirect contributions carry equal weight. For example, the engagement of a domestic helper may affect the weight to be given to the parties' collective indirect contributions.

114 In our view, a factor such as the length of the marriage may also be taken into account at the stage where the indirect contributions of the parties are considered. Likewise, the extent of a husband's involvement with the family and the assistance of a domestic helper. In other words, these factors need not be considered only after there is an initial assessment of the indirect contributions of the parties.

115 As we have taken the short marriage into account in considering the parties' indirect contributions, we do not take the short marriage into account a second time in considering whether to give more weight to the collective direct contributions than to the collective indirect contributions.

116 Based on our views of the direct contributions and the indirect contributions of the parties and applying equal weightage for the collective direct and indirect contributions, the average ratio is as follows:

| | **Husband** | **Wife** |
|---|---|---|
| Direct | 93 | 7 |
| Indirect | 40 | 60 |
| Average (unadjusted) | 66.5 | 33.5 |

117 The Judge also made one more adjustment of 2% to the average ratio that he tentatively reached so that it became 73:27 (instead of 75:25), in H's favour because of H's expenditure on one of his girlfriends. This is the subject

of H's appeal as well because H argues that the expenses totalling S$33,881.36 did not justify the 2% adjustment.[49] W countered that that sum was only the undisputed expenses and there would have been other more substantial but undetermined expenses.[50] Even if that were so, it seems to us that the money which H spent on that girlfriend, or other girlfriends too, could have been considered together with the time spent by H on them in the assessment of H's indirect contribution, which we have done, rather than considering them separately.

118 In the circumstances, we do not make the same further downward adjustment of 2% against H. We therefore do not make any further adjustment to the average ratio of 66.5:33.5 in H's favour.

119 The total value of the matrimonial assets is S$2,443,942.18. With the average ratio of 66.5:33.5:

(a) H is entitled to S$1,625,221.55; and

(b) W is entitled to S$818,720.63.

120 As W already has assets of S$233,430.65 in her name (being S$333,430.65 which the Judge found minus S$100,000 for W's BMW car), she is entitled to a further S$585,289.98 from H and he is to pay this sum within one month from the date of our decision if he has not already done so. The Judge had ordered H to pay a larger sum in two tranches within two deadlines but those deadlines are no longer relevant in the light of our decision.

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49 HAC for CA 27 at para 125.

50 WRC for CA 27 at para 95.

**Maintenance for the son**

121 W had claimed maintenance from H for the son. She alleged that his monthly expenses were S$8,253.31. H alleged that it was S$2,887.07.[51] The Judge noted that the son would also spend significant time with H (under orders for custody, care and control of the son) and H would pay for expenses incurred by the son during that time. Adopting a broad brush approach, he assessed the child's reasonable expenses to be S$5,000 per month. This included the son's share of rental expenses and helper's expenses, albeit the Judge did not specify how much of the maintenance order made was attributable to each set of expenses. W had alleged that the full quantum of such expenses amounted to S$1,400 per month[52] and S$1,520 per month respectively.

122 Based on the Judge's assessment of the earning capacity of W and H, the Judge ordered H to pay 60% of the S$5,000 per month, *ie*, S$3,000 per month.[53]

123 However, the Judge declined to order the maintenance to apply retrospectively to December 2017 which is the time when W applied for maintenance in a separate maintenance application. The Judge had three reasons. First, W had been able to cope. The Judge referred to *AJE v AJF* [2011] 3 SLR 1177 at [27]. Second, H had been paying for part of the son's expenses including the school fees. Third, the difference was not so significant as to warrant a retrospective order. Therefore, the Judge ordered payment of

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51 WRC for CA 27 at para 99.

52 WRC for CA 27 at para 100.

53 Judgment at [152].

maintenance by H to be made by the first day of the month following the issuance of the Judgment (on 28 January 2021).[54]

124 H's appeal on maintenance is on two bases. First, the assessment of S$5,000 per month for the son's expenses was excessive. Specifically, H targets an allowance in principle by the Judge for the son's share of rental expenses and expenses for a domestic helper. Secondly, H submits that the Judge erred in ordering him to pay 60% of the son's expenses.[55]

125 On the quantum for rent, H argues that although W had provided evidence of a monthly payment of S$2,800 which was supposed to be the rent she was paying for staying at her parents' home, the Judge should not have accepted this allegation as W did not provide any tenancy agreement between her parents and her. Neither had her parents confirmed the existence of the tenancy. Secondly, W had already increased her allowance to her parents from S$150 to S$750 per month since moving back to their home. Thirdly, if W was already paying rent to her parents, she would not be incurring any additional rent for the son to stay with her.[56]

126 W said that the S$750 per month was an allowance by W to her father incorporating a study loan taken out for her university expenses. This was not paid as rent.[57] W argued that S$2,800 per month rent was on the low side based on rental listings for a 2-bedroom apartment in the vicinity of her parents' home. She added that she has since been renting an apartment in the vicinity of the son's prospective primary school at S$4,100 per month to facilitate his

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54 Judgment at [153] and [154].

55 HAC for CA 27 at paras 129 to 140.

56 HAC for CA 27 at para 130.

57 WRC for CA 27 at para 103.

admission to the school which has been secured.[58] At the outset, we disregard this additional expense as it was not a component of her original claim for maintenance. Whether it is a reasonable expense is a separate matter which we need not consider.

127 As for the son's share of the expense to employ a domestic helper, H argues that the helper would also do extensive housework for W's family.[59] However, this had already been taken into account by the Judge when he observed that the son was not the sole beneficiary of such help.

128 H's second point is that he too was bearing the full expense of a domestic help to look after the son whenever the son is with him. This was the one who was looking after the son when W and son were staying at the Property and she continues to do so when son is back with H. Hence, W should solely bear the expense of her own domestic help.[60]

129 W's counter argument is that she had released the domestic helper whom H then employed in May 2018 as he and his family were not able to care for the son themselves and that that helper had been trained by W. H's employment of that helper does not render W's expenses unreasonable.[61]

130 We address the question of the son's share of the expense to employ a domestic helper. As mentioned, the Judge had already taken into account the fact that W appeared to be claiming the full expense even though the son would not be the sole beneficiary of such help. As for H's argument that he too had to

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58 See WRC for CA 27 at para 100.

59 HAC for CA 27 at para 133.

60 HAC for CA 27 at para 134.

61 WRC for CA 27 at para 105.

pay for a domestic helper to care for the son whenever the son is with him, we agree with W that this does not detract from her expenses. At most, H's expenses for the son would be taken into account in the consideration of the next stage, *ie*, what portion of the son's expense he should bear.

131 As for the rent claimed by W, we are of the view that payment of S$2,800 per month to her parents or her father was a self-serving exercise to inflate expenses to support the claim for maintenance for the son. First, no tenancy agreement was produced. Even if this was understandable as this was a familial relationship and not a purely commercial one, that was precisely the point that troubles us. By all accounts, W's parents were supportive of her. It was unlikely that they would view her return on a commercial basis and charge her rent. If she was grateful for their support, that is a different matter. She had already increased an allowance from S$150 to S$750 per month. We do not accept her explanation that this was to repay her father for a study loan for her university expenses. Just as she questioned the repayments by H to F for loans, H too was entitled to question this explanation of hers. There was no prior evidence that she was obliged to repay her father and if she was doing so out of gratitude, that was a different matter. Furthermore, it is even more doubtful that if she had to pay something for her stay at her parents' home, this would have to include the son's share. He would simply benefit from whatever support her parents provided without more. We add that a spouse should not inflate her expenses to claim maintenance if she in fact has her parents' support without charge.

132 As the Judge did not attribute a specific sum for the son's share of the rental expense, we have to infer a sum of say S$500 per month and reduce the monthly expenses from S$5,000 to S$4,500 per month.

133 On the question of the 60% which H was ordered to pay, H argues that it should be nil as each party should bear the expenses of the son when the son is with that party. After all, he and W each has equal time with the son. H has the son from 9.30am on Sundays to 7.00pm on Tuesdays every week and half of school holidays and public holidays. He relies on the case of *TFF v TFG* [2014] SGDC 332 ("*TFF*"). However, H has qualified this argument by saying that he is prepared to pay 50% of the son's expenses on big ticket items, *ie*, enrichment classes and preschool fees amounting to S$2,673.60 on a reimbursement basis even though he will no longer receive his monthly salary for some years from a listed company as part of a restructuring exercise which is supposed to be effected in end 2021.[62]

134 According to W, that information is evidence from the bar.[63] We agree and disregard it. W also mentioned that effectively she has been bearing all the expenses for the enrichment classes as H would agree to bear half only if he agreed to such classes.

135 W also argues that H has access for two nights out of seven and so she has more time with the son. She also disagrees that *TFF* is authority for the proposition that where the parents have about equal time with a child, each should bear the child's expenses without contribution from the other. There, H bore 70% of the educational and medical expenses.[64]

136 We agree that that case is not authority for such a broad proposition and if it were, we decline to follow it. The usual practice is that where the parties

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62 HAC for CA 27 at paras 135 to 140.

63 WRC for CA 27 at para 110.

64 WRC for CA 27 at paras 107 to 109.

both earn income and the wife has care and control of the child, the husband will still be ordered to bear a portion of the child's expenses paid by the wife. This is so even where, as is common, the husband has some weekend access and also weekday access to the child. H's situation is no different. If his own expenses for the child are rather high, this may be taken into account in assessing his portion of the expenses paid by W.

137 However, H did not give much elaboration except for his having to employ the same helper who had been taking care of the child but likewise, his parents would also have the benefit of that helper.

138 Looking at the circumstances in the round, we do not see any valid reason to vary the 60% which the Judge ordered H to pay. 60% of S$4,500 is S$2,700 and that is the monthly sum he is to pay.

139 The last question on H's liability to pay maintenance for the son is when it is to take effect from. As mentioned, the Judge declined to order that it take effect retrospectively from December 2017 being the time of W's application for maintenance.

140 It is not necessary for us to set out the arguments on this issue. Suffice it for us to state that we should start from the premise that it is the joint responsibility of both parents to maintain their child. This responsibility arises when the child is born and applies regardless of any application by W for maintenance for the child. Any such application is simply to compel H to meet his obligation. In order to so compel H and to enforce any order made against him, the order has to state the quantum and the start date of his payment obligation. That start date would be:

(a) the month when the application for maintenance or for divorce is made; or

(b) the month when the decision is made (or the following month as in the present case); or

(c) such other time even before the application mentioned in (a) above, or between the events in (a) and (b).

141 Although, as a matter of practice, the court often adopts either option (a) or (b), there is in principle no reason why it should not start from a date before the one in option (a) bearing in mind what we have said above. The concern of the court about adopting option (a) or an even earlier date is that it may be tantamount to a sudden imposition of an onerous burden on the husband when arrears of maintenance arise from a retrospective order. A husband may find that he is extremely challenged to meet those arrears. However, there are four responses to this.

142 First, the husband must know all along that he has an obligation to pay maintenance (unless his financial circumstances are such that he simply cannot afford to do so).

143 Second, when the wife is claiming maintenance, he must also know that she might succeed to some extent and should not be surprised if she is successful.

144 Third, if the order is for him to pay a periodic sum which is higher than what he has been paying, if at all any, he has had the benefit of not paying the difference in the meantime. It is unwise to overemphasise the sudden burden

arising from a retrospective maintenance order and overlook his savings in the past.

145 Fourth, the court may allow a husband to pay the arrears in instalments. That said, we are aware that an order for maintenance which applies retrospectively does appear to impose a sudden and onerous burden on a husband. Hence, option (b) is sometimes adopted. However, in principle, where a husband has the financial capacity to pay retrospective maintenance, there is less reason to adopt option (b). Indeed, the shoe is on the other foot as it is generally unfair to a wife to deny the claim for maintenance during the interim between the time she applied for maintenance and the time when the decision is made. It is not a question of whether she can cope or can afford to pay the expenses in the interim and we disagree with such a proposition. After all, if a husband too can afford to pay, there is no reason why a wife should bear the burden alone during the interim.

146 As for the Judge's second reason that H had been paying for the son's expenses in the interim, that is something which W has taken into account in her cross-appeal.[65] According to her, H had transferred S$2,000 per month to her until November 2018 and then S$1,000 per month thereafter. This was not disputed by H. Applying the sum of S$2,700 per month retrospectively to start from December 2017 and taking into account H's transfer of money to W in the meantime, the arrears are as follows:

| | | |
|---|---|---|
| (a) | December 2017 to October 2018 (11 months)<br>$2,700 - $2,000 x 11 | S$7,700 |
| (b) | November 2018 to January 2021 (27 months)<br>$2,700 - $1,000 x 27 | S$45,900 |

[65] See WAC for CA 28 at para 100.

| | | |
|---|---|---|
| | Total: | S$53,600 |

147 We do not think that this is too insignificant a sum to refuse a retrospective order. Accordingly, we order the S$2,700 per month maintenance to be paid by H to take effect from December 2017 with the adjustments mentioned above to take into account his payments of S$2,000 or S$1,000 per month to W in the interim.

**Conclusion**

148 The Judge's decision on the division of matrimonial assets and on maintenance is varied to the extent stated above and the respective appeals of the parties are allowed to that extent. The remaining aspects of their appeals are dismissed.

149 We allow H to set-off any payment to be made by him to W for any payment to be made by W to him, and *vice versa*.

150 On the question of costs, we are aware that H has succeeded in reducing the amount payable by him in the division of matrimonial assets from S$1,128,957.62 to S$585,289.98. Some of the disputes would have been unnecessary if H had given a clear picture of the source of certain payments and their destinations. Furthermore, as mentioned, H's argument and elaborate calculations in support of the classification method was a distraction. Also, W has succeeded on some issues and on retrospective maintenance. In all the circumstances, we order each party to bear his/her own costs of the appeals 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

Teh Guek Ngor Engelin *SC*, Linda Joelle Ong and Lee Leann (Engelin Teh Practice LLC) for the appellant in AD/CA 27/2021 and the respondent in AD/CA 28/2021;
Marcus Ho Shing Kwan and Foo Siew Fong (Harry Elias Partnership LLP) for the appellant in AD/CA 28/2021 and the respondent in AD/CA 27/2021.

**Annex A**

| S/No | Description | Judge's Valuation (S$) | Appellate Court's Valuation (S$) |
|---|---|---|---|
| **Wife's Assets** | | | |
| 1. | DBS Account No ending in 6757 | 64,772.49 | 64,772.49 |
| 2. | DBS Account No ending in 2722 | 3,085.13 | 3,085.13 |
| 3. | UOB Account No ending in 2082 | 2,225.99 | 2,225.99 |
| 4. | POSB Child Development Account | 13,029.43 | 13,029.43 |
| 5. | BMW Car | 100,000.00 | Excluded |
| 6. | CPF Ordinary Account | 53,964.32 | 53,964.32 |
| 7. | CPF Special Account | 18,110.26 | 18,110.26 |
| 8. | CPF Medisave Account | 18,243.03 | 18,243.03 |
| 9. | Personal gifts | 60,000.00 | 60,000.00 |
| | **Sub-Total** | 333,430.65 | **233,430.65**<br>*H's contribution:* 60,000<br>*W's contribution:* 173,430.65 |
| **Husband's Assets** | | | |
| 10. | SCB Account No ending in 3852 ("SCB 3852") | 0.43 | 0.43 |

| S/No | Description | Judge's Valuation (S$) | Appellate Court's Valuation (S$) |
|---|---|---|---|
| 11. | DBS Account No ending in 1900 | 0.30 | 0.30 |
| 12. | UOB Account No ending in 8100 ("UOB 8100") | 1,841.07 | 1,841.07 |
| 13. | UOB Account No ending in 2108 | 50.49 | 50.49 |
| 14. | CPF Ordinary Account | 60,089.62 | 60,089.62 |
| 15. | CPF Special Account | 52,724.82 | 52,724.82 |
| 16. | CPF Medisave Account | 22,587.44 | 22,587.44 |
| 17. | AIA Singapore Insurance Policy No ending in 2749 | 38,685.77 | 38,685.77 |
| 18. | AIA Policy No ending in 3003 | 46,068.10 | 46,068.10 |
| 19. | AIA Policy No ending in 2994 | 54,558.33 | 54,558.33 |
| 20. | UOB 5840 | 1,848.26 | 1,848.26 |
| 21. | Tokio Marine Policy | 367,829.94 | Excluded |
| 22. | Dividends from shares in Company Y | 2,073,247.27 | Excluded |
| 23. | Maserati Car | 17,868.34 | 17,868.34 |
| 24. | Club Membership | 200,000.00 | 200,000.00 |
| 25. | Sums transferred to F | 48,815.93 | 323,465.93 |
| 26. | Withdrawals from SCB 0353 | 105,000.00 | 105,000.00 |
| 27. | Share of Bukit Timah Property | 1,744,000.00 | Excluded |

| S/No | Description | Judge's Valuation (S$) | Appellate Court's Valuation (S$) |
|---|---|---|---|
| 28. | SCB 0353 | 59,028.97 | 59,028.97 |
| 29. | SCB 4325 | 57,974.47 | 57,974.47 |
| 30. | POSB 1658 | 1,495.53 | 1,495.53 |
| 31. | CitiGold 4055 | 588.39 | 588.39 |
| 32. | Monies spent on wines | 128,518.72 | 128,518.72 |
| 33. | S$1m Gift | Excluded | 1,038,116.55 |
| | **Sub-Total** | 5,082,822.19 | **2,210,511.53**<br>*H's contribution:*<br>100%<br>*W's contribution:*<br>0% |
| | **Total** | 5,416,252.84 | **2,443,942.18** |