

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2022] SGHCF 11

Divorce (Transferred) No 1156 of 2019

Between

WDO

... Plaintiff

And

WDP

... Defendant

GROUNDINGS OF DECISIONS

[Family Law — Matrimonial Assets — Division]

[Family Law — Maintenance]

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WDO
v
WDP

[2022] SGHCF 11

General Division of the High Court (Family Division) — Divorce
(Transferred) No 1156 of 2019
Choo Han Teck J
27 April 2022

24 May 2022

Judgment reserved

Choo Han Teck J:

1 The plaintiff (“the Wife”) and the defendant (“the Husband”) married in Singapore on 4 April 1988. The marriage lasted 31 years before the Wife filed for divorce in 2019. Interim judgment was granted on 30 May 2019. The Husband is a banker and the Wife is a full-time homemaker. The parties have three children who are all above the age of 21. There are no issues of custody, care and control, or maintenance for the children. The only two issues before me are (1) the division of matrimonial assets; and (2) the Wife’s claim for maintenance.

2 On the issue of division of matrimonial assets, the parties disagree as to which assets should constitute the matrimonial pool. The Wife says that two Singapore properties, the Crowhurst Property (“Property C”) and the Bloxhome

Property (“Property B”), are gifts from her late mother and registered in her sole name, and thus should be excluded from the matrimonial pool:

(a) For Property C, the Wife says that it should not be regarded as a matrimonial home because it only became the parties’ home in 2004, when her late mother gave the property to her. The Wife also says that after the Husband had accepted a job in Geneva in 2007, the family moved with the Husband to Geneva until 2009 and did not occupy Property C during this time. The Wife further says that the Husband also did not substantially improve Property C but instead, diminished the net value of the property by mortgaging Property C for loans.

(b) For Property B, the Wife says that although it was linked to Property C via a back-gate, it was a distinct and separate property and was never meant to be the parties’ matrimonial home. The Wife says that the parties lived primarily in Property C whereas Property B was mainly occupied by their two oldest children. Property B was renovated in 2012 after it was given to the Wife, and again, in 2018. The Wife says that the renovations cannot be construed as the Husband’s substantial improvement of Property B because the money used for the renovations of Property B was obtained from mortgaging Property C (which was also a gift by the Wife’s late mother).

3 The Husband says that Property C and Property B are both matrimonial assets. The Husband says that when they first moved into Property C, Property C was in a dilapidated condition and they had to use the proceeds of sale of their previous house, the Namly Property, to renovate Property C to livable conditions. The Husband also says that Property B was given to the Wife in 2012 to provide more personal space for their family, including the parties’

growing children. The Husband says that the parties took steps to physically link the two properties together to effectively merge the properties into a single large matrimonial home. The Husband further says that the 2012 renovations included installing a common kitchen and dining area in Property B and converting the kitchen in Property C into study rooms.

4 I am of the view that Property C and Property B are both matrimonial assets. Under section 112(10) of the Women's Charter 1961 (2020 Rev Ed) ("Women's Charter"), an asset acquired by one party by way of a gift can be a matrimonial asset if it had been used as a matrimonial home, or if it had been substantially improved during the marriage by the other party or by both parties to the marriage. In the present case, notwithstanding the fact that Property C and Property B were gifts from the Wife's late mother, I am of the view that both properties were used as the matrimonial home for the family. As early as 1994, the parties moved into Property C with the permission of the Wife's late mother. By 2004, when Property C was formally transferred to the Wife by way of a gift, the parties had already been occupying Property C as their matrimonial home for 10 years. In 2012, Property B, which was adjacent to Property C, was given to the Wife to expand the parties' matrimonial home for the collective benefit of the parties and their growing children. When renovating Property B, the parties built a gate, thus joining the two properties. This suggests that the parties intended to use both properties as their matrimonial home, which they did. The mere fact that the family stayed overseas in Switzerland for a period of two years from 2007 to 2009 does not change the fact that the two properties were the home for the parties and their children. Therefore, I am of the view that both Property C and Property B formed the matrimonial home of the parties and should be counted in the pool of matrimonial assets.

5 Apart from Property C and Property B, the Wife also says that a total of twelve DBS, UOB and HSBC Malaysia accounts in her sole name were gifts from her late mother and should be excluded from the pool of matrimonial assets. The assets are listed in the table below:

S/N	Asset	Net Value / in SGD
1.	DBS Treasure Portfolio No. ending 5430 (Cash and Cash Investments)	3,418.91
2.	DBS Treasure Portfolio No. ending 5430 (Equity)	430,936.00
3.	DBS Treasure Portfolio No. ending 5430 (Fund)	429,329.90
4.	DBS Treasure Portfolio No. ending 5430 (Fixed Income)	574,696.98
5.	HSBC Jade Global Insurance Policy No. ending 1139	387,881.69
6.	UOB BGF Global Multi Asset Income Fund Account No. ending 01012	232,810.43
7.	HSBC Malaysia Account No. ending 7108	17,330.98
8.	HSBC Malaysia Account No. ending 7131	49,339.84
9.	HSBC Malaysia Account No. ending 7132	51,279.28
10.	HSBC Malaysia Account No. ending 7133	51,279.28
11.	HSBC Malaysia Account No. ending 7136	16,446.61
12.	HSBC Shares/UT/Bonds/SUKUK	68,245.23
Total:		2,312,995.13

6 Out of the twelve assets listed above, the Husband does not dispute that the Fixed Income Portion of DBS Treasure Portfolio No. ending 5430 and the HSBC Jade Global Insurance Policy are gifts to the Wife from her late mother and ought to be excluded from the pool of matrimonial assets. For the remaining ten assets, the Husband says that the Wife did not identify these assets as gifts in her Affidavit of Assets and Means filed in 2019 and only raised the matter in her 2nd Ancillary Matters Affidavit filed in 2021, which suggests that her allegation is merely an afterthought. The Husband also says that the Wife has failed to produce any evidence regarding the source of the ten assets and has therefore failed to discharge her burden of proving that the ten assets are gifts.

7 The Wife tendered the following evidence to support her claim that the twelve assets are gifts from her late mother:

(a) In relation to the assets in DBS Treasure Portfolio No. ending 5430, the Wife adduced bank statements showing the source of all the assets in DBS Treasure Portfolio No. ending 5430 (and not only the fixed income portion) originated from her late mother's account, DBS Treasure Portfolio No. ending 6450. The Wife also adduced evidence showing that the value of the assets in DBS Treasure Portfolio No. ending 6450 (S\$1,680,230.45) is similar to the value of all her assets in DBS Treasure Portfolio No. ending 5430 (S\$1,438,381.79).

(b) In relation to the assets in HSBC Malaysia Account No. ending 7108, 7131, 7133 and 7136 ("HSBC Malaysia Assets"), the Wife says that her late mother transferred the assets to the joint HSBC Malaysia bank accounts between the Wife and her late mother, before transferring the assets to the HSBC Malaysia bank accounts under the Wife's sole name. The Wife produced bank statements from the joint HSBC

Malaysia bank account with her mother showing that there were assets totalling MYR 587, 080.61 as of 5 October 2017. The Wife says that this is not far from the existing value of the assets in the HSBC Malaysia Assets of MYR 771,995.92 and that the increase in value is attributable to gains over time.

(c) In relation to UOB BGF Global Multi Asset Income Fund Account No. ending 01012, the Wife says that the investment was held in joint names between herself and her late mother. The Wife does not have the documents to prove that the assets originated from her late mother but the Wife relies on circumstantial evidence, including the fact that she ceased full-time work in 1993 and could not have amassed a sum close to S\$232,810.43 through work. The Wife also says that it is not possible for the Husband to have paid for the purchase given that his expenses exceed his salary.

8 Having perused the bank accounts statements tendered by the Wife, I am of the view that the Wife has produced sufficient evidence to show that the assets in the twelve accounts may be traced back to monies given to her by her late mother. Her mother had been consistently generous to her. The Wife had no independent source of income of her own. It is not the Husband's case that he purchased the assets or that he substantially improved the assets in the twelve accounts. Therefore, I am of the view that the assets in the twelve accounts should be excluded from the matrimonial pool.

9 The Husband says that the sum of S\$109,000.00 should be added to the matrimonial pool because it was unilaterally withdrawn by the Wife from the Husband's DBS Account No. ending 6676 on 18 March 2019, 6 days after the Wife filed the Writ for Divorce. The Husband says that the sum was used by the

Wife to pay for her three-week holiday in Europe and a retreat to Johore Bahru without the Husband's consent and should be added back to the matrimonial pool for division between the parties. I agree. Where substantial sums are expended by one spouse during the period when divorce proceedings have commenced but before the ancillaries are concluded, the sum must be returned to the asset pool if the other spouse is considered to have a putative interest in it and has not agreed to the expenditure (*TNL v TNK and another appeal and another matter* [2017] 1 SLR 609) ("*TNL v TNK*"). I note that the Wife does not dispute that she withdrew the said amount from the Husband's bank account after the commencement of the divorce proceedings and without the consent of the Husband. I am of the view that in this case, given the unusual spending of such a large sum in the midst of divorce proceedings, the S\$109,000.00 should be added to the matrimonial pool.

10 The Husband also says that the sums of S\$420,827.04 and S\$80,484.28 should be added to the matrimonial pool because they were paid towards the monthly instalments for the mortgage of Property C and a Thailand property, the Hunsa Property, since the start of the divorce proceedings in March 2019. The Husband says that these sums ought to be included in the matrimonial pool because the amounts were incurred to preserve the matrimonial assets after the commencement of the divorce proceedings.

11 Although I agree with the Husband that expenses incurred to preserve matrimonial assets pending the determination of ancillaries ought to be divided between the parties, I do not accept the quantum of the mortgage repayments which should be added back to the matrimonial pool. The net value of Property C was determined to be S\$3,083,773.12 after deducting the outstanding mortgage of S\$1,961,226.88 as of 14 October 2021. In making the deduction of the outstanding mortgage, the agreed net value of Property C

would have accounted for the Husband's mortgage payments until 14 October 2021. There will be double-counting if mortgage repayments from March 2019 to October 2021 are added back into the matrimonial pool. The correct approach would be to add the mortgage payments for Property C from October 2021 to present date into the matrimonial pool. That would amount to approximately S\$70,137.84.

12 The Husband says that the monthly payment for the mortgage of the Hunsa property is THB55,300.00 (S\$2,238.48) and that the total mortgage payment of \$80,858.28 from March 2019 to March 2022 should be added to the matrimonial pool. However, the only evidence tendered by the Husband is a receipt from MBK Guarantee Company Limited showing that the Husband made a payment of THB55,300.00 to the company on 15 September 2019. Furthermore, the receipt showed that the total outstanding mortgage for the Hunsa property as of 15 September 2019 was only THB682,672.00 (S\$30,753.69). If the Husband had, as he claims, made timely repayment of S\$2,238.48 every month, the outstanding mortgage would have been fully repaid by November 2020 and the total payment would not have exceeded S\$30,753.69. Therefore, I find that the correct figure to add back into the matrimonial pool is S\$30,753.69.

13 In view of my findings above, the total value of the matrimonial asset pool is as follows:

S/N	Manner of Holding	Asset	Net Value/in SGD
1.	Joint Names	Kuching Property	175,538.89
2.		Hua Hin Property	466,704.95

3.		Hunsa property	194,491.31
4.		UOB Account No. ending 8507	16,479.30
5.		CIMB Account No ending 1475	83.00
6.		DBS Account No. ending 1280	317.27
Sub-total for assets under joint names			853,614.72
1.	Wife's name	Property C	3,038,773.12
2.		Property B	3,350,000.00
3.		AIA Prime Life Policy No. ending 5005	18,745.23
4.		AIA Prime Life Policy No. ending 6986	44,621.19
5.		HSBC GrowthInvest Insurance Plan Policy No. ending 6881	5,782.86
6.		Prudential PruAdvance Saver Policy No. ending 2624	18,362.84
7.		Singtel	602.30
8.		POSB Account No. ending 8264	7,114.14
9.		POSB Account No. ending 9942	5,990.18
10.		OCBC Savings Account No. ending 5001	1065.04

11.		Maybank Account No. ending 5006	995.12
12.		CPF Ordinary Account	150.86
13.		CPF Medisave Account	104.85
14.		CPF Retirement Account	149,031.78
15.		Volkswagen car	34,203.14
16.		KIA car	78,918.33
17.		Perodua Bezza car	13,833.46
Sub-total for assets under Wife's name			6,768,294.44
1.	Husband's name	Fortune Centre property	437,644.14
2.		DBS Account No. ending 0676	241.03
3.		DBS Account No. ending 1280	276.34
4.		DBS Account No. ending 9934	6040.18
5.		DBS Account No. ending 4469	683.09
6.		UOB Account No. ending 3260	277.79
7.		OCBC Account No. ending 2001	887.13
8.		CIMB Account No. ending 9854	1004.57
9.		Bangkok Bank Account No. ending 5504	3597.00

10.		TMB Bank Account No. ending 8630	84.06
11.		CPF Ordinary Account	19,044.08
12.		CPF Special Account	2,729.62
13.		CPF Medisave Account	57,200.00
14.		CPF Retirement Account	177,460.78
15.		Jaguar car	98,000.00
16.		Mazda car	8,621.93
17.		Maserati car	53,696.83
18.		Watches	23,000.00
19.		Vintage Macintosh Hi-Fi	6,300.00
20.		Electronics collection	10,000.00
21.		Hot Wheels and model car collection	2,600.00
22.		Wine collection	6,000.00
		Subtotal for assets under Husband's name	915,388.57
		Total assets	8,537,297.73

14 In addition to S\$8,537,297.73, I find that the sums of S\$109,000.00, S\$70,137.84 and S\$30,753.69 should be added back into the matrimonial pool. This brings the total value of the matrimonial pool to S\$8,747,189.26

15 Turning to the issue of division of matrimonial assets, the Wife says that the matrimonial assets should be divided 80:20 in favor of the Wife. The Husband asks for an equal division of the matrimonial assets. In long single-

income marriages, courts tend towards an equal division of matrimonial assets (*TNL v TNK* at [48]). But, wealth accumulation in every marriage is different and the courts have the discretion to deviate from equal division even in long single-income marriages to account for the circumstances of each case (*UVM v UBN* [2017] 4 SLR 921 at [66]).

16 In the present case, I am of the view that the matrimonial assets should be divided 55:45 in favor of the Wife. The parties were married for 31 years with three children to the marriage. The Husband was the main breadwinner and the Wife was a homemaker. This fits the paradigm example of a long-term single-income marriage in which the courts will tend towards an equal division of matrimonial assets. With that being said, I accept the Wife's submission that her indirect contributions to the welfare of the family outweigh that of the Husband. The Wife was the primary caregiver of the family who chose to sacrifice her career in 1993 to devote all her time and energy to raise the parties' children. The Husband, on the other hand, was preoccupied with work and made frequent "business" trips to Thailand, although it is unclear whether these trips were for legitimate business or "business" with his mistress in Thailand. Furthermore, the family benefitted greatly from the assets given to the Wife by the Wife's late mother — even the parties' matrimonial home was a gift from the Wife's late mother. Hence, I am of the view that a fair and equitable division of the matrimonial assets should be 55:45 in favour of the Wife.

17 The Wife says that an adverse inference should be drawn against the Husband because he has failed to make full and frank disclosure of his matrimonial assets in Thailand. The Wife says that the Husband has been evasive towards the production of documents for his assets in Thailand and has delayed the production of relevant documents until months before the ancillary hearing. The Wife also says that large sums of monies are frequently deposited

into the Husband's Bangkok Bank Account since 2014 and that after each deposit, there would be corresponding cash withdrawals, which suggests the existence of other undisclosed matrimonial assets and/or the dissipation of matrimonial assets. The Wife also says that the Husband has not fully accounted for loan monies obtained from Property C's mortgage and that the loan monies could have been used to acquire other non-disclosed matrimonial assets.

18 After reviewing the evidence, I am of the view that an adverse inference should be drawn against the Husband. The bank statements of the Husband's Bangkok Bank Account No. ending 5504 showed that a total sum of approximately THB21,827,022.35 (S\$889,210.77) had been deposited into the account from 2014 to 2019. This averages to S\$14,820.18 per month which far exceeded the mortgage payments that the Husband made towards the Hunsa property (THB55,300.00 or S\$2,486.96 per month). Moreover, the bank accounts showed that after each deposit, there would be multiple cash withdrawals from the Bangkok Bank Account, which Husband had not provided adequate explanations for. In the circumstances surrounding the deposits and withdrawals from the Husband's bank account, I am of the view that an adverse inference should be drawn against the Husband.

19 In the present case, given the lack of information as to the true extent of non-disclosure or dissipation, I incline to adopt the uplift approach in *TQU v TQT* [2020] SGCA 8, and award a greater share of the total pool of matrimonial assets to the Wife. I am of the view that a 5% uplift in favour of the Wife would be appropriate to ensure a fair and equitable distribution of matrimonial assets. After the uplift, the matrimonial assets should be divided 60:40 in favour of the Wife. Therefore, the Wife should be entitled to S\$5,248,313.56 and the Husband should be entitled to S\$3,498,875.70

20 I thus order as follows:

- (a) Parties are to retain assets in their sole names.
- (b) Assets in the parties' joint names, including the Kuching Property, the Hua Hin Property and the Hunsu Property, shall be given to the Husband.
- (c) The Wife shall pay the Husband the sum of S\$1,600,000.00.

21 Since the parties' liabilities in their sole names (excluding the outstanding mortgages for the properties which have already been accounted for in calculating the net value of those properties) are roughly equal, and both will be well-provided for after the division, I order each party to bear the liabilities under his/her sole name himself/herself. For the avoidance of doubt, this does not affect the parties' responsibility for outstanding mortgages — each party should be responsible for the outstanding mortgages of the properties under his or her name after the division.

22 Lastly, on the issue of maintenance for the Wife, the Wife asks for a lump sum maintenance payment of S\$1,080,000.00, calculated at S\$6,000.00 per month for 15 years. The Husband says that he should not be required to pay maintenance to the Wife given that the Wife will be in possession of substantial financial resources from her share of the matrimonial assets and her inheritance from her late mother.

23 The court's power to order maintenance is supplementary to the power to order division of matrimonial assets. The court can take into account each party's share of the matrimonial assets when assessing the appropriate quantum of maintenance to be ordered (*ATE v ATD* [2016] SGCA 2 at [31]). In the present case, the Wife will be receiving 60% of the matrimonial pool,

amounting to over 5 million dollars. Further, I have also found that the twelve bank accounts in the Wife's sole name, which contained assets worth S\$! **The Formula Not In Table**, should be excluded from the matrimonial pool and should remain the Wife's assets. In these circumstances, I agree with the Husband that the Wife will be in possession of substantial financial resources to maintain herself at a standard of living that is commensurate with the standard of living she enjoyed during the marriage. I, therefore, make no orders as to maintenance for the Wife, with liberty to the Wife to apply. Each party to bear its own costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Tan Anamah Nee Nagalingam and Lee Yun Xin (Ann Tan &
Associates) for the wife;
Chiok Beng Piow and Margaret Lee Hui Zhen (AM Legal LLC) for
the husband.