IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2017] SGCA 34

Civil Appeal No 23 of 2016

Between

TND

… Appellant

And

TNC

… Respondent

In the matter of HCF/DT 5443 of 2013

Between

TND

… Plaintiff

And

TNC

… Defendant

Civil Appeal No 30 of 2016

Between

TNC

… Appellant

And

TND

… *Respondent*

In the matter of HCF/DT 5443 of 2013

Between

TND

… *Plaintiff*

And

TNC

… *Defendant*

JUDGMENT

[Family Law] – [Matrimonial Assets] – [Division]

TND
v
TNC and another appeal

[2017] SGCA 34

Court of Appeal — Civil Appeals Nos 23 and 30 of 2016
Sundaresh Menon CJ, Chao Hick Tin JA and Judith Prakash JA
1 December 2016

27 April 2017 Judgment reserved.

Judith Prakash JA (delivering the judgment of the court):

Introduction

1 We have before us two appeals against the decision of the Judge in *TNC v TND* [2016] SGHCF 9 ("the Judgment") regarding the division of matrimonial assets and access orders. The appellant in Civil Appeal No 23 of 2016 ("CA 23") ("the wife") is the respondent in Civil Appeal No 30 of 2016 ("CA 30"). The appellant in CA 30 ("the husband") is the respondent in CA 23.

2 The marriage in question was solemnised in September 2001 in Singapore. The wife initiated divorce proceedings in November 2013 and the interim judgment of divorce was granted in September 2014. The parties have

one child, a son, who was four years old at the time of the hearing below ("the AM hearing").

Background

3 The wife is a Singapore citizen who was 43 years old at the time of the AM hearing. She has been a homemaker since 2006. Prior to that, she worked at a credit card company. It was not disputed that the wife was the primary caregiver of the child as the husband left for the United States on a work assignment soon after the child's birth in 2011.

4 The husband is a Singapore permanent resident who was 53 years old at the time of the AM hearing. He is currently engaged in his own property development business. His last employment was with a multinational 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 during this employment. Additionally, during the marriage, the parties ventured into the business of property development and, between 2002 and 2012, incorporated a number of companies to hold various properties.

5 During the AM hearing, the parties agreed that they should have joint custody of the child. They disputed the terms of care and control, with the wife seeking sole care and control of the child with reasonable access to the husband of one and a half hours per week to be carried out in a public area. The husband sought joint care and control of the child, including unsupervised weekly visits of two hours each, additional overnight access on weekends once a month and access on special occasions.

6 On the issue of maintenance, the wife sought a lump sum maintenance for herself, and maintenance arrears of $350,000 from September 2012 to July 2015. She also sought maintenance of $5,000 per month for the child, and maintenance arrears of $120,000 representing the sum of $5,000 per month from September 2012 to August 2014. The husband's position was that he was willing to fund all reasonable expenses of the child and provide a reasonable lump sum maintenance.

7 The valuation and division of the matrimonial assets was hotly contested. The wife sought a 50:50 division of the assets and asserted significant direct and indirect contributions to the marriage. The husband took the position that the effective length of the marriage was short as he had spent substantial periods away from the family and that all the immovable properties were acquired by his sole efforts and financial contributions without any involvement on the part of the wife. Accordingly, he proposed a division in the ratio 89.52:10.48 in his favour.

The decision below and the arguments on appeal

8 We will now provide a broad overview of the Judge's decision in the court below, as well as the parties' arguments on appeal.

9 With respect to the division of matrimonial assets:

(a) The Judge used the date of the interim judgment of divorce (11 September 2014) ("the IJ date") as the cut-off date for determining *both* the asset pool and the valuation of the matrimonial assets.

(b) The Judge adopted the "classification methodology" in relation to the division of the parties' matrimonial assets, *ie*, the assets were

divided into two asset pools, Group A and Group B, depending on whether they were regarded as "quintessential matrimonial assets" (Group A) or not (Group B). Group B contained only two immovable properties – the Bayshore property and the Jalan Pinang properties.

(c) For Group A, the Judge valued the pool of assets at $20,654,413.39. She attributed to the wife direct contributions of 15%, which represented an uplift from her finding that the wife had contributed $1,292,141.03 or 6.26% of the pool. As for indirect contributions, the Judge attributed 65% to the wife and 35% to the husband. The Judge gave equal weight to direct and indirect contributions. As a result, the averaged ratio for Group A was 40:60 with the husband getting 60% and the wife 40%.

(d) For Group B, the Judge valued the pool of assets at $12,554,638.51. The Judge decided that the direct contributions ratio should be 5:95 in favour of the husband. For indirect contributions, the same ratio as that for Group A (ie, 65:35 in the wife's favour) was used. This yielded an averaged ratio of 35:65 in the husband's favour. However, the Judge was of the view that the direct contributions should be assigned greater weight. The averaged ratio of Group B was therefore adjusted to 20:80 in the husband's favour.

(e) The Judge ordered the husband to transfer moneys or assets equal to the value of $10,772,693.05, less the value of the assets in her sole name, to the wife. The wife thus obtained 32.4% of the overall value of the assets.

10 With respect to maintenance for the wife and child:

(a) The Judge declined to award maintenance to the wife in the light of the assets that were allocated to her from the division of the matrimonial assets. The Judge reasoned that the wife's needs could be adequately met with the financial resources she currently had and would have in the future.

(b) The Judge ordered the husband to pay $3,500 as monthly maintenance for the child.

11 As for custody, care and control, the Judge gave the parties joint custody of the child. Care and control was given to the wife whereas the husband was allowed weekly access to the child for two hours each time. The Judge directed that the husband "shall also have reasonable access to [the child] at other times", and in doing so, expected that "both parties shall be reasonable and flexible in respect of the access arrangements, including the timings, duration and the venue for access transfers".

12 In both appeals, the Judge's use of the classification methodology was not challenged. In CA 23, the wife sought to increase her overall share of all the matrimonial assets to 40% from the 32.4% awarded by the Judge by disputing the valuation of certain assets and the apportionment of direct and indirect contributions. Before the hearing of CA 23, the wife withdrew her appeal against the lack of backdating of the child's maintenance. She also took the position that she would not appeal against the lack of a maintenance order for herself unless, in the appeals, the Court of Appeal reduced her overall share of the assets. In CA 30, the husband sought to reduce the overall share of assets given to the wife by disputing the inclusion of certain assets in the matrimonial asset pool, the valuation of certain assets and the apportionment

of direct and indirect contributions. The husband also appealed against the Judge's order on access to the child.

13 By the time they filed their skeletal submissions for the appeals, both parties took the position that the date of valuation of the matrimonial assets should be the date of the AM hearing instead of the IJ date that the Judge had used. The AM hearing took place over several sittings, starting in November 2015 and ending in February 2016. By the term "AM date", we should be taken as referring to November 2015 when the hearings began.

Preliminary point on the access order

14 We deal briefly with the husband's appeal regarding the access order. No orders were made by the Judge in relation to detailed implementation of the access arrangements because counsel for both the husband and the wife had indicated that the parties were agreeable to such a general arrangement. It appears from the parties' positions on appeal that they had thereafter recognised the need for greater specificity regarding the access arrangements due to difficulties in implementation. The issue was not an error in the Judge's access order but the need for greater specificity. Therefore, it was not the subject of an appeal and should not have been raised as such. The correct course would have been for parties to seek further access orders from the Judge. We therefore deal no further with this issue and make no order on this aspect of the husband's appeal.

Issues on appeal

15 The following issues arise for determination before us:

(a) Whether the AM date should have been used as the operative date of valuation of assets;

(b) Whether certain items ought to have been included in the pool of matrimonial assets;

(c) Whether the Judge's valuation of the total pool of matrimonial assets was accurate;

(d) Whether the overall division of the assets is just and equitable in the light of parties' direct and indirect contributions; and

(e) Whether there should be specific apportionment of the assets.

We will deal with these issues in turn.

Operative date of valuation of assets

16 The Judge found that it was just and equitable to use the IJ date as the cut-off date both for determining the asset pool and for valuing the matrimonial assets, citing this Court's guidance in *ARY v ARX and another appeal* [2016] 2 SLR 686 ("*ARY v ARX*") at [31] and [34]. Her decision to do so was based on her finding (at [10] of the Judgment) that "[t]he parties had mostly adopted this operative date in submitting their respective values of the assets", and that this was the date "when the parties' relationship and their intention to jointly accumulate matrimonial assets had practically ended".

Parties' cases on appeal

17 The husband's position on appeal was that all matrimonial assets should have been valued as at the AM date, and that the Judge erred in finding

that the parties had mostly adopted the IJ date in submitting their values of the assets. The husband pointed out that the parties had relied on valuations of the properties that were prepared in 2015, well after the IJ date, and these dates were in fact closer to the AM date than to the IJ date.

18 The wife's initial position in her appellant's case for CA 23 was that "save for the Maude Road properties, [she did] not take issue with the Judge's choice of the IJ date to value the assets". However, she changed her position in her skeletal submissions, claiming that "both parties are *ad idem* that the Judge erred in adopting the IJ date to value the properties; she should have valued them as at the hearing date".

Our decision

19 In *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 ("*Yeo Chong Lin*") at [39], we held that "[o]nce an asset is regarded as a matrimonial asset to be divided, then for the purposes of determining its value, it must be assessed as at the date of the hearing" (*ie*, the AM date). In the recent case of *TDT v TDS and another appeal and another matter* [2016] 4 SLR 145 ("*TDT v TDS*"), whilst observing that the holding in *Yeo Chong Lin* was not in fact a "hard and fast rule", we limited the discretion to depart from the AM date as the date of valuation to situations where such departure is "warranted by the facts" (at [50]).

20 We appreciate that *TDT v TDS* was released after the Judgment and the Judge was not able to take our comments therein into account. Nevertheless, on the facts, we are of the view that the Judge was under the misapprehension that the parties had adopted the IJ date at the operative date of valuation, such that she ascribed values based on the IJ date.

21 It is not apparent from our review of the parties' written submissions to the Judge or their oral arguments before her that they argued specifically for the IJ date to be used as the date of valuation of assets. The date of valuation did not appear to be an issue below. The wife, while providing summaries of the valuations of all the matrimonial assets, did not explicitly state that the valuation date that she was relying on was the IJ date as opposed to the AM date. However, given the husband's fairly extensive reference in his submissions below to valuation reports made in 2015 for various properties, it was implicit from his approach that he was not using the IJ date as the valuation date. From the notes of argument for the hearings before the Judge on 6 November 2015 and 21 December 2015, it was not apparent that the parties had argued for the IJ date to be used. In fact, on 6 November 2015, the Judge directed that parties appoint independent valuers to arrive at an agreed valuation for the various Singapore properties. The parties subsequently reached agreement in relation to the majority of the assets without seeking another valuation. The letter to the Judge dated 26 November 2015 ("the 26 November 2015 Letter") set out a table of agreed gross values, which were reproduced almost identically in the Judgment. In our view, this letter undermines any finding that the parties mostly adopted the IJ date in submitting their respective values of the assets. It would seem that in accepting these agreed values as based on valuations as of the IJ date (*ie*, 2014 values), the Judge was under a misapprehension.

22 As for the Judge's additional reason that the date of the IJ was the date "when the parties' relationship and their intention to jointly accumulate matrimonial assets had practically ended", we do not think that fact should be given much or any weight. It will almost invariably be the case that "the parties' relationship and their intention to jointly accumulate matrimonial

assets" will have ended at least by the time an interim judgment is given. If that fact, without more, could justify departing from the default rule stated in *Yeo Chong Lin* and upheld (with qualifications) in *TDT v TDS*, this would subvert the default rule in virtually *all* cases. More compelling facts (some examples of which were considered in the latter case) than that are required.

23 Accordingly, we hold that the AM date should be used for purposes of valuation of the matrimonial assets in the present case, as a departure from the AM date is not justified on the facts. This change in the valuation date would not, however, change the gross values of many of the parties' Singapore properties. The values that the Judge attributed to the Singapore properties were based on the parties' agreed values in the 26 November 2015 Letter, which were in turn largely based on valuation reports from 2015. The impact of the change in the valuation date on the overall valuation of the matrimonial assets will be discussed in the next section of our judgment.

24 We caution that the onus is on parties to set out their positions clearly regarding the appropriate date of valuation. Where, with the benefit of legal advice, the parties agree on a particular date as the date of valuation of the matrimonial assets, a judge should generally adopt that agreed date unless there is good reason not to do so. Where the parties had not, however, agreed to a date at first instance, they cannot appeal against the date chosen by the judge simply because they subsequently agree on an alternative date.

Pool of matrimonial assets

25 The inclusion of various immovable properties in Singapore in the pool of matrimonial assets was not disputed by the parties below, except for the Bayshore property, which the husband had acquired prior to the marriage. The

wife submitted below that the Bayshore property was a matrimonial home which ought to be subject to division under s 112 of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Charter") as the parties had lived in the property from 2001 to 2003. The husband disputed that it was a matrimonial home on the basis that the parties lived there for a period of only 15 months. The Judge held that the Bayshore property was a matrimonial asset, deciding that even residence in the property for 15 months was sufficient to constitute ordinary use for shelter as stated in s 112(10)(*a*)(i) of the Charter.

26 The Judge also included the full sums of the husband's and the wife's CPF moneys in the pool of matrimonial assets, as these were not the subjects of dispute between the parties below.

Parties' cases on appeal

27 The husband's argument on appeal was that the Judge had erred in including the Bayshore property and his full CPF amount in the pool of matrimonial assets. His arguments regarding the Bayshore property mirror his arguments in the court below. The husband submitted that, at the highest, only the CPF moneys used to pay for the mortgage instalments of the Bayshore property from the date of the marriage to the date of the interim judgment should be included as the net value of the Bayshore property. This would yield a sum of $215,390. Further, he argued that the Bayshore property should continue to remain in Group B and that in Group B the weight assigned to direct contributions should be increased vis-à-vis indirect contributions such that the wife would effectively be given only 9.5% of the Group B assets.

28 As for the CPF moneys, the husband contended that the amount should be pro-rated as he was married for only 13 years out of the 28 years that he

had been in the workforce. Therefore, his CPF earnings prior to marriage should be excluded from the pool of matrimonial assets.

29 The wife raised a new point on appeal. She contended that the husband had dissipated a sum of RM675,000 or about $250,000 by making a gift of the same to his sister. She contended that this sum should be added back to the pool of matrimonial assets. The wife's counsel admitted at the hearing before us that this issue was not raised before the Judge, although this transfer, which was made on 21 July 2014, had been disclosed in interrogatories filed on 7 May 2015.

Our decision

The Bayshore property

30 The question of the proper classification of the Bayshore property raises an issue of interpretation of s 112(10) of the Charter. Under s 112 of the Charter only a "matrimonial asset" falls to be divided upon divorce and this term generally refers to assets acquired during the marriage. Under s 112(10)(*a*)(i) however, an asset that one or both of the parties acquired before the marriage will still fall within the term "matrimonial asset" if it was:

> … 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;

31 The question that this case brings to the fore is whether an asset acquired before marriage that is "ordinarily used or enjoyed" during the marriage for one of the domestic purposes listed at the end of s 112(10) but for only a short while, will still be considered a "matrimonial asset" when the

marriage ends many years later. Different approaches to this issue have been taken.

32 *BGT v BGU* [2013] SGHC 50 ("*BGT v BGU*") was a case where, shortly before the marriage in 1995, the husband bought an apartment unit in his sole name. After the marriage, the parties lived in this apartment until 2001 when they bought a house in their joint names which then became their matrimonial home. The husband, who had all along borne the financial burden of the apartment alone, sold the apartment in 2009 a month or so before the wife filed for divorce. The parties disputed whether or not the apartment and, thus, the proceeds of its sale, constituted a matrimonial asset. The judge held that it was not, reasoning (at [28]) that if an asset would only constitute a matrimonial asset when its ordinary use is for the use or enjoyment of the parties or their children, then if such use ceases during the period when the parties are residing together for a reason that has nothing to do with the end of the marriage, that asset would cease to be a matrimonial asset. The court did, however, hold that the sums of money that the husband had expended during the marriage on paying off the mortgage over the apartment constituted matrimonial assets (at [29]).

33 In the present case, before the Judge, the wife argued that nothing in s 112(10)(*a*)(i) of the Charter allows for an asset which has acquired the status of a matrimonial asset because of the application of that provision to somehow lose that status subsequently. The husband, however, contended that the Bayshore property was not a matrimonial asset because the family had lived there for a period of only 15 months. The Judge rejected the husband's argument (at [18] of the Judgment). Whilst holding that the requirement of ordinary use would not be satisfied if the use was "occasional or casual", the

Judge found that a residence of 15 months' was sufficient to constitute ordinary use for shelter and thus, that the Bayshore property was a matrimonial asset. To her, examples of casual use were staying in a property for only 21 days out of 14 years of marriage or on only two occasions throughout the marriage. In the Judgment, the Judge did not deal directly with *BGT v BTU* or the wife's argument that once an asset was a matrimonial asset it was always a matrimonial asset.

34 In the recent case of *TXW v TXX* [2017] SGHCF 4 ("*TXW v TXX*"), however, which was decided by the same Judge, she expressed the reservations about *BGT v BTU* which had been implied by the earlier decision. The Judge stated that she could not interpret Parliament's intention in s 112(10)(*a*)(i) of the Charter as only covering the parties' last place of residence prior to the divorce as being a matrimonial asset while a property which the parties had used as a matrimonial home for a long period would not retain its character as a matrimonial asset simply because the parties had moved out. She explained (at [16]):

> Each case ought to be determined on its own facts. Without expressing a final view on the issue raised in *BGT v BGU*, I employ a hypothetical situation to illustrate the difficulties with a rule that a property transformed under s 112(10)(*a*)(i) automatically ceases to be a matrimonial asset upon the loss of residence. Suppose the parties live for 25 years in a property acquired before their marriage, using it as their matrimonial home. After their grown children leave the nest, they move into a small apartment which was also acquired before the marriage. Two years later, the marriage breaks down and they subsequently divorce. I find difficulty in construing Parliament's intention in s 112(10)(*a*)(i) of the WC to be to treat only the parties' last place of residence for two years as a matrimonial asset while the property used as the cradle of the family for 25 years does not retain its character as a matrimonial asset because of the parties' cessation of residence. Indeed, why should a pre-marriage property in which the parties resided for the last two years of marriage be

> included in the pool of matrimonial assets while the property in which they had lived and raised a family [for] over 25 years cease to [be] considered as the cradle of the marriage? The treatment must be decided on the precise facts and circumstances of the case before the court. I had in my decision in [the Judgment], treated a pre-marriage property in which the parties resided for at least 15 months as a matrimonial asset under s 112(10)(*a*)(i) of the WC, but I treated it differently from the quintessential matrimonial assets when it came to deciding on the proportions of division. …

35 The issue that then confronts us is whether "ordinarily used or enjoyed by both parties or … their children while the parties are residing together" necessarily imports the requirement of such usage or enjoyment right up to the start of divorce proceedings as may be implied by the words "are residing together". The Judge has eloquently illustrated the difficulties that may arise if this approach, which was the one adopted in *BGT v BGU*, is followed. As the purpose of s112(10)(*a*)(i) is to expand the pool of matrimonial assets to cover those which the parties have treated as part of their domestic lives together, irrespective of when the same were acquired, the approach taken by the Judge in *TXW v TXX* commends itself to us as being both principled and flexible. Whilst it would mean that, as the wife here contends, "once a matrimonial asset always a matrimonial asset", that in itself would not mandate that such an asset has to be divided in exactly the same way as assets acquired during the marriage (what the Judge termed "quintessential matrimonial assets") would be. A court confronted with assets that have become matrimonial assets because of the operation of s 112(10) would have the discretion to divide it in such manner as may be most equitable bearing in mind the nature of the asset, how it was paid for (*ie*, whether it was partly paid for during the course of the marriage) and the length of time during which the parties ordinarily used or enjoyed it during the marriage.

36 Thus, in relation to the Bayshore property, we are of the view that the Judge was correct to include it in the pool of matrimonial assets. The Judge had already taken into account the fact the property was used as a matrimonial home for only 15 months by classifying it in Group B and assigning a much higher weight to direct contributions vis-à-vis indirect contributions. There is no basis to disturb the Judge's decision on the character of the Bayshore property since as the Judge noted, the parties occupation of it was a settled domestic occupation for a substantial period. The husband's appeal therefore fails in this respect.

The CPF moneys

37 In relation to the CPF moneys, we do not think that the husband's argument is meritorious. As the wife has pointed out, the husband did not earn the CPF moneys at an even rate and his contributions would have been much higher in the second half of his working life, which was during the marriage, than in the first half. Without detailed evidence of his CPF contributions in each year of the marriage, there is no basis on which to pro-rate the CPF moneys. Further, this was a new argument on appeal; it had never been the husband's position below that the CPF moneys should be included on a *pro rata* basis. The husband's appeal therefore fails in this respect. We do note that the husband provided updated figures for his CPF moneys based on the AM date, which we will include in our calculations in the next section.

The gift to the husband's sister

38 The matter in relation to the gift to the husband's sister, is more complicated. The gift was made on 21 July 2014, after divorce proceedings started but before the IJ date. The gift was made from the husband's own

funds but the wife had an interest in those funds as, had they remained with the husband, they would have formed part of the pool of assets available for division. Once divorce proceedings are within contemplation or have been commenced, the parties must be aware that they both have a putative interest in their joint assets, and therefore neither of them should make substantial expenditure unconnected to daily living expenses without obtaining the consent of their spouse. If either party fails to obtain the other's consent, the expenditure has to be borne solely by the party seeking to make the expenditure and cannot be treated as joint expenditure.

39 Based on what we have said above, the $250,000 should be returned to the pool. However, there is a complication. Before the Judge, the wife did not bring up this gift at all. She did not ask for it to be put back in the pool. Consequently, in order to rely on this point on appeal, the wife ought to give a compelling explanation for why the point was not raised earlier and should be entertained now. She has given no such explanation. It was not that she was unaware that the gift had been made: as she well knew, the gift had been disclosed in the husband's answers in May 2015 to the interrogatories that she had served on him. In these circumstances, the wife's failure to raise the issue before the Judge leads to the inference that she was content for the gift moneys to be left out of the pool. If the wife was content then, we consider that it does not lie in her mouth to seek to include them now on appeal simply because she is dissatisfied with the overall division reached by the court below. In our view, there is no compelling reason to add the value of the gift back to the pool.

Valuation of matrimonial assets based on AM date

40 We note that although both parties have agreed to use the AM date as the date of valuation of the matrimonial assets, some values – notably the values of the wife's assets – are still based on 2014 dates as no updated figures were provided to the court. Further, using the 2015 values means that some of the husband's assets, mainly his bank accounts, now carry lower values than in 2014. Nonetheless, the wife did not dispute the use of these lower values.

41 We set out our analysis in terms of the assets and liabilities before moving on to dealing with the parties' arguments regarding the transfer of moneys between them during the marriage.

Assets

(1) The Singapore properties with agreed gross values

42 The following table reflects the updated net valuation of the various Singapore properties with an agreed gross value as at the AM date, with the value attributed by the Judge struck through where no longer applicable.

Property	Agreed gross value	Revised net value
1st Haji Lane	$2,825,000	~~$1,169,161.48~~ $1,214,082.81
2nd Haji Lane	$3,875,000	~~$1,725,790~~ $1,797,525.22
North Bridge Road	$3,550,000	~~$1,457,677.01~~ $1,513,751.99
Chander Road	$2,000,000	~~$1,040,595.34~~ $1,063,759.28

Nos 9, 9A, 11, 11A and 11B Jalan Pinang Road ("Jalan Pinang properties")	$18,500,000	~~$11,681,263.51~~ $9,554,587.75
Lorong Marzuki	$1,035,000	$316,820.00
Roberts Lane	$2,750,000	$1,476,814.00
Nos 27 and 29 Maude Road ("Maude Road properties")	$15,000,000	~~$8,983,768.63~~ $11,598,180.30

43 Based on the 26 November 2015 Letter, the parties had agreed on the gross values for the Haji Lane, North Bridge Road, Chander Road, and Jalan Pinang properties. These values were largely based on 2015 valuations. Therefore, even with the change in valuation date to the AM date, the gross values for these properties remain the same. The net values for these properties, however, were revised to take into account the updated information of the outstanding loans and overdrafts facilities secured by the various properties, which the wife has not challenged. The parties also agreed on the gross values for the Lorong Marzuki and Roberts Lane properties in the 26 November 2015 Letter. These were based on the wife's proposed 2014 values. The net values have remained the same for these two properties as the parties did not provide updated valuations.

44 It should be noted that the net valuation of the Jalan Pinang properties at this stage does not include certain construction-related costs, as such costs were the subject of appeal by the husband. Similarly for the Lorong Marzuki property, the net valuation does not include certain construction-related costs and the Final Account Payment. These matters will be dealt with in the next sub-section on liabilities.

45 We will now deal in detail with the net valuation of the Maude Road properties, as it was the main point of contention in both appeals.

46 In the court below, three different valuations of the Maude Road properties had been put forward by the time of the AM hearing. In the 26 November 2015 Letter, the parties agreed that the Maude Road properties were worth $15m "as is", that is, in their existing undeveloped state. The wife put forward two other valuations, namely, a valuation of $17.8m reflecting the value of the properties with planning permission, and a valuation of $35m reflecting the value of the properties on a "Gross Development Value basis" based on a valuation report issued in July 2014. She argued that the gross value of $35m should be adopted. The Judge found that "the parties had agreed to three different values of the Maude Road properties", but she chose to value the Maude Road properties at $15m, commenting that it was the more accurate and appropriate value. The Judge considered the husband's letter of 25 January 2016 regarding the existence of a commercial term loan of $3,924,359.30 disbursed in June 2015 ("the Development Loan"). The husband argued that the Development Loan should be factored into the calculation of the net value of the Maude Road properties. The Development Loan was used to pay development charges that were due to the URA for redevelopment of the Maude Road properties. The Judge, however, reasoned that her use of the IJ date as the operative valuation date should apply to the Maude Road properties and therefore the Development Loan, which was disbursed after the IJ date, should be disregarded. She also noted that the Development Loan was intended for the redevelopment of the properties, and reasoned that since she was not taking into account the purported increase in value of the properties based on proposed redevelopment, it was fair to also disregard the Development Loan.

Parties' cases on appeal

47 In CA 23, the wife's appeal regarding the Maude Road properties had three strands. First, while conceding that the Judge was "fully cognisant" that the redevelopment of the Maude Road properties was going ahead, the wife appealed against the Judge's valuation on the basis that $15m did not reflect the redevelopment potential of the properties. She abandoned the argument made below that "the fully developed value" of $35m should be used as the gross value of the properties, and argued that it should be at least $17.8m instead. Second, she argued that the Judge should have added another $3m to the net value of the Maude Road properties because the husband had used the Maude Road properties as security for a loan taken to finance redevelopment of the Jalan Pinang properties. Third, the wife argued that the $17.8m value should be uplifted by a further 20% because of the husband's dilatory conduct regarding the redevelopment of the Maude Road properties. The wife alleged that the husband allowed the planning permission obtained on 30 July 2013 to lapse on 30 July 2014, so as to deny the wife the fruits of redevelopment. To support her arguments, the wife sought to adduce, as fresh evidence, the following documents:

(a) A chain of e-mails between the husband and Mr Maurice Cheong of Lee & Lee between 26 February 2012 and 3 April 2012 ("E1");

(b) A chain of e-mails between the husband and Huay Architects from December 2011 to February 2012 ("E2"); and

(c) URA's Grant of Written Permission dated 15 June 2015 ("E3").

48 In CA 30, the husband's appeal regarding the Maude Road properties was on the basis that the Judge failed to take into account the Development Loan, which in turn affected the net valuation of the Maude Road properties. He pointed out that the Development Loan was a liability that was incurred on 8 June 2015, before the AM date. He argued that it should be taken into account in arriving at the net value of the Maude Road properties if the operative valuation date were to be the AM date.

49 The husband was, however, satisfied with the Judge's valuation of $15m for the Maude Road properties. He also submitted that the parties had never agreed to the values of $17.8m and $35m which the wife claimed represented, respectively, the value of the properties with planning permission and the value when fully developed. The husband argued that those values were grossly inflated as they were theoretical values used for the purposes of loan approval and mortgage. The husband stated that the "as is" value of $15m was already a huge concession on his part as he had obtained two valuation reports in July 2015 from Savills and Jones Lang LaSalle, which valued the Maude Road properties at $10.7m and $11m respectively. The husband also denied trying to delay redevelopment of the Maude Road properties. He clarified that under the URA approval process, he had to obtain an Outline Permission followed by a Provisional Permission before he could apply for a Written Permission. The Provisional Permission, which appeared to be the subject of the wife's contentions, never did lapse as the husband had obtained extensions repeatedly till January 2015 when he applied for Written Permission. Any delay was instead attributable to the wife, who had obtained an injunction preventing the husband from redeveloping the Maude Road properties.

Our decision

50 We will first address the wife's attempt to adduce evidence in the form of E1, E2, and E3 (referred to above at [46]). We note at the outset that the wife did not seek the leave of the court to adduce further evidence as is required under O 57 r 13(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). We have explained in *Toh Eng Lan v Foong Fook Yue and another appeal* [1998] 3 SLR(R) 833 ("*Toh Eng Lan*") at [33]–[35] that it is plainly wrong to seek to adduce further evidence without first asking for the leave of the court to do so.

51 In this case, even if the wife had adopted the proper procedure for adducing further evidence, we would have been disinclined to allow its admission.

52 The requirements laid down in *Ladd v Marshall* must be fulfilled to justify the admission, on appeal, of evidence of matters which occurred before the date of the decision from which the appeal is brought (*Toh Eng Lan* at [34]). The wife has not shown that these requirements have been met. It is clear that E1 and E2 could have been obtained with reasonable diligence for use at the trial. Also, the evidence does not have an important influence on the result of the case. We hold therefore that E1 (in so far as any portions thereof had not been previously admitted) and E2 cannot be admitted at this stage of the proceedings.

53 Turning to E3, which is the Grant of Written Permission for the Maude Road properties in June 2015, given the change in the operative date of valuation of assets to the AM date, it would be *prima facie* relevant as it suggests a possible increase in the value of the properties. However, the fact

that written permission had been granted in June 2015 was not a disputed fact and would not have any significant influence on the result of the case. Therefore, it is unnecessary to admit E3 into the record at this late stage of the proceedings.

54 We move to the issue of the net valuation of the Maude Road properties as at the AM date. With respect, the Judge misapprehended the nature of the parties' agreement regarding the gross value of the Maude Road properties in the 26 November 2015 Letter. In that letter, the table setting out the agreed gross values did not include the $17.8m and $35m values, and in para 4(a) of the letter, it was explicitly stated that "there is no agreement between the parties on the value of the property at $17,800,000.00 … and $35,000,000.00 … as stated in [the] Colliers International valuation report dated 8 July 2014". The Notes of Argument indicate that the wife's counsel took the position that: "Maude Road property – 'as is' valued agreed. Two other values – $17.8 million and gross development $35m submitted by Wife. Colliers report show[s] these values". The husband's counsel did not accept the $17.8m and $35m values on behalf of the husband, his response being "I need to check". The husband was therefore correct in submitting that the parties had not reached an agreement regarding three possible gross values of the Maude Road properties. There is therefore no basis for the wife to submit otherwise on appeal. Having reviewed the record, we are of the view that the Judge had erred in stating that the "parties had agreed to three different values of the Maude Road properties".

55 Notwithstanding the foregoing, the Judge did not err in taking $15m as the gross value of Maude Road properties and disregarding the Development Loan of June 2015, even if the AM date is used as the operative

date of valuation. It would appear that as at the AM date, the Maude Road properties had already received planning permission and the husband was proceeding with their redevelopment. There is accordingly some merit in the wife's argument that the gross value of the properties would have increased beyond just their "as is" value. However, the "as is" gross valuation of $15m is the only agreed value between the parties. In order for the court to accept any other value, we would need to see sufficient evidence as to the value of the Maude Road properties at a date prior to the completion of redevelopment. Without such evidence – which has not been led – using any other valuation cannot be justified because it would be a mere speculation on our part. Therefore, the wife's attempt to change the gross valuation of the properties fails.

56 The calculation of the net value of the Maude Road properties is a different matter, however. As the redevelopment of the Maude Road properties was clearly a unilateral decision on the part of the husband, and the wife would not benefit from the fruits of the redevelopment since that would only happen after the AM date, we consider that she should not have to bear the costs incurred for the redevelopment, even though those liabilities were incurred before the AM date. Therefore, the husband's argument that the Development Loan should be included, when calculating the net valuation of the properties, fails.

57 We also accept in principle the wife's argument that some of the liabilities borne by the Maude Road properties should be attributed to the Jalan Pinang properties instead, as some of the loans taken on the security of the Maude Road properties were in fact used for developing the Jalan Pinang properties. However, the amount of those liabilities to be attributed to Jalan

Pinang properties should be $2.5m instead of $3m as the wife submitted. The wife could not justify the sum of $3m. The husband, however, admitted in his answers to the wife's interrogatories in May 2015 that $2.5m of the loans taken out using the Maude Road properties as security were actually applied to the development of the Jalan Pinang properties. Therefore, Excel Properties Pte Ltd, a company wholly owned by the husband, and which in turn owns the Jalan Pinang properties, essentially owes a debt of $2.5m to another company wholly owned by the husband which in turn owns the Maude Road properties. The $2.5m should therefore be reflected as a liability of the Jalan Pinang properties and not of the Maude Road properties. Accordingly, the wife's appeal on this issue succeeds in part. This also explains the valuation of the Jalan Pinang properties as $9,554,587.75 (see above at [42]), which was arrived at by taking into account the difference between the agreed gross value and the updated loan amounts as of the AM date as well as the additional $2.5m liability.

58 We are of the view that the wife's argument for an "uplift" to be applied to the gross valuation of the Maude Road properties due to the husband's dilatory conduct in the redevelopment of these properties is unmeritorious. The evidence does not support the wife's allegations. Indeed, the husband's behaviour is seemingly inconsistent with the intention which the wife wishes to attribute to him: had he intended to delay redevelopment so as to cut the wife out of any potential gain from the redevelopment, he could have left the properties as they were until the ancillary matters were over, but he did not.

59 Therefore, the overall liabilities of the Maude Road properties should be the value of the outstanding term loans of $5,901,819.70 as at the AM date

less the $2.5m utilised for Jalan Pinang properties. This calculation yields a sum of $3,401,819.70. The net valuation of the Maude Road properties should thus be the difference between $15m and $3,401,819.70, that is, $11,598,180.30.

(2) The Singapore properties with no agreed gross values

60 The following table reflects the updated net valuation of the Singapore properties with no agreed gross values as at the AM date, with the value attributed by the Judge struck through where no longer applicable.

Property	**Revised net value**
5% share of 50 Geylang Lorong 40, #04-30 ("Geylang property")	$40,119.63
Bayshore property	~~$873,375~~ $879,126.61

61 The wife holds five percent of the Geylang property as a tenant in common with her parents and her sister. There was no updated net value provided despite the parties' submissions for the AM date to be used as the operative valuation date. We therefore retain the net value used by the Judge. Since the AM date is the operative valuation date, it follows that the 2015 net value of the Bayshore property, provided by the husband and which is not disputed by the wife, should be used instead.

(3) The proceeds of the Dunlop Street property that was sold

62 There was no updated figure provided for the proceeds of sale of the Dunlop Street property, which therefore remains at $970,817.02. This was not disputed.

(4) The Malaysian properties

63 The following table reflects the updated net valuation of the various Malaysian properties as at the AM date, with the values attributed by the Judge struck through where no longer applicable:

Property	**Revised net value**
Ming Hotel	~~RM656,586.58~~ RM707,165.25 ($233,364.53)
Hash Hotel	~~RM2,145,566.69~~ RM2,169,820.17 ($716,040.66)
Dragon Hotel	RM860,000 ($283,800.00)
Kampong Hulu	~~RM480,000~~ RM498,696 ($164,569.68)

64 The husband did not provide updated gross values for the Malaysian properties based on the AM date though he produced updated values of the liabilities, which were lower than in 2014, and accounted for the change in net value. The net value of Dragon Hotel remained the same as no liabilities were provided to begin with. The husband alleged that the gross property values had decreased in 2015, but the wife argued that the husband could not substantiate his claim. We are of the view that in the absence of any updated 2015 gross values on the record, the 2014 gross values ought to remain. However, given the change in the date of valuation, the applicable exchange rate should also be changed in line with the husband's case on appeal. The updated exchange rate (which we have already reflected in the table above) is RM1:$0.33 as of September 2015, which is the closest available date on the record to the AM date. This should be applied to the net values of the Malaysian properties

so as to derive their net values in SGD. The husband owns 99.99% of the shares in the companies that hold these properties, which we round up to 100% for ease of calculation, as the difference is *de minimis*. Applying the new conversion rate, the net value of the Malaysian properties is $1,397,774.87.

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

65 The following table shows the revised value of the parties' insurance policies, CPF moneys, shares, and other assets using the AM date as the operative valuation date, with the values attributed by the Judge struck through where no longer applicable.

JOINTLY HELD ASSETS	
Asset	**Revised value**
Joint bank accounts	~~$34,588~~ $37,653.28
Wife's assets	
Bank accounts	$992,487.91
Insurance policies	$60,688.83
CPF moneys	$127,658.97
Car	$16,896.00
Shares	$59,972.69
Husband's assets	
Bank accounts in Singapore	~~$427,228.70~~ $36,317.42

Bank accounts in Malaysia	~~RM 325,606.94 or $128,012.37~~ – RM 133,759.77 or – $44,140.72
Singapore companies' bank accounts	~~$77,617.97~~ $39,812.64
Malaysia companies' bank accounts	~~RM 68,465.32 or $26,917.14~~ RM2,552.57 or $842.35
Insurance policies	~~$35,468~~ $38,972
CPF moneys	$268,462.99 $269,048.14
Car	~~$36,000~~ $25,109.95

66 The wife provided no updated values for the assets under her name, and the husband did not seek to prove that there had been any change in the earlier values. We therefore adopt the values used by the Judge. The husband provided the updated figures for the AM date in relation to the assets under his name as well as for the parties' joint bank account. Despite the significant decrease in the value of the husband's assets as of the AM date, the wife did not dispute those values. As we stated above at [37], we included all of the husband's CPF moneys in the matrimonial asset pool. As for the husband's Malaysian company bank accounts, the same approach as that in [64] above would apply; the updated exchange rate of RM1:$0.33 has been applied, and the husband's ownership is rounded up to 100% for ease of calculation because the difference is *de minimis*. The Judge's decision to exclude the husband's club membership in the asset pool was not disputed. It therefore remains undisturbed.

Liabilities

67 The treatment of liabilities by the Judge was one of the key points of the husband's appeal in CA 30. In the proceedings below, the husband sought to include various liabilities set out at Annex B-2 of his submissions dated 2 November 2015. The Judge included the tenant deposits, tax on the husband's pension earnings, Final Account Payment for Jalan Pinang properties, POSB Housing Loan for the Bayshore property, and the husband's car loan. She excluded the rest of the liabilities on the basis that "they were mostly property or car-related loans which [had] already been taken into account in calculating the net value of the real properties or the car respectively." It appeared that the exclusion of some of these liabilities was also a result of her decision to use the IJ date as the operative date for valuation as some of these liabilities, such as the Final Account Payment for the Lorong Marzuki property, were incurred after the IJ date. The Judge also decided not to put the rental income from the properties into the pool of matrimonial assets, as she thought it "likely" that the rental income taken by either party before the IJ date had been deposited into the parties' bank accounts and/or used to repay the mortgage loans of the properties and other personal and family expenses. Therefore, the rental income was already reflected in the bank balances or net values. Flowing from that decision, the liabilities incurred in relation to the rental income, *ie*, taxes, were also excluded.

68 The husband's argument on appeal is that the Final Account Payment for the Lorong Marzuki property, the construction-related bills for the immovable properties in Group A and Group B ("Construction-related Costs"), as well as the corporate taxes, goods and services taxes, and property

taxes ("Taxes") ought to have been included in assessing the net value of the property. He pointed out in his submissions below that it was he who had paid the Taxes.

69 The table below sets out the liabilities which were not taken into account in arriving at the net value of any individual asset:

Husband's liabilities	
Description	**Amount**
Tenancy deposits	$376,550
Tax on pension earnings	$70,924
Final Account Payment for the Lorong Marzuki property	$496,363.10
Construction-related costs (Outstanding): (a) $6,420 – JS Tan & Associates (incurred between 27.9.2010 and 17.9.2012) for Lorong Marzuki project. (b) $2,425 – 7 interior architecture Pte Ltd (29.7.2014) for Jalan Pinang properties. (c) $5,000 – One Asia Consultants (29.9.2014) for Jalan Pinang properties. (d) $1,850 – KONE retention sum (25.11.2014) for Jalan Pinang properties. (e) $6,490 – FirstSM retention sum. (22.4.2014) for Jalan Pinang properties. (f) $37,557 – Milleniums Consultants (10.6.2015) for Maude Road properties	$22,185 (Subtotal for Jalan Pinang properties: $15,765 Subtotal for Lorong Marzuki project: $6,420)

(disregarded). (g) $48,150 – Elead Associates (9.6.2015) for Maude Road properties (disregarded).	
Corporate Tax and Goods and Services Tax ("GST") due	Disregarded
Property Tax due	$41,420 (Subtotal for Group A properties: $30,220 Subtotal for Group B properties: $11,200)

Tenant deposits and tax on pension earnings

70 These values remained the same as no updated figures for the AM date were provided and the valuations were not a subject of dispute.

Final Account Payment for the Lorong Marzuki property

71 The wife's argument against the inclusion of the Final Account Payment for the Lorong Marzuki property was that construction was completed in 2010 and yet the supporting document produced by the husband indicated that the Final Account Payment was made on 22 September 2014 which was after the IJ date. The wife questioned the *bona fides* of the husband's claim, given the length of time that had elapsed since the completion of the construction. The thrust of this argument is that the husband withheld payment of this sum until the divorce was on foot. The wife also argued that the bill should not form part of the liabilities as it is the liability of DSL Properties, which was the developer of the Lorong Marzuki project.

72 In our view, the Final Account Payment for the Lorong Marzuki property ought to be included as a liability in Group A in the light of our decision that the operative valuation date ought to be the AM date; the Final Account was rendered on 22 September 2014, shortly after the IJ date. We accept the husband's explanation that the finalisation of accounts in a construction project can take a few years after the temporary occupation permit is issued, and that there was no benefit to him in withholding the existence of this liability. We are also of the view that the interposition of DSL Properties should be disregarded. Various properties in the matrimonial asset pool are held via companies controlled by the husband but the indirect nature of the husband's interest has never stopped the wife from calculating these assets as part of the pool. There is, thus, no reason to give the liabilities related to the properties a different treatment. The husband's appeal is allowed in this regard.

Construction-related costs

73 The wife's only argument regarding the inclusion of items (a)–(e) in the table above at [69] is that the sums are *de minimis*. As for items (f)–(g) which are construction-related costs for the Maude Road properties, the wife argued that these relate to the "ongoing redevelopment of the Maude Road properties" and the husband will "recoup these amounts when the redevelopment is completed and its value soars to $35 million".

74 We are of the view that the Judge erred in failing to include items (a)–(e) as liabilities. Some of these were incurred before the IJ date whereas others were incurred after the IJ date but before the AM date. Nonetheless, they were all expended for the benefit of the matrimonial assets and therefore they ought to have been included. We note that item (a) pertains to the Lorong Marzuki

property which was classified in the Group A pool of assets, so it ought to be classified as a liability in Group A. Items (b)–(e) pertain to the Jalan Pinang properties which were classified in the Group B pool of assets, so they ought to be classified as liabilities in Group B. Items (a)–(e) amount to a sum of $22,185; contrary to the wife's suggestion, we do not think this sum can fairly be described as *de minimis*. As for items (f)–(g), in line with our reasoning at [56] above, we are of the view that since the wife would not benefit from the fruits of the redevelopment of the Maude Road properties, she should not have to bear the costs incurred for the redevelopment. Thus, those items should be disregarded when calculating liabilities. Therefore, the husband's appeal is allowed in part in this regard.

Taxes

75 In relation to the corporate taxes and GST payable by the husband's property holding and property management companies as of 21 July 2015 amounting to $84,619.42, the husband argued that this amount should have been included as these liabilities were incurred on rental income earned from properties in the asset pool. The wife submitted that the Judge had rightly disregarded these taxes. In our view, the Judge was right to not to take into account these taxes incurred on rental income in her calculations as she did not include the rental income itself in the asset pool.

76 As for the property taxes amounting to $41,420 paid in relation to the various Singapore properties, the wife had no real counter-argument against the husband's appeal; indeed, she indicated that she was agreeable to the inclusion of the property tax in the calculations if we were not minded to apply the *de minimis* principle. In our view, that the Judge erred in not including the property tax in her calculations. However, the right approach is not that

suggested by the husband, which was to include the taxes as liabilities in calculating the value of the assets. Instead, these expenses should be borne by the parties in proportion to their respective shares of the immovable assets in Group A and Group B. The property taxes paid for Group A assets totalled $30,220 while the property taxes paid for Group B assets totalled $11,200. Neither sum is *de minimis*. Since the husband paid for these, the wife should reimburse the husband a proportionate amount of the taxes out of her overall share of the assets.

Moneys transferred between the parties

77 In CA 30, the husband also appealed against the Judge's finding that a sum of $50,000 had been transferred from the wife towards the payment of properties. The wife claimed that she had transferred a sum of $50,000 in January 2005 from a fixed deposit account held jointly with her mother to the parties' joint account with Standard Chartered Bank and that this sum should be included as part of her financial contributions. The husband in turn claimed that he had returned the sum of $50,000. The Judge was satisfied that the sum had been transferred by the wife, but considered that the husband did not provide sufficient documentary evidence to support his allegation that the money had been returned. This amount was thus counted towards the wife's direct financial contributions in Group A.

78 Before us, the husband argued that the wife had conceded the return of the sum in her pleadings, specifically in her Reply to Defence and Counterclaim, where she averred that the husband had returned $55,000 to her but requested her to put the sum in a joint fixed deposit. The wife's only response to this contention was that the husband was "nit-picking".

79 We find that, contrary to the Judge's finding, the husband did return the sum of $50,000 to the wife. The wife's admission in her pleading has to be taken into account. It is noteworthy that she did not apply thereafter to amend the pleading in this respect. Therefore, it is not necessary to re-balance the Group A asset pool, as the Judge did, by counting the $50,000 as part of the wife's direct financial contributions.

Size of Group A and Group B asset pool

80 Based on the values of the assets and liabilities set out in the preceding sections, we set out the revised table for the Group A assets and liabilities, with values attributed by the Judge struck through where no longer applicable:

Wife		**Husband**	
Geylang property	$40,119.63	Other Singapore properties	~~$16,170,626.46~~ $18,980,933.60
Sole bank accounts	$992,487.91	Dunlop Street property proceeds	$970,817.02
Insurance policies	$60,688.83	Malaysian properties	~~$1,628,324.71~~ $1,397,774.87
CPF	$127,658.97	Joint bank accounts	~~$34,588~~ $37,653.28
Shares	$59,972.69	Sole bank accounts (Singapore and Malaysia)	~~$555,241.07~~ – $7,823.30
Car	$16,896	Singapore companies' bank accounts	~~$77,617.97~~ $39,812.64
		Malaysian	~~$26,917.14~~

		companies' bank accounts	$842.35
		Insurance policy	~~$35,468~~ $38,972
		CPF	~~$268,462.99~~ $269,048.14
		Car	~~$36,000~~ $25,109.95
		Tenancy deposits	– $376,550
		Tax on Chevron pension earnings	– $70,924
		Construction-related Costs and Final Account Payment for Lorong Marzuki	– $502,783.10
Sub-total	**$1,297,824.03**	**Sub-total**	**~~$19,356,589.36~~ $20,802,883.45**
Balancing (Wife's income from companies)	$794,317	Balancing (Wife's income from companies)	– $794,317
Balancing (Money previously transferred from husband to wife)	~~$50,000~~ – $850,000	Balancing (Money previously transferred from Husband to Wife)	~~– $50,000~~ **$850,000**
Total	**~~$1,292,141.03~~**	**Total**	**~~$19,362,272.36~~**

	~~**(6.26%)**~~ **$1,242,141.03** **(5.62%)**		~~**(93.74%)**~~ **$20,858,566.45** **(94.38%)**

81 The overall value of the Group A pool is $22,100,707.48. It is to be noted that a sum of $794,317, being the wife's declared income between 2007 and 2014 from the companies owned by the parties, is regarded as part of the wife's direct financial contribution to the pool. The Judge found that this sum was likely to have been invested in properties and therefore the returns from investments should be partly attributed to the wife.

82 The Group B assets comprise only the Jalan Pinang properties and the Bayshore property. These assets are held by the husband. The Jalan Pinang properties are worth $9,554,587.75 in total (see above at [42]), whereas the Bayshore property is worth $879,126.61 (see above at [60]). Deducting the Construction-related costs of $15,765 for four items related to the Jalan Pinang properties (see above at [69]), the overall worth of the Group B pool is $10,417,949.36 using the AM date as the date of valuation, somewhat less than the Judge's value of $12,554,638.51. The total worth of the matrimonial assets comes to $22,100,707.48 + $10,417,949.36 = $32,518,656.84.

Just and equitable division of the assets

83 The Judge's determination of the parties' relative direct and indirect contributions to Group A and Group B was the subject of appeal by both parties. The Judge derived the following ratios with respect to the Group A assets:

	Wife	**Husband**
A. Direct contributions	15%	85%

B. Indirect contributions	65%	35%
Average of A and B	**40%**	**60%**

84 The Judge derived the following ratios with respect to the Group B assets, but reduced the wife's share to 20% as the Judge was of the view that for Group B the direct contributions should carry greater weight than the indirect contributions:

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

85 The parties' positions regarding their direct and indirect contributions were diametrically opposed.

86 The husband made four arguments. First, for Group A, the husband argued that the Judge had overvalued the wife's direct contributions through the uplift applied to increase the wife's direct contributions to 15%. Second, the husband argued that the Judge had double-counted the wife's effort towards the properties by attributing the sum of $797,317, her declared income from the husband's companies, as part of her direct contributions to Group A, and giving her additional credit for her minimal efforts to the properties. In this vein, the husband pointed out that these sums were declared for tax-planning purposes and there was no intention for the wife to be paid these sums because all her appointments were only titular in nature. Third, regarding indirect contributions, the husband argued that the wife's contributions were overvalued by the Judge as the effective length of the

marriage was short – parties had effectively been married for only six and a half years as they had lived apart half the time. The husband also argued that his indirect contributions were undervalued and suggested that the ratio for indirect contributions should be 50:50 instead. Fourth, the husband argued that the Judge failed to give sufficient weight to direct contributions for the Group A and Group B assets. The husband argued that the Judge ought instead to have given direct contributions a weight of 75% in Group A and a weight of 90% in Group B.

87 The wife's main argument on appeal was that she ought to have been given a higher share of the assets of both Groups. She argued that her direct contributions to the Group A assets ought to have been valued at 20% such that she would have been awarded 42.5% of the overall share of Group A assets. This was because the Judge had, incorrectly, failed to accord weight to the wife's efforts to manage the matrimonial assets but had merely focused on the fact that the wife's income of $797,317 was used to invest in other properties. In the alternative, even if the Judge did factor in these efforts in managing the matrimonial assets, the wife submitted that the Judge undervalued those efforts by finding that the husband was the main driving force behind the couple's investments. The wife also argued that the Judge erred in finding that the wife's direct contribution to Group B was only five percent. She contended that any reduction of the overall ratio should have been to 30% instead of to 20%.

88 In *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21, we noted at [46] that "the division of matrimonial assets involves the sound application of judicial discretion by the judge of first instance rather than any rigid mathematical formulae". Therefore, an appellate court should not interfere in

the orders made by the court below unless it had committed an error of law or principle or failed to appreciate crucial facts. Having reviewed the parties' arguments, we do not think appellate intervention is warranted in relation to the Judge's determination of a just and equitable division of the assets in Groups A and B.

Indirect contributions

89 We deal first with the issue of indirect contributions. There is no merit in the husband's argument that the effective duration of the marriage should be viewed as six and a half years instead of 13 years just because the parties spent significant periods of time apart. Some of the time spent apart was due to the husband's overseas work assignments, and some was necessitated by the wife's pregnancy in October 2010 and the policy of the husband's company that pregnant spouses were not allowed to stay in Dhaka, Bangladesh, where the husband was then based. Further, the fact that the child was born so late in their marriage, towards the tail end of the relationship, suggests that there was consortium late into their marriage.

90 While the wife may have played a smaller role in the maintenance of the family prior to the birth of the child, she was the primary caregiver once the child was born, which was a factor that was taken into account by the Judge. She had to stay in Singapore by herself prior to the delivery of the child, and was for practical purposes the sole caregiver in the period immediately following the child's birth, as the husband was not based in Singapore at the time. It was also undisputed that even when the wife moved to the United States to be with the husband upon his posting to Houston, she had to look after the child on her own as the husband was busy with his work. When she returned to Singapore with the child, the child was diagnosed with

various health issues, which she also had to handle largely on her own. Against this, the Judge also recognised the husband's indirect contribution as the bread-winner of the family and took account of that in arriving at the applicable ratio. On the whole, the finding that the ratio was 65:35 in favour of the wife was well within the Judge's discretion and should not be disturbed. Both parties' appeals are therefore unsuccessful in this respect.

Direct contributions

91 We also see no reason to disturb the Judge's finding on the direct contributions of the parties in relation to Group A and Group B as well as the weight that the Judge assigned to direct and indirect contributions in each group.

92 While it is true that the husband was the "main driving force behind investments" and largely provided the funds for the acquisition of properties, we are of the view that the wife had played a not insignificant role in helping him to coordinate his investments whilst he was based overseas. This factor was taken into account by the Judge. The husband also conceded that the wife assisted him when he was overseas by handling his companies' funds and transferring payments. Although he may have hired professional staff to run the various companies, in our judgment, the wife's role as a right-hand woman who was intimately linked to him would have been essential to the husband's ability to manage his companies effectively from afar. While the husband tried to downplay the importance of the wife being appointed a director of some of his companies and the income declared on her behalf as work done for the companies, in our opinion these functions still served as her direct financial contributions to the business. Being a director of some companies meant that the wife took on certain duties and risks, which must be taken into account in

assessing her direct contributions. The husband also contended that the tax returns showing the wife's income should be disregarded as the returns were prepared for tax planning purposes. If, by that contention, the husband meant that the wife did not work for the companies at all and the returns reflected a false arrangement concocted to deceive the income tax authorities and reduce the tax burden of the companies, the argument cannot be made to or received by the court. The husband cannot rely on his own illegal conduct to reduce the wife's contributions. Additionally, by doing so he would be exposing himself to being referred to the income tax authorities for investigation.

93 Although we have rejected the husband's attempt to downplay the wife's direct contributions, we must also reject the wife's argument that the Judge failed to accord weight to her efforts in managing the matrimonial assets and merely focused on the fact that the $797,317 was used for investment. The Judge stated at [51] of the Judgment that:

> … 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.

It is plain from the Judgment that both the wife's income and her efforts in managing the property business were taken into account.

94 We do not accept the husband's argument that the Judge double-counted the wife's effort towards the properties by considering the wife's income of $797,317 to be part of her direct contributions to Group A and giving her additional credit in the form of an uplift for the work that she did for the companies. The Judge found (at [47] of the Judgment) that the wife's efforts had included:

> purchasing furniture for properties owned by their companies, evicting difficult tenants, managing their companies' accounts, liaising with tenants and collecting the monthly rent, handling complaints of defects, meeting with contractors, obtaining a developer's licence for one of the companies to develop a residential project, [and] standing as guarantor for the construction loan taken by that company …

95 In our judgment, and contrary to the husband's submissions, these efforts go beyond those of a mere titular director and would not have been adequately captured by the wife's income of $797,317 from 2007 to 2014. In the round, we are of the view that the uplift to 15% that the Judge accorded to the wife in Group A was reasonable and in line with the broad-brush approach. The uplift is also justified in the light of the fact that the Judge did not order any maintenance for the wife.

96 As for Group B, the Judge's decision to apportion an average ratio of 80:20 in the husband's favour is unimpeachable. We agree with the Judge's application of our comments in *ANJ v ANK* [2015] 4 SLR 1043 at [27(b)] that if an extraordinarily large pool of assets was acquired by one party's exceptional efforts, direct contributions are likely to command greater weight as against indirect contributions. We are of the view that this is the situation in relation to the Group B assets as the assets therein were the product of the husband's efforts and financial contribution; the wife's direct contributions were negligible.

97 Both parties' appeals are therefore unsuccessful in relation to direct contributions.

Overall division

98 Flowing from our comments in the preceding section, we set out our calculations for the overall division of the assets.

99 The wife should obtain 40% of the Group A asset pool, which is equivalent to a value of $8,840,282.99, and 20% of the Group B asset pool, which is equivalent to a value of $2,083,589.87. The sum of the two is $10,923,872.86. This is approximately 33.6% of the total matrimonial asset value of $32,518,656.84 (see above at [82]). We are of the view that the wife's overall share of 33.6% of the assets is appropriate in the light of the length of the marriage, the size of the matrimonial asset pool, and modest direct financial contributions by the wife.

100 We determined above at [76] that the wife is liable to reimburse the husband for the property taxes paid for the properties in Groups A and B in proportion to her share of the assets of each group. The property tax paid for Group A assets was $30,220 while the property tax paid for Group B assets was $11,200. She is therefore liable to repay (0.4 x $30,220) + (0.2 x $11,200) = $14,328 to the husband. Therefore, the total share of assets that the wife is entitled to is $10,923,872.86 – $14,328 = $10,909,544.86. Given that the wife already holds $1,297,824.03 of these assets (see above at [79]), the husband is to transfer to the wife money and/or assets equivalent to $9,611,720.83 in value.

Allocation of assets

101 In the proceedings below, the Judge ordered the husband to transfer to the wife money or assets equal to the value of the award, less the assets in her

sole name. In CA 23, the wife claimed that there was an "ongoing fiasco" in relation to the transfer of assets, and argued for specific assets to be transferred to her. This was resisted by the husband on the basis that allocation of assets was not argued below and it was not a subject of the notice of appeal.

102 We agree that these matters raised by the wife do not fall within the ambit of the appeal. If the husband is obstructive or uncooperative, that is a problem best dealt with by seeking further orders from the trial court. We order therefore that the husband is to transfer to the wife money and/or assets equivalent to $9,611,720.83 in value within six months of this judgment, failing which the parties are at liberty to apply to the Judge for further orders to implement this judgment.

Conclusion

103 To sum up, we allow both CA 23 and CA 30 in part.

104 The Judge erred in using the IJ date as the operative date of valuation of the matrimonial assets instead of the AM date. She also erred in not taking certain liabilities into account. However, the Judge's ascertainment of the ratios of indirect and direct contribution of parties in relation to the Groups A and B assets and the respective weights for indirect and indirect contributions remain undisturbed. Her orders on access and maintenance also remain undisturbed.

105 We note that the outcome of the appeals in relation to the division of matrimonial assets is such that the parties' respective shares of the assets and the absolute values obtained do not drastically differ from the assessment by the Judge. Below, the wife obtained a share of 32.4% of the matrimonial assets

(worth $10,772,693.05, based on the valuation adopted by the Judge). On appeal, she obtains a share of 33.6% of the assets (worth $10,923,872.86, based on the revised valuation). Although the difference of $151,179.81 is not insignificant in absolute terms, it is also not a major difference when viewed in the context of the total asset pool and the division ordered by the court below. Seen in that light, it is fair to say that the appeals have made little practical difference to the parties' respective positions.

106 As we cautioned in the recent decision of *TNL v TNK* [2017] SCGA 15 at [68]:

> … in the context of matrimonial appeals, there is a clear interest in encouraging the parties to move on to face the future instead of re-fighting old battles. *Therefore, generally, appeals will not be sympathetically received where the result is a potential adjustment of the sums awarded below that works out to less than ten percent thereof.* Even where such appeals are allowed because the court has established that there was an error of principle, costs may be awarded against the successful party if the court is satisfied that the appeal was a disproportionate imposition on the unsuccessful party.
>
> [emphasis added]

107 In the present case, the difference between our revised award and the original award is about 1.4%. This is well below the contemplated maximum of 10% and exemplifies an appeal in which the legitimate underlying disputes were not major, and which the parties would have been well-advised to resolve by other means. Given that these were cross-appeals on which both parties were partially successful and partially unsuccessful, each party shall bear his or her own costs.

Sundaresh Menon	Chao Hick Tin	Judith Prakash
Chief Justice	Judge of Appeal	Judge of Appeal

Winston Quek Seng Soon and Gan Guo Bin (Winston Quek & Co)
for the appellant in CA No 23 of 2016
and the respondent in CA 30 of 2016;
Koh Swee Yen, Ng Shu Ping and Lim Yang Yu
(WongPartnership LLP) for the appellant in CA No 30 of 2016
and the respondent in CA No 23 of 2016.
