IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 80

Civil Appeal No 193 of 2020

Between

TOF

… *Appellant*

And

TOE

… *Respondent*

In the matter of Divorce (Transferred) No 3134 of 2019

Between

TOE

… *Plaintiff*

And

TOF

… *Defendant*

JUDGMENT

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

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v
TOE

[2021] SGCA 80

Court of Appeal — Civil Appeal No 193 of 2020
Judith Prakash JCA, Belinda Ang Saw Ean JAD and Woo Bih Li JAD
3 May 2021

10 August 2021 Judgment reserved.

Woo Bih Li JAD (delivering the judgment of the court):

1 The 53-year-old respondent ("the Wife") is a Korean homemaker and last worked as an air stewardess some 20 years ago. The 54-year-old appellant ("the Husband") is a former fund manager from the United Kingdom ("UK"). They have one 11-year-old son ("the Child") from their 19 year-long marriage who is a citizen of both South Korea and the UK. In the proceedings in the High Court below, the judge ("the Judge") granted:

(a) the Wife sole care and control of the Child (with access rights for the Husband on certain days of the week and during half of the Child's holidays);

(b) the Wife a lump sum of $4,000,000 in full and final settlement of the division of matrimonial assets;

(c) an order that the Husband return the Wife her personal belongings (jewellery, accessories, paintings, handbags and clothes);

(d) an order that the Husband return the Wife half of the furniture and kitchenware that she bought from Korea and Japan;

(e) monthly maintenance of $5,000 for the Wife;

(f) monthly maintenance of $4,100 for the Child and an order that the Husband pay for the Child's schooling activities, enrichment/tuition classes, premiums on insurance policies and medical and dental expenses; and

(g) no order as to costs.

2 In the present proceedings, the Husband appealed against all of the orders made save for the costs order. We also mention that the Appellant's Case was submitted by the Husband's solicitors. Since then, he has ceased to be represented and has himself sent various emails to the court before the hearing of the appeal on 3 May 2021. The Wife, on the other hand, was represented by solicitors. We dismiss the Husband's appeal entirely. These are our reasons.

Facts

The marriage

3 The parties were married on 24 November 2000. Throughout the entire marriage, the Wife was a homemaker and followed the Husband wherever his work took him. The Husband, on the other hand, worked as a proprietary trader for various companies. His work took him to many countries but eventually, in 2007, he secured a position based in Singapore as a fund manager at a company we will refer to as "Company T". The Wife joined him in Singapore, and they

resided here for many years thereafter. The Husband returned to the UK in or around October 2020. The Wife and Child still live here.

4 During their time in Singapore, the couple enjoyed a comfortable life. They purchased an apartment as their matrimonial home ("MH") and lived there until they sold it in 2014. The Husband earned about $41,000 a month working in Singapore and later quit to set up his own company (which we will refer to as "J Singapore") in 2011. By his account, he set up J Singapore with a view to working less and spending more time with his son. Beyond this, and besides the fact that J Singapore develops "other software and [engages in] programming activities", little is known about J Singapore.

5 As for the Child, he was born in Korea to a surrogate mother (the Wife's sister-in-law) but effectively spent all his life in Singapore. He was aged 11 at the time of this hearing.

The marital breakdown and proceedings arising

6 According to the Wife, the marriage began deteriorating in 2012. Nonetheless, the parties continued to live together until 12 May 2014 when the Wife and the Child left and moved into a separate rental apartment. While there are conflicting accounts of what transpired on 12 May 2014, the following facts are undisputed:

(a) The Wife withdrew about $400,000 from the parties' joint bank account around the time she left to move into a separate apartment.

(b) By then, the Husband had also moved $5.2m (representing a portion of the proceeds from the sale of MH) from the couple's joint account to the bank account of a company in the Cayman Islands which we will refer to as J Cayman.

7 The Wife made three divorce applications. The first was filed on 20 May 2014 and dismissed on 25 January 2017. The second was filed on 15 June 2017 but eventually withdrawn on 27 May 2019. The last was filed on 3 July 2019 and interim judgment (a provisional order of divorce, granted before courts address ancillary matters such as maintenance, custody, care and control of children and the division of matrimonial assets) was granted on 9 December 2019. The first two were pursued on the ground that the marriage had broken down irretrievably due to the Husband's unreasonable behaviour while the last was pursued on the ground that the marriage had broken down irretrievably as the parties had been living apart for at least four years.

8 The divorce proceedings were plagued by multiple interlocutory applications. Every application was hotly contested. Interim maintenance orders would invariably be answered with requests for variations; interim care and control or custody orders would be challenged with stay applications, and requests to take the Child on holiday would be met with vigorous resistance. The Husband proved to be uncooperative and, at times, deeply hostile to the court itself. He refused to comply with court orders (prompting the Wife to take up enforcement proceedings to secure interim maintenance for her and the Child) and blamed unfavourable decisions on the judges hearing his case. Recusal applications were filed against the judges and the transcripts show that the Husband was not above casting aspersions on the judicial officers overseeing his case.

9 This belligerence continued well after the interim judgment ("IJ") was granted. The Husband kept the Child from the Wife (breaching court orders in the process), unilaterally cancelled the Child's student pass in Singapore and refused to cooperate meaningfully in any discovery/interrogatory proceedings. The Judge who heard the ancillaries below was also the judge who had earlier heard the Wife's appeal against an initial relocation order granted by a lower court in favour of the Husband (the "Relocation Order"). In allowing the appeal, the Judge observed as follows:

> The husband seems to me to be more recriminating than the wife. He wastes no moment to disparage her, in between bitter comments about the Family Court, the government, and this country. He made his remarks to show why he is aggrieved, but the bitterness and contempt could scarcely be hidden. When he was peeved, against the wife's counsel, and the courts, he could not contain his sarcasm…

10 The Husband's failure to give full and frank disclosure of the extent of his assets greatly hampered the disposal of the ancillaries below. Indeed, in the grounds of decision ("GD") on the ancillaries, the Judge remarked that his "task in [dividing up the matrimonial assets had] been greatly complicated by the Husband's persistent failure to disclose the full extent of the assets within his possession." He further observed:

> […] from 2012 when the marriage broke down, the husband had set about making his purse seem small and empty, and withheld all information as to his income and assets. Moreover, the husband's demeanour throughout the proceedings gave me further reason to disbelieve whatever limited evidence he put forward. He was glib and theatrical when it suited him in the course of presenting his case, including a moment when he broke down in tears. But his hard and arrogant self emerged after I had read the orders to the parties, and I had to caution him that he would be held in contempt should he continue as he did.

Decision below

11 The ancillaries came before the Judge on 15 September 2020 and 13 October 2020. There were three main issues: care and control of the Child, maintenance for the Wife and Child, and division of matrimonial assets on which the Judge made the orders mentioned above at [1(a)], [1(b)], [1(e)] and [1(f)].

Issues to be determined

12 We will first address the Husband's allegation that the Child was being held against his will in Singapore. In the Appellant's Case and in his emails to the court, the Husband used words like "abducted", "held unlawfully", "trafficked" and "held captive" to describe the Child's situation. Related to this allegation, the Husband also alleged that the Wife had obtained a passport for the Child from South Korea using a false name in that the Child's passport bore the Wife's family name instead of the Husband's. The Husband further alleged that the false name was used with the Singapore Immigration and Checkpoints Authorities ("ICA") and the foreign school which the Child was attending.

13 The explanation from the Wife's counsel was that the Husband had taken the Child to South Korea. He was supposed to hand the Child to the Wife there, which he did. However, the Husband then left South Korea with the Child's British passport, which he had not handed over to the Wife. The Wife then applied for a passport for the Child from the authorities in South Korea and returned to Singapore with him. Counsel did not deny that that passport was issued using the family name of the Wife. Counsel said the Child's birth certificate was used to obtain that passport although the Child is known by the Husband's family name at school. Counsel also explained that she had not acted

for the Wife previously, but she understood that the Wife had given her explanation to the court which the court had accepted.

14 We are of the view that the Husband's allegation of abduction was a distraction calculated to paint the Wife in a negative light. He did not specify whether this allegation pertained to the court's jurisdiction or any other specific issue like the Wife's claim to care and control. His allegation, in other words, had no discernible connection to any of the reliefs sought on appeal.

15 Furthermore, it is untrue to suggest that the Child is being held against his will in Singapore. If the Husband truly believed this, he would no doubt have complained accordingly to the ICA or to the school and an investigation would have been made before the ancillaries hearing by the Judge. No specific evidence of such a complaint and its outcome was placed before us for the purpose of the appeal.

16 Furthermore, an order had already been made by a District Judge on 17 February 2016 by which the Wife was ordered not to apply for any passport for the Child without the express permission of the Husband or the leave of the court. She was also not to travel overseas with the Child on any passport besides his British passport. A copy of the Order was to be served on the South Korean embassy. This was apparently done via a letter dated 1 March 2016 from Veritas Law Corporation, who were the Wife's then solicitors, to the South Korean embassy. If there is still something to be done about the name of the Child in his passport or in the school's records, that is a matter which is not part of the appeal before us and may be followed up separately, if necessary.

17 As for the Husband's allegation that the Wife is not the Child's mother because there was a surrogate mother, we will address this separately under the question of care and control of the Child.

18 The Husband detailed 15 other issues in his Appellant's Case, but these broadly fell into four main contentions regarding:

(a) the jurisdiction of the court below hearing the ancillaries;

(b) The Judge's decision to award sole care and control of the Child to the Wife and access to the Husband;

(c) The Judge's decision on spousal and child maintenance; and

(d) The Judge's drawing of adverse inferences for the purposes of identifying, valuing, and dividing the pool of matrimonial assets.

Jurisdiction

19 In matrimonial proceedings, the court's jurisdiction (whether it be the Family Court or the High Court) is governed by s 93 of the Women's Charter (Cap 353, 2009 Rev. Ed.) ("Women's Charter"):

> **Jurisdiction of court in matrimonial proceedings**
>
> **93.**—(1) Subject to subsection (2), the court shall have jurisdiction to hear proceedings for divorce, presumption of death and divorce, judicial separation or nullity of marriage only if either of the parties to the marriage is —
>
> (*a*) domiciled in Singapore at the time of the commencement of the proceedings; or
>
> (*b*) habitually resident in Singapore for a period of 3 years immediately preceding the commencement of the proceedings.
>
> …

20 Thus, jurisdiction may be established by habitual residence in Singapore for the three years immediately preceding the commencement of divorce proceedings. In this regard, it does not matter that the parties (and the Child) are foreigners. Nevertheless, before us, the Husband questioned the jurisdiction of the court. The Husband stressed that he and the Wife and the Child are foreigners. He suggested that they have no connection with Singapore and were akin to tourists in Singapore. The Wife was gaming the system by leveraging on the Child's student pass to obtain a long-term visit pass ("LTVP") for herself.

21 However, the Husband was painting a misleading picture. This was not a case where a foreign wife had parachuted a foreign child into a school in Singapore, obtained a student pass for the child and then leveraged on that to obtain an LTVP for herself even though the Wife had never been resident in Singapore. On the contrary, as set out above at [3] to [5], both the Husband and the Wife were residents in Singapore for many years and the Child had effectively spent all his life in Singapore. The Judge found that the Child had been born in South Korea but came to Singapore when he was two months old and had only ever attended school in Singapore.

22 Furthermore, according to the Respondent's Case, the Husband had previously filed Summons No FC/SUM 3773/2019 on 31 October 2019 to dismiss the divorce proceedings on various grounds including the ground that the parties had not been resident in Singapore for the last three years. This application was dismissed by a District Judge on 18 November 2019. The Husband did not file any appeal against that decision. IJ on the divorce proceedings was granted on 9 December 2019.

23 Most tellingly, the Husband implicitly accepted the court's jurisdiction, going so far as to rely on it when contesting the maintenance order that was made against him. In his affidavit of 8 July 2020, he made the following statements with regard to Maintenance Matters to be Admitted and Heard in various applications:

> 40. We are now divorced.
>
> 41. On 9 December 2019, the court granted [the Wife's] third application for divorce.
>
> 42. We are now no longer married …

24 There, the Husband was arguing that the Wife was no longer entitled to maintenance as she was no longer his Wife. Notably, he was relying on the court's subsequent order granting IJ (and impliedly accepting the court's jurisdiction) in mounting that argument. It was therefore not open to the Husband to raise any jurisdictional issue thereafter.

Care and control of and access to the Child

25 On the question of care and control of the Child, we address a preliminary point raised by the Husband about the Child's parentage. In what appeared to be a last-ditch attempt to persuade us to grant him care and control of the Child, the Husband submitted that the Wife was not the Child's mother at all. He claimed that the Wife could not be recognised as the Child's mother since Korean law only recognised a child's birth mother (*ie* the surrogate mother) as the lawful mother. We reject his arguments.

26 First, we did not see the relevance of Korean law in these proceedings. The case had been brought in Singapore and notwithstanding the international character of the parties, Singapore law had been applied at every stage of the proceedings without objection by the parties. Secondly, even if Korean law were

relevant, the appropriate approach to raising and proving Korean law was to produce an affidavit from an expert witness (typically a foreign lawyer) who could explain that law. It was *not* appropriate for the Husband to give evidence about what Korean law entailed without such evidence. Thirdly, assuming further that Korean law prohibited the use of surrogacy, the Husband's claim to parentage might be just as weak as the Wife's. That is why evidence from a Korean law expert was more appropriate than evidence from the Husband, subject to the other points we mention. Fourthly, the Husband did not dispute that the Child was conceived using the Wife's egg. The surrogate mother was not claiming any parental right over the Child. Fifthly, the couple had raised the Child as father and mother respectively. The Husband knew about the surrogacy from the very start. Although the Husband constantly reminded the Judge presiding over the Wife's appeal against the Relocation Order of the surrogacy, both sides had proceeded on the premise that the Wife was the Child's mother for the purpose of the subsequent hearing before us. Also, the Appellant's Case did not emphasise the surrogacy as an issue. In all the circumstances, it was not open to the Husband to raise the issue belatedly.

27 We also address the Husband's contentions (as stated in the Appellant's Case) that the Judge had erred in failing to interview the Child or appoint a Child Representative. This was confusing as other parts of the Appellant's Case also mentioned that the Judge had interviewed the Child for a few minutes and also alleged that the Judge had failed to consider a report from a Child Representative.

28 As mentioned, the Judge had heard the Wife's appeal against the Relocation Order. Before the Judge gave his decision, he had interviewed the Husband, the Wife and the Child separately. The Husband had also represented himself in that hearing. Mr Yeo Kwee Chye Raymond, a Singapore lawyer, was

appointed as the Child Representative of the Child. He submitted a report dated 8 June 2018 ("the 2018 Report"). This report was also considered by the Judge before he made his decision on 23 August 2019. The Judge allowed the Wife's appeal and set aside the Relocation Order.

29 However, for the purpose of the subsequent hearing on the ancillaries, the Judge had not interviewed the Wife and Child again. The Husband again appeared in person. There was no further report by the Child Representative.

30 Therefore, what the Husband meant was that the Judge should have interviewed the Child again before making his decision on care and control and access in respect of the Child. The Husband also submitted that the Judge had not adequately considered the report of the Child Representative and furthermore, that the Judge should have ordered a more updated report in view of a lapse of time of about two and a half years.

31 In our view, the Husband's arguments have no merit. It is not in every matrimonial case involving a child that the first instance court must interview the child or appoint a Child Representative. Those are options that the court *may* exercise. In the present case, those options had already been exercised. Besides the mention about a lapse of time, the Husband produced no evidence to support his argument that the Judge should have interviewed the Child again or obtained an updated report from the Child Representative. It is also unclear if the Husband had in fact submitted for this to be done when he appeared before the Judge for the ancillaries. In any event, it was for the Judge to decide whether to do so and we see no reason to hold that he had erred in deciding not to take these steps again.

32 We now address the arguments on the merits of the Judge's decision on care and control.

Parties' positions

33 The Husband's contentions are that the Judge's orders:

(a) root the Child in a country where neither the Child nor the parents are resident, and ignore the reality that the Child's stay in Singapore is purely temporary;

(b) cause more harm by abruptly deviating from the original arrangement of shared care and control; and

(c) do not pay enough heed to the 2018 Report which states that the Child is close to the Husband, that the family's stay in Singapore appears to be transient and that the Husband has spoken of a family support network capable of providing assistance in the UK.

34 The Wife defends the Judge's orders arguing that:

(a) after the Husband's Relocation Order was overturned on appeal, the Husband consistently sought to disrupt the Child's education in Singapore by cancelling the Child's student visa applications, refusing to pay the Child's school fees and accusing the Child's school of accepting bribes. The Wife has had to seek court orders to compel the Husband to reinstate the Child's student pass We will elaborate on these allegations later. The Child is still attending school in Singapore. Implicit in these arguments is the suggestion that the Child's routine and education are best preserved by his remaining with the Wife in Singapore;

(b) the Husband has constantly placed his own interests above the Child's (*eg,* by seeking a relocation for the Child which would have uprooted the Child simply because the Husband himself wished to return to the UK); and

(c) the Husband has since returned to the UK and has not given any indication when he will return to Singapore. In light of these developments, the "question of his having shared care and control of [the Child] is now moot".

Our decision

35 As a starting point, we find that the only practical option in the circumstances is awarding sole care and control to one of the parents. The Husband and Wife have lived in separate countries since October 2020. Short of shuttling the Child constantly between Singapore and the UK, there is no feasible way of maintaining any kind of shared care and control arrangement for the Child. Indeed, during the hearing before us, the Husband himself acknowledged that there would be practical difficulties with a shared care and control arrangement.

36 Although the Judge had taken into account the Husband's plan then to relocate to the UK and the Wife's plan to remain in Singapore, that was not the only reason why he decided that the initial interim arrangement for shared care and control of the Child should be varied. The Judge noted that the shared care and control arrangement was not working well as it was disruptive to the Child and had created more conflicts between the parties.

37 We acknowledge that difficulties in implementing shared care and control would not necessarily preclude an order for such an arrangement and that conflicts between divorcing parties are bound to arise. The question is the extent of the difficulties or conflicts. More importantly, in deciding all matters relating to the Child, the court's paramount consideration is the welfare of the Child: s 125(1) Women's Charter. For the reasons stated below, there is no justification for disturbing the Judge's decision to award sole care and control to the Wife.

38 First, shared care and control is not feasible as the parties are not able to meaningfully co-parent, even when they are both resident in the same country.

39 One specific instance stood out. This related to the Child's student pass, which he required in order to continue his studies in Singapore. In short, there were multiple quarrels between the parties and the Child's student pass was not renewed in time for the start of the next school semester. As a result, he missed school for some six months between January and June 2020. We outline the key facts that flesh out this episode:

(a) The Respondent's Case alleged that on 28 June 2019, the Wife learned that the Husband had unilaterally cancelled the Child's student pass after the Husband had obtained the Relocation Order. As such, on 16 August 2019, the Wife obtained an order from a District Judge for the Husband to reinstate the student's pass and not to cancel that pass without the Wife's consent. Thereafter, the Judge made his order to set aside the Relocation Order.

(b) Subsequently, in November 2019, the Wife instructed the school to renew the student pass for a standard term of six years. When an application was then made to the ICA, the Husband withdrew it without

the consent of the Wife. The Wife asked the school to resubmit the application but again the Husband withdrew it. When the Wife followed up with ICA, she was told that ICA had no choice but to allow the withdrawal as the parties had shared care and control of the Child.

(c) As the Child did not have a student pass, he was unable to go to school when the new term started on 13 January 2020.

(d) The Wife then filed another application and on 27 May 2020, a District Judge ordered parties to take whatever steps were necessary to enrol the Child in the school and procure the student pass for him. However, the matter was not resolved and the Wife alleged that the Husband had refused to pay the Child's school fees and had accused the school of "accepting bribes". The impasse continued with the Wife having to write to the District Judge for clarification of her earlier order of 27 May 2020. Finally, on 11 August 2020, a student pass was issued for the Child and he returned to school when term resumed on 18 August 2020. By then, he had missed school for the period 13 January to 26 June 2020.

40 The Husband did not dispute these facts. It was therefore no wonder that the Judge found that the interim arrangement of shared care and control was not working well. In that regard, we agree wholly with the Judge.

41 Second, the Judge appropriately considered all the relevant material before coming to his conclusions. It was simply not true, as the Husband alleged in his Appellant's Case, that the Judge favoured the Wife's testimony (that the Child was unhappy) to the total exclusion of all other evidence. In fact, the Child himself had mentioned that he had been unhappy with the interim shared care and control order (as noted by the Judge at [3] of his GD).

42 It was also not true that the Judge had failed to give due weight to the 2018 report. In the Appellant's Case, the Husband had (selectively) pointed to the parts of the 2018 report which remarked on (a) the Child's emotional attachment to the father, (b) the fact that neither party was employed in Singapore, and (c) the fact that the entire family's presence in Singapore was transient. The Husband failed to mention that the report had also noted that the Child was comfortable with the Wife and that the Wife had complained of difficulties in access to the Child during the interim arrangement of shared care and control.

43 Most importantly, at the time when the Judge made his decision to revoke the Relocation Order, he had already taken the 2018 report into account. However, he had also noted the following (at [6] and [7] of his GD):

> (a) the Child was very clear that he preferred to stay in Singapore where he had been brought up and where his friends are. The Child also prefers the weather in Singapore to that in the UK and South Korea; and
>
> (b) the Husband was more recriminatory than the Wife and his bitterness and contempt could scarcely be hidden (as mentioned in [9] above).

44 The Judge was concerned that either or both parties would become master manipulators. Taking into account the history of the divorce proceedings, he was fortified in his view that the Relocation Order would only serve the interests of the Husband and no one else.

45 It seems to us that when it came to the hearing of the ancillaries, the Judge did take into account, as he was entitled to, the reasons for his decision to revoke the Relocation Order and any other evidence presented before him. By

then, the Wife had mentioned the Husband's conduct in cancelling the Child's student pass.

46 Third, the Husband also claimed that the access orders of the Judge were "unworkable" as they do not sufficiently take into account the fact that he now resides in the UK. We disagree. The Husband himself confirmed during the hearing before us that the Wife "doesn't stop the video calls" and that he is in contact with the Child on "most days". By his own account, he maintains frequent contact with the Child although he alleged that the Child was quiet when the mother was around. It appears that the Husband's real complaint is the lack of physical contact with the Child. But the fact that he cannot enjoy such contact is no fault of the access orders granted. It is a natural consequence of his decision to leave Singapore and the current Covid-19 pandemic. Indeed, the Husband did not make any specific proposal about how his access could be improved. The fact that he has been in contact with the Child on "most days" suggests that the Wife has not discouraged such contact, and indeed he himself has not suggested so.

47 We also take this opportunity to raise our concerns about certain emails sent by the Husband to the court.

48 As mentioned, after the Appellant's Case was filed, the Husband sent emails to the court. One purpose was to refer to two letters or emails allegedly from the Child. Those letters/emails stated that the Child wanted his parents to live near each other in the UK and that the Child wanted to move to the UK to be a professional football player which he could not do in Singapore. One of the letters/emails also stated that what the Child had said two years ago (presumably referring to what he had said during the judicial interview conducted with the purpose of examining the Relocation Order) was completely false. He did not

want to stay in Singapore till the age of 17. He was not living a happy life without his dad, and his mum was running out of money. He wanted his parents to live in the same neighbourhood. If it took for him to die for them to do so, he would do it.

49 Leaving aside the point that these documents should have been exhibited with an affidavit from the Husband, and assuming that they did in fact emanate from the Child, we are concerned that the Child may have been manipulated by the Husband to issue them.

50 We note with concern that the Child claims to have said something completely false two years ago, and that he allegedly claims that he is prepared to die in the cause of bringing his parents to live in the same neighbourhood. Such comments reflect the sad state of affairs before us for which the Husband has to bear the main responsibility, albeit with the Wife playing a part too. If the Husband continues with his recriminations, he will put the Child's welfare very much at risk.

51 We conclude that, in all the circumstances, the Husband has failed to show that the Judge had erred when he granted sole care and control to the Wife and thereby permitted the Child to continue with his education in Singapore for the time being. We hope that the Child will not be used as a pawn and further hope that his parents will reflect on whether they have been advocating his interests or their own.

Spousal and child maintenance

Parties' positions

52 According to the Husband, the Judge erred in:

(a) concluding that the Husband was a man capable of supporting himself, the Wife, and the Child. The Judge's conclusions had been partially based on District Judge Edgar Foo's ("DJ Foo") decision in *TOE v TOF* [2017] SGFC 45, where DJ Foo was deciding on the Wife's application for maintenance and whether to enforce an interim maintenance order made by another District Judge. DJ Foo had observed that the Husband's spending habits were not consistent with that of an individual who supposedly had no income and was in debt. Those observations were, according to the Husband, dated and therefore unreliable;

(b) failing to take into account the Husband's tax returns (which showed that he had no income), and failing to appreciate the possibility that his mother had been the one bearing all his expenses;

(c) failing to consider that the Husband had to borrow money from his mother;

(d) failing to consider the Wife's earning capacity as someone with a "higher qualification in hospitality" who is "able-bodied" and capable of working. Relying on *NI v NJ* [2007] 1 SLR(R) 75 ("*NI v NJ*"), the Husband suggested that the Wife ought to support herself.

53 The Wife defends the Judge's decision, stating that:

(a) DJ Foo's observations, though made three years ago, were still applicable at the time of the IJ (*ie* in 2020);

(b) the Husband had been vague and evasive in discovery or interrogatories administered in 2020, the suggestion being that the Husband was again hiding his true financial position;

(c) there was no way that the Husband's mother could have paid for a second property in the UK, or given the Husband a loan of GBP 150,000 (and at 25% interest per annum), as alleged by the Husband, given her financial circumstances; and

(d) the Wife, being a LTVP-holder, could not work in Singapore. Moreover, the present case was qualitatively different from the situation in *NI v NJ*.

Our decision

54 We affirm the Judge's decision and find that the Husband is capable of supporting himself, the Wife, and the Child.

55 The Husband submitted that the Judge should not have relied on DJ Foo's decision, which had been made three years ago in 2017. In the appeal before us, the Husband referred to Notices of Assessment showing employment income of $40,000 for 2017 and nil for 2018. In our view, the Husband's reliance on such evidence was just more of the same strategy which he had used for the hearing before DJ Foo, where he had relied on earlier Notices of Assessment. In those proceedings, DJ Foo did not accept the Husband's assertion about his lack of income. Instead, DJ Foo concluded that the Husband's spending habits and lifestyle patterns were not those of somebody who was as impecunious as the Husband claimed to be. That is an observation which the Judge affirmed, and which we note that the Husband has failed to address (much less, rebut) in his arguments before us. That being the case, we do not accept the Husband's contention that his difficult financial circumstances were continuing.

56 Insofar as the Husband relied on a Loan Agreement between his mother and himself, this evidence seems dubious at best. For one, this loan (though supposedly entered into on 14 December 2019) is not specifically referenced anywhere in his first affidavit of assets and means dated 15 January 2020. In fact, it made its first appearance in an affidavit dated 8 July 2020. Moreover, it is difficult to believe that an aged mother would enter into a loan arrangement (fully documented and executed with officious contractual jargon) with her son in which she charges him interest at the exorbitant rate of *25%* per annum.

57 We also reject the Husband's suggestion that this court should scale down the quantum of maintenance given that the Wife is capable of supporting herself. In support, the Husband argued that the Wife is in a similar position as the appellant in *NI v NJ*. This is untrue. The only similarity is that both the appellant in *NI v NJ* and the Wife in the present case did not work during the time of their marriage. But the two are in qualitatively different positions.

58 For example, the appellant-wife in *NI v NJ* had only been out of the workforce for seven years (the marriage being fairly short) and had a "range of work skills", including a Montessori diploma that she acquired during the time of the marriage: *NI v NJ* at [2] and [14]. Here, the Wife was an air-stewardess before marrying the Husband. She has not worked for the *twenty* years she spent as a "trailing spouse" following her Husband where his work took him. In fact, she is *not allowed* to work in Singapore since she is merely holding a LTVP.

59 Indeed, the Husband took inconsistent positions before us. On the one hand, the Appellant's Case criticised the Judge for not taking into account the Wife's earning capacity. Yet in an earlier letter dated 9 March 2021 from his solicitors to hers, which he attached to his email dated 15 April 2021 to the court, he complained at para 18 that the Wife was working in Singapore contrary

to the terms of the LTVP. As the Husband has accepted that technically the Wife is not supposed to work in Singapore, his argument that the Judge should have considered her earning capacity has no merit. We add that the Judge did nevertheless consider that the Wife had begun some temporary low paying jobs but had not yet found a stable permanent one.

60 As for the quantum of maintenance awarded, we note that the Husband has taken issue with the approximately $400,000 that the Wife withdrew when she left the MH on 12 May 2014 (see [6(a)] above). However, this had already been taken into consideration by DJ Foo in the earlier proceedings. In those proceedings, DJ Foo took the $400,000 into account by declining to backdate the maintenance orders. In the circumstances, we find no reason to disturb the Judge's decision.

Division of matrimonial assets

Applicable legal principles

61 When dividing a pool of matrimonial assets, the court is concerned with ensuring the just and equitable division of the material gains of the marital partnership between the spouses: *UZN v UZM* [2021] 1 SLR 426 ("*UZN*") at [16]. This exercise involves the identification of such assets and their valuation where possible.

62 Ordinarily, this would be achieved by parties submitting information they have about their assets. The court will examine the evidence, evaluate its reliability, and where necessary, draw inferences as supported by the evidence. We should emphasize that these inferences are the *ordinary* sort of inferences that a court makes in the assessment of the evidence and are different from *adverse* inferences.

63 Once the pool has been identified, the court decides what approach to adopt when dividing between the parties. Broadly, there are two:

(a) for long, single income marriages (*ie* long marriages where one spouse is the sole income earner and the other plays the role of homemaker), we affirm that courts should generally tend toward - though they should by no means be restricted to - an equal division of the matrimonial assets: *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 ("*TNL"*) at [48].

(b) for all other types of marriages, this court has endorsed the structured approach first articulated in *ANJ v ANK* [2015] 4 SLR 1043 at [22] ("*ANJ*"). This approach requires the court to (a) ascribe a ratio that represents each party's direct contributions having regard to the amount of direct financial contribution each party has made towards the acquisition or improvement of the matrimonial assets; (b) ascribe a second ratio to represent each party's indirect contribution to the well-being of the family throughout the marriage. Thereafter, using each party's respective direct and indirect percentage contributions, the court derives each party's average percentage contribution to the family that would form the basis to divide the matrimonial assets.

64 For the purpose of identifying and valuing the pool of matrimonial assets, it is not for the parties to tailor their disclosure to suit their purposes. Full and frank disclosure is therefore critical; the extent of disclosure directly impacts the court's ability to make a fair assessment of the pool of matrimonial assets, and ultimately, to order a just and equitable division of the same. As such, the failure to make full and frank disclosure may result in an adverse

inference being drawn. Such an adverse inference is drawn where (*BPC v BPB and another appeal* [2019] 1 SLR 608 ("*BPC*") at [60]):

> (a) there is a substratum of evidence that establishes a *prima facie* case of concealment against the person against whom the inference is to be drawn (see *AZZ v BAA* [2016] SGHC 44 at [107] and *UZN* at [19]); and
>
> (b) that person had some particular access to the information he is said to be hiding.

65 As can be seen, adverse inferences are fundamentally different from those we have discussed above at [62]. Adverse inferences are a response to *culpable* behaviour, usually in the form of concealment, rather than simple deductions drawn from the evidence that has been made available to the court. That said, not every shortfall in an account presents an appropriate occasion for an adverse inference to be drawn. Courts are aware that parties in a functioning marriage (particularly long ones) do not always keep fastidious accounts and would understandably have difficulty recalling the specifics of numerous transactions that occur during a marriage. Expecting such precision is simply not realistic. It is not desirable either. Spouses should not be incentivised to be calculating during the marriage; a certain degree of casualness may well be synonymous with generosity and love. The risk of a divorce should not change this.

66 If, however, an adverse inference is drawn against an uncooperative party, it would typically be given effect in one of two ways (*UZN* at [28]):

> (a) first, the court may make a finding on the value of the undisclosed assets based on the available evidence and, subject to the

party dissatisfied with the value attributed showing that that value is unreasonable, include that value in the matrimonial pool for division ("the quantification approach"); or

(b) second, the court may order a higher proportion of the known assets to be given to the other party ("the uplift approach").

67 In any given case, the court adopts the method it considers most appropriate in achieving a just and equitable result. That is, it adopts the method which best counters the effect of non-disclosure and ensures that the true material gains of the parties' marriage are ultimately divided in a fair fashion.

68 We add that the values of certain assets may also be included into the pool without the use of adverse inferences. One such situation is when a party has expended substantial sums when divorce is imminent. Thus, this court held in *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]

69 The rationale for this is that the consent of the other party was not obtained before the particular sums were expended. Unlike the drawing of an adverse inference, which usually arises from concealment, this method of including assets in the pool does not necessarily require such a culpable act. Instead, the use or diversion of these assets is known to the parties, and the lynchpin is absence of consent. Any assets removed must be identified and returned to the pool.

The Judge's decision

70 There were three parts to the Judge's decision: the identification of matrimonial assets, the apportionment of the same and his conclusion.

71 First, in identifying the matrimonial assets, the Judge made certain findings and eventually identified the following matrimonial assets:

(a) deposit for the Wife's mother's rented apartment in Korea;

(b) value of the Korean Property;

(c) money in the Wife's bank accounts;

(d) sales proceeds from the sale of the MH;

(e) money in the bank account J Cayman;

(f) money in J Singapore's bank account;

(g) the Husband's car;

(h) a property in Bali purportedly owned by the Husband ("the Bali Property");

(i) a property in Phuket purportedly owned by the Husband ("the Phuket Property");

(j) the Husband's shares in Barclays PLC ("the Barclays PLC shares");

(k) additional cash assets held by the Husband;

(l) the Husband's shares in Kings Keys Capital Partners ("the KKCP shares").

72 However, the Judge did not ascribe a value to the assets listed at [71(d)] – [71(l)] above. Instead, he drew adverse inferences from the Husband's failure to make full and frank disclosure of his assets. He noted that the Wife had claimed that the Husband's assets were worth almost $40m as compared to the Husband's claim that he had no assets at all. In the Judge's view, the little evidence he had pointed towards $40m, and was totally against a nil figure.

73 Secondly, on the question of apportionment, the Wife had adopted the approach in *ANJ* and had submitted to the Judge that the direct financial contributions should be apportioned 97:3 in the Husband's favour and the indirect contributions should be apportioned 30:70 in the Wife's favour. Averaging the two resulted in an apportionment of 36.5:63.5 in the Husband's favour.

74 The Judge also adopted the *ANJ* approach and said that the Husband had accepted the ratio of 97:3 for direct financial contributions. Before us, the Husband said that he did not agree to that as his contention was 100:0 in his

favour. Be that as it may, the difference between what the Judge had believed the Husband had agreed to and his contention before us was immaterial as will be evident below.

75 As for the parties' indirect contributions, the Husband had contended that the Wife's contribution should be less than 70% as she had the support of "domestic help, nannies and family members …". However, the Judge was of the view that the Wife's suggestion of 30:70 was appropriate.

76 Thus, the Judge was minded to accept the average ratio of 36.5:63.5 in the Husband's favour as proposed by the Wife.

77 We now come to the third part of the Judge's decision, *ie,* his conclusion. The Judge did not apply the percentage of 36.5% to the $40m figure he had mentioned. Instead, the Judge took into account the wife's claim for $5m and granted her $4m as a reasonable figure.

78 We are of the view that the Judge erred in his approach. After identifying each asset, he should have attempted to ascribe a value based on whatever little evidence he had before him and reach a tentative aggregate amount. This was not a case where the evidence was so scarce that such an exercise would be futile. He could then have added to that tentative aggregate an uplift in view of the adverse inferences he was drawing from the Husband's failure to make full and frank disclosure of his assets. If he had applied an uplift, he should then have specified what the uplift was in percentage or absolute terms. Instead, it appears that the Judge proceeded to apply the adverse inferences immediately to conclude that the Husband's assets were close to $40m. Even if what he

meant was that the assets were closer to $40m than to a nil value, this would not necessarily support a conclusion that they were, in fact, close to $40m.

79 If the Judge had concluded that the assets were close to $40m, he should then have granted the Wife 36.5% of $40m which would have been around $14,600,000 since he was of the view that 36.5% was an appropriate portion for the Wife. Alternatively, the Judge should have granted her $5m since that was the sum she was seeking, and it was lower than $14,600,000. However, as mentioned, he granted her $4m instead. There was no principled basis for doing so beyond his saying that this was a reasonable figure. As the Wife has not filed a cross-appeal against this aspect of the Judge's decision, we need only consider if we should reduce the quantum of $4m.

80 On this point, we note that the $4m figure was a net sum. In other words, the Husband was ordered to pay this figure to the Wife for the division of matrimonial assets. There was no reduction to take into account the fact that the Wife was holding assets amounting to $390,388.

Our decision

An overview

81 The Husband accepted the Wife's disclosure of her assets at $390,388. The details are as follows:

S/No	Item	Amount
1	Deposit for Wife's mother's rented apartment	$325,500
2	Value of Korean Property	$17,000
3	Money in Wife's bank accounts	$47,888
	Total:	**$390,388**

82 The Husband's assets were disputed. We have attempted to ascertain and value them based on the available evidence and using *ordinary* inferences of the sort we described above at [62]. We have considered various assets on that basis and have tabulated them below for ease of reference. We have also included the figures submitted by the Wife to the Judge, and $140,000 for the Husband's car, for ease of reference and to show how she derived a figure of almost $40m for the Husband's assets. She did not reiterate the same figures to us for all the assets discussed because she was content to rely generally on the adverse inferences which the Judge had drawn below. Many of the assets were initially valued in foreign currencies. We have adopted the conversion rates used by the Judge (set out at [8] of his GD) which were proposed by the Wife and not disputed by the Husband. These will be the conversion rates used for the rest of this judgment:

(a) 1 USD: 1.4 SGD;

(b) 1 GBP: 1.76 SGD.

Husband's Assets				
Item	**Husband's position/ valuation**	**Wife's Valuation**	**Judge's Valuation**	**Court of Appeal's valuation**
J Cayman	Does not own the company	$2,236,404.18 + $4,200,000.00	-	$2,236,404.18
Sales proceeds of the MH		$5,585,309.00	-	$5,200,000.00
J Singapore	$0	$1,050,000	-	$1,050,000.00

Husband's Assets				
Item	**Husband's position/ valuation**	**Wife's Valuation**	**Judge's Valuation**	**Court of Appeal's valuation**
Husband's car	Claims to have sold it	$140,000.00	-	$140,000.00
Bali Property	Does not own the property	$6,160,000.00	-	$2,679,420.00
Phuket Property	Does not own the property	$6,082,585.00	-	$1,968,117.42
Shares in Barclays PLC	Sold the shares	$72,005.12	-	$15,658.72
Shares in Kings Keys Capital Partners ("KKCP")	Sold the shares	$1,584,000.00 + $6,336,000.00	-	$1,320,000.00
UK Property	Does not own the property	$968,000	Insufficient proof of Husband's ownership	Insufficient proof of Husband's ownership
Cash	No assets	$5,200,000.00	-	Nil
Total:	-	**$39,614,303.30**	-	**$14,609,600.32**

83 Therefore, based on this court's valuation, the total matrimonial assets of the Husband and Wife amount to $14,999,988.32 ($390,388 + $14,609,600.32). We elaborate below the reasons we identified the above assets as the Husband's assets and how we came to the above values.

Identifying the pool of matrimonial assets

(1) J Cayman and $5.2m from the sale of the MH

84 J Cayman is a company incorporated in the Cayman Islands. According to the Wife, it is a company owned and operated by the Husband "to save tax". To that end, the Wife sought to attribute ownership of J Cayman to the Husband by asserting that he "treat[ed] the company as himself, transferring money between the company's bank accounts and the parties' bank accounts freely". She made various arguments to this effect and all of them were based on a series of transactions that allegedly proved the Husband's connection to J Cayman.

85 On the other hand, the Husband alleged that he was not a shareholder of J Cayman and was only a director. He suggested that he has no beneficial interest in J Cayman.

86 We now consider the evidence adduced by the Wife to establish that the Husband owns J Cayman. Her first argument was that there were transfers of various sums of monies involving J Cayman suggesting that the Husband owned J Cayman. For example:

(a) J Cayman had transferred monies to the parties' US$ joint account with Standard Chartered Bank ("SCB"). In 2012 alone, there were three transfers in February, August and September totalling US$4.25m. On 6 June 2013, another US$415,000 was transferred from J Cayman to their joint US$ SCB account.

(b) J Cayman had also transferred monies to individuals closely connected to the Husband including his mother. For present purposes, we need mention only a transfer of US$40,902.50 on 19 November 2013 to his mother for "expenses and fees".

(c) When the MH was sold in February 2014, the net sale proceeds of $5,585,309.63 was deposited into the parties' SCB joint account. On 9 May 2014, the Husband transferred $5.2m to J Cayman's bank account without the consent of the Wife.

87 Secondly, the Wife pointed to the fact that J Cayman's bank statements were sent to the parties' then home address at the MH. As proof, she produced the following statements which were addressed to J Cayman at that address: J Cayman's bank statements dated 23 October 2013, 23 November 2013; and 23 December 2013. She submitted that there was "no other reasonable explanation for this other than [the fact that J Cayman was] the Husband's company."

88 The Husband sought to diminish the significance of the aforementioned transactions ("the mere fact of the transaction between J Cayman and the parties' joint account should not have led to the adverse inference that the [Husband] was more than a mere director/manager of [J Cayman]"). He sought to explain J Cayman's bank statements being sent to the matrimonial home by claiming that it was "perfectly normal for bank statements of companies to be sent to the directors' home or otherwise". Specifically for the $5.2m that was unilaterally transferred by the Husband to J Cayman, he claimed that this was done to repay a loan. In support, he produced two "promissory notes" dated 8 February 2012 and 31 August 2012 that cumulatively documented US$4.25m of debts owed by him to J Cayman.

89 We note that while the Husband said that J Cayman did not belong to him, he did not say who it belonged to. Even if there was a valid reason of confidentiality to preclude him from disclosing the identity of the owner, it was incumbent on him to provide a satisfactory explanation about the state of affairs which the Wife was relying upon.

90 The Husband's explanations or arguments were unpersuasive. It was no answer for the Husband to claim that it is "normal" for a company's director to receive its bank statements. Bank statements would ordinarily be sent to the business or registered address of the company. The Husband did not suggest that the address of the MH was the business or registered address of J Cayman. Nor did he explain why the statements were sent to his residential address in Singapore instead, other than to say that this was normal as he was a director.

91 More importantly, he did not explain why J Cayman had been sending large sums of money to the parties' joint account or sending money to his mother.

92 The transfer of $5.2m from the net sale proceeds of the MH to J Cayman also called for an explanation from him. His explanation that it was to repay a loan and, more specifically, his production of two promissory notes to support that contention lacked credibility. The question of a loan had been raised much earlier when DJ Foo was hearing the maintenance applications. The promissory notes were not produced then. Nor were they produced in either of the Husband's initial affidavits of assets and means. They were produced later in an affidavit dated 12 March 2020. The Husband did not explain the late production of such evidence. We also note that each promissory note was signed by one Jessie Wong and one Arthur Chan respectively acting as an officer of the company. There was no explanation about the position of those persons. There

was also no explanation given about why the loans were made on an unsecured basis if the Husband was not the owner of J Cayman. The Husband did not elaborate what the purported loans from J Cayman were for beyond saying that they were "to make investment" (at [74] of DJ Foo's GD). He also did not elaborate as to which specific company he had allegedly invested in with the loans and how many shares he held in each of them and their value. We therefore reject the husband's explanation for unilaterally transferring $5.2m from the parties' joint account to J Cayman.

93 In the circumstances, the wife's evidence is compelling. We agree that the logical inference is that the husband owns J Cayman.

94 We turn now to the value of J Cayman. The last known bank statement of J Cayman available to the court is dated 23 December 2013. The closing balance for that month's statement was US$1,783,838.70 (or $2,236,404.18). This was the value which the Wife urged the Judge to ascribe to J Cayman, in the proceedings below.

95 As mentioned, the $5.2m from the sale proceeds of the MH was transferred from a joint account of the parties to J Cayman on 9 May 2014 (*ie.* after 23 December 2013). This would have increased the balance held in the bank account of J Cayman. However, as the Wife has treated the $5.2m separately from the balance as at 23 December 2013, we will do likewise to avoid confusion. For present purposes, it is immaterial whether we treat the $5.2m separately or add it to the balance held by J Cayman which we have concluded is owned by the Husband.

96 We are mindful that the sums in J Cayman's account may have decreased since 23 December 2013. That is, they may have diminished over

time. However, if the balance had indeed decreased, it was for the husband to say so and produce evidence to substantiate the reduction and the reasons. He did not do so. Accordingly, we are of the view that J Cayman has a value of at least $2,236,404.18 and there is another $5.2m from the sale proceeds of the MH to be added to the pool of matrimonial assets.

97 We add that another reason why the $5.2m is part of the pool of matrimonial assets is that this sum was withdrawn from the parties' joint account without the Wife's consent. As we stated earlier above, if a party has expended substantial sums when divorce is imminent, the sum expended can be included in the pool of assets because the communal property has been removed by one party without the consent of the other: *TNL a*t [24]. Here, the sum was withdrawn on 9 May 2014. This was about two weeks before the first divorce application was filed on 20 May 2014.

98 In the submissions before the Judge, the Wife had used the figure of $5,585,309 for the sale proceeds of the MH. The $5.2m figure was the sum transferred to J Cayman. However, as the Respondent's Case did not ask for the difference to be included, we have used the $5.2m figure.

99 In submissions before the Judge, the Wife had also argued that J Cayman has another bank account, *ie*, SCB Account No xxxxxxx710. She did not have a copy of a bank statement for that account. Using bank statements of a different account owned by the Husband, she argued that based on at least US$2,465,000 in management fees paid to the Husband in 2013, it was reasonable to assume that he retained at least US$1m as his profit. He would have retained that sum for each of the years 2012, 2014 and 2015 making a total of US$3m. The equivalent would be $4,200,000 which should be ascribed to the bank account of J Cayman.

100 The Judge did not address this argument in his GD. Nor did the Wife raise it in her Respondent's Case specifically. In the circumstances, we exclude this sum from the pool of matrimonial assets.

(2) J Singapore

101 The Husband accepted that he is J Singapore's sole shareholder and a director but this admission was made only at a hearing before DJ Foo for the interim maintenance applications. He did not challenge the Wife's claim that there was at least US$750,00 (or $1,050,000) in J Singapore's bank accounts as of 11 December 2013. The Wife's claim was supported by two bank statements showing a credit of US$ 500,000 and US$250,000 made on 17 February 2012 and 11 December 2013 respectively. The Husband's only contention was that the funds in J Singapore's bank accounts were J Singapore's working capital and did not represent the value of the company itself. The company itself, he argued, was worth nothing. Indeed, he claimed in his submissions that the company was dormant and "waiting to be struck off the register of companies". These were bare assertions and unsubstantiated by any evidence. According to the Husband, he would need a directors' resolution to adduce evidence of bank statements of J Singapore. This was unbelievable. He was the sole shareholder of J Singapore which would have its own copies of bank statements current at the time of the ancillaries hearing before the Judge. Furthermore, there was no reason to suspect any difficulty in obtaining a directors' resolution to obtain copies if one was really needed.

102 In addition, DJ Toh Wee San ("DJ Toh") had made an order on 28 May 2020 (in another application) for the Husband to provide all the bank statements of J Singapore from the date of account opening to date in an affidavit to be filed and served no later than 4 June 2020. However, the Husband did not

provide them. It was absurd of him to suggest that the cost of providing the statements was prohibitive as he did not even say how much the cost was. In any event, that order had been made and he did not comply.

103 In the absence of further evidence which the Husband could have produced but did not, we accept the Wife's submission that J Singapore has a value of at least $1,050,000.

104 We do not accept the Husband's argument that the Judge should have ordered a valuation of the shares in J Singapore or the transfer of some shares therein by the Husband to the Wife. It was incumbent on the Husband to state what he considered the true value of this company was, with supporting evidence. As the sole shareholder, he would have some idea of the true value. If he had done so, the Wife could have then considered whether to accept his valuation without more. Having failed to state his position on the true value, claiming that it was nil value and failing to comply with a court order to provide bank statements, the Husband's argument for a valuation was not made in good faith. His suggestion of transferring some shares to the Wife was also not made in good faith as she was seeking a break from him and not to be a co-shareholder with him.

(3) Husband's car

105 With regard to the car, the Husband's position shifted:

(a) In his first affidavit of assets and means dated 15 January 2020, he valued the vehicle at $140,000 with an outstanding loan of $120,000.

(b) In his reply affidavit to the Wife's application seeking further discovery dated 12 March 2020, he claimed that he did not own the car at all.

(c) Eventually, in a hearing before DJ Toh on 28 May 2020, he took the position that he had sold the car and that he had been renting a car ever since. However, he did not produce any documentary evidence of the net sales proceeds of the sale and of the rental (despite a court direction from DJ Toh on 28 May 2020 ordering the same). In the Appellant's Case, he claimed that he could not afford the time to get the evidence.

106 In the absence of further evidence on the initial loan or the sale which the Husband ought to have produced, we find that (a) the Husband *did* own the car and (b) the car was valued at $140,000 at the time of the hearing of the ancillaries. We are mindful that there might have been depreciation of the car but no evidence of the depreciation was adduced.

(4) Bali Property

107 The Bali Property refers to a piece of unspecified land in Bali which the Wife claims the Husband had purchased with a friend "N" and later sold, pocketing some US$4,400,000 in sales proceeds. To that end, the Wife produced:

(a) A bank statement dated 9 July 2008 showing a transfer of $2,679,420 on 19 June 2008 to "N" with the reference "PMT FOR PROPERTY INVESTMENT"; and

(b) Undated text messages from one "L" mentioning that the property had been sold for approximately USS8,800,000, with the Husband receiving half of the pay-out (*ie,* USS4,400,000).

108 According to the Wife, "L" had been the property agent who introduced this property to the Husband and to "N". "L" had recently told her that the "Bali land was sold a few years back". Even though he was not personally involved in the deal, "L" sent the following message to the Wife:

> … *I suspect* the price they got for [the Bali Property] was about USD 8.8m. 50/50 split. Not much for fees cos *I think* only the notary. *Not sure also* but I think the payment was staggered as the buyer had issues in paying upfront and had asked a delayed or lengthy payment period."
>
> (emphasis ours)

On this basis, the Wife claimed that the Husband had pocketed US$4.4m from the sale of the property.

109 The Husband's account was less straightforward and vacillated over the course of proceedings:

(a) He made no mention of owning any properties in his first affidavit of asset and means dated 15 January 2020;

(b) On 26 January 2017, in a hearing before DJ Foo for IJ and ancillaries in respect of the Wife's first divorce application, the Husband admitted to investing "by way of a holding company into several collective investment schemes". According to him, this company had "multiple investors and [made] investments into all kinds of things in different jurisdictions." He was adamant that he did not own any land himself but eventually conceded that this "holding company" invested in real estate and that the land parcels in Bali and Phuket (see below)

were "still there". When pressed, the Husband estimated that the value of his investment was "$2 million or something like that."

(c) His eventual position (which he also took in the Appellant's Case) was that he could not recall the exact transaction details and that if such a transaction had taken place, it "would have been by way of a loan to an Indonesian party in the Respondent's name or in the name of a company that she owned and managed". The Wife denied this. The Husband also claimed that he could not own shares or make investments in Bali in his own name but that assertion was neither here nor there.

110 We turn now to consider whether the Husband had purchased a property in Bali and if so, the value thereof.

111 We note that the Husband did not directly challenge the Wife's assertion that he had purchased a property in Bali and that the transfer of $2,679,420 on 19 June 2008 to "N" was for that purchase. We do not accept his allegation that he does not recall the transaction details. He could have easily contacted his friend "N" for more information and, if it was necessary, sought details from the professionals (if any) who had advised "N" or both of them on the purchase. In the circumstances, we conclude that he did purchase a property in Bali, whether or not in his own name.

112 As for the alleged sale proceeds, we are of the view that it is unsafe to place weight on a message from "L" about such proceeds. "L" did not put up an affidavit himself. Moreover, "L" himself appeared to be uncertain about the information he was sharing – his text messages were couched in tentative and qualified language which did not suggest confidence about the veracity of what he had told the Wife.

113 In the circumstances, we will not adopt the $4.4m figure proposed by the Wife as the Husband's share of the sale proceeds. In the absence of more evidence, we find that since the Husband had transferred $2,679,420 to "N" for the purchase, his share of the value of the property would be at least that sum. Accordingly, we include this sum in the pool of matrimonial assets.

(5) Phuket Property

114 We now consider the Wife's allegation that the Husband also purchased a property in Phuket. The Wife pointed to a series of transactions as proof that the Husband had purchased the Phuket Property. We have tabulated these transactions for ease of reference. For convenience, we refer to the Husband as "H" and the Wife as "W". We have also anonymized the personally identifiable names.

S/N	Alleged sender	Alleged recipient	Alleged value of transaction	Alleged date of transaction	Alleged purpose
1	H	-	US$2m	2006	Purchase of land
2	W & H	"DP"	US$200,000	9 Apr 2012	-
3	W & H	"DRK"	US$933,334	9 Apr 2012	-
4	W & H	"DP"	THB32.5m	7 Sept 2012	-
5	W & H	"SALC Ltd"	THB173,704.69	7 Sept 2012	-
6	W & H	"TBC Ltd"	THB5m	29 Oct 2012	"for purchase of land in Thailand"
7	W & H	-	THB442,577	5 Nov 2012	-

S/N	Alleged sender	Alleged recipient	Alleged value of transaction	Alleged date of transaction	Alleged purpose
8	W & H	"SN"	$15,000	13 Jul 2013	-
9	W & H	"SN"	$40,000	13 Jul 2013	-
10	W & H	"SN"	$55,000	28 Aug 2013	-
11	W & H	"SN"	$43,320	9 Oct 2013	-
12	W & H	"DP"	THB189,231.64	27 Jun 2013	-

115 To elaborate, the Wife's account was that in 2006, the parties had viewed a few properties in Singapore and Phuket before settling on the Phuket Property. The Husband allegedly paid US$2m for the land. Later on, the Husband set up a company called TBC Ltd with a business partner. As the Husband was unable to own shares in TBC Ltd, the Wife was the manager of the company for a while. The purchase of the Phuket Property apparently took some time as the documentary evidence covered a period extending to 2013. In that regard, the Wife produced bank statements, invoices for executed transactions and receipts from the solicitors who acted in the purchase, in a bid to prove that the Husband (whether through TBC Ltd or otherwise) had purchased the Phuket Property.

116 Against this, the Husband made two submissions. First, he claimed that the Wife had been "dishonest about her involvement in their financial matters, as she was heavily involved." Second, he sought to cast doubt on the probative value of the evidence that the Wife had produced: "it is not clear to whom the monies were paid, by whom and whether they were anything to do with "Phuket Land"".

117 As for the first allegation about the Wife's role in the financial matters pertaining to the Phuket Property, we do not see its relevance. If the Wife had been involved in the Phuket Property purchase, that would be an even *stronger* reason to regard the Phuket Property as a matrimonial asset and ultimately something to be included in the pool of assets for division.

118 In our view, there was ample evidence that the Husband had purchased the Phuket Property. Indeed, the Husband's attempts to deride the probative value of the evidence produced were unconvincing. He did not advance his arguments beyond simply asserting that none of the evidence proved his interest in the Phuket Property.

119 We acknowledge that some of the evidence produced by the Wife did not fully support the Wife's assertion. For example:

(a) for item 1 of the table, this was a bare assertion made by the Wife that the Husband had paid US$2m to purchase some land in Phuket in 2006. There was no objective evidence to support this allegation;

(b) for items 3, 5, and 6, it was unclear who the recipients of these sums were and how they were connected to the Phuket Property purchase;

(c) for item 7, it was unclear whether this involved a separate transfer at all. On its surface, the debit notice that the Wife produced only suggested that the Husband had *converted* US$14,484.17 into THB 442,577 and there was no evidence of any transfer of that money elsewhere. Indeed, this debit notice was substantially similar to all the other debit notices produced where the Husband had converted US Dollars into Thai Baht; and

(d) for items 8 to 12, it was unclear what precisely the payments to "SN" were for, even though the Wife said "SN" was a Singapore lawyer involved in the purchase.

120 On the other hand, the following were, in our view, suggestive of the husband's involvement and interest in the Phuket Property:

(a) Item 6. This was the THB 5m that was sent on 29 October 2012 to TBC Ltd. There were also payment details, "Purchase Sor Kor 1 Baht 5,000,000 for purchase of land in Thailand."

(b) Items 2 and 4 regarding the payment of US$200,000 and THB32.5m to DP on 9 April 2012 and 7 September 2012 respectively.

(c) Item 12 regarding an invoice from DP dated 27 June 2013 for THB189,231.64 for professional services related to "Barama Bay" in Phuket. The invoice was addressed to another Singapore company which we will refer to as "JA". According to JA's business profile on the Accounting and Corporate Regulatory Authority of Singapore database, the Husband was one of four directors and held one out of four shares in JA. However, the invoice was addressed for the attention of the Husband (alone) and the invoice was sent with a cover letter (dated 27 June 2013) addressed to the Husband and using the address of the MH. The invoice suggested that DP had acted in the purchase for the Husband or JA as his nominee. Therefore, it appears that the earlier transfer of US$200,000 to DP on 9 April 2012 and of THB 32.5m to DP on 7 September 2012 were also connected with the purchase in the absence of any other explanation from the Husband.

121 In the circumstances, we conclude that the Husband did purchase the Phuket property whether directly in his name or in the name of a nominee.

122 As for the value of the property, the Wife submitted before the Judge that a total of $6,082,585 should be taken as the value of the Phuket Property, representing "all the monies invested" by the Husband. Presumably, she was relying on all the sums set out in the above table (see [114] above) to derive this figure. However, as mentioned, we do not accept that all the sums itemised relate to the purchase.

123 We are prepared to take into account the THB 5m transferred for "Purchase Sor Kor 1 Baht 5,000,000 for purchase of land in Thailand" (Item 6 of the table). The Husband initially purchased the Phuket property with THB 5m. According to debit advices which the wife produced, this sum was converted from an original sum of US$163,463.33. This is equivalent to $228,848.66. In addition, we also take into account the two sums of US$200,000 and THB32.5m transferred to DP on 9 April 2012 and 7 September 2012 (items 2 and 4 of the table). The US$200,000 is equivalent to $280,000. As for the THB 32.5m, this was acquired using US$1,042,334.83 at an exchange rate of US$1 = THB 31.18. The equivalent of US$1,042,334.83 is $1,459,268.76. In the absence of an explanation by the Husband, we are of the view that these sums were paid in respect of the purchase price. If they were payments made for another invoice from DP, the purchase price would then be presumably higher than that invoice. The three sums of $228,848.66 + $280,000 + $1,459,268.76 total $1,968,117.42 and we include this sum in the pool of matrimonial assets.

(6) Barclays PLC shares

124 The Wife pointed to a Barclays Tax Voucher dated 7 December 2012 that evinced the Husband's ownership of 35,588 shares in Barclays PLC. According to the Appellant's Case, the Husband could not recall when "these shares were sold but it was long before the Respondent abandoned the Appellant and the family home in 2014 and the proceeds were paid into their joint account". On the other hand, the Respondent's Case argued that this was a new allegation. The Wife's 2nd Affidavit of Assets and Means dated 23 June 2020 had referred to the tax voucher and the Husband's 2nd Affidavit of Assets and Means dated 8 July 2020 remained silent about the Barclays shares. However, we note that the sale was mentioned in the Wife's submissions to the Judge for the hearing of the ancillary matters. In any event, the Husband offered no documentary proof of the sale. He could have written to the share registrar or company secretary of Barclays PLC to obtain information about his shareholding and adduced such evidence but he did not do so. We are persuaded that the Husband retains ownership of these shares.

125 Turning to the value of these assets, we note that the Wife had argued before the Judge that the shares were worth $72,005.12. As no explanation was given for this figure, we reject it. The tax voucher states that each Barclays share is worth 25 pence. That is the face value. In the absence of any evidence of any other value, we apply 25 pence per share to the 35,588 shares and this brings the total value of the shares to GBP 8,897. This works out to $15,658.72 (applying the conversion ratio mentioned above) and we accordingly add that sum into the pool of matrimonial assets.

(7) Kings Keys Capital Partners ("KKCP")

126 The Wife had alleged that the Husband owns shares in KKCP.

127 There was no question that the Husband had owned 25 shares in KKCP. The Husband himself had produced a sale and purchase agreement dated 27 December 2018 showing that he had sold these shares for GBP 750,000 with a right to repurchase them for GBP 900,000. The only question was whether he owned *more* than 25 shares in KKCP.

128 In proceedings before DJ Kathryn Thong on 5 December 2019, the Husband admitted in oral evidence that these 25 shares represented approximately 20% of the total shares in the company. The Wife had submitted that in the absence of any evidence to the contrary, the Judge should have assumed that the Husband was the sole shareholder of the company. Put another way, the Wife was urging the Judge to infer that the Husband owned an additional 100 shares in KKCP making a total of 125 shares. The Wife had also used the repurchase price of GBP 900,000 for 25 shares to determine a value of $1,584,000 for the 25 shares. If the Husband held another 100 shares, the value of those shares would be another $6,336,000.

129 However, the Judge found that there was nothing to suggest that the Husband owns or had owned any shares in the company beyond the 25 shares which he had already disposed of. The Respondent's Case did not suggest that the Judge had erred in this view. Accordingly, we proceed on the basis that the Husband held only 25 KKCP shares. We are also of the view that the sale price of GBP750,000 ($1,320,000.00) should be used and not the repurchase price of GBP900,000 as there is no evidence that the Husband bought the shares back.

(8) UK Property

130 The Wife had alleged that the Husband owns a property in the UK which he had registered in the name of his mother. The Wife's contention was that this property belonged, in truth, to the Husband as he had paid the entire purchase

price. According to her, the Husband's mother could not have afforded such a property and that the timing of the purchase (October 2015) was too coincidental to ignore – the suggestion being that this property purchase had been an attempt by the Husband to remove assets from the pool and keep them out of her reach. The Judge found that there was insufficient evidence to suggest that the Husband had a legal or beneficial interest in the UK Property. The Respondent's Case did not submit that the Judge had erred in his view. We therefore exclude that property from the pool of matrimonial assets.

(9) Husband's cash assets

131 In the proceedings below, the Wife claimed that the Husband had at least $5.2m in cash assets. She derived this figure from what she knew of the bonuses he received in 2001, 2005, 2006, 2007 and 2008.

132 To this, the Husband claimed that he had no money and was in debt. He claimed the following:

(a) that he was "never paid a bonus again in his working life" after the financial crisis in 2008.

(b) that he had no cash assets and that he had spent every dollar of what he earned when he was working for Company T between 2007 and 2012.

(c) that he started his own company in 2012 and had resolved to "maintain the same standard of living and expenditure funding from savings", the implication being that he earned less from his own company than what he used to earn while working for Company T.

(d) that he had paid "S$1million in legal fees" (unsubstantiated with evidence) and "additional cost incurred by [the Wife] leaving home from 2014 onwards".

Cumulatively, these events had supposedly put his finances at *negative* $3,264,470. On that basis, he claimed that he had no assets left. In fact, he claimed that he did not even have a bank account ("Bank accounts are old world and old technology").

133 We consider the Husband's account to be dubious. It is true that he stepped back from Company T around 2012. However, that did not represent a slowdown in his career. He set up J Singapore thereafter and presumably made his living from that business. Indeed, the Wife produced a bank statement dated 23 October 2013 showing that the Husband was paid some US$2,465,000 for his services in "ALGORITHMIC TRADING STRATEGIES CONS". The Husband was of course, free to show the true extent of his financial activity/remuneration with J Singapore. He could, for example, have produced statements from his bank accounts – bank accounts which have been conclusively proven to exist or through financial documents from J Singapore. Absent any proof, it is difficult to believe his bare assertions.

134 It is also difficult to believe that he spent every penny earned during the years he worked for Company T and that he was "never paid a bonus again in his working life" after the financial crisis in 2008. For one, that appears to be inconsistent with his investment behaviour; where would he have gotten the capital for his investments? But more importantly, when he quit his job at Company T, he could not possibly have counted on savings to "maintain the same standard of living and expenditure funding from savings" if he – by his

own account – had no savings at all. Simply put, his narrative was internally inconsistent.

135 That said, we do not consider the Wife's submissions on this issue to be convincing either. For one, it was not clear how she came to the conclusion that the Husband's cash assets amounted to "$5.2m". The relevant part of her submissions states as follows:

> [The Husband] received a USD 1M bonus in 2001 from [Company L] (when he was based in Tokyo, and USD 1M in 2005, USD 2M in 2006 and USD 4M in 2007 from [Company B]. Apart from spending USD 2M to buy the [Phuket Property],S$1M to buy and renovate [the matrimonial home], S$500,000 to invest in [Property R] and in [Property O], the rest of the monies were not touched. As an expatriate, the [Husband's] housing, club memberships and business class tickets for the family were paid by his employers and the family lived very comfortably on his salary.
>
> The [Wife] therefore asserts that at the very least, the sum of $5.2M should be added to the matrimonial assets for division.

136 A quick consideration of the figures quoted above shows that these do not add up to $5.2m. Moreover, none of the bonuses was substantiated by any evidence.

137 Accordingly, while we are prepared to infer from the above discussion on various assets that the Husband had not made full disclosure of his assets, we are of the view that it is unsafe to proceed on a premise of $5.2m and then require him to explain how he used that sum. We have already included other assets in the table mentioned at [82] above. Accordingly, we exclude that sum from the pool of matrimonial assets.

Division of matrimonial assets

138 As stated earlier, this was a single-income marriage spanning some 19 years. As we intimated at the hearing of the Husband's appeal before us, the appropriate approach to take for asset division is that adopted in *TNL* rather than the *ANJ* approach. The *TNL* approach favours equal division of the pool of matrimonial assets. If we apply *TNL*, the Wife would be entitled to 50% of the total matrimonial assets of the parties (see [83] above). Even if we were to take into account that the Wife has assets of $390,388 to reduce the amount the Husband is to pay her, the net figure which she would be entitled to (based on a 50% apportionment) would still be more than $4m. Likewise, if we apply the Judge's 36.5% to the total matrimonial assets and deduct $390,388 held by the Wife, the net figure would still be more than $4m. This would be the case even without applying any uplift to the value of the assets or to the percentage apportioned to her arising from an adverse inference being drawn against the Husband. To be clear, we would have been prepared to draw such an adverse inference since we agree that he had failed to make full and frank disclosure of his assets and/or the value thereof. The values we have used thus far were based solely on ordinary inferences drawn from the limited evidence available. We should also add that while the Husband contested the Judge's apportionment of 36.5% to the Wife, he did not specify what a fair apportionment to her would be.

139 In the circumstances, there is no reason to reduce the quantum awarded and we uphold the Judge's decision to order the Husband to pay the Wife $4m, but for different reasons.

140 There is one final matter. The Judge also ordered the Husband to return the Wife her personal belongings (jewellery, accessories, paintings, handbags

and clothes) and to return half of the furniture and kitchenware that she bought from Korea and Japan. These orders were part of the formal appeal of the Husband, but he made no written or oral submissions on them. We see no reason to disturb the Judge's orders on these items either.

Conclusion

141 In summary, we affirm the Judge's orders and dismiss the Husband's appeal.

142 After taking into account the costs submissions of the Wife's costs schedule, we grant the Wife costs of the appeal fixed at $35,000 all in. The usual consequential orders apply.

Judith Prakash
Justice of the Court of Appeal

Belinda Ang Saw Ean
Judge of the Appellate Division

Woo Bih Li
Judge of the Appellate Division

The appellant in person;
Siaw Susanah Roberta (Siaw Kheng Boon & Co) for the respondent.