IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2020] SGHCF 16

Divorce (Transferred) No 4694 of 2017

Between

VIG

… *Plaintiff*

And

VIH

… *Defendant*

JUDGMENT

[Family Law] — [Custody] — [Access]
[Family Law] — [Custody] — [Care and control]
[Family Law] — [Matrimonial assets] — [Division]
[Family Law] — [Maintenance] — [Child]
[Family Law] — [Maintenance] — [Wife]

TABLE OF CONTENTS

VIG
v
VIH

[2020] SGHCF 16

High Court (Family Division) — Divorce (Transferred) No 4694 of 2017
Tan Puay Boon JC
23, 24 October 2019, 31 March, 30 July, 18 September 2020

13 October 2020 Judgment reserved.

Tan Puay Boon JC:

Introduction

1 The plaintiff ("Husband") and the defendant ("Wife") (collectively "the parties") were married on 1 October 2005 in France.[1] They have two daughters, born in 2006 and 2016 respectively[2] (I refer to the older child as "Child A", and the younger child as "Child B", and collectively as "the Children"). The parties separated in March 2017[3] and the Husband filed a writ for divorce on 9 October 2017. Interim Judgment ("IJ") was granted on 26 January 2018, on the ground that the Wife has behaved in such a way that the Husband cannot reasonably be expected to live with her, and *vice versa*. This ended a marriage of 12 years.

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1 Statement of Claim for Divorce at para 1.

2 Husband's 1st AOM Affidavit dated 17 August 2018 ("H AOM1") at para 4.

3 Statement of Particulars at para 1(h).

2 The matters that lie for my determination are the division of matrimonial assets, custody, care and control of the Children, maintenance for the Wife and the Children, and costs.

Background facts

3 The Husband is 47 years old this year. He is a French national and a Singaporean Permanent Resident. At the time of the ancillary matters ("AM") hearings, he was the non-executive chairman of Company [X], which he had founded in 2009 and in which he was previously the Chief Executive Officer.[4] He has been working throughout the marriage. 95% of the shares in Company [X] were sold to a buyer in 2017, for US$17m. Under certain clauses of the Share Purchase Agreement ("SPA"), he also obtained a further pay-out of US$3m for meeting certain targets. Some other entitlements under the SPA are the subject of dispute.

4 The Wife is 46 years old this year. She is a Singaporean national. At the time of the AM hearings, she was a homemaker. However, prior to that, she was working as a lawyer. She worked for about a year while in France,[5] and also worked from 2009 to 2013 in Singapore.[6]

5 The parties were married in France in 2005 and lived there from 2005 to early 2009. In early 2009, the Wife moved to Singapore with Child A first, followed by the Husband.[7] At first, they rented a condominium unit in Bishan,

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4 H AOM1 at p 5.

5 Wife's 2nd AOM Affidavit dated 4 July 2019 ("W AOM2") at para 62; H AOM1 at para 19.

6 Wife's 1st AOM Affidavit dated 23 August 2018 ("W AOM1") at paras 24, 25.

7 W AOM 1 at para 24.

then moved to Ang Mo Kio, before renting an apartment near Orchard Road in 2014 ("the Orchard unit"). The Husband left the Orchard unit in March 2017, while the Wife and Children remained there until June 2019, when they moved to an apartment near Newton ("the Newton unit").[8] While these various units were rented, the Husband had also purchased a property near Tanglin ("the Tanglin property") in 2013 in his sole name.[9] The parties also own a property in France ("the French property") which they had purchased in 2006.[10]

6 In FC/SUM 3462/2017, the Husband applied for interim orders pertaining to the custody, care and control of the Children. The learned District Judge made certain orders and the parties also agreed to certain terms as recorded in the Order of Court dated 24 September 2018 (FC/ORC 4982/2018 ("ORC 4982/2018")). I allowed an appeal against the orders pertaining to weekend access in HCF/RAS 22/2018 ("RAS 22/2018"). The orders were subsequently varied by the District Judge pursuant to an application in FC/SUM 1221/2019 (the appeal in HCF/RAS 23/2019 ("RAS 23/2019") against the variation was dismissed). In gist, the interim orders provide that the Husband and Wife share joint custody, with the Wife granted care and control and the Husband granted access.

7 I note also for completeness that the Wife had applied in HCF/SUM 89/2020 ("SUM 89/2020") for additional evidence to be adduced in the AM proceedings. The evidence touched on the Husband's new relationship, his relationship with the Children, and his new business venture. I allowed the

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8 Minute Sheet 23 October 2019 at p 7.

9 H AOM1 at para 20.

10 H AOM1 at para 20.

affidavits of both parties in that summons to stand as evidence for the AM proceedings. I reserved costs of SUM 89/2020 to be dealt with together with the AM proceedings.

Division of matrimonial assets

8 I first consider the division of the parties' matrimonial assets under s 112(1) of the Women's Charter (Cap 353, 2009 Rev Ed) ("WC").

9 There are two methodologies of dividing matrimonial assets, as set out in *NK v NL* [2007] 3 SLR(R) 743 ("*NK*") at [31]–[33]: the global assessment methodology and the classification methodology. The global assessment methodology comprises four distinct steps: identification, valuation, division and apportionment (of the matrimonial assets). On the other hand, the classification methodology first divides the matrimonial assets into separate classes before applying the four steps above in relation to each class of assets.

10 Both the Husband and the Wife accepted that the global assessment methodology should be applied in the present case.[11] As I see no reason to apply the classification methodology in this case, I will adopt the global assessment methodology.

Identification and valuation of the matrimonial assets

Operative dates for identification and valuation

11 The starting position for the date of the identification of matrimonial assets is the IJ date, *ie,* 26 January 2018 (*ARY v ARX and another appeal* [2016]

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11 Minute Sheet 23 October 2019 at p 2.

2 SLR 686 ("*ARY*") at [31]). Both parties accepted that the IJ date is the appropriate operative date for identification of the matrimonial assets and[12] there is no reason for me to depart from this.

12 As for valuation of the matrimonial assets, the default position is that they should be valued at the date of the first AM hearing, *ie,* 23 October 2019: *TDT v TDS and another appeal and another matter* [2016] 4 SLR 145 ("*TDT*") at [50]. The Husband did not, in fact, dispute this. The argument that he proposed was narrower and focused on the bank and CPF accounts, arguing that those assets should be valued at the IJ date because "the [matrimonial assets] are the moneys and not the bank and CPF accounts themselves": *BUX v BUY* [2019] SGHCF 4 at [4]. The Wife's argument appears to have focused on the fact that many of the portfolios identified by the Husband above consisted not just of bank accounts, but various holdings in unit trusts, shares, and securities.[13]

13 I agree with the Husband that the bank and CPF accounts should be valued as of the IJ date. The assets are not the accounts themselves, but the moneys in the accounts. Money is, in that sense, distinct from the other categories of assets, because its "value" is, for the purposes of the division exercise, simply the amount of money that is available.

14 Originally, a significant dispute between the parties was in relation to the valuation of various portfolios that the Husband had kept his assets in. These were referred to as the "UOB Portfolio", "Indosuez Portfolio", "UBS Portfolio", and "DBS Portfolio". The same issue arose in relation to the parties' Joint DBS

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12 Minute Sheet 23 October 2019 at p 2.

13 Minute Sheet 23 October 2019 at p 2.

Account No ending in 9686 ("DBS Account 9686"). These are mixed portfolios, in that they include bank accounts and various investment assets. As a matter of principle, therefore, I considered that the IJ date ought to be used to value the bank accounts and their balances, while the AM date ought to be used to value the assets. As there was little information concerning the latter, I had asked the Husband to provide documents for the valuation of the assets at the AM date and to correspond with the Wife accordingly. Subsequently, counsel from both sides came to an amicable agreement on how these portfolios were to be treated. As indicated in a letter dated 20 August 2020 to the court, parties agreed to use the IJ date to value the above portfolios and DBS Account 9686. As such, I have treated these assets as agreed assets with agreed valuations, utilising the undisputed documentary evidence to arrive at the value of these assets closest the IJ date, with the exception of the UOB Portfolio, in respect of which the Wife had raised other objections and sought an adverse inference to be drawn for allegedly dissipated assets. I treat the UOB Portfolio under the section on agreed assets with disputed valuations.

15 I deal with the identification and valuation of the matrimonial assets in the following categories: (a) agreed assets with agreed valuations; (b) agreed assets with disputed valuations; and (c) disputed assets.

Exchange rates

16 Where there are foreign currencies involved, I adopt the exchange rates employed by the parties as follows:[14]

(a) €1 = S$1.51967; and

[14] Joint Summary of Relevant Information ("JSRI") dated 14 September 2020 at p 8.

(b) US$1 = S$1.37506.

Agreed assets with agreed valuations

17 The agreed assets with agreed valuations are set out in the table below (the values listed throughout this Judgment are the nett values of the property unless otherwise stated). I have included in the table the agreed deductions from the Husband's assets (whether because they are agreed liabilities or because the parties have agreed to exclude them from the pool of matrimonial assets), but have excluded from it the declared assets that are valued at S$0, and as these do not figure in the division exercise, I do not refer to them throughout this Judgment.

S/No	Description	Value
Joint Assets		
1.	DBS Account 9686 consisting of: a) DBS Autosave Account No ending in 9686 b) Templeton Global Bond A Mdis SGD (Unit Trust) c) Aberdeen SP Pacific Eq SGD (Unit Trust)	S$410,621.74[15]
Wife's Assets		
2.	Aviva Policy No ending in 8742	S$35,766.93[16]
3.	LCL Assurance Policy	€15,000

15 H AOM1 at p 373

16 JSRI at p 14.

S/No	Description	Value
		~ S$22,795.05[17]
4.	SingTel Shares	S$401.70[18]
5.	CPF Ordinary Account	S$201,977.01[19]
6.	CPF Medisave Account	S$50,368.38[20]
7.	CPF Special Account	S$73,577.71[21]
Husband's Assets		
8.	Aviva Policy No ending in 4324	S$26,546.80[22]
9.	Aviva Policy No ending in 3334	S$36,523.05[23]
10.	Transamerica Policy No ending in 2988	US$248,081[24] ~ S$341,126.26
11.	Manulife Policy No ending in 6809	US$221,470.50[25] ~ S$304,535.23
12.	Manulife Policy No ending in 8450 (Child B)	S$32,381.47[26]

17 JSRI at p 14.

18 JSRI at p 14.

19 JSRI at p 15.

20 JSRI at p 15.

21 JSRI at p 15.

22 JSRI at p 19.

23 JSRI at p 19.

24 JSRI at p 19.

25 JSRI at p 19.

26 JSRI at p 19.

S/No	Description	Value
13.	Palatine Assurance (Child A)	€23,000[27] ~ S$34,952.41
14.	Palatine Assurance Policy No ending in 3494	€123,000[28] ~ S$186,919.41
15.	Indosuez Portfolio	US$4,500,000.00[29] ~ S$6,187,770.00
16.	UBS Portfolio	US$9,148,795.00[30] ~S$12,580,142.05
17.	DBS Portfolio comprising of: a) DBS Savings Account No ending in 5704 b) DBS Foreign Currency Fixed Deposit Account No ending in 4031 c) DBS Autosave Account No ending in 9976 d) DBS Portfolio ending in 6040 holding Schroder Singapore Trust Fund – Class SGD A Distribution	S$342,563.13[31]
18.	Propseller Shares	S$81,000.00[32]

27 JSRI at p 19.

28 JSRI at p 19.

29 JSRI at p 23; H AOM1 at p 526.

30 JSRI at p 24.

31 JSRI at p 25; H AOM1 at p 932.

32 JSRI at p 26.

S/No	Description	Value
19.	Krak Inc Shares	S$47,950.00[33]
20.	Followcorp Shares	S$47,660.00[34]
21.	Company [X] Shares (5%)	US$1,052,631.58[35] ~ S$1,447,431.58
22.	US$3m adjustment for sale of Company [X] (less amount invested)	US$2,000,000.00[36] ~ S$2,750,120.00
23.	Investment in WatchBanQ Group	US$1,000,000.00[37] ~ S$1,375,060.00
24.	S$300,000 loan repayment	S$300,000.00[38]
25.	Less Amex Credit Card Debt	(S$18,825.08)[39]
26.	Less DBS Credit Card Debt	(S$14,730.07)[40]
27.	Less Air France Credit Card Debt	(€70.54)[41] ~ (S$107.20)
28.	Less inheritance	(€75,000)[42]

33 JSRI at p 26.

34 JSRI at p 26.

35 JSRI at p 27.

36 JSRI at p 33.

37 JSRI at p 35.

38 JSRI at p 35.

39 JSRI at p 36.

40 JSRI at p 36.

41 JSRI at p 36.

42 JSRI at p 35.

S/No	Description	Value
		~ (S$113,975.25)

18 I note for completeness that the parties have agreed to exclude two POSB accounts that are jointly held by the Husband and Child A, and by the Husband and Child B respectively. I do not deal with these further.[43]

Agreed assets with disputed valuations

19 The assets agreed to be matrimonial assets, but with disputed valuations, are set out as follows, together with the court's conclusions on valuation:

S/No	Description	Husband's valuation	Wife's valuation	Court's valuation
Joint Assets				
1.	Joint Palatine Account[44]	€760.40 ~ S$1,155.56	€3,995.03* ~ S$6,071.13*	€760.40 ~ S$1,155.56
Wife's Assets				
2.	Security deposit from Orchard unit[45]	S$27,609.00	S$0	S$27,609.00
3.	POSB Account No ending in 8146 ("POSB Account 8146")[46]	S$7,388.68	S$417.15/ S$33,294.25*	S$7,388.68

43 JSRI at p 17.

44 JSRI at p 11.

45 JSRI at p 13.

46 JSRI at p 14.

S/No	Description	Husband's valuation	Wife's valuation	Court's valuation
Husband's Assets				
4.	UOB Portfolio[47]	S$6,317,384.29	S$15,728,523.38	S$6,317,384.29
5.	CPF Ordinary Account[48]	S$55,690.91	S$55,690.91*	S$55,690.91
6.	CPF Medisave Account[49]	S$47,039.63	S$47,039.63*	S$47,039.63
7.	CPF Special Account[50]	S$42,605.67	S$42,605.67*	S$42,605.67
* Indicates that the valuations proposed by the Wife are based on the documents available and are not final.				

(1) Joint Palatine Account

20 Given that this is a bank account, I adopt the Husband's valuation of €760.40 (~ S$1,155.56), being the balance of the account closest to the IJ date,[51] as the appropriate valuation.

(2) Security deposit

21 The security deposit for the Orchard unit tenancy, which was paid by the parties before the breakdown of the marriage, is a matrimonial asset, as it should be returned to both parties. It has since been returned to the Wife's bank accounts after the IJ date, which means that it has not been accounted for in the

47 JSRI at p 20.

48 JSRI at p 31.

49 JSRI at p 32.

50 JSRI at p 32.

51 H AOM1 at p 431.

above valuations. As such, I add this sum of S$27,609.00 the pool of matrimonial assets for division.

(3) POSB Account 8146

22 Taking the IJ date as the operative date of valuation, I find that there was S$7,388.68 in the account as of the IJ date[52] and use this as the valuation accordingly.

(4) UOB Portfolio

23 Apart from the issue of the valuation date (which was settled by the parties in favour of the IJ date), the Wife also contended that there was an unexplained depreciation of the assets in the UOB Portfolio by approximately S$9m between December 2017 and January 2018.[53] The Husband countered that there was no unexplained depreciation. Instead, monies from the UOB Portfolio were transferred in order to open the Indosuez and UBS Portfolios, which are both accounted for as matrimonial assets.[54]

24 Based on the Statements of Account provided by the Husband, the total value of the deposits and investments in the UOB Portfolio was S$24,267,316.01 as of 30 December 2017,[55] and was S$6,317,384.29 as of 31 January 2018.[56] That is a difference of S$17,949,931.72. The vast majority of

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52 H AOM2 at p 904.

53 WWS at para 78.

54 HWS at para 118.

55 H AOM1 at p 475.

56 H AOM1 at p 483.

the decrease was in the deposits held in the UOB accounts. In January 2018, the Husband claimed to have made the following transfers:

(a) US$4,500,000.00 (~S$5,953,500.00) and €3,765,000.00 (~S$6,080,475.00) from the UOB Portfolio to UBS; and

(b) US$4,500,000.00 (~S$5,953,500.00) from the UOB Portfolio to Indosuez.

25 I find this to be supported by the documentary evidence. The statements from the UOB accounts show two transfers of US$4,500,000 on 17 January 2018 from one account,[57] and a single transfer of €3,765,000 on the same day from another account.[58] This is also consistent with the payment orders exhibited by the Husband, which are dated 16 January 2018.[59] The statements for January 2018 in the Indosuez Portfolio show a sum of US$4,500,000 being credited on 17 January 2018 and then split into two separate Indosuez accounts on 18 January 2018, from which point the moneys were used to purchase various assets or make certain subscriptions.[60] The UBS Portfolio statement of assets as of 31 January 2018 also shows new investments to the value of approximating US$4,500,000 and €3,765,000.[61] I am therefore satisfied that there was no dissipation of assets and there is no need to add assets back into the pool. The assets are sufficiently accounted for above in the Indosuez and UBS Portfolios.

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57 H AOM1 at p 487.

58 H AOM1 at p 488.

59 H AOM1 at pp 523-525.

60 H AOM1 at pp 526–531.

61 H AOM1 at pp 550–551.

26 As noted above at [14], the parties have agreed to use the IJ date for the valuation of this asset. Hence, I take the value of the UOB Portfolio as at 31 January 2018, being the date closest to the IJ date, which gives a value of S$6,317,384.29.[62]

(5) Husband's CPF Accounts

27 As I have decided that the operative date for valuation is the IJ date, I take the balance of the CPF Accounts closest to the IJ date as the valuation. Hence, I value the CPF Ordinary Account at S$55,690.91, the CPF Medisave Account at S$47,039.63, and the CPF Special Account at S$42,605.67.

Disputed assets and liabilities

28 The parties dispute whether the following assets and liabilities should be included in the pool of matrimonial assets. I set out their positions, together with the court's conclusion, on each of these assets below.

S/No	Description	Husband's valuation	Wife's valuation	Court's valuation
Joint Assets				
1.	French property[63]	€385,927.69 ~ S$586,482.73	€550,000 ~ S$835,818.50	€385,927.69 ~ S$586,482.73
Wife's Assets/Liabilities				
2.	Car[64]	S$205,000.00	Not matrimonial asset	S$205,000.00

62 H AOM1 at p 483.

63 JSRI at p 9.

64 See Husband's Letter to Court dated 18 September 2020 and Wife's Letter to Court dated 18 September 2020.

S/No	Description	Husband's valuation	Wife's valuation	Court's valuation
3.	Loans owing to Wife's sister[65]	S$0	(S$601,424.35)	N/A
Husband's Assets/Liabilities				
4.	Tanglin property[66]	S$2,750,759.80	S$2,750,759.80	S$2,750,759.80
5.	2,500 ordinary shares in Company [X] if key performance indicators ("KPIs") for 2018 are fulfilled[67]	S$0	US$1,169,600 ~ S$1,608,270.18	US$97,465.89 ~S$134,021.44
6.	2,974 ordinary shares in Company [X] if KPIs for 2019 are fulfilled[68]	S$0	US$1,391,356.16 ~S$1,913,198.20	N/A
7.	Monies paid to Husband's bankers and lawyers for sale of	(S$137,943.26)	S$137,943.26	(S$137,943.26)

65 JSRI at p 15.

66 JSRI at p 17.

67 JSRI at p 28.

68 JSRI at p 29.

S/No	Description	Husband's valuation	Wife's valuation	Court's valuation
	Company [X][69]			
8.	Bonuses paid to staff of Company [X][70]	(US$187,032) (~$257,180.22)	US$187,032 ~$257,180.22	N/A
9.	Loan to Husband's sister[71]	N/A	€25,000 ~ S$37,991.75	N/A
10.	Gift to Husband's niece[72]	N/A	€15,000 ~ S$22,795.05	€15,000 ~ S$22,795.05

(1) The French and Tanglin properties

29 It is not disputed that the French and Tanglin properties would constitute matrimonial assets under s 112(10) WC. The dispute arises, however, because the Wife claimed that the properties should be held on trust for the Children, whereas the Husband argued that they should be divided as matrimonial assets.

30 At present, there is no trust over the French and Tanglin properties. What the Wife sought was an *order* of court for the property to be held on trust for the Children under s 112(5)(*d*) WC, on the basis that this was the parties' understanding earlier in the marriage and later on when the marriage had broken

69 JSRI at p 33.

70 JSRI at p 34.

71 JSRI at p 36.

72 JSRI at p 37.

down as part of the settlement which did not materialise.[73] In response, the Husband argued that while it was discussed that the assets would be held for the Children on trust, the settlement negotiations failed and no agreement arose.[74] Further, s 112(5)(*d*) WC would generally not be exercised unless there was consent or prior agreement for a trust to be constituted.[75]

31 In order to properly understand the nature of s 112(5)(*d*) WC, it is important to see it in the context of s 112 as a whole. Section 112(1) WC sets out the court's power to "order the division between the parties of any matrimonial asset or the sale or any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable". This power is supplemented by ss 112(3) and (4) WC, which read:

> (3) The court may make all such other orders and give such directions *as may be necessary or expedient to give effect to any order made under this section*.
>
> (4) The court may, at any time it thinks fit, extend, vary, revoke or discharge any order made under this section, and may vary any term or condition upon or subject to which any such order has been made.
>
> [emphasis added]

32 It is in the context of ss 112(3) and (4) WC that s 112(5) provides a list of orders that the court *may* make (without prejudice to the generality of those previous provisions), including s 112(5)(*d*):

> [A]n order for any matrimonial asset, or the sale proceeds thereof, to be vested in any person (including either party) to be

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73 Minute Sheet 23 October 2019 at p 4.

74 HWS at para 115.

75 Minute Sheet 23 October 2019 at p 5.

> held on trust for such period and on such terms as may be specified in the order …

33 Seen in this light, s 112(5) WC only provides examples of orders that *supplement* and *give effect to* the primary orders under s 112(1) WC for the division of matrimonial assets. The court is not entitled to pre-empt the division exercise and to declare certain assets as held on trust. Instead, the court must undertake the division exercise according to what is just and equitable. It is only after deciding on the appropriate orders to be made, that a court can then consider what *other* orders (including an order under s 112(5)(*d*) WC) are necessary or expedient to give effect to the orders for division. Hence, in the present case, the French and Tanglin properties could not be removed from the division exercise simply by the declaration of a trust over the properties in favour of the Children. They had to be considered as part of the division exercise, following which, if necessary or expedient, a trust could be declared *in order to give effect to* the division order made under s 112 WC. Therefore, I consider that the French and Tanglin properties should be included in the pool of matrimonial assets for division. In the absence of an existing trust over the properties, it was not within the court's power to order that the properties be held on trust before considering how the matrimonial assets should be divided.

34 It is convenient for me to now deal with the closely linked issue of whether a trust would ultimately be appropriate in this case. I do not see any facts that suggest that a trust would be necessary to give effect to the division of matrimonial assets. First, the Wife referred to an alleged agreement and common understanding between the parties that the properties would be held on trust. I was not pointed to any evidence of such an agreement – the Husband is correct to say that positions taken during negotiations were not sufficient, since

there is no evidence of a settled agreement on this issue.[76] As for the French property, while there was some indication that they had wanted to "donate" the property to the Children, this was never executed.[77] In any case, even if there was such an agreement, I do not consider that the court must give effect to such an agreement in every case, as it is ultimately a question of whether it is necessary or expedient to order a trust over the properties to give effect to the division orders.

35 Second, the Wife claimed that the trust arrangement would "ensure[] that the Children's future is secured",[78] given that the Husband may take on financial risks in the future. However, the division exercise is not primarily concerned with the Children's future well-being, but with the fair apportionment between husband and wife of the economic fruits of the marriage. The concerns raised by the Wife are better addressed under the issue of maintenance, if at all. In this regard, it must be recognised that an order under s 112(5)(*d*) WC is different from the power to order security to be furnished for the purposes of providing maintenance, under s 115(2) WC. Section 112(5)(*d*) WC is intended to give effect to the *division* exercise, not to ensure that sufficient assets remain available for the payment of maintenance. In any case, given the total value of the assets involved, the risk highlighted by the Wife is not significant.

36 Therefore, I also conclude that it is not necessary or expedient for the purpose of giving effect to the orders for division to order that the French and Tanglin properties be held on trust under s 112(5)(*d*) WC.

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76 HWS at paras 113–116.

77 H AOM1 at p 10.

78 WWS at para 85.

37 Having decided that the French and Tanglin properties are to be added to the pool of matrimonial assets, I turn to their valuations. The parties have agreed to value the Tanglin property at S$2,750,759.80,[79] which is the net value of the property. However, there is a dispute over the net value of the French property. The joint valuation showed that the value of the property as €550,000.00. The Husband urged the court to deduct the loan that was repaid by a lump sum *after* the IJ date, such that the net value of the property would be €385,927.69. The Wife proposed that the gross value of the property be used, since the loan has been completely repaid. As the loan was repaid after the IJ date but before the AM date, and as I have valued the bank accounts at the IJ date, I decide to deduct the loan that was repaid, because that amount would be adequately accounted for in valuation of the bank accounts. Otherwise, there would be a double-counting of the amount in the bank account at the IJ date and of the amount used to pay off the debt by the AM date. Therefore, I adopt the Husband's valuation of €385,927.69 (being €550,000 - €164,072.31[80]), which is converted to S$586,482.73.[81]

(2) Car

38 The parties had initially agreed to include a car valued at S$273,000.00 as a matrimonial asset to be divided.[82] The car was later traded in and the sum of S$205,000.00 was given to the Wife in September 2020. At this point, a dispute arose as to whether the Husband, in seeking the Wife's agreement for the trade-in, had agreed to exclude the proceeds from the pool of matrimonial

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79 JSRI at p 17.

80 H AOM2 at pp 1282–1283.

81 JSRI at p 9.

82 JSRI at p 14.

assets. No affidavits were filed, but screenshots of messages were presented as part of correspondence from the parties. Having considered the material before me, I do not find that the Husband had agreed to exclude the proceeds from the pool of matrimonial assets – his statement that the proceeds were the Wife's assets can be understood to refer to the fact that the car was always to be treated as an asset in her name for the purposes of division. In any case, as noted above, the principle for identification is that the assets should be identified at the date of the IJ. Therefore, I find that the car should be considered as part of the pool. As for the sum of the proceeds, it was agreed between parties that the Wife received S$205,000.00. I use this sum as the valuation of the car as I consider it to be the better approximation of the value of the car as of the AM hearing date.

(3) Loans owing to the Wife's sister

39 The Wife argued that her debt of S$601,424.35 owing to her sister should be deducted from the pool of matrimonial assets. She contended that this loan was taken from her sister as she had to support the family, pay for legal fees, and to pay her rent.[83] The Husband disputed this, on the basis that the debt was purely the Wife's and was taken after the IJ date.

40 I agree with the Husband. First, the loan was taken after the IJ date. *Prima facie*, therefore, this was a liability incurred after the date on which the matrimonial assets were to be identified, and should not be included in the pool. Second, even if part of the purpose of the loan was to support herself and the Children, it is undisputed that the Husband did voluntarily provide a sum for maintenance each month. Insofar as she complained that the maintenance was insufficient, it was open for her to apply to court for an order relating to

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[83] Minute Sheet 23 October 2019 at p 7; WWS at paras 80–81.

maintenance. No such application was filed. She chose to take the loan from her sister instead, and there is no basis for the court to now say that the Husband ought to have paid maintenance to her to the tune of around S$600,000 and that the whole liability should be accounted for in the pool of matrimonial assets. Since it was her unilateral decision to incur that liability for her own expenses, it is fair to both parties that she bears the liability herself. Otherwise, spouses in her position may be able to unilaterally impose liabilities on the other spouse simply by taking out loans rather than applying for interim maintenance orders, which would bypass the safeguard of having judicial oversight of maintenance. In any event, insofar as the loan was used to pay her legal fees for the divorce, recovery of legal fees in this manner is not permissible.

(4) Shares in Company [X]

41 There are two sets of shares in Company [X] that are the subject of dispute: one set of 2,500 ordinary shares that the Company [X]'s buyer would issue to the Husband if the 2018 KPIs are met (which I refer to as the "2018 KPI Shares") and one set of 2,974 ordinary shares that are conditional on the 2019 KPIs being met (the "2019 KPI Shares"). The KPIs for both sets of shares were essentially (1) meeting a certain level of consolidated income less expenses, and (2) meeting a certain number of monthly active users for the application developed by Company [X].

42 The Wife argued that the shares in Company [X] which will be issued to the Husband upon the KPIs being met should be included in the pool of matrimonial assets. This was so because the SPA under which the 95% of shares in Company [X] was sold was executed during the marriage. The sale was therefore done during the marriage and any consideration from the sale should

be considered a matrimonial asset. The Wife cited cl 3.1 of the SPA, which defined the consideration as follows:[84]

> The aggregate consideration for the sale and purchase of the Sale Shares under this Agreement shall be an amount in cash equal to the sum of US$17,000,000, as adjusted in accordance with the provisions of Clause 5 (the "**Consideration**") and which shall be paid in accordance with Clauses 4.3 and 5.
>
> [emphasis in original]

43 The Wife pointed out that cl 5 includes cl 5.4, which provides for the 2018 KPI Shares and 2019 KPI Shares under cl 5.4.1(ii) and cl 5.4.1(iii) respectively. Similarly, the adjustment of US$3m which the Husband received under cl 5.4.1(i) was not disputed by the Husband to be matrimonial assets, and therefore, the same logic should apply to the 2018 and 2019 KPI shares.[85] In any event, the 2018 and 2019 KPI Shares could be analogised to an entitlement for vesting of shares in the future, analogous to an unvested stock option, which has been treated as a matrimonial asset in *Chan Teck Hock David v Leong Mei Chuan* [2002] 1 SLR(R) 76 ("*Chan Teck Hock*") and *AFS v AFU* [2011] 3 SLR 275 ("*AFS*").[86] I note here that *AFS* did not deal with the question of whether stock options should be treated as matrimonial assets as such, but was concerned with the identification of direct and indirect contributions towards the acquisition of shares and moneys which had been funded by the exercise of a previously granted stock option: *AFS* at [52]. Hence, I do not address this case further.

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84 H AOM1 at p 1163.

85 WWS at para 74.

86 WWS at para 76.

44 I first consider the Wife's argument that the shares under cl 5.4.1(ii) and cl 5.4.1(iii) should be treated as consideration for the purchase of the Husband's 95% share in Company [X]. The Wife's argument appears to be that since Company [X] was founded during the marriage, the shares held by the Husband were all matrimonial assets, and the consideration for the sale of the shares should be included into the pool as matrimonial assets as well. In my judgment, the 2018 and 2019 KPI Shares should not be included as matrimonial assets on this basis.

45 In the first place, I note that the wording of cl 3.1 of the SPA is ambiguous as it refers to the entirety of cl 5, but only cl 5.3 and cl 5.4.1(i) refer to any adjustment to the consideration. Clause 5.3 refers to this in the heading, while cl 5.4.1(i) includes the sentence: "For the avoidance of doubt, the payment of such US$3,000,000 to the Seller [*ie,* the Husband] shall be regarded as an adjustment to the Consideration". In contrast, there is no such reference in cll 5.4.1(ii) and (iii). In other words, it is not entirely clear from the wording of the contract whether everything in cl 5 is intended to be an adjustment to the consideration, or whether it is only specific clauses within cl 5 that should have that effect. As the buyer of the shares has clarified in a response to a letter from the Husband's solicitors (requested by the court),[87] cll 5.4.1(ii) and 5.4.1(iii) were not intended to be consideration for the purchase of the Husband's shares, but were intended to be "performance incentives" for the Husband. For the purposes of these proceedings, I prefer the buyer's interpretation, since the buyer is a third-party at arm's length and this interpretation accords with the absence of reference to adjustment to consideration in cll 5.4.1(ii) and (iii) (in contrast to cl 5.4.1(i)).

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87 Attached to letter from Husband's solicitors dated 5 November 2019.

46 In any case, in my view, the Wife's argument is not entirely accurate as it is not the *entire consideration* that should automatically be treated as matrimonial assets. The concept of consideration is not entirely equivalent to the concept of sale price. In other words, there may be payments that are *promised* as part of the consideration for the sale of the shares which are not intended to be part of the sale price of the shares – the payments are "consideration" for the shares in the sense of deriving contractual force from the sale, but are not meant to reflect the value of the shares directly. This is so in the present case.

47 Having decided that the entitlement to the 2018 and 2019 KPI Shares should not be matrimonial assets simply on the basis of the SPA, I deal next with the Wife's argument that the Husband's entitlement to the 2018 and 2019 KPI Shares should be treated as stock options and included as matrimonial assets accordingly. The Court of Appeal in *Chan Teck Hock* ([43] *supra*) at [28]-[29] held that unvested stock options, *ie,* "a contract to grant an option upon fulfilment of a condition", were choses in action that could be treated as matrimonial assets under s 112(10) WC. By analogy, I accept that in principle, the contractual entitlement to shares upon fulfilment of certain conditions could be treated as matrimonial assets. However, the question is whether the specific entitlements in question should be considered matrimonial assets. For that question, the Court of Appeal's further guidance in *Chan Teck Hock* at [37] is instructive:

> We would hasten to add that even as between the second and third categories of stock options, there is a need to differentiate between them. Whereas, in respect of the second category stock options, they were already vested (*ie* already earned), the same is not so in respect of the third category stock options. The husband had to continue rendering services to Dell beyond the date of the decree *nisi* to acquire the options. So in respect of these third category stock options, they were given not just for services rendered prior to the decree *nisi* but also for services

> to be rendered post the decree. Otherwise there would have been no necessity to postdate the vesting of options. In this regard, we would adopt the "time rule" advocated in *Hug* ([19] *supra*) by the Court of Appeal of California. *The effect of that rule is to treat only that portion of the stock options as matrimonial assets as is obtained by multiplying the stock options in question by the fraction obtained between the period in months between the commencement of the husband's employment with Dell and the date of the decree nisi as the numerator and the period in months between his commencement of the employment with Dell and the date when the stock option was exercisable by him as the denominator.* ***Only that portion of the third category stock options as so computed would be reckoned as matrimonial assets***. [emphasis added in italics and bold italics]

48 In other words, after identifying unvested stock options as "assets" that could fall within s 112(10) WC, the Court of Appeal went on to determine to what extent they could be treated as *matrimonial* assets. Given that the condition for vesting the stock options in that case turned on the length of service, the Court of Appeal determined that only the proportion of the stock options that could be attributed to the period of service performed *during* the marriage could be treated as matrimonial assets. Hence, *Chan Teck Hock* does not stand for the broad proposition that all entitlements to shares (*ie*, the contractual right to have shares or a share option in the future) obtained *during* the marriage would automatically be treated as matrimonial assets. Instead, the court has to consider the nature of the conditions upon which the relevant party would become entitled to the share option or, in this case, the shares.

49 In the present case, the 2018 and 2019 KPI Shares are conditional on certain conditions being met for Fiscal 2018 ("FY 2018") and Fiscal 2019 ("FY 2019") respectively. Clause 1.1 defines FY 2018 as the fiscal year ending 31 December 2018 and FY 2019 as the fiscal year ending 31 December 2019. The IJ date was 26 January 2018. Hence, it is clear that the 2019 KPI Shares were conditional on work done and targets achieved after the marriage had ended.

There is no basis for including any of the entitlements to the 2019 KPI Shares as matrimonial assets. The same is not true for the 2018 KPI Shares, since around a month of work, from 1 to 26 January 2018, would have arguably contributed to the achievement of the 2018 KPIs. While it is not certain that there is a linear relationship between the time spent working and the achievement of the KPIs, a proportion based on time is a suitable estimate as a matter of determining the proportion of the entitlement to be treated as matrimonial assets. Taking a broad-brush approach to estimating the portion of the 2018 KPI Shares that should be treated as matrimonial assets, I take the fraction of $\frac{1}{12}$, being one month out of 12. Estimating the value of the 2018 KPI Shares according to the value of shares as purchased under the SPA (on the adjusted consideration of US$20,000,000, and taking the proportion of that attributable to work done before the IJ, I arrive at the following calculation:

$$\frac{1}{12} \times \frac{\text{US\$20,000,000}}{\text{42,750 shares}} \times \text{2,500 shares} = \text{US\$97,465.89}$$

Converting this based on the agreed currency exchange rate used by both parties, this gives the sum of S$134,021.44. Therefore, the share of the 2018 KPI Shares that are treated as matrimonial assets would be worth S$134,021.44.

(5) Expenses relating to Company [X]

50 The Husband had incurred expenses for professional fees relating to the sale of Company [X]. In particular, he paid a sum of S$137,492.26 in November 2018 to bankers who assisted with the sale of Company [X]. He argued that these sums should be deducted from the pool of matrimonial assets, since the US$3m that was earned (which has been included in the pool) should be netted against these expenses. The Wife argued that they should not be deducted, as

the fees were paid after the IJ date. The Husband responded that the quantum of fees payable was based on what the Husband received from the sale.

51 I agree with the Husband that these sums should be deducted from the pool of matrimonial assets as these were expenses related to the US$3m which has been added into the pool of matrimonial assets. While the specific payment in question was paid after the IJ date, the fees were in fact incurred *before* the IJ date, since the services were obtained for the sale of Company [X] earlier. The later payment was apparently due to the arrangement that the quantum of the fees would be conditional on the amount earned, and so an adjustment was made to account for the additional US$3m paid to the Husband. It would be more appropriate to treat these expenses together with the assets earned under the SPA. I therefore deduct the sum of S$137,943.26 from the pool of matrimonial assets.[88]

(6) Bonuses to staff of Company [X]

52 In October 2018, the Husband decided to pay bonuses to the staff of Company [X] in appreciation of their efforts which enabled the US$3m to be earned under cl 5.4.1.(i) of the SPA. He argued that the sums should be deducted from the pool of matrimonial assets, while the Wife argued that there was no such need.

53 Given that the payments were made after the IJ date, and they were gratuitous and not part of any contract, I decide not to deduct these sums from the pool of matrimonial assets. These payments were not mandated and were

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88 Husband's Discovery Affidavit in response to SUM 873 dated 30 April 2019 ("H Discovery Affidavit") at p 387.

given out of the Husband's goodwill. While the efforts of the staff contributed to the US$3m pay-out under cl 5.4.1(i) of the SPA, the bonuses were not required under the SPA or any other contract. As such, these should be treated as gifts made by the Husband after the IJ date out of his funds. Given that I have decided to value the bank accounts at the IJ date, it follows that these payments to the staff are out of the Husband's "own" assets and it is not necessary to address them further in the division exercise.

(7) Loan to Husband's sister

54 The Husband had loaned €25,000 (~ S$37,991.95) to his sister on 9 February 2018. As this is after the IJ date, and given that I have chosen to value the bank accounts as of the IJ date, I do not see any reason to add this sum back into the pool of matrimonial assets as this would already be accounted for.

(8) Gift to Husband's niece

55 On 26 November 2017, the Husband gave his niece €15,000.00 to assist her in purchasing a property. The Wife argued that this sum should be returned to the pool of matrimonial assets. I agree with the Wife. As the Court of Appeal stated in *TNL v TNK* [2017] 1 SLR 609 ("*TNL*") at [24]:

> … [T]he issue is how the court should deal with substantial sums expended by one spouse during the period: (a) *in which divorce proceedings are imminent*; or (b) after interim judgment but before the ancillaries are concluded. We are of the view that if, during these periods, and whether by way of gift or otherwise, one spouse expends a substantial sum, this sum must be returned to the asset pool if the other spouse is considered to have at least a putative interest in it and has not agreed, either expressly or impliedly, to the expenditure either before it was incurred or at any subsequent time. Furthermore, this remains the case regardless of whether: (a) the expenditure was a deliberate attempt to dissipate matrimonial assets; or (b) the expenditure was for the benefit of the children or other relatives. The spouse who makes such a payment must be prepared to

> bear it personally and in full. In the absence of consent, he or she cannot expect the other spouse to share in it. What constitutes a substantial sum is, of course, a question of fact and we do not propose to lay down a hard and fast rule in this regard, except to emphasise that it is not intended to include daily, run-of-the-mill expenses.
>
> [emphasis added]

56 In this case, the writ was filed on 9 October 2017. The gift to the niece was on 26 November 2017, *after* the writ was filed. This clearly was a period of time where divorce proceedings were imminent. The Wife had a putative interest in the funds and did not agree to the transfer, and even though the transfer was intended to benefit a relative, that does not prevent the sum from being returned to the pool. The sum of €15,000.00 is a substantial sum and is not a "daily, run-of-the-mill expense[]": *TNL* at [24]. Therefore, I return the sum of €15,000.00 (~ S$22,795.05) to the pool of matrimonial assets, and will later treat this amount as an advance to the Husband.

Summary of matrimonial assets

57 I summarise the pool of matrimonial assets in the following table:

S/No	Description	Value
Joint Assets		
1.	DBS Account 9686	S$410,621.74[89]
2.	Joint Palatine Account	€760.40 ~S$1,155.56
3.	French property	€385,927.69 ~S$586,482.73

[89] H AOM1 at p 373

S/No	Description	Value
	Sub-Total (A)	S$998,260.03
Wife's Assets		
4.	Car	S$205,000.00
5.	Aviva Policy No ending in 8742	S$35,766.93[90]
6.	LCL Assurance Policy	€15,000 ~ S$22,795.05[91]
7.	SingTel Shares	S$401.70[92]
8.	CPF Ordinary Account	S$201,977.01[93]
9.	CPF Medisave Account	S$50,368.38[94]
10.	CPF Special Account	S$73,577.71[95]
11.	Security deposit from Orchard unit	S$27,609.00
12.	POSB Account 8146	S$7,388.68
	Sub-Total (B)	S$624,884.46
Husband's Assets		
13.	Aviva Policy No ending in 4324	S$26,546.80[96]

90 JSRI at p 14.

91 JSRI at p 14.

92 JSRI at p 14.

93 JSRI at p 15.

94 JSRI at p 15.

95 JSRI at p 15.

96 JSRI at p 19.

S/No	Description	Value
14.	Aviva Policy No ending in 3334	S$36,523.05[97]
15.	Transamerica Policy No ending in 2988	US$248,081[98] ~ S$341,126.26
16.	Manulife Policy No ending in 6809	US$221,470.50[99] ~ S$304,535.23
17.	Manulife Policy No ending in 8450 (Child B)	S$32,381.47[100]
18.	Palatine Assurance (Child A)	€23,000[101] ~ S$34,952.41
19.	Palatine Assurance Policy No ending in 3494 ("Palatine Assurance 3494")	€123,000[102] ~ S$186,919.41
20.	Indosuez Portfolio	US$4,500,000.00[103] ~ S$6,187,770.00
21.	UBS Portfolio	US$9,148,795.00 ~S$12,580,142.05
22.	DBS Portfolio	S$342,563.13[104]

97 JSRI at p 19.

98 JSRI at p 19.

99 JSRI at p 19.

100 JSRI at p 19.

101 JSRI at p 19.

102 JSRI at p 19.

103 H AOM1 at p 526.

104 H AOM1 at p 932.

S/No	Description	Value
23.	Propseller Shares	S$81,000.00[105]
24.	Krak Inc Shares	S$47,950.00[106]
25.	Followcorp Shares	S$47,660.00[107]
26.	Company [X] Shares (5%)	US$1,052,631.58[108] ~ S$1,447,431.58
27.	US$3m adjustment for sale of Company [X] (less amount invested)	US$2,000,000.00[109] ~ S$2,750,120.00
28.	Investment in WatchBanQ Group	US$1,000,000.00[110] ~ S$1,375,060.00
29.	S$300,000 loan repayment	S$300,000.00[111]
30.	UOB Portfolio	S$6,317,384.29
31.	CPF Ordinary Account	S$55,690.91
32.	CPF Medisave Account	S$47,039.63
33.	CPF Special Account	S$42,605.67
34.	Tanglin property	S$2,750,759.80
35.	2018 KPI Shares	US$97,465.87

105 JSRI at p 26.

106 JSRI at p 26.

107 JSRI at p 26.

108 JSRI at p 27.

109 JSRI at p 33.

110 JSRI at p 35.

111 JSRI at p 35.

S/No	Description	Value
		~S$134,021.44
36.	Gift to Husband's niece	€15,000.00 ~S$22,795.05
37.	Less Amex Credit Card Debt	(S$18,825.08)[112]
38.	Less DBS Credit Card Debt	(S$14,730.07)[113]
39.	Less Air France Credit Card Debt	(€70.54)[114] ~ (S$107.20)
40.	Less inheritance	(€75,000)[115] ~ (S$113,975.25)
41.	Less monies paid to Husband's bankers and lawyers for sale of Company [X]	(S$137,943.26)
	Sub-Total (C)	S$35,207,397.32
	Total (A)+(B)+(C)	S$36,830,541.81

Adjustment for losses arising from the COVID-19 pandemic

58 Before the AM could be resolved in this case, the COVID-19 pandemic substantially affected the value of certain assets held by the Husband. In a letter to the court dated 8 April 2020, the Husband set out the various losses suffered as follows:

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112 JSRI at p 36.

113 JSRI at p 36.

114 JSRI at p 36.

115 JSRI at p 35.

S/N	Asset	Depreciation
1.	UBS Portfolio	S$1,835,931.05
2.	Indosuez Portfolio	S$805,065.05
3.	Palatine Assurance 3494	S$20,509.79
4.	DBS Portfolio	S$112,414.22
	Total	S$0

59 I refer to this sum as the "COVID-19 Losses". This sum was not disputed by the Wife. As I have adopted the IJ date for the valuation of these assets, and the depreciation above was calculated from that date, the figures are logical and consistent with my findings above. Following discussions between the parties, it was agreed that the Wife would bear her share of the COVID-19 Losses. The parties updated the court by way of letter on 26 May 2020 that the parties had agreed to a mechanism by which the COVID-19 could be shared. On 18 September 2020, the parties confirmed that they had agreed to the following terms:

> (a) Parties agree that the total quantum of the alleged losses suffered by the Plaintiff arising from the COVID-19 situation is taken to be SGD 2,773,920.11 ("**COVID-19 Amount**"). The Defendant's share of the COVID-19 Amount shall be calculated by applying the percentage figure of the Defendant's share of the matrimonial assets, as determined by the Court during the Ancillary Matters proceedings, to the figure of SGD 2,773,920.11. It is agreed that the two children of the marriage shall be the beneficiaries of the Defendant's share of the COVID-19 Amount.
>
> (b) The Defendant agrees to execute a will in favour of the two children of the marriage within six (6) months of the Plaintiff making full payment of the Defendant's share of the matrimonial assets to her pursuant to the Ancillary Matters Order of Court. For the avoidance of doubt, the Defendant's share of the matrimonial assets encompasses the Defendant's share of the COVID-19 Amount. The will executed by the

> Defendant shall provide that the Defendant's share of the COVID-19 Amount is distributed to the two children in equal shares upon her demise. The Defendant shall provide the Plaintiff with a redacted copy of her will reflecting such part of the will showing the distribution of the COVID-19 Amount within one (1) week of execution. The Defendant shall not take any steps to revoke or amend this will in relation to the distribution of the COVID-19 Amount thereafter save in accordance with Paragraph (c) below.
>
> (c) The Defendant is entitled to subsequently distribute her share of the COVID-19 Amount directly to the two children of the marriage at any time after the Defendant has complied with her obligations at Paragraph (b) above. If the Defendant chooses to do so then she shall provide the Plaintiff with written notice of her proposed alternate mode of distribution. After the two children of the marriage have received their respective entitlements to the value of the COVID-19 Amount pursuant to Paragraph (a), the Defendant may revoke or amend her will as she deems fit.
>
> [emphasis in original]

60 What remains to be dealt with is the apportionment of the COVID-19 Losses, which would be the same as the ratio of division of the matrimonial assets. I now turn to that issue.

Division of matrimonial assets

61 Having identified and valued the pool of matrimonial assets, the question is how the assets should be divided. The Husband advocated using the structured approach found in *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ*") while the Wife argued that the approach in *TNL* ([55] *supra*) was more appropriate as the marriage should be characterised as a single-income marriage. This was a marriage of 12 years, in which the Wife had worked for approximately five to six years (around one year in France and between 2009 and 2013 in Singapore). The question is whether the facts of this case suggest that the approach in *TNL* should apply instead of the structured approach.

62 In addressing this issue, I take guidance from the High Court Family Division's decision in *UBM v UBN* [2017] 4 SLR 921 ("*UBM*") at [48]–[50]:

> 48 In *TNL v TNK*, the Court of Appeal defined "Single-Income Marriages" as marriages where "one spouse is the sole-income earner and the other plays the role of homemaker"; it distinguished this from "Dual-Income Marriages", which it defined as "marriages where both spouses are working and are therefore able to make both direct and indirect financial contributions to the household" (see [42]–[43]).
>
> 49 **The words "Single-Income Marriage" ought to be interpreted sensibly in the spirit in which *TNL v TNK* was decided**. I do not think the Court of Appeal intended to draw a thick black line separating cases where the main homemaker worked intermittently for a few years in the course of a long marriage from cases where the homemaker had not worked a single day, applying the structured approach in *ANJ v ANK* ([2] *supra*) only in the former situation while excluding it in the latter. To do so may place a full-time homemaker (who has not worked at all during marriage) in a better position than a homemaker who also worked but brought far less income into the marriage than the main breadwinner. This is because the former may obtain near equal division of the assets following *TNL v TNK*, while the latter may obtain substantially less than that share if *ANJ v ANK* is applied to her (or his) case and her direct contributions are very low.
>
> 50 **It appears from the judgment in *TNL v TNK* that a "Single-Income Marriage" would include a marriage where one party is *primarily* the breadwinner and the other is *primarily* the homemaker.** The Court of Appeal cited, as examples of Single-Income Marriages, two cases where the spouse who took on the role of the main homemaker had also made some financial contributions, for example, through employment or through investments. Thus, it appears that "Single-Income Marriages" are not limited to those where one spouse focuses exclusively on the homemaking role without contributing financially at all, while the other is the sole breadwinner. …
>
> [emphasis in original in italics; emphasis added in bold]

63 Hence, it is not the case that as soon as one spouse works any amount of time that the marriage cannot be treated as a "Single-Income Marriage" and that the structured approach in *ANJ* must apply. In my view, the present case falls

within the scope of a "Single-Income Marriage" even though the Wife had worked for slightly under half of the marriage. The most significant factor, in my view, is that the Wife was a homemaker in the period when the Husband was working in Company [X]. This same period saw a massive increase in the wealth of the family arising from that company, which dwarfed any contributions that the Wife had made financially to the marriage. Even though she had worked earlier, it is clear from the calculations put forward by both parties that between 96% and 99% of the direct financial contributions would have been made by the Husband, and the indirect financial contributions would also be tilted significantly in the Husband's favour. Taking a look at the balance of responsibilities and contributions between the Husband and the Wife in this particular case, it was artificial to treat this as a dual-income marriage, since the income of each was so disparate, the Wife's income being a small fraction of the Husband's income, and considering that the Wife had worked for only part of the marriage.

64 I derive further support for this conclusion from the Court of Appeal's *reasons* for not applying the structured approach in certain cases. In *TNL* at [44], the Court of Appeal noted that since the structured approach gave recognition to financial contributions under both direct and indirect contributions, the "non-working spouse is, in this sense, doubly (and severely) disadvantaged". This would apply to a case where one party has earned *significantly* more overall in such a way that the financial contribution of the other party becomes almost negligible. At [45], the Court of Appeal recognised that if the structured approach was used and adjustments sought to be made to reflect the "mutual respect … for spousal contributions, whether in the economic or homemaking spheres" (citing *ANJ* at [18]):

> [G]iving effect to this principle in the context of a Single-Income Marriage and within the framework of the *ANJ* approach would almost inevitably result in some degree of artificiality: the court would either have to ward the non-working spouse a very high percentage in Step 2 (which may appear to disregard the working spouse's indirect financial contributions), or accord a very high weightage to Step 2 at Step 3. In some, if not most, cases, the court would have to do both.

65 In a recent judgment, the Court of Appeal has noted that for short marriages (apparently without distinguishing between single- or dual-income marriages), the structured approach in *ANJ* ([61] *supra*) should apply: *USB v USA* [2020] SGCA 57 at [37]. That case dealt with a marriage of five years. The present marriage of 12 years was not short, but neither was it long. Rather than to focus simply on the length of the marriage, and in recognition of the factors in the present case identified above, I was of the view that the structured approach was not appropriate in the present case.

66 However, I recognise that the disagreements over whether *ANJ* or *TNL* ([55] *supra*) should apply are not, in the final analysis, the most important issue, since the aim, regardless of the approach taken, is to arrive at a just and equitable division of assets. Regardless of which approach was used, I would not be surprised if the results were similar.

Direct financial contributions

67 The parties are agreed that the Husband had provided the vast majority of direct financial contributions to the pool of matrimonial assets. The Husband assessed his contributions at between 96% to 99%, and the Wife adopted the figure of 96% in her submissions. While these numerical values are not required under *TNL*, and should not take on inordinate weight, I state them here as helpful guides for characterising the overall financial situation in the marriage.

Indirect contributions

68 Turning to the indirect financial contributions, I note that there is no need to assign a numerical value to the indirect contributions. I make the following observations on the parties' respective contributions:

(a) In terms of the indirect financial contributions, given the Husband's overall earnings, and the less time that the Wife spent working, the majority of the expenses would have been financed by the Husband.

(b) The Wife was the primary caregiver for the two Children. She was the one in charge of their daily care, their feeding, cleaning, playing, and education.[116] It is, however, not disputed that the Husband did play his part in the Children's upbringing – he was involved in Child [A]'s education and activities, and also in taking care of Child [B].[117]

(c) The Wife had made sacrifices in her career to take care of the Children as she left her job in 2013 to become a full-time homemaker: see *ARY* ([11] *supra*) at [61].

(d) While the parties had hired domestic helpers, I agree with the Wife that this does not *necessarily* reduce the Wife's contribution to the marriage. At the same time, it is also true that having domestic helpers would tend to relieve the burden of some aspects of the family's upkeep and maintenance.

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116 Wife's Affidavit on Interim Custody, Care and Control dated 22 November 2017 ("WC1") at paras 112–121.

117 Husband's Affidavit on Interim Custody, Care and Control dated 10 October 2017 ("HC1") at paras 52–58.

(e) I recognise that Company [X] was not a "family business", and that the Wife never worked for the Company. At the same time, I acknowledge that in a marriage where one spouse is involved in building a business, the other spouse may give indirect support. This is part of the principle that the marriage is a partnership.

Adjustments for adverse inferences

69 The Wife further argued that adjustments should be made to the division to account for the loans and gifts to the Husband's family members, and the bonuses given to the staff of Company [X]. As I have already addressed them at [52]–[56] above, there is no need to account for them again by adjusting the division of the matrimonial assets.

Final division ratio

70 I note that the Court of Appeal in *BOR v BOS and another appeal* [2018] SGCA 78 at [113] observed that in "moderately lengthy marriages" in the range of 15 to 18 years, the courts have awarded the homemaker about 35% to 40% of the matrimonial assets. The Court of Appeal also noted (at [113]) that "[f]or marriages of shorter duration (around 10–15 years), the trend appears to be towards awarding the non-income earning party about 25% to 35% of the matrimonial pool", citing *UGG v UGH (m.w.)* [2017] SGHCF 25 and *ABX v ABY and others* [2014] 2 SLR 969.

71 The primary factor that I consider important is that the bulk of the matrimonial assets was earned by the Husband's efforts at building up Company [X]. Even in the structured approach of *ANJ* ([61] *supra*), after accounting for the direct and indirect contributions, the Court of Appeal recognised (at [27(b)]) that "[i]f the pool of assets available for division is extraordinarily large and all

of that was accrued by one party's exceptional efforts, direct contributions are likely to command greater weight as against indirect contributions". While there is no need to specify the ratios and adjustments when not using the structured approach, I find that the same logic is compelling when addressing an exceptionally large pool of assets which are largely the result of one party's efforts.

72 The Wife argued that a division of 50:50 between the parties would be just and equitable. In my view, this failed to account for the assets that the Husband had earned by his work with Company [X]. She further argued that "it has always been the parties' understanding" that "the matrimonial assets will be shared in equally", and that this was the prevailing outcome in French family law.[118] She alleged that the Husband had promised that the assets would be split equally.[119] Apparently, the Husband also promised in 2009 that when he was setting up his business, the Wife would bear 50% of the liability if it failed, but would share in 50% of the success.[120]

73 While I recognise that the agreement of parties is a factor for the court to consider under s 112(2)(*e*) WC, the Wife's argument faced significant difficulties in this case. The evidence concerning the agreement was very weak and consisted purely of her own assertions. There was no document evidencing any such agreement. Even if there were some agreement against the backdrop of French family law, the assertion that equal division was the likely outcome in France was not proved by any expert evidence. When it came to the alleged

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118 WWS at para 98.

119 WWS at para 98.

120 W AOM2 at paras 58–60.

2009 agreement in Singapore, there is, once again, no evidence of that agreement. I do not give this weight in my determination of the appropriate ratio.

74 The Husband's argument that he should be awarded 81.75% of the assets, with the Wife receiving 18.25%, went too far the other way and failed to reflect the Wife's indirect contributions to the marriage, recognising the principle of the marriage as a partnership: *ANJ* at [17].

75 Having regard to the assets in this case, and the fact that the Wife was the primary caregiver of the Children, but recognising also that this was a marriage of a short-to-moderate length and the Husband was also involved in the Children's lives, I decide that an appropriate division is 70:30 in favour of the Husband, on a broad-brush approach. In arriving at this determination, I found the High Court Family Division's comments in *UBM* ([62] *supra*) at [60] particularly helpful:

> Divorcing couples were once in an intact, functioning relationship; they chose to marry each other, for better or for worse. The mutual emotional support each gave the other in the marriage cannot be measured in monetary terms. Who is to say that had one spouse not been present in the life of the other, the latter would have been as financially successful and thus able to contribute a greater share to the pool of matrimonial assets? Conversely, one cannot, on hindsight, tell with certainty whether the presence of the other spouse in one's life had any negative effect on one's career. Countless decisions, small and large, are made in the course of a marriage. Many significant forks in life's road occur during the course of a marriage. The broad brush approach is thus a key feature in the resolution of disputes over the division of matrimonial assets. The final ratio also ought to reflect the philosophy of marriage as an equal partnership of different efforts. Matrimonial disputes are best managed, and families better supported, by a sensible, broad-brush process which does not incentivise calculative behaviour. Parties need to be bigger, kinder and wiser after a divorce; they need to look ahead and recast their future to focus on healing themselves and parenting their children.

Apportionment of the pool of matrimonial assets

76 The total value of the pool of matrimonial assets is S$36,830,541.81. Based on the ratio of 70:30 in favour of the Husband, the Husband is entitled to S$25,781,379.27 and the Wife is entitled to S$11,049,162.54.

77 I first deduct the advances that each party has already received. The Husband is treated as having received an advance of S$22,795.05 (see [56] above), the value of the gift that he had given to his niece. The Wife had received an advance of S$100,000.00 which was paid by Husband to Wife in December 2018, after the IJ date.[121] Their respective remaining entitlements are therefore S$25,758,584.22 (being S$25,781,379.27 - S$22,795.05) and S$10,949,162.54 (being S$11,049,162.54 – S$100,000.00). The Wife has a total of S$624,884.46 in her name. To make up for her share of the matrimonial assets, the Husband should pay to the Wife the sum of S$10,324,278.08 (being S$10,949,162.54 - S$624,884.46). At the same time, the Wife should relinquish all her rights to the joint assets listed above.

78 In addition to that, according to the parties' agreement on the COVID-19 Losses, the sum of S$2,773,920.11 is to be divided in the ratio of 70:30 as well. The Wife is therefore to bear S$832,176.03. This sum is to be dealt with in the manner described at [59] above according to the parties' agreement.

Custody and care and control of the Children

79 In making orders for custody, and care and control, the paramount consideration for the court is the child's welfare: see s 125(2) WC and *TAU v*

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121 Minute Sheet 24 October 2019 at p 15.

TAT [2018] SGHCF 11 at [10]. As the High Court noted in *Tan Siew Kee v Chua Ah Boey* [1987] SLR(R) 725 at [12], "welfare":

> … means the general well-being of the child and all aspects of his upbringing, religious, moral as well as physical. His happiness, comfort and security also go to make up his well-being.

Custody

80 The parties are agreed that joint custody is appropriate in this case. A sole custody order would be rare and ought to be made only in exceptional circumstances, *eg,* physical, sexual, or emotional abuse: *CX v CY (minor: custody and access)* [2005] 3 SLR(R) 690 at [38]. I therefore agree that a joint custody order is appropriate in this case.

81 Apart from the overall custody of the Children, however, the Wife also sought two specific custody-related orders, pertaining to Child [B]'s schooling and the religion of the Children.[122] The power of the court to grant such additional orders is found in s 126(1) WC, and s 126(2)(*a*) WC (which provides a list of specific orders without prejudice to the general power under s 126(1) WC) makes specific reference to the manner of the child's education and the religion in which he or she is to be brought up.

Order for Child [B]'s schooling

82 The Wife had sought an order specifying which school Child [B] should attend. Parties had indicated that this would depend on whether the older child, Child [A], would be able to obtain a place at School [Y], and would also depend on the situation for the upcoming school year. Given how the proceedings have

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122 WWS at para 4.

unfolded, I sought clarification from the parties whether Child [A] had in fact managed to obtain a place at School [Y]. Parties confirmed on 30 July 2020 that Child [A] will not be attending School [Y], but School [Z] instead. In the interest of having the children attend the same school, and given that the parties did not express a preference for any particular school, and in the light of the need to confirm the school choices in August 2020, I granted an order on 3 August 2020 that both Child [A] and Child [B] are to be enrolled in School [Z] for the coming academic year. That sufficiently disposes of this particular application.

Order for religious upbringing

83 The Wife submitted that the court should grant an order that the Children should be brought up as Muslims until they are old enough to make their own decisions about religion.[123] The Wife argued that this order is needed to maintain the *status quo* in the interests of the Children, and that the Husband has downplayed the Children's religious upbringing in the divorce proceedings.[124] The Husband argued that no specific orders should be made, claiming that the Children have been raised in both Islam and Roman Catholicism, and that the order would change the *status quo*.[125]

84 I agree with the Husband that no such order is necessary at present. I accept that the Children have been raised according to some teachings of Islam, and that the Children have been declared as Muslim in documentation like school applications.[126] It is also not disputed that they have been allowed to

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123 WWS at para 4(b).

124 WWS at para 6(b).

125 Minute Sheet 23 October 2019 at p 11.

126 W AOM2 at para 143.

follow the Husband to celebrate Roman Catholic religious holidays like Christmas and Easter, and they have followed the parents to church for special occasions like weddings and baptisms.[127] It does not appear that the Husband wishes to prevent the Children from continuing to follow the Islamic practices that they have been brought up with, nor does it appear that the Wife is seeking, at present, to add anything further to their religious practices. The Wife's primary concern appears to be that the Husband may bring the Children to church to celebrate his religious holidays, and that this may lead to confusion.[128] I do not think that such occasional visits would be damaging to the Children's welfare – the Husband is not entitled to unilaterally convert the Children to Roman Catholicism in any case, and such occasional visits on special occasions do not appear to pose a threat to the Children's identity.

85 While each party has characterised the other party's intentions in the worst light, I do not see any substantial dispute that arises in relation to the Children's religious upbringing at this point. A court order at this juncture is a blunt instrument that may do more harm than good. I decline to make an order concerning the Children's religious upbringing in this judgment.

Care and control and access

86 The parties disagree over the appropriate care and control order. The Husband sought an order for shared care and control.[129] The Wife argued that

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127 H AOM1 at para 106.

128 Wife's Affidavit Filed in SUM 3462/2017 dated 10 August 2018 ("WC3") at para 36.

129 HWS at para 44.

sole care and control should be granted to her, with the Husband being given access to the Children.[130]

87 As the High Court defined it in *AQL v AQM* [2012] 1 SLR 840 ("*AQL*") at [8], a "shared" care and control order means that "the child spends time living with *each* parent, who then becomes the child's primary caregiver for the duration that the child lives with him (or her). … [T]he child effectively has *two* homes and *two* primary caregivers." In the following, I first address why I do not think that shared care and control is appropriate in this case, before discussing who should be granted the sole care and control of the Children. In the following, I proceed on the basis that the two Children should be kept together, which is, in my view, consistent with their welfare.

Should shared care and control be granted?

88 In my judgment, shared care and control is not suitable. As the High Court Family Division recognised in *TAU v TAT* [2018] 5 SLR 1089 ("*TAU v TAT*") at [12], the court has to consider "factors such as that particular child's needs at that stage of life, the extent to which the parents are able to co-operate within such an arrangement, and whether it is easy for that child, bearing in mind his or her age and personality, to live in two homes within one week." The following factors weighed on my mind in the present case:

(a) Both children were either of schooling or near schooling age. Given this, it seemed to me that greater stability in their home lives would be in their interest, to enable them to settle down well after school and be prepared for the next day's activities. Having them shuttle

130 WWS at para 2.

between different living situations after school does not appear to be conducive to their welfare.

(b) The parties have shown themselves to have a fraught relationship and there is a real risk that a shared care and control arrangement would be unworkable. This is especially so given the multiple allegations and complaints made by each party about the other.

(c) I do not consider that the Husband's concern over the Wife's Obsessive-Compulsive Disorder ("OCD") was entirely justified and reject his argument that a shared care and control order was needed to account for her OCD. I will elaborate on this below.

(d) The mere fact that it is in the Children's interest for both parents to be continually involved in their upbringing, which the Husband emphasises and which is not disputed, does *not* require a shared care and control order to be granted: see, *eg*, *TAU v TAT* at [25]–[26].

Who should be granted care and control?

89 In my judgment, having regard to all the circumstances of the case, I am of the view that the Wife should be granted care and control of the Children, with access given to the Husband.

90 I do not find that the Wife's OCD is such as to prevent her from being the primary caretaker for the Children. I take guidance from the evidence tendered on behalf of the Wife, which show that having OCD does not, in and of itself, impair the Wife's capacity to be a parent.

(a) The psychologist who had been treating the Wife since August 2016 tendered an affidavit and report dated 21 November 2017 stating

that the Wife's condition was "Moderate", and that individuals with OCD "do not pose a danger to others, including children, just because of their condition." Specifically, the psychologist observed that the Wife had a "caring and loving relationship" with Child [B] (based on primary observation), and that the Wife actively sought advice on how to ensure that her condition did not negatively impact Child [A].[131] In a supplementary affidavit and report dated 10 August 2018, the psychologist also observed that the Wife "makes an active effort not to restrict [the Children's] behaviour or to impose her fears on them. She is conscious of putting their needs before her own, and has typically been most successful at resisting OCD-related behaviour when the [Children] have been involved."[132]

(b) A psychiatrist also gave his opinion concerning the Wife's condition. He examined the Wife on three dates and interviewed the Wife's sister as well. In his report dated 21 August 2018,[133] he concluded that her condition was of "mild severity".[134] She was observed to be "sensitive about her children's emotional wellbeing and reiterated her wish to prioritise their needs and best interests."[135] He concluded, "[h]aving evaluated [the Wife's] OCD (severity and symptoms) and its effect on her well-being, functioning, and quality of life, it is my opinion

131 Wife's Expert Affidavit 1 dated 21 November 2017 ("WE1") at pp 16, 19.

132 Wife's Expert Affidavit 2 dated 10 August 2018 ("WE2") at p 15.

133 Wife's Expert Affidavit 3 ("WE3") dated 21 August 2018 at p 18.

134 WE3 at p 20.

135 WE3 at p 20.

that her current OCD symptoms have not seriously impaired her self-care and child-rearing capacities."[136]

91 The Husband's various allegations about the Wife's outbursts and difficulty coping were, in my view, not ultimately probative, as they captured specific instances rather than showing her overall conduct. Further, as the psychologist noted, these could have been influenced by the breakdown of the relationship between the Wife and Husband, or lack of trust between her and her domestic helpers.[137]

92 Given that I have not found that the Wife's OCD was such as to render her unfit to be the primary caretaker, I conclude that the Wife should be granted care and control. I note here that just as I did not place much weight on the Wife's OCD, I also did not rely on the allegations that she made against the Husband concerning his panic attacks. The Wife has always been the primary caretaker for both Children since their birth. She would be most prepared to take on the responsibility of caring for the Children after the divorce. Further, this means that there would be familiarity and regularity in the Children's lives if the Wife is granted care and control. This is significant as it would minimise the disruption caused by the divorce.

Access

93 It is clear that there was no reason against granting the Husband unsupervised access to the Children. In the event that the Wife was granted care

136 WE3 at p 21.

137 WE1 at p 19.

and control, the Husband indicated that he was satisfied with the access granted in the interim orders with variations as follows:[138]

(a) ORC 4982/2018 as varied by the High Court is to continue, save that the weekend access should begin on Thursday 7am instead of Friday 7am.

(b) FC/ORC 2703/2019, which varied ORC 4982/2018 concerning holiday access, was to stand save that religious public holidays were to be spent with the parent of that religion, and such holidays will not be covered by the provision that public holidays falling during school holidays are not to be covered in the public holiday arrangements.

94 The Wife made the following points in submissions:[139]

(a) First, weekend access was to be varied such that the Husband would have access every other week, from Friday after Child [A]'s school day ends to Sunday 8.30pm. During the weeks that the Husband does not have weekend access, he is to have access on an additional weekday evening from 5pm to 9pm before that weekend.

(b) Second, although the Wife was amenable to the Husband having half the school holidays, she sought an order that would ensure that the Husband would not have access for a continuous period of more than seven days at a time.

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138 Notes of Argument of 24 October 2019 at p 2.

139 WWS at para 45.

(c) Third, the Wife was agreeable to have the Children spend any religious holidays with the parent of that religion, and that the Children will spend Mother's Day and the Wife's birthday with the Wife, and Father's Day and the Husband's birthday with the Husband.

(d) Fourth, in the event of any overseas travel, the Husband shall bring both Children on the trip.

95 I deal first with weekend access. In RAS 22/2018, I had considered that an alternate weekend access would not be in the Children's interest, given that they had been spending every weekend with the Husband. However, I recognise that as both Children grow up and attend school, the weekends become ever more precious to the parents. The interim order at present provides that the Husband has access on Friday morning to Saturday night, while the Wife will spend Sunday morning onwards with the Children. Now that both Children attend school, the Husband sought access to commence on Thursday morning. I do not think that this is appropriate, since that would result in instability when two full days of the week are part of the Husband's access. Further, I consider that the Wife's concerns are valid. Under the interim order, the Husband is given access to the Children on the only two nights which are not "school nights" in the week. I accept that this gave the Husband much more time with the Children for leisure and recreational activities, like birthday parties and sleepovers. The downside to the Wife's proposal was that the Husband's contact with the Children would be less regular, but I am satisfied that the Wife's proposal that the Husband be given a weekday evening access during the weeks he does not have weekend access to be sufficient. Rather than limit this to the week prior to the weekend where he does not have access, I think that this weekday access can be granted any day in the five days before or after the weekend in question.

Moreover, in this scenario, the Husband is given a full Sunday with the Children as well.

96 As for the holidays, I recognise the Wife's concern with the Husband being granted continuous access for more than seven days. In my view, such a limitation to seven days was not entirely justified. While the Wife has provided evidence that the Children were not used to extended access with the Husband,[140] I note that her primary concern seems to be the possibility that the Children may have one entire month with the Husband.[141] Further, while the Wife expressed some dissatisfaction with the Husband's conduct during the two-week long trip that the Husband took the Children to France,[142] I am of the view that there were no serious problems. I acknowledged that some limitation was justified by the evidence, but given the prior two-week trip as well as the fact that the Wife's primary concern was with very lengthy periods up to a month, I conclude that the limit should be placed at *14* days (not seven) until the Children grow more accustomed to spending extended periods of time away from the Wife and with the Husband. As for how the religious holidays were to be spent, the parties were in agreement and I see no reason to order otherwise. Similarly, I accept that the Children are to spend Mother's and Father's Days, and the Wife's and Husband's birthdays with the respective parent. The Wife further asked for an order that if the Husband wishes to bring Child [A] or Child [B] overseas for travel, he would have to bring *both* Children. I do not see a reason for imposing this restriction, as it appears to be overly restrictive and there is no pressing need for it.

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140 WWS at paras 51–57.

141 Minute Sheet 24 October 2019 at p 3; WWS at para 52.

142 Wife's 16th Affidavit dated 3 September 2019 at paras 8–17.

97 At the hearing on 18 September 2020, the parties also agreed that the interim orders made concerning electronic access and handover arrangements to continue, and for the parties to keep each other informed of what the school communicates to each party about the children. I accordingly make orders reflecting this agreement.

98 I therefore make the order as follows:

(a) There be joint custody of the two (2) children of the marriage, namely, [Child A] and [Child B] to both the Husband and the Wife.

(b) That care and control of the two (2) children is granted to the Wife.

(c) Subject to (d)–(f), that the Husband shall have access to the children as follows:-

(i) Every Tuesday evening from 5.00pm to 9.00pm.

(ii) Every other week, every Friday from 12.00pm to Sunday 8.00pm ("weekend access"). In weeks where the Husband does not have weekend access, he shall have access on a weekday evening of his choice, subject to the Wife's agreement (which shall not be unreasonably withheld), from 5.00pm to 9.00pm in the five (5) days prior to or after the weekend in which he does not have weekend access. For the avoidance of doubt, the Children will spend the first weekend after the release of this judgment with the Husband.

(iii) Subject to (vi), half of each of the school holidays, with parties to discuss and agree on specific dates, save that the

Husband shall not have access for a continuous period of more than 14 days. Parties are to endeavour to agree on increasing this limit as soon as appropriate for the Children. Such access is to start at 9.00am of the first day of each period and end at 9.00pm on the last day of each period.

(iv) For public holidays, alternate public holidays from 9.00am to 9.00pm. Where a public holiday falls within a school holiday, it is not to be counted as part of the school holiday in (iii) above.

(v) Notwithstanding (i) to (iv) above, the Children shall spend Muslim public holidays (*viz*, Hari Raya Puasa and Hari Raya Haji) with the Wife, and shall spend Catholic public holidays (*viz*, Christmas and Easter) with the Husband. They shall also spend Mother's Day and the Wife's birthday with the Wife, and Father's Day and the Husband's birthday with the Husband. Such access is to commence at 9.00am and end at 9.00pm. These days are not to be considered for the purposes of (iii) or (iv) above.

(vi) Any other period as may be agreed between the parties.

(vii) Parties are at liberty to adjust the holiday schedule (*ie*, any access under (iii)–(v)) by mutual agreement. For the avoidance of doubt, this does not preclude the parties from coming to any other mutual agreement for any of the access granted to the Husband.

(viii) The Husband shall pick up and drop off the Children at the Wife's residence or some other mutually agreed location.

(ix) Where applicable, the Husband is to ensure that the Children attend school and their scheduled classes when they are with him.

(d) Either parent who intends to travel with the Children shall provide an itinerary at least seven (7) days in advance.

(e) Parties are to have reasonable electronic access to the Children, subject to the Children's schedules, when they are with the other parent.

(f) Parties are to keep each other informed and updated about what the school or any other educational institution communicates to either party about the Children.

(g) Parties are not to speak to the Children about the court proceedings or speak about the court proceedings in the presence of the Children.

(h) Parties are not to photograph, document or record videos of the Children for the purposes of use or reference in court.

Maintenance

Wife

99 Section 114(1) WC sets out a non-exhaustive list of factors to be considered when ordering maintenance. The guiding principle behind the grant of maintenance is that of financial preservation: *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506 at [12].

100 Based on my judgment, she will receive 30% of the matrimonial assets, which would be a total of around S$11m, a large part of which are liquid assets.

While she is still relatively young and has many more years ahead of her for which she will need sufficient finances, this is a significant sum. The power to order maintenance is supplementary to the power to divide the matrimonial assets: *TNL* ([55] *supra*) at [63]. In my judgment, the sum that the Wife will receive, if invested properly, and even if the Wife chooses not to seek employment, would be more than sufficient to maintain the Wife. Therefore, I do not make a maintenance order in favour of the Wife in this case.

Children

101 The Wife sought maintenance for the Children as well.

102 I first consider the claimed monthly expenses of each child. The Wife claimed that Child [A] required S$7,298.43 per month, while Child [B] required S$5,385.75 per month. The breakdown of these expenses is tabulated as follows:[143]

S/N	Description	Amount
Child [A]'s Expenses		
1.	Food delivery	S$789.03
2.	Food at restaurants	S$295.76
3.	Entertainment	S$450.00
4.	Shopping, including toys, clothes, shoes, and presents that Child [A] wants to buy for others	S$1,500.00
5.	School fees	S$2,234.17

143 W AOM2 at para 110.

S/N	Description	Amount
6.	Transport to and from school	S$270.00
7.	School supplies, stationary, books, attire, miscellaneous	S$148.52
8.	Piano classes	S$349.00
9.	Drama classes	S$320.00
10.	Ballet classes	S$117.50
11.	Ballet costume & supplies	S$22.37
12.	Holiday camps	S$73.55
13.	Hairdressing	S$134.00
14.	Tennis classes	Unknown
15.	Mobile phone charges	Unknown
16.	Manicure	S$15.30
17.	Annual birthday celebration	S$548.33
18.	Medical	Unknown
19.	Dental	S$30.90
	Sub-Total (A)	S$0
Child [B]'s Expenses		
20.	Food delivery	S$789.03
21.	Food at restaurants	S$295.76
22.	School fees	S$1,829.50
23.	Gymnastic classes	S$96.30

S/N	Description	Amount
24.	Shopping, including toys, clothes, shoes, and presents that Child [B] wants to buy for others	S$500.00
25.	Annual birthday celebration	S$548.33
26.	Medical	Unknown
27.	Dental	S$9.92
28.	Supplies	S$8.90
29.	Mandarin tuition	S$380.00
30.	Piano classes	S$235.00
31.	Ballet classes	S$117.50
32.	Ballet costume & supplies	S$16.03
33.	French classes	S$395.42
34.	Swimming classes	S$164.06
	Sub-Total (B)	S$5,385.75
	Total (A) + (B)	S$12,684.18

103 It bears reminding that the court, in deciding on the appropriate maintenance for children, is not concerned primarily with an accounting exercise, but deals broadly with a number of different factors in deciding on the appropriate award of maintenance: *UEB v UEC* [2018] SGHCF 5 at [13]. In that regard, the High Court has also observed that "maintenance is ordered in order to meet the reasonable needs of the child and if the child's lifestyle is overly extravagant, the husband should not be made to bear the costs of it": *APE v APF* [2015] SGHC 17 at [43]. I agree with the Husband that these expenses are

excessive. In respect of Child [A], I do not see why S$1,500.00 is needed every month for shopping. For both Children, I find that the expenses for food delivery and restaurant dining are excessive given their age. I note also that the Children appear to have meals at school. Entertainment, similarly, for such children ought not to reach S$450.00 per month. The annual birthday expenses, based on the Wife's accounting, would amount to around S$6,579.96 per child. In my view, that is excessive as well. In his submissions, the Husband proposed instead that Child [A] has reasonable expenses of S$4,688.89[144] while Child [B] has reasonable expenses of S$3,942.71.[145] In the round, I am satisfied that Child [A] can be allowed S$5,000.00 per month and Child [B] S$4,000.00 per month as reasonable expenses. These are relatively high simply because of the parents' "means and station in life" (see s 68 WC, which applies by virtue of s 127(2) WC).

104 I note that the Wife has also tabulated the household expenses. I do not intend to go through each of these items. I am only concerned with the expenses that can be attributed to the Children and which they have a share in enjoying. First, the rental cost of their current unit is S$11,800.00 per month. In my judgment, the Wife cannot claim for the whole of this rent. While account must be given to the standard of living to which the Wife and family are used to, the court must also consider that the situation after the breakdown of marriage has changed. If the Wife claims that she is not able to earn an income, there is no reason why she is not able to move to a residence with lower monthly rent. The Wife is not entitled simply to throw this cost on the Husband. Having regard to the parties' lifestyle, I am of the view that a reasonable expense for monthly

144 HWS at p 97.

145 HWS at p 99.

rental would be around S$9,000.00 per month. I note that the Husband is also renting a unit for around S$8,300 per month.[146] Second, food delivery and eating out have already been accounted for in the tabulation of the Children's expenses. There is no reason to account for that again. Further, given that "entertainment" is an expense accounted for in the Children's expenses, I do not see the need to account for them in terms of the various subscriptions in the household expenses. Third, I accept the expenses of a domestic helper or cleaner, as well as utilities and transport, but make adjustments for what can be considered reasonable. Having regard to all of the numbers, I consider that a monthly household expense of approximately S$11,000.00 to be reasonable. The Children's share of the expenses would be approximately S$7,300 per month (being approximately two-thirds of the household expenses).

105 I do not consider the various overseas travel and holiday expenses in my determination. These can be funded by either party individually when they choose to bring the Children on holidays. Similarly, presents for the Children are within each parties' individual expenditures.

106 Taking each child's reasonable expenses and their share of the household expenses together, I find that the Children have a total of S$16,300.00 per month in expenses (being S$5,000.00 + S$4,000.00 + S$7,300.00).

107 I turn now to consider how this should be borne between the two parties. The Wife argued that the Husband should pay for all of the Children's expenses. I could not agree. There was no basis for saddling the Husband with such

146 H AOM1 at Tab 35.

payments entirely given that the Wife would be receiving a significant share of the matrimonial assets (which could be used to generate an income) and given that she could find employment. Given the large pool of matrimonial assets, I do not consider it appropriate to rely on income entirely in this case. Although the Wife has tendered evidence concerning the Husband's new business venture,[147] the Husband noted that he never disputed that he could afford maintenance.[148] In my judgment, a fair apportionment of the expenses is along the lines of the ratio of the division of the pool of matrimonial assets, *ie*, 70% to the Husband and 30% to the Wife. I then adjust this slightly to place more responsibility on the Husband since he will be retaining most of his investment assets and has most recently been employed, to a ratio of 80:20 in favour of the Husband.

108 Hence, I order that the Husband should pay S$13,040.00 per month (being 0.8 x S$16,300.00) as maintenance for the Children.

Costs

109 I had reserved the costs of RAS 23/2019 and SUM 89/2020 to be considered together with the AM proceedings. Parties are to file and exchange written submission on costs of RAS 23/2019, SUM 89/2020, and the AM proceedings limited to 12 pages (excluding annexes exhibiting documents and list of disbursements), within 14 days of this judgment.

Conclusion

110 I summarise the conclusions above as follows:

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147 Wife's Affidavit in SUM 89/2020 at para 22.

148 Husband's Affidavit in SUM 89/2020 at para 15.

(a) The pool of matrimonial assets is divided in the ratio of 70:30 in favour of the Husband. The total value of the pool of matrimonial assets is S$36,830,541.81. Based on the said ratio, the Husband is entitled to S$25,781,379.27 and the Wife is entitled to S$11,049,162.54. Accounting for the assets already in her own name, and the S$100,000.00 advance paid in December 2018, the Wife is entitled to a further S$10,324,278.08.

(i) The Husband is to pay 50% of S$10,324,278.08 to the Wife within three months of the date of this judgment, and the remaining 50% of this sum within six months of the date of this judgment.

(ii) The Wife is to transfer all her rights and entitlements to the joint assets to the Husband within three months of the date of this judgment.

(b) The Wife is to bear her share of the COVID-19 Losses, *ie* S$832,176.03 (being 30% of S$2,773,920.11), in the manner agreed by the parties (see [59] above).

(c) On the Children's matters:

(i) I make no order as to the religious upbringing of the Children. The order relating to the choice of school of the Children is that given on 3 August 2020.

(ii) There shall be joint custody of the two (2) children of the marriage, namely, [Child A] and [Child B] to both the Husband and the Wife.

(iii) Care and control of the two (2) children is granted to the Wife.

(iv) Subject to (v)–(vii), that the Husband shall have access to the children as follows:-

(A) Every Tuesday evening from 5.00pm to 9.00pm.

(B) Every other week, every Friday from 12.00pm to Sunday 8.00pm ("weekend access"). In weeks where the Husband does not have weekend access, he shall have access on a weekday evening of his choice, subject to the Wife's agreement (which shall not be unreasonably withheld), from 5.00pm to 9.00pm in the five (5) days prior to or after the weekend in which he does not have weekend access. For the avoidance of doubt, the Children will spend the first weekend after the release of this judgment with the Husband.

(C) Subject to (F), half of each of the school holidays, with parties to discuss and agree on specific dates, save that the Husband shall not have access for a continuous period of more than 14 days. Parties are to endeavour to agree on increasing this limit as soon as appropriate for the Children. Such access is to start at 9.00am of the first day of each period and end at 9.00pm on the last day of each period.

(D) For public holidays, alternate public holidays from 9.00am to 9.00pm. Where a public holiday falls within a school holiday, it is not to be counted as part of the school holiday in (C) above.

(E) Notwithstanding (A) to (D) above, the Children shall spend Muslim public holidays (*viz*, Hari Raya Puasa and Hari Raya Haji) with the Wife, and shall spend Catholic public holidays (*viz*, Christmas and Easter) with the Husband. They shall also spend Mother's Day and the Wife's birthday with the Wife, and Father's Day and the Husband's birthday with the Husband. Such access is to commence at 9.00am and end at 9.00pm. These days are not to be considered for the purposes of (C) or (D) above.

(F) Any other period as may be agreed between the parties.

(G) Parties are at liberty to adjust the holiday schedule (*ie*, any access under (C)–(E)) by mutual agreement. For the avoidance of doubt, this does not preclude the parties coming to any other mutual agreement for any of the access granted to the Husband.

(H) The Husband shall pick up and drop off the Children at the Wife's residence or some other mutually agreed location.

(I) Where applicable, the Husband is to ensure that the Children attend school and their scheduled classes when they are with him.

(v) Either parent who intends to travel with the Children shall provide an itinerary at least seven (7) days in advance.

(vi) Parties are to have reasonable electronic access to the Children, subject to the Children's schedules, when they are with the other parent.

(vii) Parties are to keep each other informed and updated about what the school or any other educational institution communicates to either party about the Children.

(viii) Parties are not to speak to the Children about the court proceedings or speak about the court proceedings in the presence of the Children.

(ix) Parties are not to photograph, document or record videos of the Children for the purposes of use or reference in court.

(d) There shall be no maintenance payable for the Wife.

(e) The Husband is to pay S$13,040.00 per month as maintenance for both Children, to be paid by the 1st of every calendar month into a bank account of the Wife's choosing. This shall commence from the 1st of the next calendar month after the date of this judgment.

Tan Puay Boon
Judicial Commissioner

Foo Siew Fong, Gill Carrie Kaur and Yap Ying Jie Clement (Harry Elias Partnership LLP) for the plaintiff;
Kronenburg Edmund Jerome, Ho Mingjie Kevin, Tan Po Nin Jeslyn, Tan Qian Ni Roseanne and Colin Wu Guolin (Braddell Brothers LLP) for the defendant.
