

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2016] SGHCF 13

Divorce Transfer No 5353 of 2012

Between

TQN

... Plaintiff

And

TQO

... Defendant

GROUND OF DECISION

[Family Law] — [Matrimonial assets] — [Division]

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**TQN
v
TQO**

[2016] SGHCF 13

High Court — Divorce Transfer No 5353 of 2012
Foo Tuat Yien JC
23 October 2015; 15 April 2016

4 August 2016

Foo Tuat Yien JC:

Introduction

1 This grounds of decision deals with the ancillary matters under Part X of the Women's Charter (Cap 353, 2009 Rev Ed). The parties consented to the following orders:¹

- (a) No order for maintenance for the Plaintiff Wife ("the Wife");
- (b) There shall be joint custody and joint care and control of the two children of the marriage;

¹ See Notes of Evidence dated 15 April 2016 at p 8.

(c) The Defendant Husband, (“the Husband”) shall pay for the children’s educational expenses directly and each party shall pay for the household expenses when the children live with that party; and

(d) Each party is to retain the assets in their sole name (except a landed Property inherited by the Husband from his father in the Husband’s sole name (“the Inherited Property”)).

2 Parties agreed that the only issues before me were the division of two properties. The first was the Inherited Property acquired by the Husband from his father, which the Wife argued should be divided as part of the pool of matrimonial assets. The second was the parties’ matrimonial home, a leasehold landed property (“the Matrimonial Home”), which was held by them as joint-tenants.

3 On 15 April 2016, I held that the Inherited Property did not form part of the matrimonial assets. I ordered that the Matrimonial Home be divided in the proportion of 67% for the Husband and 33% for the Wife. The Husband has appealed against my division of the Matrimonial Home and I now set out my reasons.

Background facts

4 The Husband is 63 years old and was stated, as at October 2013, to be a Senior Financial Services Director with an agency at a major insurance company. The Wife is 48 years old and was stated, as at April 2015, to be marketing water filtration systems in Myanmar through her own company.

5 The parties met sometime in early 1994. The Wife was then 26 years old while the Husband was 41 years old.² The Husband was then a senior

financial services director at the same major insurance company. The Wife had joined that company in 1993 as an insurance agent after leaving her job as a flight attendant.

6 The parties lived together for a while. The Husband, who had been twice married, was then separated from his second wife. He subsequently obtained a divorce from his second wife. The Husband had no children from his earlier marriages.

7 The parties' son was born on 25 March 1995. Their daughter was born on 25 July 1996, about two months after the parties' marriage on 14 March 1996.³ The Wife stopped work shortly after their son was conceived in mid-1994.

8 The family lived in the Inherited Property from 1996 to May 2002. Thereafter, they moved and stayed at two rental properties before moving into the Matrimonial Home around November 2005.⁴ In early 2007, the Wife separated from the Husband due to matrimonial differences, though they continued to live under the same roof.⁵ The Wife stayed with her parents from 2010 to 2012, whilst the children continued to stay in the Matrimonial Home.⁶ According to the Wife, this arrangement was to ensure that the children's schedules were not disrupted. On 14 October 2012, the children left the Matrimonial Home as well and stayed together with the Wife.⁷ The Wife

² Affidavit of Wife dated 31 December 2013 at para 5.

³ Affidavit of Wife dated 31 December 2013 at paras 9 and 10.

⁴ Affidavit of Wife dated 14 September 2015 at paras 4 and 6; Affidavit of Husband dated 3 September 2015 at para 10.

⁵ Affidavit of Wife dated 31 December 2013 at para 14.

⁶ Affidavit of Wife dated 6 April 2015 at para 16.

relocated to Myanmar for work on 6 February 2014 and the children returned to the Matrimonial Home to live with the Husband.

9 The Wife filed for divorce on 5 November 2012. Interim judgment for divorce was granted on 15 July 2013 on the ground of a four year separation. As mentioned earlier at [2], the only issues before me were the division of the Inherited Property and the Matrimonial Home. I deal first with the Inherited Property.

My decision

The Inherited Property

10 The Inherited Property was owned by the Husband's father ("F"), who died on 19 August 1999.⁸ By a will dated 8 January 1988, F directed that his estate to be held on trust for five years from the date of his death and for the trustees to pay his wife \$4,000 per month up to the date of her death or the date of distribution (*ie*, 19 August 2004), whichever was earlier. Thereafter, the estate was to be distributed to F's widow and his three children, including the Husband, in equal shares, if they were alive at the date of distribution.⁹ F's widow died on 22 September 2006. By a Deed of Distribution dated 17 August 2012 ("2012 Deed of Distribution") entered into between all the beneficiaries of F and F's widow's estate, *ie*, the Husband and his two siblings, it was agreed that the Inherited Property was to be appropriated solely to the Husband.¹⁰ The other two siblings each received separate immovable property.

⁷ Affidavit of Wife dated 31 December 2013 at para 32.

⁸ Affidavit of Husband dated 9 May 2014 at p 17.

⁹ *Ibid* at p 19.

11 I found that the Inherited Property did not form part of the matrimonial assets. Section 112(10) of the Women's Charter provides that any asset acquired by one party by gift or inheritance at any time would not be a matrimonial asset unless it was used as the matrimonial home or was substantially improved during the marriage by the other party or by both parties to the marriage. As mentioned above at [10], the terms of F's will provided that the estate was to be distributed only upon F's widow's death or upon the date of distribution on 19 August 2004, whichever was earlier, and only to the named beneficiaries "as shall be living at the date of distribution". When parties stayed in the Inherited property from 1996 to May 2002, the property was owned by F up to his death on 19 August 1999, and after F's death, the Husband's estate title and interest in F's estate had yet to vest in interest. The Husband's estate title and interest in F's estate was vested in interest only on the date of distribution on 19 August 2004. Further, the appropriation of the Inherited property to the Husband was effected via the 2012 Deed of Distribution, long after parties and their children moved out of the Inherited Property. The Inherited Property was not owned by the Husband at the relevant time and cannot be regarded as a matrimonial home or a matrimonial asset. I note that this finding that the Inherited Property is not a matrimonial asset for division is not the subject of appeal.

12 I turn now to the Matrimonial Home.

The Matrimonial Home

13 The parties agreed that the Matrimonial Home, their matrimonial home, was the only matrimonial asset for division as they had agreed to

¹⁰ Wife's 2nd Supplemental Submissions at Tab C.

exclude all other assets in their sole names. The Husband had proposed that the Wife's share be transferred to him upon him reimbursing her CPF account with principal and accrued interest.¹¹ The Wife asked for an equal division of the property.¹² The Husband later submitted that the Wife should not be given more than 10% of the property.¹³ To decide on this narrow point of what would be a just and equitable division of the Matrimonial Home, I need only turn to the Court of Appeal decision of *ANJ v ANK* [2015] 4 SLR 1043, where the Court of Appeal laid down the following approach (at [17] and [22]):

17 It is now axiomatic that the court's power to divide matrimonial assets must be exercised in broad strokes, with the court determining what is just and equitable in the circumstances of each case. The philosophy underlying what is known as the "broad-brush approach" is that mutual respect must be accorded for spousal contributions, whether in the economic or homemaking spheres, as both roles are equally fundamental to the well-being of a marital partnership. ...

¹¹ Affidavit of Husband dated 2 October 2013 at para 46; Affidavit of Wife dated 20 September 2013 at page 28 shows that her CPF principal used towards purchase of the property was \$55,000 with accrued interest of \$11,605.70 (total: \$66,605.70) as at 16 September 2013.

¹² Affidavit of Wife dated 20 September 2013 at para 18.

¹³ Husband's Written Submissions dated 15 October 2015 at para 11.

...

22 ... Using the structured approach, the court could first ascribe 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. Next, to give credit to both parties' indirect contribution throughout the marriage, instead of giving the party who has contributed more significantly than the other an "uplift" to his or her direct contribution percentage, the court should proceed to ascribe a second ratio to represent each party's indirect contribution to the well-being of the family relative to that of the other. Using each party's respective direct and indirect percentage contributions, the court then derives each party's average percentage contribution to the family which would form the basis to divide the matrimonial assets. Further adjustments (to take into account, inter alia, the other factors enumerated in s 112(2) of the WC) may need to be made to the parties' average percentage contributions ...

The court therefore has to first determine the ratio of the parties' direct contributions, followed by the ratio of their indirect contributions throughout the marriage. The average of the two ratios will then form the basis of the division of the matrimonial assets. This is in recognition of the idea that marriage is an equal cooperative partnership of efforts and equal acknowledgement must be awarded to spousal contributions whether in the economic or homemaking sphere (see *NK v NL* [2007] 3 SLR(R) 743 at [20]). Further adjustments may also be made to ensure that the final division is just and equitable considering all the circumstances of the case.

14 I note that completion of the purchase of the Matrimonial Home for the price of \$1m was effected in November 2005¹⁴ and parties moved in that same year.¹⁵ There was no mortgage loan. The Wife estimated the value of the

¹⁴ Affidavit of Husband dated 6 March 2015 at pg 329.

¹⁵ Affidavit of Wife dated 14 September 2015 at paras 4 and 6; Affidavit of Husband dated 3

property at \$3m,¹⁶ while the Husband estimated the value of the property at \$2.5m,¹⁷ which he later reduced to \$2.25m.¹⁸ It is noted that the Matrimonial Home is a 99 year leasehold property with a residue of about 78 years.¹⁹ It was not necessary to determine the value for the purpose of division as this was the only property to be divided and distributed.

Direct financial contribution

15 The following figures were agreed upon by the parties (through their counsel) as their respective direct financial contributions:

	Husband	Wife
CPF Funds	\$521,588	\$55,000
Cash Contribution	\$100,000 (10% deposit) \$364,516.79 (cash on completion)	Nil
Total	\$986,104.79	\$55,000

16 There was a further issue regarding the renovation costs that the Husband alleged he incurred. The Husband initially claimed that he spent \$102,000 on renovation for the Matrimonial Home.²⁰ This sum was then

September 2015 at para 10.

¹⁶ Affidavit of Wife dated 20 September 2013 at para 5(e).

¹⁷ Affidavit of Husband dated 2 October 2013 at para 18.

¹⁸ Husband's Written Submission dated 15 October 2015 at para 57.

¹⁹ Affidavit of Husband made on 2 October 2013 at page 44.

²⁰ Affidavit of Husband dated 2 October 2013 at para 44

increased to \$170,319.43,²¹ but was later reduced to \$84,479.52.²² The Wife disputed this sum and submitted that the renovation costs were significantly lower.²³ This issue was, however, resolved when counsel for the Husband confirmed that the direct financial contribution of the parties could be determined without taking into account the renovation costs as claimed by the Husband. I noted that the Husband's documents in relation to the claim of \$170,319.43 (these documents covered the period from 2005 to 2014) included items that were not relevant, such as maintenance costs, furniture and household items, office supplies and what seemed to be items not appropriate for a home or for renovation of other properties owned by the Husband's family members, such as four toilet signs, garden sheds and 18 bidet toilet seats. Both parties had said that they moved into the Matrimonial Home in 2005.

17 Counsel for the parties calculated and agreed that the ratio of the parties' direct financial contributions towards the purchase of the Matrimonial Home was 94.7:5.3 in favour of the Husband.²⁴

Indirect financial contribution

18 The main contention between the parties was their respective indirect contributions (financial and non-financial) to the marriage. The Wife's latest submission was that the ratio should be 80:20 in her favour, while the Husband proposed that the Wife be attributed a percentage between 20%–30%. After considering the submissions by the parties and the entirety of the

²¹ Affidavit of Husband dated 6 March 2015 at para 67.

²² Annex A of the Notes of Evidence of hearing on 15 April 2016.

²³ Affidavit of Wife dated 31 December 2013 at paras 40–42.

²⁴ Notes of Evidence dated 15 April 2016 at p 3.

facts of the case, I was of the view that a ratio of 60:40 in favour of the Wife was appropriate.

19 First, I accepted the Wife's evidence that in the early years of the parties' relationship from March 1995 (upon the birth of their son), the Wife did not work and had been taking care of the children. A few years after the birth of their daughter, the Wife started working again as a real estate agent in a small real estate firm.²⁵ In 2000, the Wife joined a real estate company, working on a commission basis with no restriction or control on her working hours. She was therefore able to manage her working hours with her responsibility as a mother, the latter of which she said was her priority. It was only in 2005 that the Wife became relatively more active in her real estate work.

20 In contrast, during that period, the Husband, who was in his forties, was a successful senior financial services advisor with a major insurance company and was building up his career. The Husband was described in 1995 as a senior agency manager with Prudential Assurance, who was their first Million Dollar Round Table qualifier from his company and had continued to earn that honour for more than 12 years. He also had an agency with 45 agents earning in excess of \$1m in commissions since 1991.²⁶ This would be indicative of a job with a busy and demanding schedule with possibly frequent travel commitments.²⁷

²⁵ Affidavit of Wife dated 6 April 2015 at para 15.

²⁶ Affidavit of Husband dated 9 March 2015 at p 22.

²⁷ Husband's Written Submissions dated 15 October 2015 at para 152.

21 In November 2000, the Husband accepted a job from a Malaysian insurance agency as an Agency Development Advisor to be based in Kuala Lumpur, Malaysia (“KL”) for three years.²⁸ The Husband averred that this job only lasted till November 2001 and that at the material time, he only travelled to KL twice a month from November 2000 to November 2001, with each trip being from Thursday to Saturday.²⁹ He further averred that he would always make it a point to be back by Saturday. On the other hand, the Wife alleged that for two to three years when the children were young, the Husband had to travel to KL to work from Monday to Friday every alternate week and would often not come home even on the weekends as he preferred to drive to Hat Yai, Thailand to play golf.³⁰ It is noted that the letter of appointment dated 1 November 2000 and signed by the Husband provided for him to be based at the agency’s office in KL. Unfortunately, the copy of the Dissolution Agreement operative from 30 November 2001, that the Husband provided, was not dated and signed.

22 The Wife further alleged that even when the Husband was in Singapore over the weekends, he would leave for golf at 6am, return home only after 2pm, and then sleep until 7pm.³¹ The Husband denied this. He said that he only played golf occasionally on Sundays with F (while he was still alive) and would leave at 6am and return at 12pm for lunch. He also only drove to Hat Yai once.³² Leaving the Husband’s golfing aside, I found it probable that during the time that the Husband was so employed, he would

²⁸ Affidavit of Husband dated 9 March 2015 at p 26.

²⁹ Affidavit of Husband dated 9 March 2015 at para 22.

³⁰ Affidavit of Wife dated 31 December 2013 at para 21.

³¹ *Ibid* at para 22.

³² Affidavit of Husband dated 9 March 2015 at paras 19 and 20.

have had to spend quite some time on the job in KL. This would mean that not only during that period, but during the other times when the Husband was working and continuing to build up his career as a successful insurance executive in Singapore, the child care functions were largely borne by the Wife, especially during the children's formative years.

23 Second, I took into account both parties' role as caregiver of the children over the years as the marriage faltered. Specifically, I considered that for a period of time, the Wife had left the matrimonial home in 2010 to 2012 to stay with her parents and thereafter, when the children were older, the Wife moved to Myanmar in February 2014 to work. At the latter time, the son was 17 years old and the daughter was 15 years old. During this period, the children stayed with the Husband at the Matrimonial Home and credit must be given to the Husband for his care of the children.

24 Third, I considered the extent of the contributions made by each party to the welfare of the family, including caring for the family or any aged or infirm relative or dependant of either party, a factor that was relevant under s 112(2)(d) of the Women's Charter. In this regard, the Wife alleged that she helped to look after F (who lived next door to them at that time), and in particular, helped to change F's renal bags every six hours from 1998 onwards.³³ The Husband denied this. He alleged that the Wife never had a good relationship with his parents, and in particular, F.³⁴ Furthermore, the Husband's siblings filed affidavits in these proceedings averring to similar effect.³⁵ Bearing in mind the evidence of the parties and the Husband's

³³ Affidavit of Wife dated 27 September 2013 at para 17(d); see also Wife's 6 April 2015 Affidavit at paras 25 and 26.

³⁴ Affidavit of Husband dated 9 March 2015 at para 26.

³⁵ Affidavit of Husband's brother dated 6 March 2015 at para 6; Affidavit of Husband's sister

siblings, while I had no doubt that the Wife was concerned for F's welfare, F appeared to be a man of substantial means who could afford (and did enlist) the services of a domestic helper. Therefore, I preferred the Husband's evidence over that of the Wife's in relation to the care of F and did not give weight to the Wife's statements that she had helped to look after F (who died in 1999). It must also be remembered that the children were very young during that time and the Wife's attention would have been mostly focused on them.

25 On the other hand, it was undisputed that the parties had taken in the Wife's sister's illegitimate daughter after her birth in August 2000 and the family took care of her until her mother had the financial means to take over caring for her.³⁶ The Husband alleged that the family took care of the child until she was six years old, while according to the Wife, the child left when she was three years old.³⁷ Whilst the Husband agreed to take in the child, it is likely that the main responsibility for the care of the child would have devolved upon the Wife, especially given that the Husband had accepted the job offer with a Malaysian insurance agency in KL at the time. It was also undisputed that the Husband had helped the Wife's father by paying \$40,800 towards the mortgage of a property that belonged to the Wife's father.³⁸ Although the Husband claimed to have given over \$150,000 to the Wife's father, this was not substantiated and was denied by the Wife. These were two factors that I had taken into consideration in relation to the Husband.

dated 7 November 2013 at para 3.

³⁶ Affidavit of Husband dated 9 March 2015 at paras 68-71.

³⁷ Affidavit of Wife dated 6 April 2015 at para 66.

³⁸ Notes of Evidence dated 15 April 2016 at p 6.

26 Fourth, I considered how the parties had contributed to the household and children's expenses over the years. It must be borne in mind that although the divorce was only filed on 5 November 2012, the parties started living separate lives by early 2007. This meant that the parties lived as a married couple for only about 11 years. It was not in dispute that the parties did not have a joint account. The Husband claimed that he had not given the Wife a monthly allowance because she had always been self-sufficient. He further alleged that he had offered the Wife a supplementary credit card but this was refused by the Wife.³⁹ The Wife said that she had asked for a supplementary credit card but the Husband refused because of his experience with his second wife.⁴⁰ The Husband also averred that he applied for a supplementary Esso card for the petrol for their three cars and a Diners credit card for groceries at Sheng Siong supermarket.⁴¹ The Wife conceded receiving the supplementary Esso card but denied receiving any Diners credit card from the Husband. The Husband stated that all household expenses including grocery bills were paid by him and that he reimbursed the Wife for whatever shopping expenses she incurred for the children and the house.⁴² In contrast, the Wife alleged that the Husband gave her a monthly allowance of \$3,000.⁴³ Although the Wife acknowledged that the Husband had paid for household expenses including grocery bills, she denied ever being reimbursed for the expenses she had incurred for the children or the household.⁴⁴ Given the history of the marriage and that the parties had started to live apart since 2007, albeit under one roof, I

³⁹ Affidavit of Husband dated 9 March 2015 at paras 39 and 68.

⁴⁰ Affidavit of Wife dated 6 April 2015 at para 38.

⁴¹ *Ibid* at para 39.

⁴² Affidavit of Husband dated 9 March 2015 at para 40.

⁴³ Affidavit of Wife dated 31 December 2013 at para 46.

⁴⁴ Affidavit of Wife dated 6 April 2015 at para 41.

was of the view that the truth likely lay somewhere in between both parties' accounts, and that the Wife did bear a share of the costs of the expenses for the household and the children. I also noted that the Husband paid for the renovation expenses although there was a dispute as to the amount.

27 In the light of the above, and considering all the circumstances of the case, I was of the view that the parties' indirect contribution was 60:40 in favour of the Wife.

Final ratio for division

28 Averaging the ratios of the parties' direct and indirect contributions, I found that the overall ratio was 67.35:32.65 in favour of the Husband, which I rounded to 67:33. I proceeded to consider whether there was any need for an adjustment to ensure that the overall distribution of the matrimonial assets was just and equitable. First, I noted that the Husband would be paying for the son's education in the United States of America when he begins his university education at Notre Dame University. According to the Husband, that will cost \$400,000 for a four year education. I commend the Husband for willingly agreeing to bear the full cost of the son's education. I note that he had also agreed to bear the costs of the daughter's education and her maintenance expenses.

29 Second, I also took into account the fact that the Wife had not sought to ask for maintenance and that each party had agreed for each to keep the assets in their own name. There was no need to go into the issue of the parties' respective incomes or assets because they had agreed that the court was only required to decide on the division of the Matrimonial Home. I noted, however, from the documents produced by the Husband, particularly those in relation to the estate of F, that the value of that estate was fairly substantial as at February

2001.⁴⁵ The Husband was one of the four beneficiaries to that estate and also a beneficiary to his mother's estate (the mother was a beneficiary of F's estate). One of the immovable properties appropriated as the Husband's share of the estate was the Inherited Property, which was valued in 2001 at \$1.45m. The Husband had estimated that the value of this property to be \$3m in 2015. The Husband was also a shareholder of a family investment holding company. He stated that apart from his earnings from his insurance agency, he had additional sources of income from F's estate, the family investment holding company and from the Inherited Property.⁴⁶ It was clear that the Husband would undoubtedly have more assets of higher value and income generating capacity than the Wife and it is in that light that I view his payment of maintenance for the children without contribution from the Wife. I am aware that many of those assets are not matrimonial property.

30 Parties to a marriage contribute to the extent of their resources, ability and capabilities to advance the common interest of the family and for the welfare and best interests of their children. In my view, there was no need to adjust the overall ratio of 67:33 in favour of the Husband for the division of the Matrimonial Home. In light of the facts and circumstances of this case, this ratio represented a just and equitable division of the matrimonial assets, especially when it is considered that the parties agreed that the Matrimonial Home was the only asset liable for division and that the parties were to keep matrimonial assets in their sole names.

⁴⁵ Voluntary Affidavit of Husband dated 9 May 2014 at pg 21 to 45.

⁴⁶ Affidavit of Husband dated 2 October 2013 at paras 13 and 14.

Conclusion

31 I therefore ordered that the Matrimonial Home be divided in the proportion of 67% for the Husband and 33% for the Wife.

32 I further ordered that the Husband was to notify the Wife or her counsel within six weeks from the date of my order if he wanted to take over the Wife's interest in the property. If the Husband elected to take over the Wife's interest, the transfer of the property was to be completed within three months of the date of the Husband's election, at a consideration to be determined by a valuer jointly appointed by the parties for this purpose. The Husband would pay to the Wife a sum equivalent to 33% of the value of the property after deducting therefrom the principal and accrued interest to be refunded to the Wife's CPF account with the CPF Board. The costs and expenses of the valuation and the transfer to the Husband are to be borne by the Husband.

33 Should the Husband decide not to take over the Wife's interest in the property, the sale of the property in the open market was to be effected within five months of the Husband's election not to take over or within such other date/period as might be agreed upon by the parties. The Parties were to have joint conduct of the sale. The net sale proceeds (less the costs and expenses of the sale) were to be divided in the proportion of 67% and 33% for the Husband and the Wife respectively. Each party would refund, out of their respective shares, the principal and accrued interest due to the CPF Board.

34 I also ordered that each party was to bear their own costs.

Nirmal Singh, Ramalingam Kasi (Raj Kumar & Rama) for the
 plaintiff;
 Oei Ai Hoea Anna, Twang Mei Shan (Tan, Oei & Oei LLC) for the
 defendant.