IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 03

Civil Appeal No 226 of 2017

Between

BPC

… *Appellant*

And

BPB

… *Respondent*

Civil Appeal No 227 of 2017

Between

BPB

… *Appellant*

And

BPC

… *Respondent*

In the matter of Divorce Suit No 4447 of 2010/Z

Between

BPC

… *Plaintiff*

And

BPB

… *Defendant*

JUDGMENT

[Family Law] — [Maintenance] — [Child]

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

[Family Law] — [Matrimonial assets] — [Division] — [Date for determination of pool of matrimonial assets]

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BPC
v
BPB and another appeal

[2019] SGCA 03

Court of Appeal — Civil Appeals Nos 226 and 227 of 2017
Andrew Phang Boon Leong JA, Judith Prakash JA and Belinda Ang Saw Ean J
25 September 2018

10 January 2019 Judgment reserved.

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

Introduction

1 This pair of cross-appeals arises out of orders relating to the division of the matrimonial assets and the maintenance for the children made by the High Court judge ("the Judge") in Divorce Suit No 4447 of 2010 ("the Divorce Proceedings") on 13 November 2017, in respect of which the Judge issued brief oral grounds ("the GD"). The Divorce Proceedings ended a 17-year-long dual-income marriage which produced two children ("the Children") and a pool of matrimonial assets valued at $38,010,639. The pool was ordered to be divided in the ratio of 66.76:33.24 in the Husband's favour.

2 Civil Appeal No 226 of 2017 is an appeal by the wife, [BPC] ("the Wife"), against the Judge's decision to assign a 60:40 weightage between direct

and indirect contributions. Civil Appeal No 227 of 2017 is an appeal by the husband, [BPB] ("the Husband"), against the Judge's decisions to:

(a) adopt the date of the ancillary matters hearing as the operative date for *both* determining the pool of matrimonial assets and valuing the matrimonial assets in the parties' sole names;

(b) assess the Wife's direct contributions towards the purchase of their current matrimonial home on Bukit Timah Road ("the Home") as being 78% of the cost thereof;

(c) assign a 60:40 weightage between direct and indirect contributions; and

(d) order the Husband to pay $11,000 per month in child maintenance and 75% of the Children's school fees and other expenses.

We shall hereinafter refer to these cross-appeals as "the Wife's Appeal" and "the Husband's Appeal" respectively.

3 Having heard the submissions of the parties, we reserved judgment. We now furnish our decision and the accompanying reasons.

Background

4 The parties married in December 1993. They have two children who were born in 2002 and 2006 respectively ("the Children"). Their first child was conceived via in-vitro fertilisation ("IVF") procedures.

The parties' respective careers

5 The parties have always been focused on their respective careers, and during the marriage both frequently worked long hours. Until 1999, the Husband worked as an engineer at his family's company, while the Wife worked as an analyst in a bank.

6 In 1999, the Husband and the Wife went to the United States to pursue post-graduate studies in the same university. They returned to Singapore in September 2001 after completing their further studies.

7 Subsequent to their return, the Wife took up various senior executive roles in various banks, while the Husband took on various consultancy-related roles in a series of companies. He also started his own consulting firm ("the Firm"). At this stage of their careers, the Wife consistently commanded a steadier income than the Husband.

8 This changed in 2005 when the Husband founded, with four partners, a venture capital fund ("the Fund"). The Husband was granted a total of 833,184 share options in the Fund on 15 August 2005, which were to be vested proportionately over five years, and were to be exercised within five years of each vesting. Subsequently, on 27 February 2013, the Husband was granted an additional 196,627 share options, bringing his total number of share options to 1,029,811. The vesting of these share options may be summarised as follows:

Date of vesting	Date of expiry	Number of share options
15 August 2006	14 August 2011	166,637
15 August 2007	14 August 2012	166,637
15 August 2008	14 August 2013	166,637
15 August 2009	14 August 2014	166,637
15 August 2010	14 August 2015	166,636
27 February 2013	26 February 2018	196,627
	Total:	**1,029,811**

9 Since the inception of the Fund, the value of the Husband's interests in the Fund has grown astronomically, particularly in 2015 and 2016, to the extent that the assets in the Husband's sole name now completely dwarf those in the Wife's – as of June 2016, the Husband's shares in the Fund alone were valued at $28,021,805.

10 The Fund required the Husband to shuttle frequently between Singapore and Shanghai, with his trips increasing in frequency in 2006. The Wife remained in Singapore with their family at all times. In 2008, the Husband was appointed the Vice Chairman (China) of the Fund, resulting in his being stationed in the People's Republic of China on a full-time basis.

The parties' dealings in real estate

11 During the course of their marriage, the parties purchased three apartment units together. Details of these are as follows:

(a) On 3 March 2005, the parties purchased a property on Peck Hay Road for $1,700,000 which they sold a few months later at a profit of $300,000.

(b) On 26 September 2005, the parties purchased a property at Mount Sinai Rise ("the Sinai Property") for $2,380,000. This was sold in April 2007 for $4,500,000.

(c) On 27 June 2007, the parties purchased the Home for $3,100,000. They moved in in January 2009 and it remained the matrimonial home until the end of the marriage. As of 2016, the Home was worth $3,950,000.

The Divorce Proceedings

12 Fissures in the marriage emerged when, in August 2008, the Wife confronted the Husband about her discovery of his adultery with a Chinese woman ("the Partner"). The Husband confessed to having an extramarital affair with the Partner. On 25 August 2009, the Husband purchased an apartment in Shanghai, and added the Partner as a joint owner of the apartment. In March 2010, the Husband unilaterally reduced monthly maintenance for the family from the usual $16,374 to $15,000. In June 2010, the Wife found out about the Husband's purchase of the Shanghai apartment and his adding of the Partner as a joint owner. In September 2010, the Husband further reduced monthly maintenance for the family to $5,000.

13 On 2 September 2010, the Wife commenced the Divorce Proceedings. Thereafter, the Wife changed the locks to the Home, thereby preventing the Husband from walking in and out of the Home freely as he had been wont to do in order to spend time with the Children.

14 On 22 September 2010, the Wife applied for interim maintenance. The Husband was ordered to pay a monthly maintenance of $10,000 on 16 March 2011. The divorce proceeded and interim judgment was granted on 8 November 2011. The ancillary proceedings commenced on 21 June 2016, the rather long lapse of time between the two dates being largely due to the filing of applications for discovery and interrogatories by the Wife in order to obtain full disclosure from the Husband.

The decision below

15 The Judge issued the GD on 13 November 2017. She first ordered, by consent, that the parties shall have joint custody of the Children, with care and control to be given to the Wife, and with access rights granted to the Husband.

16 Next, regarding the determination, valuation and division of the matrimonial assets, the Judge held that:

> (a) the date of the ancillary matters hearing (and not the date of interim judgment) shall be the operative date for both determining the pool of matrimonial assets and valuing the matrimonial assets;
>
> (b) pursuant to these dates, the assets in the matrimonial pool were valued at $38,010,639 and were to be divided between the parties in the ratio 66.76:33.24 in favour of the Husband, with this ratio being obtained from valuing:
>
> > (i) the ratio of their respective direct contributions as 87.94:12.06 in favour of the Husband;
> >
> > (ii) the ratio of their respective indirect contributions as 65:35 in favour of the Wife; and

(iii) the relative weightage assigned between the direct and indirect contributions as 60:40 in favour of direct contributions;

(c) pursuant to this ratio, the Husband was to transfer to the Wife his interest in the Home (with the Wife bearing the costs and expenses of the transfer);

(d) the Wife was to be entitled to the funds in their United Overseas Bank joint account and the Husband was to pay the Wife $7,013,875; and

(e) each party was to retain the assets in their own names.

17 Finally, as regards the issue of maintenance, the Judge decided that: (a) there shall be no order for maintenance for the Wife; and (b) in respect of the Children, the Husband is to pay the Wife $11,000 per month as general maintenance and also 75% of the Children's school fees, related education expenses and the first child's growth hormone expenses.

The appeals

18 In the Wife's Appeal, the Wife challenges the Judge's decision regarding the division of matrimonial assets solely on the ground that the Judge should have assigned a 50:50 weightage between direct and indirect contributions.

19 In the Husband's Appeal, the Husband challenges aspects of the Judge's decision regarding the determination, valuation and division of the pool of matrimonial assets, as well as maintenance for the Children. Regarding the determination, valuation and division of the asset pool, the Husband contends that:

(a) the operative date for *both* determining the pool of matrimonial assets *and* valuing the matrimonial assets should be the date of interim judgment;

(b) the Wife should be found to have only made 60% of the direct financial contributions towards the purchase of the Home;

(c) the Husband should be found to have made more than merely 35% of the indirect contributions; and

(d) the court should have assigned a 70:30 weightage between direct and indirect contributions.

As regards maintenance for the Children, the Husband submits that he should only be required to pay $8,300 per month in child maintenance and 50% of the specified expenses.

The issues to be determined

20 In the light of the foregoing, the issues that arise for this court's consideration are:

(a) regarding the determination, valuation and division of the pool of matrimonial assets:

(i) first, whether the operative dates for the determination of the pool of matrimonial assets and the valuation of the matrimonial assets in the parties' sole names should be the date of interim judgment or the date of the ancillary matters hearing;

(ii) second, whether the direct contribution by each party towards the purchase of the Home was rightly assessed to be 78:22 in favour of the Wife;

(iii) third, whether the indirect contribution by each party was rightly assessed to be 65:35 in favour of the Wife; and

(iv) fourth, whether the weightage between direct and indirect contributions should be assigned as 60:40 in favour of direct contributions; and

(b) regarding maintenance for the Children, whether the orders made by the Judge should be varied.

21 The specific submissions raised by the parties in relation to these issues will be dealt with as they arise in the course of our analysis below.

Our decision

22 It is well established that an appellate court will be slow to make minor adjustments to the orders made by the first instance court, and will seldom interfere in the orders made below unless it can be demonstrated that the court has committed an error of law or principle, or has failed to appreciate certain crucial facts: see *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 ("*TNL v TNK*") at [53] and *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ v ANK*") at [42]. Bearing this in mind, we affirm all the findings made by the Judge, save for the decision to adopt the date of the ancillary matters hearing (instead of the date of interim judgment) as the operative date for *determining* the pool of matrimonial assets, and all the findings that flow from that decision. In the result, we dismiss the Wife's appeal and allow the Husband's appeal in part. Our reasons follow.

Determination, valuation and division of the matrimonial assets

23 In our judgment, while the date of the ancillary matters hearing was rightly adopted as the operative date for *valuing* the matrimonial assets, the date of interim judgment should have been adopted as the operative date for *determining* the pool of matrimonial assets. Hence, the value of the pool of matrimonial assets must be reduced from $38,010,639 to $31,835,775. This is on the basis that after November 2011, the Husband acquired additional assets valued at a total of $6,174,864 which should not have been included in the pool. The Husband's assets should have been valued at $27,251,426 and this figure added to the Wife's total financial contribution of $4,584,349, as found by the Judge, gives a total pool of $31,835,775. But in the light of the Husband's insufficiently full and frank disclosure of his assets and income, we consider it appropriate to draw an adverse inference against the Husband and give effect to it by adding the equivalent of 10% of the value of all disclosed assets (*ie*, $3,183,578 (rounded up from $3,183,577.50)) to the existing asset pool, which results in a total asset value of $35,019,353.

24 As regards the *division* of matrimonial assets, we affirm the Judge's decision in respect of the relative proportion of direct contributions made by the parties to the Home, the relative proportion of indirect contributions made, and the relative weight to be placed on direct contributions as opposed to indirect contributions. We see no reason to vary these figures arrived at by the Judge.

Determination of the pool of matrimonial assets

25 In *ARY v ARX and another appeal* [2016] 2 SLR 686 ("*ARY v ARX*"), this court made the following important observations regarding the operative date for determining the pool of matrimonial assets (at [31] and [34]–[36]):

> 31 … In our judgment, while the court retains the discretion to select the appropriate operative date to determine the pool of matrimonial assets, there is much to be said that, unless the particular circumstances or justice of the case warrant it, **the *starting point* or *default position* should be the date that interim judgment is granted**.
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> …
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> 34 … We will not go so far as to *fix* the date of the interim judgment as the operative date for determining the pool of matrimonial assets. We think **the right balance between certainty and flexibility is struck if the date of the interim judgment is set as a starting point, with the court possessing the discretion to depart from it in deserving cases**.
>
> 35 This will preserve the court's flexibility to ensure that justice is done in every case. **The court may depart from the starting point when there are cogent reasons to do so**. These include situations where, for example, a party incurs a large amount of expenditure from having 'indulged in certain vices' such that the matrimonial assets have been "unfairly or unjustly depleted by the unacceptable actions of that party" (*AJR* [*v AJS* [2010] 4 SLR 617] at [6]). Even when the court chooses not to depart from the starting point, it remains able to take into account accruing benefits (*Yeo Chong Lin* [*v Tay Ang Choo Nancy* [2011] 2 SLR 1157] at [21]) and restore expenditure notionally to the pool of matrimonial assets (*Yeo Chong Lin* at [33]).
>
> 36 **The court must exercise care when it decides to depart from the starting point, and should provide reasons whenever it does**. This is because 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* (*Anthony Patrick Nathan v Chan Siew Chin* [2011] 4 SLR 1121 at [21]–[33]), and the discretion to determine how those assets should be *divided*.
> …
>
> [emphasis in original in italics; emphasis added in bold]

26 The upshot is that the court should generally rely on the date of interim judgment as the starting point in determining a pool of matrimonial assets, and any decision to depart from this should be accompanied by cogent reasons.

27 In the GD, the Judge adopted the date of the ancillary matters hearing as the operative date for determining the pool of matrimonial assets. The Judge thus considered that the following assets, which had been acquired in the period between the date of interim judgment and the date of the ancillary matters hearing, fell within the pool of matrimonial assets:

(a) an apartment in China purchased on 14 September 2014 and worth $1,185,489;

(b) shares in an Australian company purchased in April 2014 and worth $305,816;

(c) 196,627 share options in the Fund, which were granted on 27 February 2013 and were worth $4,683,559 ("the 2013 Share Options"); and

(d) a new car purchased by the Husband which had a net value of $29,370.

28 The main reasons given for this decision by the Judge were:

(a) First, the Wife's efforts in caring for the Children from the date of interim judgment to the date of the ancillary matters hearing enabled the Husband to devote and focus his energies on his job as the Vice Chairman (China) of the Fund and do well.

(b) Second, the Husband had been less than forthcoming in providing meaningful information on his income and his assets, such that an adverse inference should be drawn against the Husband.

29 Accordingly, the question is whether either of these reasons is sufficiently cogent to justify a departure from the starting position of using the date of interim judgment as the operative date to determine the pool of matrimonial assets. In our judgment, neither reason meets the standard.

(1) Continuing care for the Children by the Wife

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

31 As a matter of principle, the contributions made by the Wife *after* the date of interim judgment should *not* be considered to be a factor that justifies including assets acquired after interim judgment within the pool of matrimonial assets because everything that the Wife would have done for the Children post-interim judgment would have been done as *mother*, and no longer as *spouse*. This reasoning is supported by the decision of this court in *AUA v ATZ* [2016] 4 SLR 674 ("*AUA v ATZ*").

32 In *AUA v ATZ*, this court found that the operative date for determining the parties' respective contributions to the marriage was the date on which the parties had signed a postnuptial settlement agreement ("the Deed"), and not the

date of the final judgment of divorce, because "that was when the marriage effectively came to an end" and thereafter "the parties were only waiting for time to elapse before filing for divorce" (at [24]). The court applied (at [25]) the analysis that had been undertaken in the earlier decision of this court in *ARY v ARX*, where it was held that the date of interim judgment should be the operative date for determining the pool of matrimonial assets because that was when there was no longer any matrimonial home, no *consortium vitae* and no right on either side to conjugal rights, and it would be artificial to speak of any asset acquired after the interim judgment as being a matrimonial asset. The court similarly concluded in *AUA v ATZ* that "the parties' marital relationship had come to a close with the conclusion of a Deed" (at [26]), and therefore found that it was not unjust to *not* take into account, in the division of the pool of matrimonial assets, the wife's continuing role as the primary caregiver of the child even *after* the parties had signed the Deed. To that end, this court reasoned as follows (at [27]):

> In the circumstances, it is artificial to say that after the conclusion of the Deed, the wife should still be given credit for her 'indirect contributions … as a caregiver to the child' … . We do not, for a moment, wish to undervalue the role played by the wife in caring for the child **but the point is that following the conclusion of the Deed, everything the wife did for the child, she did *qua* mother, and no longer *qua* spouse.** The parties, particularly the wife, would have known that she would have to bear the brunt of bringing up the child and moreover that was what she wanted to do too. That was why the Deed was structured the way it was. There is therefore no injustice in the fact that the Deed did not appear to take the wife's continuing role as primary caregiver to the child into account in determining her share of the matrimonial assets. [emphasis added in bold]

33 We recognise that in *ARY v ARX*, despite holding that the date of interim judgment should, as a matter of principle, be the starting point for selecting the operative date to determine the pool of matrimonial assets, this court actually

adopted the date of the ancillary matters hearing as the operative date. In so doing, the court first referred (at [37]) to yet another earlier decision of this court in *Yeo Gim Tong Michael v Tianzon Lolita* [1996] 1 SLR(R) 633 ("*Tianzon*"), where the court had appeared to adopt the date of the ancillary matters hearing as the operative date because the wife continued to look after the child of the marriage. The court in *ARY v ARX* then endorsed the decision of the High Court judge to choose the date of the ancillary matters hearing as the operative date because the wife's continued care for the children even *after* the grant of interim judgment "enabled the husband to focus on his work and obtain the salaries and bonuses he received in the intervening period" (at [41]). *ARY v ARX* therefore appears to suggest that continuing care for the children after the grant of interim judgment is a factor that can, in and of itself, justify the selection of the date of the ancillary matters hearing over the date of interim judgment as the operative date for determining the pool of matrimonial assets.

34 In our judgment, however, a closer reading of *ARY v ARX* shows that such a conclusion would be incorrect. First, following the initial remarks in *ARY v ARX* set out at [33] above, the court crucially went on to state that the "mere fact that the wife looked after the children after the granting of interim judgment may, in itself, be unexceptional", and also identified two *further* factors that made the ancillary matters hearing date a "fairer operative date" on those facts: first, the amount of the salary and bonuses received during that period was "tremendous" relative to the value of the matrimonial assets; and second, the wife's care of the children and household *prior* to the granting of interim judgment likely contributed to the husband's ability to earn the salary and bonuses received after interim judgment (at [42]). Thus, as we see it, in *ARY v ARX*, this court considered that it was only the presence of all three factors that made it appropriate to depart from the usual course of adopting the date of

interim judgment. Indeed, this court emphasised in *ARY v ARX* that it was "[t]hese factors viewed *in their totality* [that] made it fairer in the circumstances of this particular case to adopt the later date of the commencement of ancillary proceedings, 30 June 2012, as the operative date" [emphasis added] (at [42]).

35 Second, the decision in *Tianzon*, which this court had appeared to cite in *ARY v ARX* in aid of the proposition that the wife's continuing care for the children post-interim judgment is a factor that can, in and of itself, justify the court's selection of the date of the ancillary matters hearing as the operative date, does *not* in fact support this proposition. In *Tianzon*, this court held that the court may, "[a]s a matter of practicality", take into account "any assets acquired during the marriage including those acquired after the marriage has broken down" in determining the assets that fall within the pool of matrimonial assets to be divided under s 106 of the Women's Charter (Cap 353, 1985 Rev Ed) (at [7]). However, the precise period the court in *Tianzon* was referring to when considering that the assets were acquired "during the marriage" is not clear. The court merely observed that "the marriage is only dissolved when the decree *nisi* is made absolute", and that usually, "the ancillary matters come before the court for hearing prior to the date when the decree *nisi* is made absolute" (*Tianzon* at [7]). The court was therefore, at best, merely stating that all assets acquired from the time when the marriage irretrievably broke down, which the court considered to be the date when the divorce petition was filed (see *Tianzon* at [6]), until the time when final judgment was granted for the divorce could be considered in the division process. This does not evince a preference for either the date of interim judgment or the date of the ancillary matters hearing as the operative date for determining the matrimonial pool.

36 Therefore, *ARY v ARX* does *not* support the proposition that the wife's continuing care for the children after interim judgment has been granted is a

factor that can, in and of itself, justify the selection of the date of the ancillary matters hearing as the operative date for determining the pool of matrimonial assets.

(2) Adverse inference against the Husband

37 The Wife submits that the Judge was correct to have selected the date of the ancillary matters hearing as the operative date for determining the pool of matrimonial assets in order to give effect to an adverse inference drawn against the Husband. Assuming *arguendo* that the Judge was justified in drawing an adverse inference against the Husband, we agree that it is *in principle* open to the court to adjust the operative date for determining the pool of matrimonial assets in order to give effect to an adverse inference. On the present facts, however, this approach was *not* correct.

38 In *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 ("*Chan Tin Sun*"), this court summarised the position regarding how the court may give effect to adverse inferences drawn against a spouse on account of the failure to make full and frank disclosure of his or her assets as follows (at [64]):

> There are ***at least*** two alternative approaches to give effect to the adverse inference drawn against a spouse, both of which have been endorsed by this court: see *NK v NL* [[2007] 3 SLR(R) 743] at [61]–[62]. The first approach is for the court to make a finding of the value of the undisclosed assets on the available evidence and for the party dissatisfied with the value attributed to show that it is unreasonable; if the dissatisfied party is unable to do so, the value is then included in the matrimonial pool for division (see, for example, the Singapore High Court decision of *Tay Sin Tor v Tan Chay Eng* [1999] 2 SLR(R) 385 at [18]). Although it endorsed this approach, the court in *NK v NL* also cautioned against 'unnecessary speculation with respect to the specific values of undeclared assets' and instead held (at [62]) that in the circumstances of the case, 'it might be more just and equitable (not to mention, practical) to order a higher proportion of the known assets to be given to the wife'. [emphasis added in bold italics]

39 In other words, as the law stands, while there are two approaches to giving effect to the drawing of an adverse inference against a spouse that the court would generally prefer to rely on, the court is *not* in principle restricted to adopting either of them. This makes good sense, given that, as this court observed in *Chan Tin Sun* (at [65]):

> Ultimately, the appropriate approach to adopt would depend on the facts of the particular case subject to the overriding impetus of achieving a just and equitable result. As this court observed in *Yeo Chong Lin* [*v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157] at [66]:
>
> > … In the final analysis, it is for the court to decide, in the light of the fact-situation of each case, which approach would in its view best achieve an equitable and just result. What must be clearly recognised is that when the court makes such a determination it is not undertaking an exercise based on arithmetic but a judgmental exercise based, in part at least, on feel.

40 Having said that, we consider it inappropriate in this case to adjust the operative date for determining the pool of matrimonial assets in order to give effect to the adverse inference drawn against the Husband, given the significant value of the assets accumulated in the period following the grant of interim judgment up till the commencement of ancillary proceedings. The value of all the assets accumulated by the Husband during this period (excluding only the car since there is no evidence as to its actual date of acquisition) is $6,174,864 (obtained by adding the values in [27] above). This value corresponds to 22.66% of the total value of assets he accumulated *prior* to the date of interim judgment (*ie*, $27,251,426). In our judgment, introducing an uplift of 22.66% on the total value of the Husband's assets to be divided between the parties on account of his failure to make full and frank disclosure is excessive, and would not conduce towards a just and equitable result in the circumstances. Such an approach would involve bestowing upon the Wife a windfall that she did not contribute to. As we observed at [9] above, the value of the Fund only skyrocketed in 2015

and 2016. Accordingly, including the 2013 Share Options in the matrimonial pool would be allowing the Wife to take the benefit of their value even though she had not contributed to the Husband's acquisition of those share options.

41 Accordingly, we find that there was no cogent reason for the Judge to have departed from the starting point of adopting the date of interim judgment as the operative date for determining the pool of matrimonial assets.

Valuation of the pool of matrimonial assets

42 In *TDT v TDS and another appeal and another matter* [2016] 4 SLR 145 ("*TDT v TDS*"), this court restated the position regarding the operative date for valuing the pool of matrimonial assets in the following manner (at [50]):

> *The general position is that the date of the hearing is the date that should be adopted for the purposes of valuing the matrimonial assets*: see *Yeo Chong Lin* at [39]. Although framed as an imperative in *Yeo Chong Lin*, we do not think that the position that the value of a matrimonial asset "must be assessed at the date of the hearing" is a hard and fast rule. … In our view, *the court retains the discretion to depart from the date of the ancillary matters hearing in determining the value of properties subject to division where this is warranted by the facts*. Indeed, this very point was reiterated in our recent decision in *ARX v ARY* … (at [36]). [emphasis added]

43 Put another way, the position set out here is that the court should generally rely on the date of the ancillary matters hearing as the starting point in valuing matrimonial assets, and any decision to depart from this should be accompanied by cogent reasons. The Judge followed this position in the GD.

44 The Husband challenges the decision on the basis that: (a) the Judge should have selected the date of interim judgment as the operative date for valuing the assets in the parties' sole names; and (b) alternatively, the Judge should have selected December 2014 as the date for valuing the Husband's

shares and share options in the Fund. In our judgment, there is no reason, let alone a cogent one, for the court to adopt either of the alternative dates suggested.

(1) Date of interim judgment

45 The Husband's submission that the Judge should adopt the date of interim judgment as the operative date for valuing assets in the parties' sole names relies on the decision of the High Court in *Anthony Patrick Nathan v Chan Siew Chin* [2011] 4 SLR 1121 ("*Nathan*"). In this case, Quentin Loh J held that "not all matrimonial assets should be valued on the same date" (at [21]). Specifically, whereas jointly owned assets should be valued at the date of the judgment on ancillary matters (at [23]), separately owned matrimonial assets should generally be valued at the date on which the matrimonial assets were determined (at [25]). The rationale given for this distinction is as follows (at [26]–[27]):

> 26 … Not only should a party not be exposed to the risk of a gain or a loss flowing from the other party's *separate acquisition* of new assets (funded out of existing matrimonial assets), a party should also not be exposed to the risk of a gain or a loss flowing from the other party's *continued holding* of the existing matrimonial assets which he or she separately owns in the first place. Indeed, to hold an asset is as much an investment decision as to sell it.
>
> 27 The corollary to the general principle of limiting risk exposure to the party taking a unilateral decision on a separately owned asset is that it also prevents the other party from benefiting from a profitable investment decision which he or she had no part in; see *Ong Boon Huat Samuel v Chan Mei Lan Kristine* [2007] 2 SLR(R) 729 at [23] ("*Samuel Ong*") where the Court of Appeal held that having disassociated herself with a certain property investment by the husband, the wife could not reap its profits:
>
> > … In our view, the Wife cannot now claim what she once rejected. If the Wife maintains that she has nothing to do with the liabilities associated with Malvern Springs, then she similarly can have no share in its profits.

> The Court of Appeal determined that the property was not to be included in the matrimonial asset pool for division (at [15]). …

46 This principle has since been applied in a series of subsequent decisions of the High Court: see *Yong Shao Keat v Foo Jock Khim* [2012] SGHC 107 at [10], *BGT v BGU* [2013] SGHC 50 at [40]–[41] and *AZZ v BAA* [2016] SGHC 44 ("*AZZ v BAA*") at [140].

47 Relying on *Nathan*, the Husband submits that the assets that are held in his sole name, in particular, his shares and share options in the Fund, should be valued at the date of interim judgment. To this end, the Husband argues that the shares and share options in the Fund are "extremely volatile", and that it was "entirely fortuitous" that the value of the shares in the Fund had increased to the present extent, such that the Wife should not be made to bear the risk of any drop in value of the shares in the Fund but should also not be allowed to benefit from any corresponding rise in value.

48 In our judgment, however, the distinction drawn in *Nathan* between jointly owned and separately owned matrimonial assets does not rest on sound principle. Section 112(10) of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Charter") defines a "matrimonial asset". It states:

> (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.

49 The purpose of the definition is to determine the pool of matrimonial assets. Once an asset falls within the pool, the section does not draw any distinction between it and any other asset in the pool on the basis of its ownership. Thus, as long as a property is a "matrimonial asset", regardless of whether it is jointly or separately owned, it should, according to the principle set out in *TDT v TDS*, generally be valued at the date of the ancillary matters hearing and hence be subject to the vagaries of movements in the property market during the period leading up to the hearing of the ancillary proceedings. This follows from the fundamental notion of all matrimonial assets constituting a "deferred community of property", which underlies the judicial exercise of dividing matrimonial assets pursuant to s 112 of the Charter.

50 In *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520, this court endorsed this concept of matrimonial assets, observing (at [40]) that:

> … the very basis upon which s 112 of the [Charter] was premised [is] that *matrimonial assets are not to be viewed as belonging to the husband or the wife exclusively, to be dealt with accordingly upon a divorce*. On the contrary, *the legislative mandate to the courts is to treat all matrimonial assets as community property (or, as one writer put it, 'deferred community of property' inasmuch as the concept of community property does not take place until the marriage is terminated legally) to be divided in accordance with s 112 of the [Charter]* (and see generally Leong Wai Kum, *Halsbury's Laws of Singapore: Family Law*, vol 11 (LexisNexis, 2006 Reissue, 2006) … at para 130.751). [emphasis added]

51 The practical effect of adopting this conception of matrimonial assets has been described in Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) in the following terms (at paras 17.063 and 17.065):

> [17.063] Matrimonial assets are the gains of the marital partnership between the former equal marital partners who have both contributed their different personal efforts to enrich their marital partnership. It is mistaken to view the common directive to the court as to achieve the just and equitable division of property that has been acquired by the spouse who, as the main or only bread-winner, paid for the property. The correct view is that division of matrimonial assets is the division of surplus property, money or other financial resources acquired by both spouses' co-operative efforts during the course of their marriage whatever form their respective efforts may have assumed. …
>
> …
>
> [17.065] When all the matrimonial assets are properly identified by the court, what is reached is the material gains of the marital partnership. The equal marital partners co-operated with one another and, at the termination of their partnership, these are the material gains they have left. The net current value of these material gains should be calculated. When each matrimonial asset is accorded its net current value, the court has well and truly arrived at the net material gains accumulated by the spouses over the course of their marital partnership. It is these net material gains that the court is empowered to divide in just and equitable proportions between them. …

52 In our judgment, the court, in valuing the pool of matrimonial assets, ought simply to ascertain whether an asset falls within the definition of a "matrimonial asset" under s 112(10) of the Charter. If the asset does, then it should be divided between the parties in accordance with the notion that marriage yields, upon its termination, a deferred community of property. Drawing a distinction between jointly owned and separately owned property is antithetical to this treatment of matrimonial assets as community property, and would not assist in achieving an equitable division. As a matter of principle, therefore, both parties in a marriage should take the benefits or losses associated with a matrimonial asset that come with the lapse of time *regardless of* whether

that matrimonial asset is jointly or separately owned. Neither party should be shielded from any potential risk associated with a solely-owned matrimonial asset by ring-fencing it to be valued at the date at which it is determined to be a "matrimonial asset" within s 112(10).

53 We therefore reject the Husband's submission that the assets held in his sole name, in particular, his shares and share options in the Fund, should be valued at the date of interim judgment.

(2) December 2014

54 The Husband's alternative argument is that the value of his shares and share options in the Fund should be valued as at December 2014. To this end, the Husband first cites the following extract from the decision of this court in *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 ("*Yeo Chong Lin*") (at [36]):

> It seems to us that practicality would suggest that there should be an operative date. However, the problem is in determining what that operative date should be, bearing in mind the possible diverse assets, and the different circumstances under which they were acquired. Indeed, it does not follow that there can only be one operative date. *Multiple dates are distinctly possible*, depending on the nature of the assets and the circumstances surrounding their acquisition. *Ultimately, perhaps the adoption of an operative date or dates may not really be that critical as compared to arriving at a just and equitable division.* [emphasis added]

The Husband then submits that valuing the shares as at December 2014 would conduce towards a more just and equitable division of the matrimonial assets between the parties because this valuation date strikes the right balance between giving due recognition to the care-giving efforts of the Wife before the granting of interim judgment, and not overcompensating the Wife to the detriment of the Husband.

55 This submission must be rejected. First, the suggestion that December 2014 is the most suitable valuation date lacks any legal basis. The Husband has not presented a single case that has valued the matrimonial assets of the parties at a date other than the date of interim judgment or the date of the ancillary matters hearing. We think that there is good reason for the dearth of such authority. The courts have been chary of adopting a date that is not tied to any legally significant event in the course of the divorce proceedings as that would often be akin to adopting "an unguided discretion" in the name of achieving justice and equity in each case (see *ARY v ARX* at [36]), which is a practice that has consistently been frowned upon.

56 Second, the proposal for December 2014 to be selected as the operative date for valuing the matrimonial assets also lacks any factual basis. The Husband argues that the Wife should be deprived of the dramatic rise in the value of the shares in the Fund between 2015 and 2016 because the Wife's indirect contributions prior to interim judgment should not be taken to have contributed to the management and growth of the Fund. We disagree. As the Judge rightly observed, "the effort, resources, know-how and wherewithal for [the Fund] would have been invested [by the Husband] … *before* the formal setting up of [the Fund]" [emphasis added]. This means that the Husband would have benefitted from the Wife's indirect contributions *before* the date of interim judgment and hence at a time when the Wife would have been caring for the Children *qua* spouse (and not solely *qua* mother). There is therefore no reason to prevent the Wife from enjoying the increase in value of the shares and share options in the Fund even if this increase came after the date of interim judgment, *as long as* the share and share options had been acquired *before* the date of interim judgment.

57 For these reasons, we reject the Husband's submissions that either the date of interim judgment or December 2014 should be adopted as the operative date for valuing the matrimonial assets, and we affirm the Judge's decision to select the date of the ancillary matters hearing as the operative date.

Giving effect to the adverse inferences drawn against the Husband

58 Having held that the pool of matrimonial assets should be determined at the date of interim judgment and valued at the date of the ancillary matters hearing, such that the assets that had been acquired in the period between the date of interim judgment and the date of the ancillary matters hearing should be excluded from the matrimonial pool, the value of the pool must be reduced from $38,010,639 to $31,835,775. As stated earlier (at [40] above), the reduction of $6,174,864 is derived by omitting all the assets listed in [27] above apart from the allegedly new car. The consequence of reducing the pool to $31,835,775 is that the proportion of the Wife's direct contributions to the pool (valued at $4,584,349 by the Judge) increases from 12.06% to 14.40% while the Husband's goes down from 87.94% to 85.60%. Whether this change of 2.34% should have an impact on the division exercise is a question which we will deal with later.

59 We turn first to address the question of whether the Judge was justified in drawing an adverse inference against the Husband and, if so, how to best give effect to the adverse inference drawn.

60 The court is entitled to draw an adverse inference against a party who fails to comply with his or her duty of full and frank disclosure of the matrimonial assets: see *ANJ v ANK* at [29] and *NK v NL* [2007] 3 SLR 743 ("*NK v NL*") at [57]. The court may do so, provided that (*Chan Tin Sun* at [62]):

(a) there is a substratum of evidence that establishes a *prima facie* case against the person against whom the inference is to be drawn; and

(b) that person must have had some particular access to the information he is said to be hiding.

61 In the GD, the Judge drew an adverse inference against the Husband for his failure to provide meaningful information about both his income and his assets. In relation to the Husband's income, the Judge observed that while the Husband had submitted his notices of assessment of income tax for his employment in Singapore, he had failed to provide equivalent documents for his employment in China or any other meaningful information on his income. The Husband claimed that he was unable to provide any Chinese tax documents because there are no such documents to show what his employers had submitted to the tax authorities in China. The Judge rejected this explanation because:

(a) someone in the Husband's position with his earning capacity would likely be earning more than an overall income of just US$400,000 per annum, especially given the likely compensation structure of a venture capital organisation; and

(b) the Wife had presented evidence from public sources to show that Husband is a director in a number of companies in Singapore and China, and the Husband may have received income for so acting.

62 Next, as regards the Husband's assets, the Judge drew an adverse inference against the Husband in respect of the following assets:

(a) First, the surrender values of the Husband's non-China insurance policies with Prudential. The Husband claimed that he could not provide

the surrender values because he did not know his insurance policy numbers, and his calls to Prudential were not answered, but the Wife submitted that an adverse inference should be drawn because there should be no difficulty for the owner of an insurance policy to get information on the surrender values. The Judge agreed with the Wife.

(b) Second, the Husband's shares in the Central Depository ("CDP"). The Husband failed to provide his CDP statements despite facing a court order requiring him to do so. Subsequently, he exhibited a CDP confirmation letter dated 22 March 2017 stating that his CDP account held no shares from January 2011 to March 2017. However, the Judge did not accept this confirmation letter because the maximum period for the retrieval of the CDP statements was seven years. Thus, the Husband could have obtained confirmation on his shares from as far back as March 2010, but had not done so.

(c) Third, the Husband's earnings from the Firm in 2006. The Wife claimed that the Husband had received earnings of $1m from the Firm and deposited them into his mother's account in Hong Kong on 28 June 2006. The Husband disputed the amount received but accepted that the sum of $206,761.69 remained unaccounted for.

(d) Fourth, monies spent by the Husband on the Partner. The Wife claimed that the Husband had provided general financial support to the Partner, including but not limited to assisting her in relation to her living expenses, education costs, driving lessons, flights, and the rental of an apartment in Singapore from January to June 2009.

(e) Finally, amounts from the sales proceeds of the Sinai Property that the Husband had withdrawn from their joint account on

> 18 December 2007 to transfer to the Firm's account. The Wife claimed that the Husband had dissipated $270,000 of these sales proceeds but it was eventually common ground that $87,700 remained unaccounted for. The Husband claimed that he had used $76,000 of this remaining sum to pay for his credit card expenses, but the Judge rejected this suggestion.

63 In our judgment, on the basis of the evidence before the Judge, she was justified in drawing an adverse inference against the Husband, the inference being essentially that the Husband's assets exceeded what had been disclosed in the proceedings. The evidence adduced was clearly sufficient to establish a *prima facie* case against the Husband, and the Husband must have had access to the information concerning the items that he had allegedly been slow to disclose information to the court about.

64 As regards how best to give effect to the adverse inference, having rejected the approach adopted by the Judge (see [37]–[40] above), we look instead at the two approaches that are generally relied on by the court in this regard. These are (see *Chan Tin Sun* at [64], *Yeo Chong Lin* at [65] and *NK v NL* at [61]–[62]):

> (a) First, the court may make a finding on the value of the undisclosed assets based on the available evidence and, subject to the party dissatisfied with the value attributed showing that that value is unreasonable, include that value in the matrimonial pool for division.
>
> (b) Second, the court may order a higher proportion of the known assets to be given to the party in whose favour the adverse inference is being drawn.

65 On the facts, the only assets which have been valued are the unaccounted portion of the Husband's earnings from the Firm in 2006, and the unaccounted portion of the amount dissipated from the Sinai Property sales proceeds, which together total $294,461.69. No value can easily be ascribed to the assets in respect of which the Judge has concluded that there has been insufficient disclosure or to the sources of income that the Husband has been found to be hiding. For example, it is difficult to discern precisely how much the Husband has spent on the Partner or how much the Husband truly earns by way of non-variable components of his salary from the Fund or as a director of various other companies.

66 It has been observed in reported decisions that the first approach, which involves ascribing a value to the undisclosed assets and adding that value to the matrimonial pool for division, might not be appropriate where there are numerous undeclared assets, given that ascribing a specific value to these undeclared assets would involve "unnecessary speculation": see *Chan Tin Sun* at [64], *Yeo Chong Lin* at [65] and *NK v NL* at [62]. Hence, in the circumstances, it might appear that it would be more just and equitable and more practical to adopt the second approach, which involves simply ordering a higher proportion of the known assets to the Wife. However, we consider the first approach to be appropriate here for the reasons explained in *Yeo Chong Lin* (at [66]) as follows:

> … In the nature of things, whichever approach the court adopts in such a situation, it is undoubtedly to a large extent speculative; whether it decides to give a value to what it considers to be 'undisclosed assets' or to give a higher percentage of the disclosed assets to the other party. Either approach would translate to giving something more to the other spouse by way of a specific sum. The very fact that the court is confronted with the problem of 'undisclosed assets' means that the position is unclear and far from certain. In the final analysis, it is for the court to decide, in the light of the fact-situation of each case, which approach would in its view best achieve an equitable and just result. What must be clearly

> recognised is that when the court makes such a determination it is not undertaking an exercise based on arithmetic but a judgmental exercise based, in part at least, on feel.

67 In our judgment, on the facts of this case, it would be fair and equitable to give effect to the adverse inference drawn against the Husband on account of his insufficient disclosure of his assets by quantifying the value of the Husband's undisclosed assets and income at about 10% of the value of the assets included in the pool of matrimonial assets. That would correspond to a figure of $3,183,578 (rounded up from $3,183,577.50). In our judgment, the additional $3,183,578 is a fair figure in the circumstances of this case where the Husband has proved himself capable of earning very substantial sums in a relatively short space of time and has also sought to withhold relevant financial information from the Wife and the court. We would add that we have not used this additional amount as part of the Husband's contribution to the asset pool for the purpose of computing the ratio of his contributions to those of the Wife. This is because the additional amount arises from an adverse inference rather than from disclosure by the Husband. He is only entitled to credit in the computation of the ratio for sums which he has disclosed.

68 In the result, adding $3,183,578 to the pool of matrimonial assets on account of giving effect to the adverse inference drawn against the Husband would give us a total pool value of $35,019,353, which is a reduction from the $38,010,639 figure that the Judge had arrived at.

Division of the pool of matrimonial assets

69 Having determined and valued the pool of matrimonial assets, we turn to address the issues concerning the division of the pool.

70 It is well established that the structured approach towards the division of matrimonial assets requires the court to: (a) first, ascribe a ratio that represents each party's direct contributions relative to those 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; (b) second, ascribe a second ratio to represent each party's indirect contribution to the well-being of the family relative to that of the other throughout the marriage; and (c) third, using each party's respective direct and indirect percentage contributions, derive each party's average percentage contribution to the family that would form the basis to divide the matrimonial assets (*ANJ v ANK* at [22]; see also *Twiss, Christopher James Hans v Twiss, Yvonne Prendergast* [2015] SGCA 52 at [17]) ("the *ANJ* Approach").

71 We now proceed to address issues that arise in respect of each step of the *ANJ* Approach.

(1) Attribution of direct contributions to the Home

72 In the GD, the Judge, in ultimately fixing the direct contributions to the purchase of the Home to the parties in the ratio of 22:78 in favour of the Wife, held that the net cash proceeds from the sale of the Sinai Property were to be attributed 17:83 in favour of the Wife.

73 The Husband submits that the ratio of direct contribution between the parties in respect of the Home should be 40:60 in favour of the Wife. On his calculations, the Wife's direct contributions to the property totalled $1,980,000, while his own totalled $1,320,000.

74 First, the Husband contends that the profits from the sale of matrimonial properties ought to first be divided equally between the parties before the

balance of the sale proceeds are divided between the parties in accordance with their respective direct contributions. The Husband cites the decision of this court in *NK v NL* as authority for the proposition that profits from the sale of any matrimonial property during the marriage do not need to be attributed to parties in accordance with their direct financial contributions towards the said property.

75 In our judgment, the Husband's reliance on *NK v NL* is misplaced. In *NK v NL*, this court overturned the decision of the High Court judge to award the wife only 23% of the matrimonial home, which comprised about 8% direct contribution (from the wife's CPF contributions to the home) and 15% indirect contribution (in recognition of the wife's role as main caregiver of the children and as a homemaker). The High Court judge had erred in failing to take into account the fact that the sale proceeds from the sale of the previous two properties that the husband and wife had jointly owned had been ploughed back into the purchase of the current matrimonial home. The court thus allowed the wife's appeal, increasing her share of the matrimonial home to 40% in order to give due recognition to her financial contribution to the current home in the form of using part of those earlier sale proceeds as direct contribution (at [48]). Crucially, the court only referred to the *profits* from the sale of the earlier properties because the parties lacked any documentary evidence regarding the *actual sale proceeds* collected, and could only estimate the total profits made from the respective sales (*ie*, $100,000 for the first property and $200,000 for the second property) (at [4]). Accordingly, *NK v NL* does *not* in fact support the Husband's case that where a previous property is held in joint tenancy and is sold, the profits of the sale are to be divided equally before splitting the balance of the sale proceeds according to the parties' respective direct contributions.

76 In any event, leaving *NK v NL* to one side, it also appears, as a matter of principle, fair and just for the Judge to attribute the profits made from the sale

of previous matrimonial properties to each party in accordance with their respective direct contributions made. In our view, at this stage of the division process, the court should quite rightly be concerned *only* with the parties' respective *direct* contributions. The court should *not* be concerned with the parties' respective indirect contributions because these would be considered at the next stage of the division process. Nor should the court be obliged to attribute the profits made from the sale of any previous matrimonial property *equally* between the parties just because the property had been held in joint tenancy, given that this would not be accurately reflecting the parties' direct contributions.

77 Next, the Husband submits that the Judge erred in using the current valuation of the Home (*ie*, $3,950,000) as a basis for the figures to be attributed to both parties in respect of their direct contributions towards it. According to the Husband, the Judge should have taken the parties' actual payments towards the acquisition of the Home instead, given that it has yet to be sold and there is evidence of the actual direct contributions made by the parties towards its purchase. The Judge's reliance on the current valuation, which is a substantial increase from the original purchase price, has resulted in an overvaluation of the Wife's direct contributions.

78 The Husband cites the decision of the High Court in *AZZ v BAA* as authority that the Judge should have used the parties' historical actual contribution towards the acquisition of the Home, and not the present net value of the property. We do not accept this for two reasons.

79 First, $3,950,000 is a figure representing the value of the Home that the parties are in agreement on. The parties never raised any issue as regards the

Judge's reliance on this figure to calculate the parties' respective direct contributions. It is now too late for the Husband to protest the use of this figure.

80 Second, in any event, *AZZ v BAA* does not stand for the proposition that the court is *obliged* to use the parties' historical actual contribution instead of the present value of the asset. Rather, as Vinodh Coomaraswamy J explained, the parties' historical actual contributions to the matrimonial home were used in *AZZ v BAA* because the court had evidence of those figures, and the present figures were greatly inflated due to substantial capital gains – the value of the matrimonial home had increased *more than threefold* from $2.92m in late 2003 to $9.37m in June 2014 (see *AZZ v BAA* at [140] and [192]). Here, while there has been an increase in value of the Home from $3,100,000 to $3,950,000, this increase is not so exceptional as to warrant a finding that the Judge should have relied on the original figure.

81 Therefore, we are not inclined to disturb the Judge's finding that the Wife's direct contribution towards the purchase of the Home amounted to 78% of the acquisition cost.

82 In any event, the Husband's calculations, even if accepted, would not help him as much as he thinks. If the parties' contributions were taken as $1,980,000 (Wife) and $1,320,000 (Husband), this would not only change the value of the Home but it would also change the ratio of the parties' respective direct contributions. It would mean a total value of $31,185,775, to which the parties would have contributed in the ratio 88.83:11.17 in favour of the Husband. This is very little different from the ratio of 87.94:12.06 found by the Judge or even the ratio of 85.60:14.40 that we came to in [58] above. And what is the practical result of all these small differences in figures? In our view, nothing. It must be remembered that division of matrimonial assets is a broad

brush affair. It is impossible to attribute exact figures even to direct contributions over years of marriage let alone to indirect ones. We have previously said that this court will not interfere to make minute adjustments and this case is a good example of a situation in which it would be wrong to fiddle around so finely with the figures and percentages as the impact of such fine-tuning would not only be relatively insignificant in monetary terms but would also wrongly encourage parties to waste time in the courts on pernickety details when they should be getting on with their lives.

(2) Attribution of indirect contributions

83 In the GD, the Judge determined that the indirect contributions of the parties should be weighted 35:65 in favour of the Wife. In arriving at this conclusion, the Judge considered the following:

> (a) The parties' relocation to the States in 1999 to further their studies should not be regarded as a career sacrifice on the Wife's part, given that it was more likely that both were simply pursuing their respective interests in furthering their studies (see [6] above).
>
> (b) The Wife had to endure IVF procedures in 2001 to conceive their first child.
>
> (c) The Wife bore the main care-giving responsibilities for the Children and these increased when the Husband began to travel more frequently to Shanghai with the inception of the Fund, and even more so when the Husband was based in Shanghai on a full-time basis.
>
> (d) In the earlier years when the Husband's income was still uncertain and variable, the Wife contributed more to the family finances (see [7] above).

84 During the oral hearing, the Husband contended that the indirect contribution made by him should be given a higher value than the 35% that the Judge attributed to him. To this end, the Husband submitted that after the Divorce Proceedings were commenced, he had effectively been kept out of the Children's lives by the Wife. By changing the locks of the Home, she had denied the Husband access to the Children (see [13] above).

85 In our judgment, the Judge was correct to determine the ratio of indirect contributions between the Husband and the Wife to be 35:65 in favour of the Wife, and the Husband's allegation that the Wife had kept him out of the Children's lives does not change this determination.

86 This court held in *Chan Tin Sun* that the court may take into consideration the misconduct of either party in determining what would be a just and equitable division of matrimonial assets under the Charter *only if* the conduct is *extreme* (*ie*, manifestly serious) and *undisputed*, given that "the hearing of the ancillaries is *not* intended to be another forum for parties to dredge up accusations and allegations relating to each other's conduct" [emphasis in original], and the "court is not equipped to scrutinise the conduct of the parties to assign blame, nor should it be so in light of the no-fault basis of divorce embodied within the [Charter]" (at [25]). And the court may exercise its discretion in this regard by "ascribing a negative value to a spouse's misconduct" (at [27]).

87 Applying this test to the present facts, it is evident that the allegations against the Wife here do not justify ascribing a negative value to the Wife's misconduct. Although the Judge found that the Wife had changed the locks of the Home after filing for divorce, there was no finding by the Judge that the Wife had ever obstructed the Husband in his attempts to obtain access to the

Children. In any event, taking the Husband's case at its highest, even if the Wife could be considered to have obstructed the Husband's access to the Children, this conduct still falls some way short of the level of misconduct needed in order to justify the ascription of a negative value to the impugned conduct.

88 In *Chan Tin Sun*, the alleged misconduct was significantly graver – the wife had embarked on a premeditated course of action to inflict harm on the husband by systematically poisoning him. The court found that the wife's misconduct was "*so extreme and undisputed* that it fell to be considered in determining what would be a just and equitable division of the matrimonial assets" [emphasis in original] (at [54]). This was because it was the type of conduct that "not only makes no contribution to the welfare of the family but also fundamentally undermines the co-operative partnership and harms the welfare of the other spouse". Thus, the court ascribed a negative value to the wife's conduct (at [55]). The misconduct in that case was clearly several times more serious than what the Wife here has been accused of. We therefore see no reason to disturb the Judge's assessment of the Husband's indirect contributions to the marriage.

(3) Weightage between direct and indirect contributions

89 The *ANJ* Approach generally proceeds on the basis that the direct contributions and indirect contributions made by both parties carry *equal* weight, but that the presence of some factors may require the calibrating of the "average ratio" in favour of one party to produce a just and equitable result: *ANJ v ANK* at [26]. The circumstances that could shift the "average ratio" include: (a) the length of the marriage (in that indirect contributions generally tend to feature more prominently in long marriages); (b) the size of the pool of matrimonial assets and its constituents (in that if the pool of assets available for

division is extraordinarily large and the whole pool was accrued by one party's exceptional efforts, direct contributions are likely to command greater weight as against indirect contributions); and (c) the extent and nature of indirect contributions made (at [27]).

90 In *TNL v TNK*, this court clarified that the *ANJ* Approach works well in marriages where both spouses are working and are thus able to make both direct and indirect financial contributions to the household (*ie*, dual-income marriages) (at [42]). However, the *ANJ* Approach should not be applied to marriages where one spouse is the sole income earner and the other plays the role of homemaker (*ie*, single-income marriages) (at [43]–[46]). The court then observed and affirmed the trend of the courts tending towards an equal division of matrimonial assets in long single-income marriages (at [48]). Finally, the court also highlighted that different considerations would apply in short single-income marriages, but left the content of these considerations to be addressed on another occasion since this issue did not arise on the facts of that case (also at [48]).

91 The Judge determined that the weightage between direct contributions and indirect contributions should be assessed to be 60:40 in favour of direct contributions, given that "a very large proportion of the pool had been contributed by [the Husband]". The Husband challenges this finding, submitting that the facts of this case warrant an adjustment of the weightage between direct contributions and indirect contributions to at least 70:30. The Wife too challenges the Judge's decision in this regard, submitting that equal weight should be given to both types of contributions.

(A) THE HUSBAND'S APPEAL

92 We turn first to address the Husband's Appeal on this issue. The Husband argues in favour of a 70:30 weightage in favour of direct contributions on the grounds that:

(a) there were no children for the first half of the marriage when both parties were focused on their careers;

(b) the Wife had enjoyed a rather successful career, such that this was not a case involving a full-time homemaker requiring greater weight to be placed on indirect contributions;

(c) the Husband was effectively kept out of the Children's lives by the Wife after the Divorce Proceedings were commenced; and

(d) a very large proportion of the matrimonial assets comes from the Husband's shares and share options in the Fund.

93 In our judgment, none of the arguments raised by the Husband warrant the adjustment of the weightage between direct contributions and indirect contributions as decided by the Judge.

94 First, the Husband's observation that there were no children for the first half of their marriage is neither here nor there – it does not indicate that there is a need to adjust the weightage either way to promote a more just and equitable outcome.

95 Secondly, *TNL v TNK* clarified that whether or not a marriage is dual- or single-income simply affects whether the *ANJ* Approach applies in the first place. Accordingly, we take the view that the Husband's observation that the

Wife had enjoyed a rather successful career is also neutral – it merely goes to show that the Judge was correct to apply the *ANJ* Approach.

96 Thirdly, in respect of the Husband's allegation that he had effectively been kept out of the Children's lives by the Wife, we first reject the Wife's broad submission that the conduct of parties can have no relevance whatsoever to an assessment of the weightage between direct contributions and indirect contributions. The Wife's contention that *Chan Tin Sun* cannot be applied to the particular context of deciding the weightage between direct contributions and indirect contributions misses the point, given that this is essentially the third step of the *ANJ* Approach, which in turn is part of the overall exercise of assessing what would constitute a just and equitable division of matrimonial assets under s 112(1) of the Charter. Having said that, we consider that this allegation should have no effect on the weightage between direct contributions and indirect contributions for the reasons that we have already canvassed earlier when dealing with this allegation.

97 Fourthly, the Husband's final observation that a very large proportion of the matrimonial assets comes from his shares and share options in the Fund also does not assist him, given that this was *precisely* the factor that the Judge had already considered in exercising her discretion in deciding that the weightage ought to be 60:40.

98 Accordingly, the Husband's Appeal cannot succeed in this regard.

(B) THE WIFE'S APPEAL

99 Turning to the Wife's Appeal, the Wife submits that the weightage between direct contributions and indirect contributions should be equal because:

(a) direct contributions should only be given greater weightage in cases involving long single-income marriages with exceptionally large asset pools, and *not* merely when the assets are substantial and one party is largely responsible for the extraordinarily large pool of assets;

(b) neither party contended for an unequal weightage of the two components in the proceedings below;

(c) the Wife's contributions were not confined to the domestic sphere; and

(d) the Wife had contributed consistently throughout the marriage, allowing the Husband to establish and flourish in his career.

100 In our judgment, none of the Wife's contentions have any merit. First, and most fundamentally, the rule that the Wife propounds reflects a misunderstanding of the mechanics of the *ANJ* Approach and the clarification on long single-income marriages in *TNL v TNK*. The Wife submits that direct contributions should *only* be given greater weight in cases involving long single-income marriages with exceptionally large asset pools, like in the case of *Yeo Chong Lin*. We do not think that this court had intended for the situations in which the weightage between direct and indirect contributions may be varied to be so narrowly restricted. In *TNL v TNK*, this court, in clarifying (at [48]) that the courts generally tend towards an equal division of matrimonial assets in cases involving long single-income marriages, observed that *Yeo Chong Lin* was quite unlike the other long single-income marriages cited thus far (at [52]):

> One seeming outlier to these cases would be this court's decision in *Yeo Chong Lin* …, which involved a 49-year marriage. The husband was the breadwinner and the wife was a full-time homemaker throughout the entire marriage. This court upheld (at [82]) the High Court's 65:35 distribution in

> favour of the husband. *However, that was a unique case and it is clear that a major factor that featured in the analysis was the exceptionally large size of the asset pool, which amounted to around $69m.* In our view, this factor distinguishes *Yeo Chong Lin* from the present appeals. [emphasis added]

101 It is thus clear that *Yeo Chong Lin* is meant to be an exception to the general rule for long single-income marriages laid down in *TNL v TNK* (at [48]). Accordingly, in so far as the Wife is suggesting that only cases such as *Yeo Chong Lin* can, as a general rule, fall within one of the broad criteria of cases that may be identified under the *ANJ* Approach where direct contributions may be given greater weight, the Wife's proposed rule is circular and not feasible.

102 Put another way, according to the existing framework laid out in both *ANJ v ANK* and *TNL v TNK*, one must first enquire whether the marriage is a long single-income or dual-income marriage. If it is the former, then the approach in *TNL v TNK* applies, and the court will generally tend towards equal division, except if the marriage involves an exceptionally large matrimonial asset pool, like in *Yeo Chong Lin*, when it will be treated as an exception to the norm of equal division. If it is the latter, then the *ANJ* Approach will apply, and a whole host of possible factors might ultimately lead the court to find that direct contributions ought to be given greater weight than indirect contributions. For this reason, in so far as the rule proposed by the Wife would restrict the degree of discretion of the court currently afforded under the *ANJ* Approach to arrive at a finding that greater weight ought to be placed on direct contributions as compared to indirect contributions, it cannot be accepted. The entire inquiry is still intended to revolve around a broad brush approach that "strike[s] a proper balance between the search for a principled test and the need to remain sensitive to the factual nuances of each case": see *ANJ v ANK* at [25] and [30].

103 Second, we find the Wife's submission that neither party had contended for an unequal weightage of the two components in the proceedings below to be entirely irrelevant. In our view, under the *ANJ* Approach, the court will never be precluded from exercising its discretion to consider whether the weightage between direct and indirect contributions ought to be re-calibrated, regardless of the parties' submissions. This is because the *ANJ* Approach is essentially an approach to guide the court's exercise of its powers of matrimonial division to achieve a just and equitable result under s 112(1).

104 As for the Wife's third and fourth submissions, while we accept that finding that the Wife had been consistently involved in making indirect contributions to the marriage might serve to shift the weightage in favour of indirect contributions, such contributions are surely factors that the Judge had already taken into consideration when she decided the weightage between direct contributions and indirect contributions should be 60:40 in favour of direct contributions. In any event, evaluating the merits of these factors as a matter of principle, the fact that the Wife has *both* been active in her career on the one hand, and actively caring for her children and tending to the household on the other, would arguably suggest that there ought to be a slight shift of the ratio in favour of direct contributions, given the undeniably huge direct contributions made by the Husband.

105 Taking all these considerations in the round, there thus appears to be no good basis on which to make any adjustment to the ratio that the Judge has ordered.

Maintenance for the Children

106 Finally, we address the Husband's Appeal against the orders made regarding maintenance for the Children. In effect, the Judge divided the expenses of the Children between the parties on a 75:25 basis, with the Husband bearing the higher share. The general expenses were quantified at $14,617 per month. The Husband's 75% share came to $10,962.75, which the Judge rounded up to $11,000. As for the Children's school fees, related education expenses and the first child's growth hormone expenses, the Judge ordered the Husband to either bear 75% of the same directly or to reimburse the Wife to that extent. In arriving at the sum of $11,000, the Judge took the Children's share of the household expenses to be $5,374 and the other reasonable expenses for the Children (excluding school fees) to be $9,243, and imposed a 75% share of the Children's maintenance on the Husband on account of the adverse inference drawn against the Husband in respect of his failure to be forthright in disclosing the full magnitude of his income.

107 The Husband submits that he should be ordered to pay the Wife: (a) 50% of the Children's share of the household expenses and other reasonable expenses for the Children, which amounts to $5,157.67 per month in child maintenance (excluding school fees); and (b) 50% of the Children's school fees, related education expenses and the first child's growth hormone expenses. He first argues that the figures for the household and other reasonable expenses that the Judge had adopted were too high. In place of the Judge's figures, he proposes that the Children's share of the household expenses be quantified at $4,267.33, while the other reasonable expenses for the Children (excluding school fees) should be quantified at $6,603.34. Half of these figures would come up to a total of $5,435.34.

108 In our judgment, there is no reason to vary the amounts adopted by the Judge in making her orders regarding the maintenance for the Children.

109 In the first place, s 114(2) of the Charter states as follows:

> **Assessment of maintenance**
>
> **114.—** …
>
> (2) In exercising its powers under this section, the court shall endeavour so to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

110 Prior to the breakdown of the parties' marriage, the Husband had been paying $16,374 per month as general maintenance for the family and all of the Children's school fees. Accordingly, by ordering the Husband to pay only $11,000 plus 75% of the children's education and other expenses, the Judge was, in accordance with s 114(2) of the Charter, merely imposing upon the Husband the financial obligations and responsibilities that he had been assuming for the family prior to the breakdown of the marriage. There is therefore nothing remarkable about the maintenance orders made by the Judge. We also see no basis on which to upset the Judge's quantification of the Children's expenses.

111 The Husband also submits that the Judge should have ordered the parties to each bear half of all expenses incurred for the Children because both parties have a joint and equal obligation to maintain their children under s 68 of the Charter. We do not accept that s 68 mandates such a result. Although parents do indeed share an equal responsibility for looking after their children, this ought not to necessarily translate into each parent bearing an equal share of the burden to provide maintenance for their children. This is because the extent of the duty

to provide maintenance rests on a host of factors as enumerated by s 114(1) of the Charter:

> (*a*) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
>
> (*b*) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
>
> (*c*) the standard of living enjoyed by the family before the breakdown of the marriage;
>
> (*d*) the age of each party to the marriage and the duration of the marriage;
>
> (*e*) any physical or mental disability of either of the parties to the marriage;
>
> (*f*) the contributions made by each of the parties to the marriage to the welfare of the family, including any contribution made by looking after the home or caring for the family; and
>
> (*g*) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring.

It was therefore open to the Judge to consider other factors, including the relative circumstances of both parties, in making the maintenance orders.

112 Finally, the Husband submits that if we are not with him on his appeal regarding the division of the matrimonial assets, the Wife would thereby be significantly enriched by the ancillary proceedings. Hence, the "sheer amount of assets that the Wife would receive from the division of assets makes it fair and equitable for both parties to share the [C]hildren's expenses equally". Contrary to the Husband's submission, however, the division of the matrimonial assets should not be a consideration that affects the determination of

maintenance for the Children. In this regard, the following observations of this court in *AUA v ATZ* (at [48]) are worth reproducing:

> Where the court is considering the issue of division of assets, the focus is on the *proprietary entitlements* of the parties to the marriage *inter se*. No interests of third parties like children are at stake. It therefore stands to reason that any agreement which has been freely and voluntarily entered into by the parties upon legal advice should be almost determinative of the outcome and the role of the court is greatly circumscribed: it is there only to ensure that the agreement would not effect injustice. In contrast, **where the court is considering the issue of maintenance for the child, the focus of the court's inquiry is the *financial needs of the child*** – *a third party* who had no say in the conclusion of the agreement but whose interests are nevertheless directly implicated. In this context, the court assumes a more prominent custodial role and **the overriding objective is that the welfare of the child must be safeguarded** and adequate provision must be made for his/her upkeep. [emphasis in original in italics; emphasis added in bold]

Accordingly, the Husband's contention that maintenance for the Children should be reduced because the Wife is already receiving a substantial amount of assets through matrimonial division is a *non sequitur*, and must be rejected.

Conclusion

113 For these reasons, we dismiss the Wife's Appeal and allow the Husband's Appeal in part. In the result, we make the following orders:

(a) The pool of matrimonial assets to be divided between the parties shall be reduced to $35,019,353.

(b) The ratio for the division of the matrimonial assets shall remain at 66.76:33.24 in favour of the Husband.

(c) The Wife's share of the assets at 33.24% thereof accordingly works out to $11,640,432.94 and as the Wife has assets in her hands

worth $1,665,390 and wishes to retain the Home valued at $3,950,000, the Husband shall pay her the sum of $6,025,043 (rounded up from $6,025,042.94).

(d) The terms of payment shall be that the Husband shall pay the Wife $2m within two months hereof and the balance by equal monthly instalments on the last business day of each month commencing on 30 April 2019 such that the said sum of $6,025,043 is paid in full by the end of September 2021. Unpaid instalments shall carry interest as prescribed by the Judge. In the event that the Husband has already made part payment to the Wife, the parties shall be at liberty to apply by letter to the Court for the payment schedule to be adjusted.

(e) The maintenance orders made by the Judge in respect of the Children shall stand as ordered.

(f) Each party is to bear his or her own costs for the cross-appeals.

Andrew Phang Boon Leong Judge of Appeal	Judith Prakash Judge of Appeal	Belinda Ang Saw Ean Judge

Johnson Loo Teck Lee and VM Vidthiya (Drew & Napier LLC)
for the appellant in Civil Appeal No 226 of 2017 and the respondent in Civil Appeal No 227 of 2017;
Koh Tien Hua and Chew Wei En (Eversheds Harry Elias LLP)
for the respondent in Civil Appeal No 226 of 2017 and the appellant in Civil Appeal No 227 of 2017.