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

**[2016] SGHCF 9**

Divorce Transfer No 5443 of 2013

Between

**TNC**

… *Plaintiff*

And

**TND**

… *Defendant*

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# GROUNDS OF DECISION

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[Family Law] — [Matrimonial assets] — [Division]
[Family Law] — [Maintenance]
[Family Law] — [Custody] — [Access]

Version No 1: 28 Oct 2020 (02:01 hrs)

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# TNC
# v
# TND

**[2016] SGHCF 9**

High Court — Divorce Transfer No 5443 of 2013
Debbie Ong JC
2, 6 November, 21 December 2015; 21, 25 and 27 January, 12 February 2016

17 May 2016

**Debbie Ong JC:**

1 This case concerns the ancillary reliefs in respect of child custody, maintenance, and the division of matrimonial assets under Part X of the Women's Charter (Cap 353, 2009 Rev Ed). It involves the use of the less commonly employed approach to the division of matrimonial assets – the classification methodology. Using this methodology, the court divides classes of matrimonial assets separately, rather than by way of a global assessment. Both the classification methodology and the global assessment methodology are consistent with the legislative framework provided by s 112 of the Women's Charter on the division of matrimonial assets and neither approach is superior to the other (*NK v NL* [2007] 3 SLR(R) 743 at [33]; see [38] below).

**Background facts**

2 The parties were married on 22 September 2001 in Singapore. A son was born to them on 18 May 2011 and was four years old at the time of the hearings. The Defendant ("the Husband") is retired. His last employment was with a multinational energy corporation at which he had spent more than 15 years and held various senior executive positions. He was posted on a number of overseas assignments while employed by the company. The Plaintiff ("the Wife") had been a homemaker since 2006 and was the primary caregiver of their child. Prior to that, she worked at a credit card company. During the marriage, the parties ventured into the business of property development and, from 2002 to 2012, incorporated a number of companies to hold various properties.

3 The interim judgment of divorce was granted on 11 September 2014. I gave my decision on the ancillary matters on 12 February 2016. Both parties have appealed against my decision and I now give my grounds.

**Custody, care and control, access of child**

4 I ordered that the Husband and Wife shall both have joint custody of their son. Both parents have parental responsibility over him and must make joint decisions in the major aspects of his life, in his welfare. The Wife shall have care and control of the son. The Husband shall have weekly access to him for two hours each time. He shall also have reasonable access to him at other times in a manner that can be arranged by the parties. Both parties shall be reasonable and flexible in respect of the access arrangements, including the timings, duration and the venue for access transfers. By the time of the hearing, both counsel for the Husband and the Wife indicated that the parties were quite agreeable to such an access arrangement.



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5 The court expects both parents to cooperate in this matter and each must make reasonable arrangements for the son to spend as much time as possible with both parents under the circumstances. Since the Wife has care and control of the son, she should support greater access in order that their child will grow up being closely bonded to both parents.

**Division of assets**

***Identifying the matrimonial assets and reaching their net value***

6 The Court of Appeal in *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 ("*Yeo Chong Lin*") was of the view (at [39]) that Parliament did not intend to prescribe a definite cut-off date for identifying the pool of matrimonial assets, but once an asset is regarded as a matrimonial asset to be divided, its value should be assessed at the date of the hearing of ancillary matters.

7 The High Court in *Wong Kien Keong v Khoo Hoon Eng* [2014] 1 SLR 1342 (at [103]) noted that "some cases seem to support the position that there is judicial discretion to choose another date which might be more just" and quoted its observation in *Anthony Patrick Nathan v Chan Siew Chin* [2011] 4 SLR 1121 (at [29]) that "[u]ltimately, the date on which matrimonial assets should be valued is up to the court's discretion ….What is critical is to arrive at a 'just and equitable division'… in all the circumstances in each particular case."

8 The position has since been settled by the Court of Appeal's recent decision in *ARY v ARX and another appeal* [2016] 2 SLR 686. The Court of Appeal first held that the date of the interim judgment of divorce ought to be



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taken as a starting point, but not a fixed operative date, for identifying the pool of matrimonial assets (at [34]):

> We think the right balance between certainty and flexibility is struck if the date of the interim judgment is set as a starting point (as the operative date for determining the pool of matrimonial assets), with the court possessing the discretion to depart from it in deserving cases.

9 The Court of Appeal then confirmed that "the court has not only the discretion to select the operative date to *determine* the pool of matrimonial assets, it also has the discretion to determine the date at which those assets should be *valued*" (at [36]) (emphasis in original).

10 In this case, I found that it was just and equitable to use the date of the interim judgment of divorce in September 2014 as the cut-off date for both determining the asset pool and valuing the matrimonial assets. The parties had mostly adopted this operative date in submitting their respective values of the assets. I note that there was agreement between the parties on the values of the immovable properties which formed the bulk of the matrimonial assets. Reaching agreed values for the bulk of the assets is a very commendable step in these proceedings and, consistent with this stance that the parties had taken, the values of other assets and liabilities were also assessed as at this date. Further, this date was when the parties' relationship and their intention to jointly accumulate matrimonial assets had practically ended; each dealt with the assets as solo ventures thereafter, with both appearing to accept that movements in the asset values were due to their respective efforts.



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*Assets*

(1) The Singapore Properties with agreed values

11 After the hearing on 6 November 2015, the parties reached agreement on the valuation of the following properties in Singapore as follows:

| **Property** | **Agreed gross value** | **Net value** |
|---|---|---|
| 1st Haji Lane property | S$2,825,000 | S$1,169,161.48 |
| 2nd Haji Lane property | S$3,875,000 | S$1,725,790 |
| North Bridge Road | S$3,550,000 | S$1,457,677.01 |
| Chander Road | S$2,000,000 | S$1,040,595.34 |
| Two Jalan Pinang properties | S$18,500,000 | S$11,681,263.51 |
| Lorong Marzuki | S$1,035,000 | S$316,820 |
| Roberts Lane | S$2,750,000 | S$1,476,814 |
| Maude Road properties | S$15,000,000 (“as is”) | S$8,983,768.63 |
| | S$17,800,000 (“with planning approval”) | S$11,783,768.63 |
| | S$35,000,000 (“fully developed”) | S$21,560,000 |

12 The values of the Singapore properties were not in dispute. However, the parties had agreed to three different values of the Maude Road properties based on the configurations shown above. The planning permission to develop these Maude Road properties into hotels had been issued on 30 July 2013 and was supposed to have lapsed on 30 July 2014. They have not yet been developed as such. The Husband submitted that the “as is” value ought to be



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used for the purpose of valuing the assets for division, while the Wife submitted that the "fully developed" value should be used. I accepted the "as is" value of S$15,000,000 as the more accurate and appropriate value of the Maude Road properties.

13 The Husband submitted to the court by way of a letter dated 25 January 2016 that the loan of S$3,924,359.30 was omitted from the calculation of the net value of the Maude Road properties. I noted that the loan was taken out at a late stage, in June 2015. Given that I have accepted September 2014 as the operative date to value the matrimonial assets, it was consistent that the same approach be taken in respect of the Maude Road properties. In any event, the loan appeared to be intended for the further development of the Maude Road properties. Given that I had not taken into account the increase in value in the Maude Road properties based on the proposed further development, it was fair in my view that the loan should also not be taken into account.

(2) The Singapore Properties with no agreed values

14 The parties have not specifically agreed to the values of the following two Singapore properties:

| **Property** | **Wife's alleged net value** |
|---|---|
| Geylang property | S$40,119.63 |
| Bayshore property | S$873,375 |

15 I accepted S$40,119.63 as the value of the Geylang property, there being no other value submitted by the Husband.

16 There was no agreement on whether the Bayshore property was a matrimonial asset. The Bayshore property was acquired prior to the marriage.



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The Wife submitted that this was a matrimonial home which ought to be divided under s 112 of the Women's Charter as the parties had stayed in the property from 2001 to 2003. The Husband disputed that it was a matrimonial home and submitted that they lived there for only a period of 15 months.

17 Section 112(10) of the Women's Charter provides:

> (10) In this section, "matrimonial asset" means —
>
> (*a*) any asset acquired before the marriage by one party or both parties to the marriage —
>
> > (i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or
> >
> > (ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and
>
> (*b*) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,
>
> but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

18 I found that the Bayshore property was ordinarily used by both parties for shelter and therefore a matrimonial asset. The requirement of ordinary use would not be satisfied if the parties' use of or stay at the property was "occasional or casual": *BJS v BJT* [2013] 4 SLR 41 at [23]. Examples of casual residence are staying in a property for no more than 21 days out of 14 years of marriage (*Ryan Neil John v Berger Rosaline* [2000] 3 SLR(R) 647 at [60]) or on only two occasions throughout the marriage (*JAF v JAE* [2015] SGHC 114 at [15]). On the present facts, even if I had accepted the Husband's submission, residence in the property for 15 months is sufficient to constitute ordinary use for shelter.



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(3) The proceeds of the Singapore property that had been sold

19 I accepted that the proceeds of sale of a property at Dunlop Street property, amounting to S$970,817.02, should be in the pool of matrimonial assets as it had been acquired by the Husband during the marriage.

(4) The Malaysian Properties

20 The parties have properties in Malaysia ("Malaysian Properties") owned by two Malaysian companies which are in turn owned by the Husband with a 99.99% share and his cousin with a 0.01% share.

21 I accepted the values alleged by the Husband because they had been extracted from valuation reports, in contrast to the Wife's alleged values which were not based on any independent valuation. Further, the Wife's objection to the Husband's values appeared to merely be that the figures provided by the valuation surveyor were lower than the purchase price for the respective properties. In my view, the market values of real property are subject to change, and it was not inconceivable that the values of the properties have dropped over time. The Wife had also not provided documentary evidence to support her assertions of the purchase prices of the properties. I therefore calculated the net value of the Malaysian Properties using the Husband's figures of the gross value of the properties. After subtracting the outstanding loans on the properties, their net values are set out as follows:

| **Property** | **Net value** |
|---|---|
| Ming Hotel | RM656,586.58 |
| Hash Hotel | RM2,145,566.69 |



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| | |
|---|---|
| Dragon Hotel | RM860,000 |
| Kampong Hulu | RM480,000 |

22 Using the Husband's values, I found that 99.99% of the total net value of the Malaysian Properties is RM4,141,739.06, or, applying the conversion rate of RM1:S$0.39315 as at 4 September 2014, S$1,628,324.71. The Husband argued, in his letter to the court dated 25 January 2016, that the more recent exchange rate as at September 2015 should be used instead of the exchange rate as at September 2014. The Wife submitted in response that the Malaysian Properties had been valued according to the market value up to 2014; thus it would not be fair to take into account the drop in the exchange rate, yet disregard the possible rise in the property values over the same period of time. I found this to be persuasive, and also noted that the same exchange rate of RM1:S$0.39315 had been applied to the Malaysian bank accounts. I therefore used the exchange rate as at 4 September 2014.

(5) Bank accounts, insurance policies, CPF monies, shares and other assets

23 The following table sets out the parties' assets in the form of bank accounts, insurance policies, CPF monies, shares, and other assets:

| **Jointly held assets** | |
|---|---|
| **Asset** | **Value** |
| Joint bank accounts | S$34,588 |
| **Wife's assets** | |
| Bank accounts | S$992,487.91 |
| Insurance policies | S$60,688.83 |



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| | |
|---|---|
| CPF monies | S$127,658.97 |
| Car | S$16,896 |
| Shares | S$59,972.69 |
| **Husband's assets** | |
| Bank accounts in Singapore | S$427,228.70 |
| Bank accounts in Malaysia | RM 325606.94<br>(S$128,012.37) |
| Singaporean company bank accounts | S$77,617.97 |
| Malaysian company bank accounts<br>99.99% of value | RM 68,472.17<br>($26,919.83)<br>S$26,917.14 |
| Insurance policies | S$35,468 |
| CPF monies | S$268,462.99 |
| Car | S$36,000 |
| Club membership | $4000 |

The Husband's Malaysian accounts have balances that add up to S$128,012.37, based on a conversion rate of RM1: S$0.39315. The Malaysian company bank accounts are held by companies which are 99.99% owned by the Husband. 99.99% of the total amount in these bank accounts, converted at a rate of RM1: S$0.39315, is S$26,917.14.

24 The Husband submitted that the balance in one of his accounts, a Standard Chartered e$aver Account, should not be included in the pool of



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matrimonial assets as it had been withdrawn over time to pay off a DBS overdraft loan and various other loans and bills. I was not persuaded by the Husband's submissions in this regard, and agreed with the Wife that doing so would amount to double-counting the loans. This was because the amount of the outstanding loans as at September and November 2014 had already been taken into account when calculating the net value of the properties. The balance in the e$aver Account that the Husband referred to was that in July 2015. Essentially, the Husband's submissions were based on using two different time periods for different assets. If there had been repayments since November 2014, it was true that the monies in the e$aver Account would decrease, but at the same time, the outstanding loans would decrease and the net value of the properties would increase. Ultimately, there should not be a significant effect on the total value of the matrimonial assets.

*Liabilities*

25 In order to arrive at the net value of the total pool of matrimonial assets, the other liabilities of the parties were taken into account. The following table sets out the husband's liabilities which had not been taken into account in arriving at the net value of any individual asset:

| **Husband's liabilities** | |
|---|---|
| **Liability** | **Amount** |
| Tenant deposits | S$376,550 |
| Tax on pension earnings | S$70,924 |

26 The tax on the Husband's pension earnings of S$440,000 paid to him in May 2014 and deposited into his e$aver Account formed part of the balance of the bank account that was included in the pool of matrimonial assets.



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Because this liability relates to a matrimonial asset, and diminishes its net value, I have deducted this amount from the pool.

27 The Husband had submitted that the rest of the liabilities set out at Annex B-2 of his submissions dated 2 November 2015 ought to be included. I had decided to exclude them as they were mostly property or car-related loans which have already been taken into account in calculating the net value of the real properties or the car respectively. Consistent with using the date of the interim judgment as the operative date for valuing the assets, I excluded some of the other liabilities relating to bills, debts, and account payments incurred by the property-holding companies after the date of the interim judgment. As I had decided not to put the rental income from the properties into the pool of matrimonial assets, the liabilities incurred in relation to the rental income were also excluded.

*Monies transferred between the parties*

28 The Wife claimed that she had transferred a sum of S$50,000 in January 2005 from a fixed deposit account held jointly with her mother to the parties' joint Standard Chartered Cheque & Save Account which should be included as her financial contributions. I was satisfied that this was supported by documentary evidence which did not merely show that the sum had been deposited into the Standard Chartered Cheque & Save Account on 8 January 2005, but that the same sum had been withdrawn from the UOB fixed deposit account owned jointly by the Wife and her mother just one day before. The Husband alleged that he had since paid back the sum of S$50,000 but he did not provide sufficient documentary evidence to support his allegation. I therefore found that a sum of S$50,000 had been transferred from the Wife for the use of both parties towards the payment of properties.



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29 The Husband claimed that the Wife had borrowed a sum of S$850,000 from him in September 2012 and has not since returned the money to him, to which the Wife admitted. I found that the sum of S$850,000 had been transferred from the Husband to the Wife and took this sum into account in the calculations.

30 Both parties also claimed that the other had taken rental income for their own benefit. The Wife claimed that the Husband had taken rental income from 14 Singapore rental properties amounting to at least S$2,094,050 as at September 2015 and also from three Malaysian properties amounting to RM11,500 per month for an undisclosed period of time. The Husband claimed that the Wife had taken rental income from the following properties: (a) S$43,900 (of which S$38,000 was used to pay the outstanding loan) from the Roberts Lane property between January 2015 to June 2015; (b) S$4,650 from the Chander Road property in October 2013; and (c) S$76,000 from one of the Maude Road properties between May 2013 to June 2015. In response, the Wife alleged that the Husband had not given her maintenance for the period between September 2012 and July 2015 and that any monies collected would have been required for reasonable expenses.

31 In my view, the rental income taken by either party before the date of the interim judgment was likely to have been deposited into their bank accounts and/or used to repay the mortgage loans of the properties and other personal and family expenses, and so would have been reflected in the bank balances or the net values of the properties disclosed by the parties accordingly. I therefore did not include these alleged sums in calculating the pool of matrimonial assets.



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***Determination of a just and equitable division of the assets***

*Fundamental legal principles underlying s 112*

32 Section 112 of the Women's Charter confers upon the court the power to order the division of the parties' matrimonial assets. Section 112(1) provides:

> **112.**—(1) The court shall have power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable.

33 The power to divide matrimonial assets is to be exercised in broad strokes, with the court determining what is just and equitable in the circumstances of each case: *ANJ v ANK* [2015] 4 SLR 1043 at [17]. The Court of Appeal had held in *Yeo Chong Lin* at [81] that:

> At the end of the day, we wish to underscore the point that the broad brush approach … is all about feel and the court's sense of justice.

However, the "broad brush approach" is not a licence to ignore the premise of s 112 of the Women's Charter, which is that matrimonial assets are not to be viewed as belonging to the husband or the wife exclusively; on the contrary, the legislative mandate to the courts is to treat all matrimonial assets as community property to be divided in accordance with s 112: *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 ("*Lock Yeng Fun*") at [40]. The division of assets is founded on the ideology of marriage as an "equal co-operative partnership of efforts", an ideology which accords equal recognition to spousal contributions whether in the economic or homemaking spheres: *NK v NL* at [20]. The Court of Appeal emphasized in *ANJ v ANK* that (at [17]):



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> 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…

34 To accord due and sufficient recognition to each party's contributions towards the marriage, and especially with a view to avoid overvaluing or undervaluing indirect contributions, the Court of Appeal has laid down a structured approach comprising the following steps (*ANJ v ANK* at [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 ….

35 The first step of the structured approach is to determine the parties' direct contributions. The parties' direct contributions to different matrimonial assets may be unequal, sometimes vastly so. But differences in direct contributions alone do not mean that these assets are not the result of the spouses' cooperative partnership of efforts, for it may be that one spouse's indirect contributions has made possible the other's direct contributions, a familiar example being where one spouse is a homemaker and the other the breadwinner. It is thus common to pool together the assets and consider each party's direct and indirect contributions to the entire pool of different assets.



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However, there may be special circumstances that justify a different approach to the division of particular assets. A survey of the cases shows three possible ways in which a court can achieve a just and equitable division in cases involving more exceptional circumstances.

36 First, the court may choose not to divide an asset. The court's power to divide any asset under s 112 is a discretionary power and it may decline to do so where there is a valid reason: *Ong Boon Huat Samuel v Chan Mei Lan Kristine* [2007] 2 SLR(R) 729 ("*Ong Boon Huat*") at [26]. In *Ong Boon Huat*, the husband made all the financial payments for the purchase of a property, which had been purchased at a time when the parties' relationship had deteriorated. The wife also sought to enter into a deed of settlement disclaiming all responsibilities arising from its purchase. The court thought it just to exclude it from division and allowed the husband to keep the property as it was his solo venture.

37 Second, the court may give a spouse a lower proportion of a pool of assets to reflect the lower contributions made by that spouse after the marriage has broken down. In *Oh Choon v Lee Siew Lin* [2014] 1 SLR 629 ("*Oh Choon*"), the husband acquired a property and car some 11 years after moving out of the matrimonial home. The Court of Appeal declined to exclude the two assets from the pool of assets liable to division, but awarded the wife a lower proportion of the assets than the High Court. It recognised that during the period after separation, the wife's contributions to the marriage were "at best – negligible (or perhaps even non-existent)" (at [20]).

38 Third, the court may decide to divide a class of assets separately from the rest of the matrimonial assets, pursuant to what has been called the "classification methodology", rather than dividing all the matrimonial assets



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globally. The Court of Appeal in *NK v NL* explained the difference between the two methodologies in this way:

> 31 The first methodology consists of four distinct phases: *viz*, identification, assessment, division and apportionment ("the global assessment methodology"). According to this approach, the court's duty is to (a) identify and pool all the matrimonial assets pursuant to s 112(10) of the Act; (b) assess the net value of the pool of assets; (c) determine a just and equitable division in the light of all the circumstances of the case; and (d) decide on the most convenient way to achieve these proportions of division, *ie*, how the order of division should be satisfied from the assets (see Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths, 1997) at p 895). Pursuant to this approach, the percentage for indirect contributions is applied without distinction to *all* matrimonial assets (see, for example, *Ryan Neil John v Berger Rosaline* [2000] 3 SLR(R) 647 at [24]; and *Tham Lai Hoong v Fong Weng Sun Peter Vincent* [2002] 1 SLR(R) 391 ("*Tham Lai Hoong*") at [12]).
>
> 32 The second methodology, on the other hand, involves an assimilation of all four of the above steps into a broad judicial discretion which, in the first instance, separately considers and divides *classes* of matrimonial assets ("the classification methodology"). Pursuant to this method, the court apportions classes of matrimonial assets separately, for example, the matrimonial home, cash in bank accounts, shares, and businesses, *etc*. Any direct financial contributions and indirect contributions are considered in relation to *each* class of assets, rather than by way of a global assessment (see, for example, *NI v NJ* [2007] 1 SLR(R) 75).
>
> 33 There is much to be said for either method, both of which are consistent with the legislative framework provided by s 112 of the Act, which does not specify how the court should sequence the decisions involved in an application for the division of matrimonial assets. Nonetheless, the adoption of either methodology must be underscored by a principled approach. … neither methodology is superior to the other. In the final analysis, the facts and circumstances of the case at hand are of primary importance. Further, regardless of the methodology adopted, the paramount aim is to ensure that the matrimonial assets concerned are divided in a *just and equitable* manner (as aptly laid down in s 112(1) of the Act itself). The court should apply the methodology that leads to this result.



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39 The first methodology, "the global assessment methodology", is far more commonly used than the "classification methodology". Pursuant to the classification methodology, only the direct contributions may vary. The classification approach "would be appropriate where there are multiple classes of assets, and where the parties have made different contributions" to each class: *NK v NL* at [35]. The weightage accorded to indirect contributions must remain constant in relation to each class of assets, since indirect contributions can only be assessed and applied at the end of the marriage: *AYQ v AYR and another matter* [2013] 1 SLR 476 at [22] to [23]. The court must avoid the "blinkered" approach where "varying weights are accorded for indirect contributions in different matrimonial asset classes" (at [23]).

40 Since the presence of different direct contributions to different assets has never stood in the way of a court dividing the matrimonial assets globally, there must be something more to indicate that the classification methodology may be the more suitable approach. In my view, assets can be separately divided if some are not wholly the gains of the co-operative partnership of efforts that the marriage represents. Professor Leong Wai Kum stated in *Elements of Family Law in Singapore* (LexisNexis, 2nd Ed, 2013) ("*Elements*") at p 577 that "[t]he power to divide matrimonial assets is driven by the motive to share the *gains* of the marital partnership as fairly as possible between the former marital partners" (emphasis added). In Professor Leong's view, there is a meaningful distinction to be made between "quintessential matrimonial assets", which are assets that wholly represent the gains of the marital partnership, and those which are not. She describes assets acquired *during* the marriage by the *efforts* of one or both parties as "quintessential" matrimonial assets (*Elements* at p 557).



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41 Section 112(10)(*a*), however, places assets acquired *before* marriage, but regarded as matrimonial assets by virtue of ordinary *usage* or substantial *improvement*, on the same footing as those acquired during marriage (s 112(10)(*b*)). For property acquired before marriage but regarded as a matrimonial asset due to substantial improvement, Professor Leong suggests treating only the increase in value of the property brought about by the parties' improvement as liable to division. Discounting the value of the property before marriage from the value of the property at the operative date enables the court to derive the value attributable to the parties' efforts, which is a quintessential asset (*Elements* at p 577). However, such discounting cannot be done for property regarded as matrimonial asset by virtue of "ordinary usage" or enjoyment since there is no discernible increase in value that can be ascribed to the parties' efforts. This is why the use of the classification approach for such assets may be more appropriate.

*Applying the legal principles to present facts*

42 In my view, the Bayshore property, acquired by the husband before marriage, and regarded as matrimonial property merely because the parties used it for shelter, should be divided differently from the rest of the matrimonial assets. Bearing in mind that this was not a quintessential matrimonial asset although a matrimonial asset within s 112(10)(*a*)(i), I found it appropriate to treat its division separately from the quintessential matrimonial assets. This should not be taken as suggesting that all properties falling within s 112(10)(*a*)(i) should be classed and divided separately. Rather, in this particular case, the period of use and enjoyment of the Bayshore property was significantly shorter compared to the length of the marriage, and the property had not been used by the parties for a long time (at least from 2003 to 2014).



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43 The Jalan Pinang properties should also be treated differently. These properties had increased massively in value after the parties' marriage had broken down and largely due to the efforts of the Husband. The increase in value was due to the redevelopment of the properties into a hotel, a project the Wife conceded she was not involved in. These properties ought also to be treated separately from the class of quintessential matrimonial assets.

44 I divided the assets into two groups: Group A consists of the quintessential matrimonial assets, which in the present case were assets acquired during the marriage, and Group B consists of assets which do not fall into s 112(10)(*b*) but which were matrimonial assets transformed by virtue of the conversion formula in s 112(10)(*a*)(i), or which values have vastly increased near and after the time parties were largely living separate lives. I placed the Bayshore property and the Jalan Pinang properties in Group B in order to give different consideration to them. The rest of the assets fall within Group A. Both groups of assets fell to be divided according to the structured approach in *ANJ v ANK*. However, I accorded different weightages to the parties' direct contributions for each group of assets while applying the same percentage for indirect contributions.

*Parties' direct contributions*

45 I start with the Group A assets. The Husband's main submission in this respect was that most of the assets were acquired by him. His submission is that the Wife's direct contributions came mainly from her bank balances, insurance policies, the 5% share in the Geylang property, CPF monies and her car. His position is that the remaining assets were acquired by his direct financial contributions. He perceived that he had made all the efforts to



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acquire and develop the real properties which represent the bulk of the parties' wealth.

46 The Wife submitted that the parties should be viewed as having made equal direct financial contributions as they jointly intended and expended efforts to acquire the various assets.

47 In assessing the Wife's direct contributions, I found that the Wife had made efforts towards the parties' real estate business. Although they may not be comparable to the Husband's efforts, they were not insignificant. They included, amongst others, purchasing furniture for properties owned by their companies, evicting difficult tenants, managing their companies' accounts, liaising with tenants and collecting the monthly rent, liaising with the auditors on the accounts of one of the companies and answering queries on the business operations, liaising with the buyers of the Lorong Marzuki units and handling complaints of defects, meeting with contractors, obtaining a developer's licence for one of the companies to develop a residential project, standing as guarantor for the construction loan taken by that company, and borrowing S$330,000 from her relatives to deposit into the parties' joint account.

48 I found that, based on the Inland Revenue Authority of Singapore's Notices of Assessment, between 2007 and 2014, the Wife had received a total income of S$794,317 from the companies owned by the parties. In working out the Wife's direct contributions, I took into account the income she had received for her work in respect of the companies, which totalled S$794,317, and the sum of S$50,000, both of which were placed with the Husband and likely to have been invested in properties. The returns from the investments should thus also be partly attributed to the Wife. However, her contributions in



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managing the properties as part of the real estate business should not be double-counted. Her efforts which can be said to have directly generated income or led to the acquisition of the assets can be accounted for as her "direct" contributions, but these efforts should not be taken into account again as "indirect contributions" under the structured approach.

49 On the available evidence, I found it clear that the Husband was the main driving force behind the investment by the parties into real properties. He spearheaded the acquisition and development of the various real properties. He also managed all the technical, commercial, financial and administrative aspects of the property projects with the support of his staff, and liaised with the project consultants, contractors, suppliers, banks, accountants, tax agents, auditors and company secretaries. It would thus be unfair to the Husband to attribute 50% as the Wife's *direct* contributions, which is the position submitted by the Wife.

50 Still, I noted that married parties do not conduct their business affairs in a way that pure business partners do, and so, one should not mathematically convert the Wife's efforts into monetary terms in a scientific manner.

51 I ascribed the "as is" value to the Maude Road properties and derived the following as a *preliminary* calculation of each party's financial input for the purpose of calculating their respective direct contributions. The Wife's income of S$794,317 and the monies transferred between the parties were also taken into account. A preliminary calculation of the parties' respective direct contributions is as follows:

| **Wife** | | **Husband** | |
|---|---|---|---|
| Geylang property | S$40,119.63 | Singapore properties | S$16,170,626.46 |



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| | | | |
|---|---|---|---|
| | | (excluding Jalan Pinang and Bayshore) | |
| Sole bank accounts | S$992,487.91 | Dunlop Street property | S$970,817.02 |
| Insurance policies | S$60,688.83 | 99.99% of Malaysian properties | S$1,628,324.71 |
| CPF | S$127,658.97 | Joint bank accounts | S$34,588 |
| Shares | S$59,972.69 | Sole bank accounts | S$555,241.07 |
| Car | S$16,896 | Singapore companies' bank accounts | S$77,617.97 |
| | | 99.99% of Malaysian companies' bank accounts | S$26,917.14 |
| | | Insurance policy | S$35,468 |
| | | CPF | S$268,462.99 |
| | | Car | S$36,000 |
| | | Tenant deposits | -S$376,550 |
| | | Tax on Chevron pension earnings | -S$70,924 |
| **Sub-total** | **S$1,297,824.03** | **Sub-total** | **S$19,356,589.36** |
| Balancing (Wife's income | S$794,317 | Balancing (Wife's income | -S$794,317 |



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| | | | |
|---|---|---|---|
| from companies) | | from companies) | |
| Balancing<br>(Transfer to joint account) | S$50,000<br>-S$850,000 | Balancing<br>(Transfer to joint account) | -S$50,000<br>S$850,000 |
| **Total** | **S$1,292,141.03 (6.26%)** | **Total** | **S$19,362,272.36 (93.74%)** |

As mentioned earlier, the Wife's income was also used to invest in various properties and projects and would have yielded profits. The use of the Wife's income in the acquisition of the properties which enabled the parties to produce property assets of substantial values as well as her direct efforts in managing the property business are her direct contributions. I found that it was appropriate to ascribe to her a higher percentage than shown in the calculations.

52 The Court of Appeal said in *ANJ v ANK* (at [23]):

> Even in respect of direct financial contributions of the parties, not infrequently, the situation is less than clear. In a case where the documentary evidence falls short of establishing exactly who made what contribution and/or the exact amount of monetary contribution made by each party, the court must make a "rough and ready approximation" of the figures (see *NK v NL* at [28], citing *Hoong Khai Soon v Cheng Kwee Eng* [1993] 1 SLR(R) 823 at [17] with approval). At the end of the day, the court would have to approach the issue by exercising sound judgment, having regard to the inherent veracity of each party's version of events reflected in their affidavits or testimony as well as the documentary evidence. This is where "broad brush" comes in.

53 In the present case, where financial inputs were made by the Wife towards investments and it was not possible to calculate mathematically the exact yields the financial contribution produced, I found it just to use a broad brush approach in ascribing a ratio for the Wife's direct contributions. I took into consideration the fact that the total value of the matrimonial assets is



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massive, reaching more than S$20m (in Group A alone), and that much of this was acquired in the later years of marriage, largely due to the Husband's efforts and business acumen. I also balanced that against the use of the Wife's income to invest in properties, and the profits that would have accumulated from these properties over the years. I thus attributed, to the Wife, *direct* contributions to the matrimonial assets in Group A at 15%, and 85% to the Husband.

*Parties' indirect contributions*

54 This is a marriage which is neither short nor very long, with periods within in which the parties did not live physically together. The Husband left Singapore sometime around 2005 and the Wife travelled to be with him on and off over the years during the rest of the marriage. The Wife stated that she returned in January 2013 for good. By this time in 2013, the marriage was not in a healthy state. The Husband stated that the parties were completely separated in January 2013 and that parties had already been substantially living apart even earlier. In fact, the Husband appeared to suggest that from 2010, the parties did not spend substantial periods of time together although they had not fully intended to end consortium as husband and wife at that time. The latter is supported by the fact that their child was born in May 2011.

55 Their child is young and was born in the later part of the marriage; the Wife was the primary carer of the child and took on a larger role in the domestic sphere. The Wife had undergone fertility treatment and had cared for the child in Singapore as well as when they were abroad. Prior to the child's birth, the Wife had also given support to the Husband in various ways which was not accounted for as producing her income and not taken into account as her direct contributions. She had also lived in other countries now and then,



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accompanying her Husband and adapting to new home environments and a life which involved some travelling. At the same time, she had to manage matters in Singapore as well. The parties lived separate lives from around January 2013 and divorce proceedings commenced in September that year.

56 As I have attributed the Wife's efforts directly to the production of income and in that sense, converted them into direct contributions to the acquisition of assets, her efforts in the business that produced the income will not be counted again separately as "indirect contributions" for purposes of division.

57 Taking into consideration all the facts and circumstances, I attributed 65% *indirect* contributions to the Wife and 35% *indirect* contributions to the Husband. The Husband, who took on the role of breadwinner, had provided financially for the family and this indirect contribution was recognised.

*Division of Group A assets*

58 Applying the structured approach in *ANJ v ANK*, I derived the following ratios in respect of Group A assets:

| | **Wife** | **Husband** |
|---|---|---|
| A. Direct contributions | 15% | 85% |
| B. Indirect contributions | 65% | 35% |
| Average of A and B | **40%** | **60%** |

59 The average percentage of the direct and indirect contributions of the Wife was 40% while the Husband's was 60%. A just and equitable division of



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the Group A assets under these circumstances was for the Wife to have a 40% share and the Husband to have a 60% share of the matrimonial assets in Group A.

*Division of Group B assets*

60 I found that the full agreed value of the Jalan Pinang properties was mainly attributable to the Husband's efforts. As I had noted at [36] to [37], the Court of Appeal made clear in *Ong Boon Huat* and *Oh Choon* that the court has the discretion to divide the matrimonial assets in such a way that a party may not even obtain a share of an asset acquired near breakdown or may obtain only a very small share. I would not have put the Wife's direct contributions towards the Jalan Pinang properties of massive value at 15%. Applying the broad brush approach, I would have assessed the Wife's direct contributions at no more than 5% and the Husband's at 95%. Averaging the percentages for direct and indirect contributions would have yielded the following result in respect of the Jalan Pinang Properties:

| | **Wife** | **Husband** |
|---|---|---|
| A. Direct contributions | 5% | 95% |
| B. Indirect contributions | 65% | 35% |
| Average of A and B | **35%** | **65%** |

61 Averaging the ratios in this manner assumes that "the collective indirect contribution made by both parties carries equal weight as the collective direct financial contribution made by both parties" (*ANJ v ANK* at [26]). However, the Court of Appeal noted that there may be instances where one component could assume greater importance than the other and should



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correspondingly be accorded greater weightage. This would shift the average ratio in favour of one party. In particular, the Court of Appeal suggested that if an extraordinarily large pool of assets was acquired by one party's exceptional efforts, direct contributions were likely to command greater weight as against indirect contributions (at [27]). The same principle should apply when the court is considering only a class of the matrimonial assets.

62 The court should engage in a "non-mathematical balancing exercise" to determine the appropriate weight to be accorded to each component. The Court of Appeal in *ANJ v ANK* stressed that "the balancing exercise should be non-mathematical in nature, and should instead be based on the court's sense of what is fair and just" (at [26]). On the present facts, the direct contributions to the Jalan Pinang properties should command greater weight in comparison with the indirect contributions, and the average ratio should be shifted in favour of the Husband, who made most of the direct contributions.

63 The other matrimonial asset in Group B, the Bayshore property, was transformed into a matrimonial asset by virtue of the formula in s 112(10)(*a*)(i). I had earlier explained why the whole value of this property did not have the character of a quintessential matrimonial asset. As the value of the Bayshore property is small relative to the value of the Jalan Pinang properties, I have decided to place the Bayshore property into Group B such that its division will follow the division proportions in respect of the Jalan Pinang Properties. On balance, a just and equitable division of Group B assets was to award 20% of these assets to the Wife and 80% to the Husband.

*Conclusion on the Division of Groups A and B*

64 The total value of the Group A assets, the quintessential matrimonial asset pool, after the deduction of liabilities, is S$20,654,413.39. 40% of the



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Group A assets was thus S$8,261,765.35.The total net value of the Group B assets, consisting of the Bayshore property and the Jalan Pinang properties, is S$12,554,638.51. 20% of Group B assets is S$2,510,927.70.

65 The total that the Wife should receive was S$10,772,693.05. I ordered that the Husband shall transfer to the Wife monies or assets equal to the value of S$10,772,693.05, less the assets that were, at the date of my order, held by her in her name.

**Maintenance**

***For the Wife***

66 An order of maintenance under s 113 of the Women's Charter supplements the order for the division of matrimonial assets (see *Elements* at p 697, citing *Lock Yeng Fun* and *Rosaline Singh v Jayabalan Samidurai (alias Jerome Jayabalan*) [2004] 1 SLR(R) 457). In *Yeo Chong Lin*, the Wife was awarded 35% of the assets, which translated to about S$24m. No maintenance was awarded as she did not need any. In *Lock Yeng Fun*, the wife had received 50% of the assets which totalled S$1.6m. The Court of Appeal rescinded the High Court's lump sum maintenance order. More recently, in *ARY v ARX*, the Court of Appeal rescinded the order of nominal maintenance as the Wife was capable of supporting herself.

67 Here, the Wife has been awarded S$10.7m. This was by no means a modest sum. It was in fact a massive sum. The Wife had submitted her monthly expenses to be about S$8,141. Even if it was accepted that she needed this amount monthly, I did not think that the Wife required maintenance as her alleged needs could adequately be met with the financial resources that she currently had or would have in the future if she puts the



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resources into investments and if she generates further income with the earning capacity demonstrated by her efforts in the businesses.

68 I therefore ordered that there shall be no maintenance for the Wife.

***For the child***

69 The Husband was prepared to bear the son's expenses solely, but disputed the expenses alleged by the Wife. The Wife alleged the expenses of the son to be S$4,318.66 per month. The Husband was willing to pay about S$3,500 as monthly maintenance for him. I found this sum to be reasonable, as both parents are obliged to maintain their child. Even if the expenses alleged by the Wife were accepted, I was of the view that she could afford to bear the remaining S$800 per month.

70 I therefore ordered that the Husband pay a monthly sum of S$3,500 for the son's maintenance.

Debbie Ong
Judicial Commissioner

Quek Seng Soon Winston (Winston Quek & Company) for the plaintiff;
Choh Thian Chee Irving and Looi Min Yi Stephanie (Optimus Chambers LLC) for the defendant.



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