**IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE**

**[2023] SGHCF 17**

District Court Appeal No 102 of 2022

Between

WJF

… *Appellant*

And

WJE

… *Respondent*

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# JUDGMENT

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[Family Law — Matrimonial assets — Division]

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# WJF
# v
# WJE

## [2023] SGHCF 17

General Division of the High Court (Family Division) — District Court Appeal No 102 of 2022
Choo Han Teck J
3 March 2023

27 March 2023 Judgment reserved.

**Choo Han Teck J:**

1 The appellant ("the Husband") and the respondent ("the Wife") are both 46 years old. They registered their marriage on 12 May 2001. The Husband is a businessman, and the Wife works as a customer service officer at a local bank. They have two children — a son and a daughter ("the Children"), aged 21 and 17 respectively. The parties obtained the interim judgment of divorce on 19 November 2020 and the ancillary matters order was given on 26 October 2022, after hearings on 3 August 2022 and 11 October 2022 before the learned District Judge Toh Wee San ("the DJ"). The Husband is only appealing against the portion of the DJ's order that the matrimonial home be divided in the ratio of 69% (Wife): 31% (Husband), and that the Husband pays the Wife a total of $132,000.00.

2 The appellant advances three points in his appeal: first, he says that the

DJ erred in drawing an adverse inference against him — both in the way it was drawn, and the way it was given effect to. Secondly, he says that the DJ erred in applying the uplift to the pool of matrimonial assets instead of the specific class of assets from which the adverse inference was drawn. Finally, he says that the DJ's valuation of the matrimonial assets was wrong.

3 It is important to set out the context in which the adverse inference was drawn. The Husband owns three businesses, [F] Pte Ltd, [G] Pte Ltd, and [B] Pte Ltd. He is the sole shareholder and director of the first two companies and the sole proprietor of the third. He says that [F] Pte Ltd has been dormant since 2014, and the Wife disputes this. However, I am of the view that this is not a material fact in this appeal as the adverse inference was drawn primarily on the dealings of the other two companies. The DJ found that the Husband used the monies from the bank accounts of these companies for extraneous purposes outside of business expenses (including personal family expenses). This finding was not challenged on appeal.

4 The DJ was troubled, and rightly so, that the Husband did not adduce sufficient evidence differentiating between monies applied toward company purposes and monies applied for his domestic uses. Thus, the DJ drew an adverse inference against Husband and gave effect to it in two ways. First, she added back into the matrimonial pool certain ascertainable payments from the Husband's companies amounting to $196,005.00. She also added a sum of $16,999.00 back to the matrimonial asset pool. That is the value of the expensive gifts and loans given to the Husband's friends. In total, the DJ added $213,004.00 back into the matrimonial assets. Second, the DJ applied an 8% uplift to the Wife's share of the assets. The Husband disputes both ways in which the DJ gave effect to the adverse inference.



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5 On the first way — the addition of $213,004.00 back into the matrimonial asset pool, the Husband only disputes the DJ's order to repay the withdrawals from [G] Pte Ltd amounting to $48,800.00. At paragraph 14 of his submissions, his counsel argued that "[i]n the circumstances, the DJ should have clawed back a sum of $164,204 only." By this submission, the Husband accepts that the addition of other sums back into the matrimonial asset pool is justified, with the only error being the clawback of payments from [G] Pte Ltd. The Husband says the DJ erred because [G] Pte Ltd is a separate legal entity from the Husband. Thus, he reasons that the company's assets (which include the monies in the company's bank account) are not matrimonial assets within s 112 of the Women's Charter 1961 (2020 Rev Ed).

6 I do not accept the Husband's claim. The assets of the company are not matrimonial assets, but the Husband's shares of [G] Pte Ltd are. Thus, there is no need to "pierce the corporate veil" to account for the payments amounting to $48,800.00, for the simple reason that the valuation of the Husband shares was pegged directly to the company's bank account balance. The depletion of the bank account by the Husband's withdrawals had improperly diminished the value of the shares. Accordingly, the addition of $48,800.00 back into the matrimonial pool does no more than reflect the true value of the shares before these unjustified transactions diminished its value. I thus see no basis to disturb the DJ's decision.

7 Apart from disputing the DJ's decision to add specific sums back into the matrimonial pool, the Husband further disputes the DJ's decision to award an 8% uplift to the Wife's share of the matrimonial assets. The Court of Appeal in *UZN v UZM* [2021] 1 SLR 246 ("*UZN*") (at [28]-[29]) recently stated that the



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objective of drawing an adverse inference and the approaches to give effect to it:

> 28 It is well-established in the jurisprudence in this area that there are generally two approaches the courts have used to give effect to an adverse inference against a non-disclosing party (see *BPC* ([16] *supra*) at [64], *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 ("*Chan Tin Sun*") at [64], *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 ("*Yeo Chong Lin*") at [65], and *NK v NL* [2007] 3 SLR(R) 743 ("*NK v NL*") at [61]–[62]):
>
> > (a) First, the court may *make a finding on the value of the undisclosed assets* based on the available evidence and, subject to the party dissatisfied with the value attributed showing that that value is unreasonable, include that value in the matrimonial pool for division. We will refer to this as "the quantification approach".
> >
> > (b) Second, the court may order a *higher proportion of the known assets* to be given to the other party. We will refer to this as "the uplift approach".
>
> 29 The judgments of this court have made it clear that whether the court adopts the quantification approach or the uplift approach is a matter of judgment in each individual case (see *Yeo Chong Lin* at [66] (cited in *BPC* at [66]), *Chan Tin Sun* at [65], and *NK v NL* at [64]). The court should adopt the method it considers most appropriate in achieving a just and equitable result. What is just and equitable must be seen in the light of the objective of drawing an adverse inference in this context in the first place – to counter the effects of non-disclosure of assets which diminishes the value of the matrimonial pool and thereby places those assets out of the reach of the other party for the purposes of division under s 112 of the Women's Charter as matrimonial assets (see [16] above). The preferred approach should enable the court to most appropriately reach a just and equitable division of the true material gains of the parties' marriage.
>
> [emphasis in original]

8 The DJ explained that of the 8% uplift, 5% was for the breach of the duty of full and frank disclosure in respect of the Husband's use of the monies in his companies' bank accounts. And 3% was for "H's conduct in the



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proceeding (*sic*) and the wife (W)'s role as the permanent caregiver of the children in the future".

9 I am of the view that the 3% uplift cannot be supported for two reasons. First, adverse inferences are not meant to punish the parties for their conduct, unless that conduct amounts to a failure to provide full and frank disclosure, or reveals a lack of candour as to their means. Secondly, an uplift is not the appropriate method to recognise the Wife's role as the permanent caregiver: see *ANJ v ANK* [2015] 4 SLR 1043 at [19]. The DJ correctly apportioned the ratio by taking into account the Wife's role as the primary caregiver. Thus, this further uplift of 3% counted the Wife's primary caregiver role twice.

10 I affirm the DJ's decision to give an uplift of 5%. The Husband says that since the DJ already added known values of $213,004.00 back into the pool, there was no need to further give an uplift of 8%. The dicta in *UZN* seems to suggest that only one approach may be used to give effect at any one point in time. However, in giving effect to an adverse inference, the court should be flexible in achieving a just and equitable outcome. As stated in *UZN*, the objective of drawing an adverse inference is to reverse the effect of any diminution of the pool of matrimonial assets and ascertain, where possible, the true value of the material gains of the marital partnership. In the present case, the Husband decided to use his corporate bank accounts for his personal transactions. The sheer volume of financial transactions, as one would expect of a corporate account, left many transaction entries unaccounted for, and the DJ was sceptical as to the true amount of matrimonial assets that had been dissipated. It would be harsh to clawback every sum unaccounted for, as it is possible that some of them were for legitimate business expenses. However, even after adding back the sum of $213,004.00, there should still be a larger



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amount to be added back to the matrimonial assets. Thus, I am of the view that the DJ's decision to give an uplift of 5% was perfectly reasonable.

11 Although the law does not require married couples to keep records of their personal transactions during marriage, but when one of them uses a corporate bank account to manage the company expenses as well as his personal expenses, as in this case, he must be able to account clearly what the expenses were for. When, as in this case, money is spent on gifts to his friends, it is unclear whether disbursements from that account are made in his personal and his company's interests, or for the benefit of his marriage. In such a situation, the court must have the flexibility to take into account the unquantified dissipation. Accordingly, the uplift of 5% is justified.

12 With the appropriate uplift of 5% in mind, the second issue is whether the uplift ought to be applied to the matrimonial asset pool as a whole, as the Wife says, or only the class of assets to which the Husband's companies' shares belong, as the Husband says. This question arises because instead of dividing the entire matrimonial asset pool as a whole, the DJ divided the matrimonial asset pool into two classes of assets — the matrimonial home and all other matrimonial assets (to which the Husband's shares belong), and then ascribed different ratios by which the classes are to be divided. The former method of dividing assets is known as the "global method" while the latter is known as the "classification method".

13 I am of the view that the uplift of 5% should apply across all classes of assets. Under the global approach, the uplift would have been applied to the entire asset pool. The outcome should be no different under the classification method. The purpose of an uplift is to give the prejudiced party a "higher



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proportion of the known assets" (*UZN* at [28(b)]). This refers to all known assets within the matrimonial asset pool, not only assets belonging to one particular class. Moreover, the 5% uplift would only result in a difference of around $50,000.00, which is just and equitable in the circumstances.

14 At the hearing before me on 3 March 2023, counsel for the Husband argued that the DJ should have applied the global method instead of the classification method when the global method would have led to the 5% uplift being applied to the entire matrimonial asset pool, contradicting his own submission earlier. In any case, I do not agree with counsel. The Court of Appeal in *NK v NL* [2007] 3 SLR(R) 743 at [35] stated that the "classification approach would be appropriate where there are multiple classes of assets, and where the parties have made different contributions". The DJ did not err in law by applying the classification method over the global method. The parties' contributions to the matrimonial home differ from their contributions to all other assets. It is in such a situation that the classification approach is appropriate.

15 Finally, I turn to the last issue raised by the appellant that it was "undiscernible how the DJ arrived at a value of the parties' assets to be $125,912.14 for the Wife and $166,154.33 for the Husband." It was recorded in the Notes of Evidence of the ancillary matters hearing on 3 August 2022 that the DJ went through the parties' assets line by line according to their respective Fact and Position Sheets ("FPS"). The Husband was given the opportunity to clarify the position during the hearing itself. The fact that the DJ did not detail her finding on each asset does not entitle the Husband to reproduce his FPS and say that it ought to be the correct valuation. The Notes of Evidence show that the DJ had considered the value of each asset disputed by the parties. An appellate court will not interfere with findings of fact of the lower court unless



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there is an error of law or omission of material facts. The arguments on appeal presented by counsel for the appellant merely reproduces his arguments below. They do not show how or why the DJ was wrong. I thus affirm the decision of the DJ on the valuation of the matrimonial assets.

16 For the foregoing reasons, the appeal is dismissed, save that the uplift for the adverse inference is reduced from 8% to 5%. I will hear the question of costs at a later date.

- Sgd -
Choo Han Teck
Judge of the High Court

Patrick Fernandez (Fernandez LLC) for the appellant;
Linda Joelle Ong and Sylvie Tan Xin Er (Engelin Teh Practice LLP)
for the respondent.



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