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

[2024] SGHC(A) 11

Appellate Division / Civil Appeal No 86 of 2023

Between

WOS

… *Appellant*

And

WOT

… *Respondent*

GROUNDS OF DECISION

[Family Law — Matrimonial assets — Division]

WOS
v
WOT

[2024] SGHC(A) 11

Appellate Division of the High Court — Civil Appeal No 86 of 2023
Debbie Ong Siew Ling JAD, See Kee Oon JAD, Audrey Lim J
6 February 2024, 6 March 2024, 28 March 2024

19 April 2024

Debbie Ong Siew Ling JAD (delivering the grounds of decision of the court):

1 The present appeal involves the issue of whether and how the fact and circumstances of the spouses' separation may be relevant in the division of matrimonial assets upon divorce.

2 The grant of a divorce is quite often preceded by a period of separation between the parties. In 2022, 45.2% of divorces filed under the Women's Charter 1961 (2020 Rev Ed) (the "Women's Charter") relied on the reason that the parties have separated or lived apart for more than three years ("Statistics on Marriages and Divorces, Reference Year 2022" (Singapore Department of Statistics, 2022) <www.singstat.gov.sg> at p 17). In addition to this group of cases, divorces filed which cite other reasons evidencing the breakdown of marriage (for example, unreasonable behaviour) may also contain a period of separation, like the one in the present case.

Background

3 The appellant (the "Husband") is a 67-year-old businessman in the construction and maintenance industry. The respondent (the "Wife") is a 61-year-old homemaker. The parties married on 3 June 1999. They began living separately approximately a decade later; the Husband claimed that they separated on 13 July 2008 while the Wife's account was that they separated in end-2010. The Judge of the Family Division of the High Court (the "Judge"), whose decision was the subject matter of this appeal, accepted the latter date, although nothing ultimately turned on this. Divorce proceedings were commenced on 4 October 2018, and an interim judgment of divorce (the "IJ") was granted on 12 March 2019. The total length of their marriage was approximately 20 years, with the parties living apart for around half that time. They have a 22-year-old son, "E", who is presently attending university overseas.

4 The only issues which fell for determination in the court below were the division of matrimonial assets and maintenance for the Wife and E.

5 The ancillary matters were heard by the Judge on 27 June 2023. The Judge issued his decision in *WOS v WOT* [2023] SGHCF 36 (the "Judgment") on 31 July 2023, and the Husband filed his notice of appeal on 14 August 2023.

Decision below

6 We set out briefly only the aspects of the Judge's decision that are relevant to this appeal.

7 The Judge held that the appropriate operative date for determining the pool of matrimonial assets was the IJ date (Judgment at [12]). In coming to this

conclusion, the Judge noted that this was the default position, and that the adoption of an earlier date required evidence that the parties had a mutual intention to "put an end to the marriage contract" and that they no longer intended to "participate in the joint accumulation of matrimonial assets" prior to the grant of the IJ (Judgment at [3]). On the facts, the Judge found that the Husband had not succeeded in demonstrating such an intention and the mere fact that one party had left the matrimonial home was insufficient to demonstrate that the marriage had ended on that date (Judgment at [7]–[8]). On the contrary, he found that the evidence showed that the Husband had continued to harbour hope that the marriage could be saved even after the Husband's alleged date of separation on 13 July 2008 (Judgment at [9]). Moreover, the Husband had continued to contribute to family expenses and E's allowance, had supported the Wife and E as late as in 2018 and while they were in the United Kingdom for E's university education, and would return home to spend time with the family on special occasions (Judgment at [11]). In view of these facts, the Judge found that the marriage had continued to exist in a meaningful sense until the grant of the IJ on 12 March 2019 (Judgment at [12]).

8 The Judge held that the Husband's shareholdings in three companies, namely "UEP", "A & E", and "K & E" (the "Three Companies"), were matrimonial assets liable to division (Judgment at [18] and [22]). As for the valuation of these interests, the court-appointed valuer Mr John Stuart Dawson ("Mr Dawson") provided three valuations of the shares as at three dates – 4 October 2018, 12 March 2019, and 22 September 2021. The Judge adopted the valuation of $12,451,000 as at 22 September 2021, being closest to the date of the ancillary matters hearing (Judgment at [20] and [22]).

9 The Husband had transferred various sums of money to a company called "BS", which had been acquired and registered in the name of his son from

his previous marriage, and its subsidiary called "IS". The Judge found that there was "nothing sinister or inappropriate" about these transfers, nor was there any evidence that the Husband had been dissipating monies through these businesses (Judgment at [25]). The Judge therefore rejected the Wife's attempt to have the sums paid to BS and IS *prior* to the commencement of divorce proceedings added back into the matrimonial pool. However, the Judge held that a sum of $370,000 which the Husband paid to BS and IS *after* the commencement of divorce proceedings was to be added back into the matrimonial pool (Judgment at [25]).

10 The Husband had paid to his friend, "Alan", a sum of $2,000,000 out of the proceeds of the sale of his shares in a company, "S Corp". The Judge did not believe the Husband's claim that this had been carried out in repayment of any loan Alan had extended to the Husband (Judgment at [28]). While Alan produced an affidavit affirming the alleged loan, the Judge found it "incredible" that there was no contemporaneous documentation such as bank statements, cheques, text messages, or contracts evincing so large a loan. He also noted the "suspicious" timing of the payment to Alan, which was shortly before divorce proceedings were commenced on 4 October 2018. The Judge thus added back the $2,000,000 paid to Alan into the matrimonial pool.

11 The Husband had sought to exclude the sum of $600,000 from the proceeds of sale of a property owned by him (the "Maplewoods Property") which were included in the matrimonial pool. The Judge rejected the Husband's claim that its purchase had been funded by a loan from the Husband's father which was still outstanding (Judgment at [30]). He took the view that if it had been so funded, the Husband would have immediately repaid the loan upon selling the property. Moreover, the Husband had sufficient cash to make the downpayment on his own. Further, the note adduced by the Husband as

evidence of the loan stated that it was to be repaid in full by 31 December 2010. The Judge did not believe that the $600,000 which the Husband allegedly borrowed from his father was meant for the purchase of the Maplewoods Property, or that he had not yet repaid the loan after more than 12 years (Judgment at [30]). The Judge therefore included the entire sale proceeds of the Maplewoods Property amounting to $839,333.59 in the matrimonial pool (Judgment at [29]).

12 The Husband was involved in a lawsuit involving S Corp for some years before the divorce (the "S Corp Lawsuit"). The Wife argued that the legal fees incurred ought to be added back into the matrimonial pool. The Judge declined to include the bulk of the $1,041,274.97 paid, as it had been paid either long before divorce proceedings were commenced (Judgment at [33]), or on or *after* the date on which the IJ was granted and therefore would have already been included in the valuation of the Husband's bank accounts as determined on the IJ date (Judgment at [34]). However, he added back into the pool the remaining $303,710.18 paid in the period shortly before divorce proceedings commenced up until the grant of the IJ (Judgment at [34]).

13 The Judge found that the total value of the parties' matrimonial assets was $20,055,159.88, comprising assets worth $115,875.29 in the Wife's name, assets worth $17,434,972.57 in the Husband's name and the matrimonial home worth $2,504,312.02 held in the parties' joint names (Judgment at [41]).

14 The Judge divided the matrimonial pool in the ratio of 60:40 in favour of the Husband. He noted the tendency in case precedents towards equal division in long single-income marriages, and adjusted the ratio upwards in favour of the Husband to account for his effort in building up the large pool of matrimonial assets (Judgment at [44] and [46]). The Judge rejected the

Husband's contention that the marriage should be considered as having ended in 2008 and was thus "moderately long" rather than long, as well as the Husband's attempt to have some "negative contribution" attributed to the Wife on the basis of her allegedly bad behaviour (Judgment at [44]–[45]). As such, the Husband would be entitled to $12,033,095.93 of the pool of matrimonial assets, and the Wife would be entitled to $8,022,063.95 (Judgment at [46]).

Issues before this court

15 The Husband's appeal raised the following issues:

(a) whether the date of separation or the date of the IJ should be used as the operative date for determining the pool of matrimonial assets;

(b) whether the Judge was correct to include the disputed assets in the matrimonial pool, and to accept the valuer Mr Dawson's valuation of the shares in the Three Companies;

(c) whether the Judge's decision of dividing the assets in the ratio of 60:40 in favour of the Husband was appropriate; and

(d) whether the Judge's consequential orders were appropriate.

Our decision

The operative date for determining the pool of matrimonial assets

16 The Husband submitted that the court retains the discretion to select the appropriate operative date for determining the pool of matrimonial assets, and that the particular circumstances of the case warranted the adoption of the parties' date of separation for this purpose. He claimed that from the date of their alleged separation in 2008, the Wife had been fully aware of his intention

to divorce her, and relied on testimony from third parties which suggested that it was well-known to those who knew the parties that their marriage contract had ended. He also pointed to the Wife's willingness to testify against him in the S Corp Lawsuit, and her failure to make any attempt to reconcile or to take steps to improve the relationship between them, as evidence that she herself saw the marriage as having irretrievably broken down. He also highlighted conduct on the part of both parties, which he claimed showed that they no longer intended to jointly accumulate matrimonial assets after the date of their alleged separation. On his account, the only reason that the parties did not formally commence divorce proceedings was because they had wanted to wait until E had graduated from school.

17 The Husband further submitted that the Judge did not apply the three "indicia" in *ARY v ARX and another appeal* [2016] 2 SLR 686 ("*ARY*") at [32] correctly as there was sufficient proof that after he left the matrimonial home for good, there was no *consortium vitae* and there were no conjugal rights.

18 The Wife's position was that the court should not depart from the IJ date as the operative date, *except* for where the separation has been "crystallized" by way of "deed or express mutual drafting of deed". She submitted that the various facts which the Husband cited to show that their marriage effectively ended by 2008 were no more than the "ordinary factual concomitants of a failed marriage", which could not support a departure from the IJ date as the appropriate operative date. Various actions taken unilaterally by each party were not indicative of a common intention to bring the marriage to an end. She asserted that while the Husband had expressed an intention to seek a divorce, she had not agreed to or accepted it, and the Husband's claim that he had only held off doing so because he wanted to wait until E finished university before commencing divorce proceedings should not be believed, given that he

eventually did so even though E was still in university. The Wife submitted that the Husband could have initiated a divorce much earlier, and the fact that he did not must be taken to mean that he did not view the marriage as having ended.

19 The Wife also highlighted that both parties had continued to discharge their respective roles as breadwinner and homemaker in the marriage. The Husband continued to pay the mortgage loan on the matrimonial home, maintained the Wife's country club membership, and appeared content to let the status quo remain and continue providing for the family while she cared for the children, even during their separation. The Wife claimed to have made efforts to ensure that the Husband maintained his relationship with E and his stepson. The Husband would return to spend time as a family, stay overnight at the matrimonial home and be cared for by the Wife when he was ill, and attended family events at which the Wife was also present.

20 We saw no basis for departing from the IJ date as the operative date for the identification of the parties' matrimonial assets. The starting point or default position is that the date of the IJ is the appropriate operative date to determine the pool of matrimonial assets (*ARY* at [31]). As a matter of principle, the grant of the IJ "puts an end to the marriage contract and indicates that the parties no longer intend to participate in the joint accumulation of matrimonial assets" (*ARY* at [32], citing *AJR v AJS* [2010] 4 SLR 617 at [4]). It follows that any asset acquired before this date would be an asset acquired during the marriage, while any asset acquired after the IJ falls outside the definition of s 112(10) of the Women's Charter. As explained in Debbie Ong, "Family Law" (2011) 12 SAL Ann Rev 298 at para 15.22:

> … "Matrimonial asset" has a specific definition in the Women's Charter. Section 112(10) provides that all assets acquired by one or both parties during the marriage are matrimonial assets.

> Some assets acquired before marriage or by gift may also be matrimonial assets if, for example, the other spouse or both spouses have substantially improved them during the marriage. The phrase "during the marriage" is therefore important to the definition of matrimonial assets. A marriage is still subsisting even when parties begin living separately or are separated but not divorced, or when a party files a writ of divorce. If an asset is acquired during a subsisting marriage, it is a matrimonial asset. However, the court can decide not to award a share of such an asset to the other party.

21 Adopting the date of the IJ as the starting point will enable parties to arrange their financial affairs and give them the comfort of knowing when they will be taken as having moved into a different phase in their lives (*ARY* at [34]). The Court of Appeal in *ARY* explained that "the right balance between certainty and flexibility is struck if the date of the interim judgment is set as a starting point, with the court possessing the discretion to depart from it in deserving cases" (*ARY* at [34]).

22 While the court retains the discretion to depart from this default operative date, this discretion is "not a free or an unguided one" and should only be exercised where the particular circumstances or justice of the case warrant it, or where there are cogent reasons to do so (*ARY* at [26], [31] and [35]). For example, the "ordinary factual concomitants of a failed marriage" cannot, without more, justify a deviation from the IJ date in favour of the separation date, for if so, "in almost every divorce the operative date will be that of the parties' separation" and this "confuses the factual position with the position at law, which regards the parties as being in a subsisting legal union even though that union may have undergone factual disintegration" (*ARY* at [40]).

23 We observe that the Court of Appeal in *ARY* quoted *Sivakolunthu Kumarasamy v Shanmugam Nagaiah* [1987] SLR(R) 702 ("*Sivakolunthu*") at [25] for the point that the grant of the IJ is a recognition by the court that there

is "no longer any matrimonial home, no *consortium vitae* and no right on either side to conjugal rights" (*ARY* at [32]). This reference in *ARY* appeared to be the basis for the Husband's submission that these are the three "indicia" the fulfilment of which justifies the use of the date of separation. It should be noted that *Sivakolunthu* concerned the question of whether the court has the power to grant ancillary orders upon the grant of the *interim* judgment of divorce (previously referred to as a "decree *nisi*" of divorce) which has *not* yet been made *final* (*Sivakolunthu* at [24]–[29]). The court in *Sivakolunthu* held that as the IJ brought the marriage to an end for all practical purposes, the court had the power to make such orders upon a grant of the *interim* judgment. *Sivakolunthu* did *not* involve the question of the operative date for the identification of matrimonial assets. Instead, the reference to *Sivakolunthu* in *ARY* was made to explain why the IJ signifies *the end of a marriage for all practical purposes*. Neither *Sivakolunthu* nor *ARY* supports the use of the three "indicia" as a general test for the appropriate operative date for identifying the parties' matrimonial assets, as suggested by the Husband (see [17] above). To adopt such a general test for the operative date would severely dilute the principle in *ARY* that the date of the IJ is the starting point which may be departed from only for cogent reasons in deserving cases (*ARY* at [35]–[36]). The criteria of the three "indicia" suggested by the Husband would almost always be satisfied in the many cases (see [2] above) where divorce is granted on proof that the parties had lived apart for more than three years (see ss 95(3)(*d*) and (*e*) of the Women's Charter).

24 This issue on the appropriate operative date arose in *Oh Choon* v *Lee Siew Lin* [2014] 1 SLR 629 ("*Oh Choon*"). There, the appellant sought to exclude from the matrimonial pool certain assets acquired after he had moved out of the matrimonial home, arguing that the 18-year marriage was in substance

a short one of six years when they did live together. The Court of Appeal observed (at [12]):

> [T]here continued to be contact (albeit only at monthly intervals) between the Appellant and the Respondent after the former had moved out. Indeed, it was an undisputed fact that the Appellant continued to provide $1,200 in monthly maintenance to the Respondent during these monthly visits to the Matrimonial Home. This itself demonstrated that there was a continuous (albeit clearly attenuated) relationship between the parties throughout. By contrast, a marriage might itself be a meaningless one even if husband and wife were living together under the same roof if they treated each other as total strangers. Given the myriad of possible factual situations different marriages may entail, we do not think that the Appellant's argument should be allowed to find general legal traction. **A moment's reflection will reveal that to take the Appellant's argument as one of general application would lead to unnecessary complications in the particular cases that the courts might have to deal with in future**.
>
> [emphasis added]

25 To take the position that a marriage lasts only until separation such that assets acquired after separation are not matrimonial assets imports "unnecessary complications in the particular cases that the courts might have to deal with in future". The underlying basis for such a position appears to be that these assets are not acquired "during" marriage since separation has ended the marriage. We point out that conducting a forensic exercise into what parties truly intended and how they behaved in order to determine if they intended to end their marriage for the purposes of determining the operative date will involve a court of law examining an intimate marriage relationship and employing artificial distinctions (which we elaborate on below). Further, such a position is at odds with the law that a marriage practically ends only upon the grant of the IJ. In contrast, the use of the IJ date is certain and unequivocal; as explained in *ARY*, the IJ puts an end to the whole content of the marriage contract (*ARY* at [32]).

26 Indeed, these difficulties and "unnecessary complications" could be seen from the present parties' arguments and the Judge's attempt in assessing

whether their relationship in the period between separation and IJ indicated an end to their marriage. The Judge analysed the nature of the parties' relationship at [9]–[11] of the Judgment in this way:

> 9 … The Husband has taken an inconsistent position in the present case. In his amended Statement of Particulars (dated 4 October 2018) the Husband stated that parties "tried to salvage their relationship" but this effort was futile and by "end-2010", the Husband felt that "there was no point in staying together and instead preferred for parties to lead separate lives". This is inconsistent with his counsel's submission that the date of separation was 13 July 2008. Similarly, in a letter (dated 13 July 2008) written by the Husband to the Wife, informing her of his decision to leave the matrimonial home, the Husband expressed some hope that their relationship would improve and "not end up in divorce". The Husband also implored the Wife to make some changes for "the sake of the family". These are words of hope, and not despair. They do not indicate that the marriage had ended. They are inconsistent with the case the Husband is advancing. It is clear to me that as at 13 July 2008, although the Husband may have left the matrimonial home, and the marriage had deteriorated, the marriage cannot be said to have ended. The Husband himself harboured the hope that it may continue.
>
> 10 The act of separation itself does not necessarily mean that both parties had intended for the marriage contract to come to an end. Parties could have separated with the intention of getting the needed space to find a new breath and revive their marriage. A spouse who has moved out may have intended for the separation to be the end of the marriage contract, while the other spouse may remain an unwilling participant to the situation, hoping for the marital relationship to improve. In these situations, it would be wrong to take the separation of the couple as being indicative of the marriage contract having come to an end. Ultimately, the enquiry remains whether there was sufficient evidence to show that the marriage contract had come to an end for both spouses at the proposed operative date.
>
> 11 In the present case, the evidence was not merely ambiguous as to the status of the relationship between the Husband and the Wife. The Husband himself claims that after leaving the matrimonial home many years ago, he continued to contribute to family expenses, such as groceries, utilities, and management fees of the matrimonial flat. He also contributed to E's allowance and supported him emotionally. The Husband continued with the responsibility and care of the Wife and E to as late as 2018. He financed and supported the living expenses of the Wife and E in the UK (the Wife had accompanied E to the UK for his tertiary education). After they stayed at an Airbnb, the Husband

> encouraged the Wife and E to move to a safer neighbourhood, and financed their move, for "security reasons". This indicated that the marriage contract was not fully at an end. I also accept the Wife's evidence that there were occasions when the Husband "would return home and the family would also spend time together as a family". This included meeting for "special occasions" such as the attendance of one of the children's "graduation ceremony". Her evidence is consistent with the Husband's.

27 We have reproduced above a substantial portion of the Judgment to illustrate the sort of forensic exercise the parties were effectively seeking from the court by their submissions – an assessment of the state of a very intimate marriage relationship and whether the spouses had ended their marriage in their hearts and minds despite still being legally married.

28 Such an exercise may also involve employing rather artificial distinctions as to whether certain acts are carried out as a *parent only* or as a *spouse* as well. The Husband submitted that the Judge was wrong to view his continued financial support for the Wife and E and his continued involvement in family life as indicative that the marriage contract continued to subsist beyond 2008. He argued that his provision of financial support was simply pursuant to the maintenance order which the Wife had obtained against him in 2010. His continued involvement in E's life, as well as in that of his stepson (the Wife's son from her previous marriage), was simply his fulfilment of his duty as a father and not as a spouse.

29 Parents must provide care and financial support for their children, whether they are still married to each other or are divorced (see s 46 of the Women's Charter). These are legal obligations that are imposed on the parties independent of their marriage status. It would generally be artificial to determine if a party's particular acts of caregiving and maintenance *during marriage* are carried out in the party's role only *as a parent* or *as a spouse* as

well. Where such acts are carried out *after* divorce, it would be clear that the party would be discharging his or her responsibilities only as a parent to the child. We explain some recent decisions which have employed the distinction between a party's caregiving *qua* parent and *qua* spouse and explain the different context in which such a distinction arose.

30 In *BPC v BPB and another appeal* [2019] 1 SLR 608 ("*BPC*"), the High Court had used the date of the ancillary matters hearing as the operative date for the identification of matrimonial assets. On appeal, the Court of Appeal disagreed that the facts warranted a departure from the starting point of the date of the IJ as the operative date (at [30]):

> The Wife argues that the date of the ancillary matters hearing should be adopted as the operative date to determine the pool of matrimonial assets because she continued to care for the Children after interim judgment was granted, and the Husband has benefitted by being given the freedom to spend more time on his work and accumulate more assets than he would have if he did not have the benefit of the Wife's continued care for the Children. **This argument is not, however, based on sound principle. In our judgment, continuing care for the children by the wife in any marriage after interim judgment has been granted *cannot, in and of itself*, be a sufficient basis for the court to adopt the date of the ancillary matters hearing as the operative date**.
>
> [emphasis in original in italics, emphasis added in bold]

31 In contrast with the position in *BPC*, the facts in *ARY* were held to justify a departure from the default date. Apart from childcaring, two *further* factors in *ARY* made the ancillary matters hearing date the appropriate operative date (*BPC* at [34]):

> First, the amount of the salary and bonuses received during that period was "tremendous" relative to the value of the matrimonial assets; and second, the wife's care of the children and household *prior* to the granting of interim judgment likely contributed to the husband's ability to earn the salary and bonuses received after interim judgment (at [42]).

> Thus, as we see it, in *ARY v ARX*, this court considered that it was only the presence of all three factors that made it appropriate to depart from the usual course of adopting the date of interim judgment.

32 Indeed, if caring for the children after IJ is sufficient *in itself* for a departure from the starting position, an operative date *after* the IJ date could justifiably be adopted for the identification of matrimonial assets in all cases involving minor children, undermining the principle that adopting the IJ date is set as the starting point.

33 Another example of when it may be appropriate to depart from the default date is found in *AUA v ATZ* [2016] 4 SLR 674 ("*AUA*"). The marriage in *AUA* was very short. The parties had entered into a deed of separation which explicitly stated that they would live separate and apart "as if each were single and unmarried", and which provided also for "all matters that a court would have to consider in ancillary proceedings arising out of a divorce" (*AUA* at [5]). On the facts, it was clear that the parties' marital relationship had come to a close with the conclusion of the deed. While the three "indicia" in *ARY* were present, this merely indicated at the minimum that the marriage was at an end for the purpose of determining the operative date. As it appeared that the only reason why the parties in *AUA* entered into the deed instead of immediately commencing divorce proceedings was because sufficient time had not yet elapsed for them to obtain a divorce based on three years' separation, the court held that the operative date for determining the parties' respective contributions to the marriage ought to be the date on which the deed was concluded (*AUA* at [24] and [26]).

34 The operative date for the identification of matrimonial assets also serves as the cut-off date for the assessment of the parties' direct and indirect contributions to the marriage in the division exercise. Any caregiving of the

children made *after* the IJ date will not be taken into account as indirect contributions to the marriage, as it is rendered only *qua* parent. In *BPC*, caregiving efforts after IJ were not taken into account as contributions to the marriage. Similarly, in *AUA* where the date of separation was adopted as the operative date, the court likewise applied the distinction between care rendered *qua* spouse and *qua* parent in holding that caregiving rendered *after* that operative date should *not* be taken into account in the division exercise (*AUA* at [27]).

35 We have set out above the context in which the distinction between caregiving *qua* parent and *qua* spouse had arisen in *BPC*, *ARY* and *AUA*. This discussion has sought to explain the various concepts and principles arising in the steps in the division exercise. To bring this distinction into the assessment of whether the parties are separated with the intention of ending the marriage reflects a misunderstanding of the principles discussed above.

36 After determining the operative date for the identification of the matrimonial assets, the court proceeds to determine the total pool of matrimonial assets liable to be divided between the parties. Next, it considers all the relevant facts to reach a just and equitable proportion of division of the identified matrimonial pool. The structured approach in *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ*") applies to dual-income marriages. In single-income marriages, the court considers the division trends in case precedents with a similar factual matrix including, importantly, the length of the marriage and the contributions of the parties. When the court considers the parties' contributions, the fact of separation and the circumstances surrounding it will be relevant. In *Oh Choon*, while the court declined to depart from the IJ date in favour of the date of the parties' separation, the circumstances of the parties' separation were

taken into account in determining the *proportion* of the pool of assets which each spouse would receive (*Oh Choon* at [13]).

37 In the present case, we will explain further below how the circumstances of separation are relevant in reaching the final proportions of division. For now, we will address the other points raised by the Husband in respect of whether certain assets and notional sums ought to have been included in the matrimonial pool.

Whether certain disputed assets should be included in the matrimonial pool and whether the valuation of the Three Companies should be accepted

Shares in the Three Companies and their valuation

38 The Husband argued that as his interests in the Three Companies had all been acquired after the date of the parties' separation, they ought not to have been included in the matrimonial pool. Further, as these companies had been incorporated using funds borrowed from friends and family which he would have to repay, the justice of the case also militated against regarding these shares as a matrimonial asset. In the alternative, the Husband took issue with the valuation of his interests in these companies provided by the court-appointed valuer, and the Judge's decision to adopt that valuation without applying a discount.

39 In view of our decision on the operative date, we found that the Husband's interests in the Three Companies were matrimonial assets as they were acquired before the IJ date. That they were acquired through use of borrowed monies did not change this – they were acquired by the Husband's efforts and remained assets acquired during the marriage (see s 112(10) of the Women's Charter). Had the Husband wished to have the allegedly borrowed

moneys taken into account, the proper course would have been to deduct them from the pool of matrimonial assets if they existed as liabilities at the IJ date. However, he had not shown that these were existing liabilities. The first piece of evidence which he relied upon was a cheque made out to him by his father. This appeared to remain attached to the chequebook, and the Husband provided no other evidence by way of bank statements that the cheque was ever cashed in or that the money had been withdrawn. The second piece of evidence was a cheque from the Husband's father's estate to UEP, dated long after the Three Companies were incorporated. On the Husband's own case, the money was applied not towards incorporating the Three Companies or acquiring his interests therein, but towards helping UEP through its financial difficulties. Neither sufficed to show that there remained any outstanding liability which ought to have been deducted from the asset pool.

40 As for the valuation of these assets, we also saw no reason to disturb the Judge's valuation of the Husband's interests in the Three Companies. A valuation by a court-appointed valuer may be set aside if the valuer does not act in accordance with his terms of reference, if he has materially departed from his instructions, if the valuation is patently or manifestly in error so as to require judicial intervention, or if there was fraud, corruption, collusion, dishonesty, bad faith, bias, or the like (*WAS v WAT* [2022] SGHCF 7 at [23]). None of these were present on the facts before us. In particular, we did not think the valuer had gone beyond the scope of his terms of reference. We noted that the question of how a loan to a shareholder ought to be accounted for was one which would have ordinarily arisen in the course of determining the value of a shareholder's interest in a company, and which a valuer might reasonably have thought prudent to address. We also did not think the Judge erred in declining to exclude the value of the loans owed to the Husband by "KKC", another company in

which the Husband owned shares. While the Judge had excluded the shares from the matrimonial pool on the basis that they had been acquired after the date of the IJ, as the Wife pointed out, it was highly unlikely that the Husband could have acquired the entirety of the loaned sum after the IJ date. The evidence supported an inference that the funds which had been loaned to KKC must have been paid out of funds which he had acquired before that date, which would have formed part of the matrimonial pool.

The $2,000,000 paid to Alan allegedly in repayment of a loan

41 The Husband submitted that as the $2,000,000 which he paid to Alan was in fact repayment of a loan which Alan had extended to him, the Judge should not have added this sum back into the matrimonial pool. At the outset, we rejected the Husband's attempt to place on the Wife the burden of proving that there was no loan. We agreed with the Judge that a loan to Alan had not been proved by the Husband.

42 We noted that Alan himself acknowledged in his affidavit that the alleged loan of $3,500,000 was "not an insignificant sum", and claimed to have asked the Husband about the purpose for which he was borrowing the money. As the Judge noted, it would have been incredible that such a large loan was not supported by any documentary evidence such as bank statements, cheques, text messages, or contracts (Judgment at [28]). The timing of the payment to Alan was also suspicious, coming shortly before the commencement of divorce proceedings.

43 It is clear that substantial sums expended during the period where divorce proceedings are imminent must be returned to the asset pool if the other spouse has at least a putative interest in it and has not consented, either expressly

or impliedly, to the expenditure either before it was incurred or at any subsequent time: *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 ("*TNL*") at [24]. Regardless of whether the expenditure was a deliberate attempt to dissipate the asset, or for the benefit of children or relatives, the spouse who makes such a payment must be prepared to bear it personally and in full (*TNL* at [24]). As no existing loan liability could be proven, the sum paid to Alan was correctly added back into the pool of matrimonial assets on the basis of this "*TNL dicta*" (see *UZN v UZM* [2021] 1 SLR 426 ("*UZN*") at [62]–[63]).

The $600,000 allegedly borrowed to fund the Maplewoods Property

44 The Husband claimed that he had taken a loan of $600,000 from his father to fund the purchase of the Maplewoods Property, which allegedly remained outstanding. He submitted that this sum should be deducted from the proceeds of sale of the Maplewoods Property which were included in the matrimonial pool. On appeal, the Husband argued that there was no evidence to show that the $600,000 was *not* borrowed from his father to purchase the Maplewoods Property.

45 Upon divorce, in general, all the parties' assets acquired during their marriage will be treated as matrimonial assets; the party who asserts that such an asset is not a matrimonial asset bears the burden of proving this on the balance of probabilities (see *USB v USA and another appeal* [2020] 2 SLR 588 at [31]). In the present case, the burden was on the Husband to prove that part of the Maplewoods Property proceeds ought not to have been included in the matrimonial pool.

46 As stated at [11] above, the Judge did not believe that the $600,000 which the Husband borrowed from his father was meant for the purchase of the Maplewoods Property, or that he had not yet repaid the loan after more than 12 years. We were of the view that there was also no basis to disturb the Judge's decision in this respect.

The $370,000 paid to BS and IS

47 The Husband argued that the Judge erred in adding back into the matrimonial pool the sum of $370,000 which he transferred to BS and IS after divorce proceedings had commenced.

48 The Judge drew a distinction between sums paid to BS and IS before the commencement of divorce proceedings and those paid after, and added the latter sum back into the pool of matrimonial assets on the basis of the *TNL dicta* (Judgment at [25]). On appeal, the Husband cited the Court of Appeal's remark in *TNL* that what constitutes a substantial sum is a question of fact (at [24]), and argued that the $370,000 was insubstantial in comparison to the total value of the matrimonial assets. We did not think the Judge erred in finding a sum of $370,000 to be substantial.

49 The Husband's argument that the Wife had "no putative interest in the matrimonial assets having not contributed to it" was misconceived. A spouse will have a putative interest in an asset which is a matrimonial asset liable to division under s 112 of the Women's Charter (see *TNL* at [25] and [31]). As it was undisputed that the sums were paid out of funds which were matrimonial assets, the *TNL dicta* applied. The Judge had correctly added the sum back into the matrimonial pool.

The $303,710.18 in legal fees

50 We turn to address the Judge's decision to add back into the matrimonial pool a sum of $303,710.18 comprising legal fees incurred in respect of the S Corp Lawsuit based on the *TNL dicta*. The Husband had paid these fees close to the commencement of divorce proceedings (Judgment at [34]). Respectfully, we were of the view that this sum should not have been added back into the matrimonial pool.

51 In *UZN* at [64], the Court of Appeal explained:

> The basis for adding the sums back into the pool of matrimonial assets under the circumstances described in the *TNL dicta* is that the consent of the other party was not obtained, rather than a suspicion of concealment. For example, a mother uses a sum of $35,000, which would have constituted part of the matrimonial pool, to pay for their child's school fees in an overseas institution. The mother's reason for withdrawing the sum is to fund their child's overseas education. If this is true, it is not a "wrongful dissipation" intended to put assets out of reach of the other party. However, if it is made without the father's consent, this withdrawal may be more appropriately dealt with when addressing how the parents should maintain their child, and the sum should be returned to the matrimonial pool in the meantime. The father may argue that he never agreed that the child should have an overseas education, which is far more expensive than a local one. Thus, his consent was not given when the mother withdrew the sum of $35,000 for this purpose at a time when divorce was imminent, and the *TNL dicta* would apply.

52 The basis for adding substantial sums back into the matrimonial pool is that the other spouse has not consented to making the expenditure at a time when divorce is imminent. The *TNL dicta* ensures that matrimonial assets are preserved in the matrimonial pool for division between the spouses. When divorce is imminent, what would have been identified as matrimonial assets should not be expended or transferred away without the consent of the other spouse. Prior to the time that divorce is imminent, parties may expend sums,

even substantial sums, while managing their financial affairs in the usual ways that married couples do.

53 In the present case, while the legal work may have been done and the liability to pay legal fees may have arisen in the period when divorce was imminent, they were part of the different stages of a legal action commenced long before divorce proceedings began. Indeed, the Judge had declined to add back the *bulk* of the legal fees paid in connection with the S Corp Lawsuit, on the basis that they had been paid "long before divorce proceedings commenced on 4 October 2018" (the Judgment at [33]). Having committed himself to the S Corp Lawsuit long before the divorce proceedings, the Husband could not be faulted for seeing the lawsuit through to its completion and paying the legal fees incurred in so doing.

54 We were of the view that the *TNL dicta* did not apply in respect of the $303,710.18 in legal fees, and that this sum should not have been added back into the matrimonial pool.

The appropriate proportions of division

55 The Husband submitted that, if the operative date for determining the matrimonial pool was the IJ date, then the appropriate ratio for division of assets acquired pre-separation was 60:40 in his favour and that for post-separation was 90:10, or alternatively, that a "blended ratio" of 75:25 in his favour should be used. He argued that the Wife's direct and indirect contributions were minimal, and the lengthy period of separation ought to be taken into account in determining the proportions of division of the matrimonial assets.

56 The Wife argued that in long single-income marriages such as the present, the tendency is towards dividing the matrimonial assets equally. She

stressed the indirect contributions she made in caring for the children and the household, that she gave up her job to do so, and that this enabled the Husband to focus on his business. She argued that the long period of separation also should not be taken into account given that she remained the primary carer of the children and the household. She submitted that the Judge was correct to award her 40% of the matrimonial assets.

57 We were of the view that while the Judge awarded the Husband a greater share on the basis of his "overwhelming" contribution, the Judge had not attributed sufficient weight to the fact that the parties had been living separately for about half of their 20-year marriage. Further, a marriage of 20 years in which 10 years were spent living apart could not be considered a long single-income marriage of the sort envisaged in *TNL*.

58 While separation will not by itself warrant a departure from the IJ date as the operative date for identification of matrimonial assets, the circumstances of separation are relevant to determining the parties' respective contributions to the marriage, and ultimately to *determining the proportions* of division. For example, the court may award an entire or larger share of an asset to the party who acquired it after separation, if it is just to do so in the circumstances, or it may award a higher proportion of the total matrimonial pool to that party (*Oh Choon* at [13]).

59 In *Oh Choon*, the Court of Appeal found that the wife's contributions after separation were at best negligible, or even non-existent (*Oh Choon* at [20]). The parties in *Oh Choon* were separated for six years out of an 18-year marriage. The court in *Oh Choon* observed (at [13]):

> In strict legal terms, the marriage between the parties in the present case had lasted almost three times the duration

> claimed by the Respondent, *viz*, 18 years instead of just six. However, we hasten to add that the approach we adopted was not an excessively technical one. **This was because the nub of the matter appeared to us to lie, instead, in ascertaining (in particular) the actual contributions (of both a direct and indirect nature) by the Respondent (if any) to the total pool of matrimonial assets**. This was an exercise which would in any case take into account the relevant circumstances arising from the fact that the marriage was a short one when viewed from a *de facto* perspective. **In particular, if indeed the Appellant could make good his argument that the Respondent had contributed little – if anything at all – to the pool of matrimonial assets after he had left the Respondent following the first six years of marriage, that would reduce in a corresponding fashion the proportion of the pool of assets the Respondent would be entitled to upon division**. This appeared to us to be a more objective approach which was simultaneously true to legal principle.
>
> [emphases in original in italics, emphases added in bold]

60 Applying these principles, the court in *Oh Choon* observed that the parties "had little to do with each other following the first six years of their marriage", and therefore awarded the Respondent a 15% share in the total pool of matrimonial assets (at [20]).

61 The extent of the spouses' indirect contributions to the marriage will generally be reduced after separation. The extent of these post-separation contributions will vary from case to case, and must be properly assessed on the facts of each case.

62 In the present case, although the parties maintained some contact with each other and the Wife continued to care for E, their significant period of separation would inevitably have reduced the indirect contributions which the Wife could have made, compared to a homemaker maintaining a shared home and caring for the family in the sort of long marriage to which the presumption of equal division was envisaged to apply in *TNL* at [48].

63 It is significant that the bulk of this sizeable matrimonial pool was acquired after the parties had separated. Taking into account the relevant circumstances, in particular the length of the marriage, the parties' separated circumstances, the fact that the matrimonial pool was sizeable with the majority of it acquired after the parties' separation, we were of the view that a ratio of 70:30 in favour of the Husband was just and equitable. We also bore in mind that the court's power to divide assets is to be exercised in broad strokes (see *ANJ* at [30]; *UYQ v UYP* [2020] 1 SLR 551 at [3]).

Consequential orders and costs

64 In sum, our decision was as follows:

(a) The operative date for determining the matrimonial pool is that of the IJ.

(b) The Judge's findings in respect of individual assets were affirmed, except that the $303,710.18 in legal fees was to be excluded from the matrimonial pool.

(c) The parties' matrimonial assets were to be divided in a ratio of 70:30 in favour of the Husband.

65 In view of our decision on the value of the matrimonial pool and the proportions in which it was to be divided, we set aside the consequential orders made by the Judge and directed parties to submit on the consequential orders which ought to be made in order to give effect to our decision.

66 Briefly, the Husband took the position that the matrimonial home should be valued at $4,100,000, while the Wife's proposed value was $3,750,000. Both parties agreed that the outstanding mortgage of $126,618.81 ought to be

deducted from the value of the matrimonial home. The Wife submitted that the matrimonial home should be transferred to her at the valuation she proposed. The Husband was not opposed to the matrimonial home being transferred to the Wife provided it was transferred at the valuation he submitted. However, if that value was not adopted, he submitted that the matrimonial home should be sold in the open market; and the sale proceeds should then be added to the matrimonial pool and divided accordingly, with the sale proceeds paid to the Wife counted against her share of the matrimonial pool.

67 On the timeframe for payment, the Wife sought payment of $1,200,000 within one month of the making of the consequential orders, with the approximately $1,300,000 remainder of her entitlement to the matrimonial pool (after deducting the value of the matrimonial home and the assets held in her sole name) to be paid within three months from that date. On the other hand, the Husband submitted that the remainder of her entitlement, after deducting the value of the matrimonial home and the assets held in her sole name, should be paid over 36 monthly instalments of $12,000, with the outstanding balance paid in the 37th month from the making of the consequential orders. Parties were otherwise in agreement that the Wife was to bear the costs of conveyance associated with the transfer of the matrimonial home to her, and that all assets held in her sole name should be retained by her and counted against her share of the pool of matrimonial assets.

68 Having considered their proposals, we ordered that the parties' matrimonial home be transferred to the Wife. In this connection, we adopted the valuation of the parties' matrimonial home at $3,925,000, this being the midpoint between the values submitted by the parties. We were of the view that neither party's proposed valuation was unreasonable. We noted that the difference between the parties' proposed values was $350,000, which was not a

large difference considering the large size of the total matrimonial pool. As the parties had agreed that the outstanding mortgage of $126,618.81 was to be deducted from the value of the matrimonial home, the final net value of the matrimonial home was $3,798,381.19.

69 We ordered that the matrimonial home be transferred (other than by way of sale) to the Wife, with no refunds to be made to the Husband's Central Provident Fund ("CPF") account. This order was made subject to the Central Provident Fund Act 1953 (2020 Rev Ed) (the "CPF Act") and the subsidiary legislation made thereunder in respect of the Husband's CPF monies, property, and investments. The CPF Board was to give effect to the terms of this order, in accordance with the provisions of the CPF Act and the subsidiary legislation made thereunder. The parties, including the CPF Board, were to be at liberty to apply for further directions or orders generally.

70 Deducting from the Wife's 30% of the parties' matrimonial assets the $3,798,381.19 which reflected the value of the matrimonial home, as well as the $115,875.29 of assets already held in the Wife's sole name, the balance sum payable by the Husband to the Wife was $2,399,439.92. We accepted that a significant portion of the Husband's assets were illiquid, and that it may take time to realise their value. We thus ordered that the Husband pay to the Wife $1,000,000 within one month of our order, and thereafter monthly installments of at least $15,000, and full payment of any outstanding balance within 24 months of our order.

71 On costs, we noted that while the Husband had succeeded in having his share of the matrimonial pool increased, he was not successful in his arguments in respect of the appropriate operative date and the assets which he sought to have excluded from that pool save for the legal fees paid in respect of the S Corp

Lawsuit. We were of the view that the Husband was only partially successful in his appeal and ordered that the Wife pay him costs fixed at $12,000 (inclusive of disbursements).

Debbie Ong Siew Ling
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

Audrey Lim
Judge of the High Court

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