IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC(A) 19

Civil Appeal No 44 of 2021

Between

CLB

… *Appellant*

And

CLC

… *Respondent*

In the matter of Divorce (Transferred) No 1639 of 2019

Between

CLB

… *Plaintiff*

And

CLC

… *Defendant*

EX TEMPORE JUDGMENT

[Family Law] — [Matrimonial assets] — [Division]
[Family Law] — [Matrimonial assets] — [Gifts]

CLB
v
CLC

[2021] SGHC(A) 19

Appellate Division of the High Court — Civil Appeal No 44 of 2021
Quentin Loh JAD, See Kee Oon J and Chua Lee Ming J
25 November 2021

25 November 2021

See Kee Oon J (delivering the judgment of the court *ex tempore*):

Introduction

1 This is an appeal against the decision of the High Court judge ("the Judge") in *CLB v CLC* [2021] SGHCF 17 ("the GD") pursuant to a hearing of ancillary matters in respect of division of the parties' matrimonial assets. Amongst other assets, the Judge included several bank and investment accounts into the pool of matrimonial assets for division ("matrimonial pool"). This amounted to a matrimonial pool of S$13,233,139, which also included S$496,419 which was to account for an adverse inference drawn against the Husband. The Judge divided the matrimonial pool equally, on the basis of a direct contribution ratio of 57:43 in the Husband's favour, and an indirect contribution ratio of 55:45 in the Wife's favour.

2 The Husband appeals against the Judge's decision, on three main grounds:

(a) First, that a group of assets ("the Disputed Assets") should have been excluded by the Judge from the matrimonial pool. In addition, he also contends that an ANZ Bank account bearing an account number ending in 55 ("ANZ-55") should have been excluded. We refer to this as "the Disputed Assets Issue".

(b) Second, that the Judge erred in drawing an adverse inference against the Husband in relation to a discrepancy of S$496,419. We refer to this as "the Adverse Inference Issue".

(c) Third, that the Judge should have ascribed an indirect contribution ratio in favour of the Husband instead of the Wife. We refer to this as "the Indirect Ratio Issue".

3 For the reasons that follow, we allow the appeal on the Disputed Assets Issue and the Adverse Inference Issue. However, we dismiss the appeal on the Indirect Ratio Issue.

The Disputed Assets Issue

4 Whether the Disputed Assets should have been included in the matrimonial pool is the key issue in this case, as they represent 28.7% of the matrimonial pool. The Disputed Assets are six Australian bank accounts and investment portfolios that were valued at S$3,801,863. These included: (a) a Commonwealth Bank Account No. ending in 29 valued at S$3 ("CBA-29"); (b) a Charles Schwab Account No. ending in 76 valued at S$416,411 ("Schwab-76"); (c) a Charles Schwab Account No. ending in 12 valued at S$656,661 ("Schwab-12"); (d) a Commonwealth Securities Account No. ending in 63

valued at S$838,104 ("CSA-63"); (e) a Shaw and Partners (Australia) Account No. ending in 15 valued at S$1,081,409 ("Shaw-15"); and (f) a SAXO Capital Markets Account No. ending in 21 valued at S$809,275 ("SAXO-21"). The respective value of these accounts were as per the date of the ancillary matters hearing. Along with the Disputed Assets, there was a further Australian bank account, ANZ-55, which the Husband also contends should have been excluded from the matrimonial pool. As of the date of the ancillary matters hearing, ANZ-55 contained S$10,602.

5 The Husband's central claim is that the Disputed Assets were derived from gifts or inheritance received from his father. The Husband received a total of S$5,024,886.35 from several sources (we refer to this broadly as "the Inheritance Moneys"): (a) S$132,693.42 from his father's Australian will ("the Australian Inheritance"), half of which was intended for his children; (b) S$519,411.93 from the winding up of a company referred to as [G] Inc below ("the [G] Money"); (c) S$3,541,240.77 from the sale of the shares of a company referred to below as [H] Sdn Bhd ("the [H] Money"); and (d) S$831,540.23 from his father's Singaporean will ("the Singaporean Inheritance"). It is not disputed that these sums were all gifts or inheritance from the Husband's father, or were gifted to him prior to the marriage.

6 Aside from the Disputed Assets, the Husband also had several other bank accounts and investments in Singapore, Malaysia, Australia and Tanzania. Altogether, the value of these assets as at the date of the ancillary matters hearing was S$1,335,025. The Judge had excluded these from the matrimonial pool, and found that these other investments had been funded by the [H] Money and the [G] Money, and perhaps also the Singaporean Inheritance: GD at [80]. Neither party has challenged this on appeal.

The applicable legal principles

7 The principles on identifying matrimonial assets are well-settled and we need not restate them in full. We focus on the principles relevant to the present case. The arguments made by the Husband pertain mainly to gifts and inheritance that he argues should be excluded from the matrimonial pool. For gifts and inheritance, by virtue of the proviso in s 112(10) of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Women's Charter"), the default position is that they are not part of the pool, regardless of when they are acquired. However, they may be transformed into matrimonial assets by: (a) substantial improvement; or (b) use as the matrimonial home: *USB v USA and another appeal* [2020] 2 SLR 588 ("*USB*") at [19(d)].

8 The position described above refers to the situation where the asset received as a gift or inheritance remains in the same form. If the asset is used to obtain a different asset, as when it is deposited into a bank account, exchanged for a different asset, or sold to fund the purchase of a new asset, there is the question of whether the new asset remains a gift or inheritance. In this regard, the question to be addressed is whether the gift or inheritance loses its quality as a gift or inheritance, in that there was a "real and unambiguous intention" on the part of the donee that the new asset derived from the gift or inheritance was to constitute part of the pool of matrimonial assets: *Chen Siew Hwee v Low Kee Guan (Wong Yong Yee, co-respondent)* [2006] 4 SLR(R) 605 ("*Chen Siew Hwee*"). If so, and the asset satisfies either s 112(10)(*a*) or (*b*) of the Women's Charter, then the new asset would be a matrimonial asset.

The Disputed Assets

9 The Judge included the Disputed Assets in the matrimonial pool for two main reasons: first, the sources from which the Disputed Assets were derived

were "not clear" (GD at [64]) and second, the moneys were commingled and thus "no longer separately identifiable" as the Husband's inheritance money (GD at [75]).

10 Having considered the parties' arguments, we find, with respect, that the Judge had erred in including the Disputed Assets and ANZ-55 in the matrimonial pool. The funds in the Disputed Assets can fairly be said to be traceable to the Husband's various inheritance sums. Furthermore, we do not agree with the Judge's finding that the Inheritance Moneys were no longer separately identifiable.

The Disputed Assets were derived from the Inheritance Moneys

11 In our judgment, it was more likely than not that the Disputed Assets were derived from the Inheritance Moneys. We accept that the Husband has the legal burden of proof to establish that the Disputed Assets were so derived: see *USB* at [31]. While the Wife has alleged that there is no evidence to this effect, the Husband did depose in his affidavit where the Inheritance Moneys had been transferred to. We are conscious that the movement of the money was not supported by documentary evidence. Nevertheless, the available evidence is consistent with the Husband's assertion on affidavit. First, we observe that the Wife's evidence, or at least, her case below and in her affidavits, was broadly consistent with the Husband's assertion that the Disputed Assets were derived from his Inheritance Moneys:

(a) The Husband deposed that the Australian Inheritance was mixed in with ANZ-55. He further explained that the money in ANZ-55 was spent on family trips to Australia, and intermingled with the Schwab-76, Schwab-12, SAXO-21, Shaw-15, and CSA-63. That the Australian Inheritance was placed into these accounts was accepted by the Wife.

(b) The Husband deposed that the [G] Money was gifted to him by his father before the marriage, and amounted to S$519,411.93. He explained that it was first placed in a BNP Paribas bank account, and then transferred and mixed in DBS Bank Account No. ending in 3 ("DBS-3"), which was a Singaporean bank account that the Husband drew funds from for the family's expenses. The Husband claims that the money in the Schwab-76, Schwab-12, CBA-29, Shaw-15 and SAXO-21 accounts were *also* derived from this. The Wife accepts that the [G] Money had gone into DBS-3 first. She also accepts that he had shifted the money from DBS-3 into the Disputed Assets. Instead, she argues that the [G] Money had been commingled with DBS-3 and was thus a matrimonial asset.

(c) The Husband deposed that the [H] Money was put into a UOB bank account that he held jointly with the Wife ("the UOB Joint Bank Account") from February 2010 to June 2015 in several tranches, with the overall distributions being S$3,541,240.77. The Husband claims that the money in the Schwab-76, Schwab-12, CBA-29, Shaw-15 and SAXO-21 accounts were derived from this. The Wife's position is that "[the [H] Money] … remained in [the UOB Joint Account] until the marriage broke down finally in 2018 … and some part of [it] may have been placed into the Disputed Assets."

12 Furthermore, the numbers support the Husband's case as a whole. One of the key difficulties with the Judge's reasoning is that it does not provide an answer as to where all of the Inheritance Moneys went to. For example, the Judge recognised that the [H] Money and the [G] Money (and possibly, also the Singaporean Inheritance) had been used to fund some of the Husband's other investments: GD at [80]. However, as noted above, the total value of the

other investments was S$1,335,025, whilst the total value of the Inheritance Moneys was S$5,024,886.35. There was still a substantial amount left over, which, logically speaking, must have gone somewhere.

13 Considering the total value of the Husband's inheritance, and the total value of his investments and other bank accounts, it becomes quite clear that this "somewhere" was the Disputed Assets. The total value of the Inheritance Moneys was S$5,024,886.35, as deposed by the Husband, of which S$1,335,025 had gone into his other investments. This leaves S$3,689,861.35 unaccounted for. At the date of the ancillary matters hearing, the total value of the Disputed Assets was S$3,801,863.00, and ANZ-55 contained S$10,602 – a total of S$3,812,465. Thus, apart from a relatively small discrepancy of around $120,000 (when seen in the context of the size of the Inheritance Moneys), the total amount of the Inheritance Moneys is reflected in the value of his other investments, ANZ-55, and the Disputed Assets. As for the amount unaccounted for, the existence of a discrepancy is more relevant to the Adverse Inference Issue, and for now it suffices for us to say that we find this discrepancy to be explicable.

14 As such, the numbers strongly support the factual inference that the Husband attempted to ring-fence his Inheritance Moneys by funnelling them into the Disputed Assets. Importantly, the Wife appears to agree with this, as her case was that the Husband had attempted to ring-fence his Inheritance Moneys when the marriage broke down.

The Inheritance Moneys retained their character as gifts or inheritance

15 It was undisputed that the Inheritance Moneys were gifts and inheritance received by the Husband (GD at [55] and [60]). We are satisfied that the Inheritance Moneys did not lose their character as gifts or inheritance.

16 With regard to the [H] Money and the [G] Money:

(a) The Judge excluded the Husband's other investments from the matrimonial pool on the basis that "the moneys in such accounts would be comprised of only non-matrimonial assets … (*ie,* comprising either sale proceeds from the 1/3 share of [H] Sdn Bhd and proceeds from winging up [G] Inc (BVI)": GD at [80]. Thus, the Judge did not find that the [G] Money or the [H] Money had lost their character as the Husband's inheritance.

(b) With regard to the [H] Money, the Wife argued that this lost its character as a gift or inheritance, as it was placed in the UOB Joint Account, and that the Husband had made it clear that this was for the family in the event of his untimely demise. That the [H] Money was placed in the UOB Joint Account is not disputed by the Husband. However, the Judge found that the Husband's act of depositing moneys into a joint account in itself was not sufficient to evince the requisite "*real and unambiguous intention*" that the entire asset was to be part of the matrimonial pool: GD at [56].

(c) The Judge found that there was no real and unambiguous intention that the [G] Money was to be part of the matrimonial pool and excluded several of the Husband's other investments from the matrimonial pool as they were acquired using the [G] Money which retained its character as a gift: GD at [58] to [62].

Neither party has challenged these findings on appeal. Thus, it is an accepted position that the [H] Money and the [G] Money did not lose their character as the Husband's inheritance or gifts.

17 Similarly, with regard to the Singaporean Inheritance, the Judge accepted that it had never lost its character as a gift or inheritance. The Judge acknowledged that several of the Husband's other investments were "comprised of only non-matrimonial assets", and that this was the case "regardless of whether the moneys in these accounts were partly funded using [the Singaporean Inheritance]": GD at [80]. Thus, the Judge had accepted that the Singaporean Inheritance remained the Husband's gift or inheritance. As noted previously, this portion of the Judge's reasoning has not been challenged by the parties.

18 Finally, with regard to the Australian Inheritance, the Judge did not make an express pronouncement as to whether it retained its status as the Husband's gift or inheritance. Instead, the Judge dealt with it in the context of ANZ-55 as it was the Husband's case that the Australian Inheritance had first been placed there. The Judge found that ANZ-55 was a matrimonial asset, reasoning that "[t]he Husband had intended and considered moneys in [ANZ-55] to be part of the family's assets". On this basis, it was found that "it was not necessary to trace the original source of the moneys": GD at [69]. We note at this juncture that ANZ-55, as a bank account, was in fact a pre-marital asset. It is identified as such in the First Schedule to the parties' pre-nuptial agreement (see GD at [26]).

19 It follows that in order for ANZ-55 to be treated as a matrimonial asset, it would have to satisfy either the requirement of ordinary usage or of substantial improvement under ss 112(10)(*a*)(i) or (ii) of the Women's Charter respectively. As the Wife has not argued that she has substantially improved ANZ-55, the only question is whether she can show that it was ordinarily used by the parties. With respect, the Judge – by proceeding generally in terms of the Husband's "intention to utilise the moneys" – conflated two issues, first,

whether under s 112(10)(*a*)(i) of the Women's Charter the account itself (a pre-marital asset) was a matrimonial asset by reason of ordinary usage, and, second, whether the moneys derived from the Australian Inheritance deposited into ANZ-55 lost their character as inheritance. We deal with the latter first, and express our views on the former in due course at [26] below.

20 The Judge appeared to take the view that the Australian Inheritance had lost its character as the Husband's inheritance as he had shown a real and unambiguous intention for it to be part of the matrimonial pool. With respect, we do not agree with the Judge's inference. This follows from our conclusion, explained below, that the parties' use of ANZ-55 did not amount to ordinary usage within the meaning of s 112(10)(*a*)(i) of the Women's Charter. Hence, the mere fact that the Australian Inheritance was deposited into ANZ-55 could not be a basis for concluding that the Husband had a real and unambiguous intention for the Australian Inheritance to be treated as a matrimonial asset. It would be odd if conduct that did not amount to ordinary usage for the purposes of s 112(10)(*a*)(i) would be sufficient to establish an intention to convert an inheritance into a matrimonial asset. We therefore conclude that the Inheritance Moneys had not lost their character as gifts or inheritance.

The Judge's reliance on "commingling"

21 Finally, the Judge's decision was partly on the basis that the Inheritance Moneys had been commingled with the money of the family, and thus were "no longer separately identifiable" as the Husband's inheritance: GD at [75]. It seems that, on this basis, the Judge justified including the Disputed Assets into the matrimonial pool: GD at [76].

22 It is unclear how commingling would lead to this conclusion. On one reading, it appears to us that the Judge was using commingling as a legal

principle that transformed the Inheritance Moneys into matrimonial assets. If we are correct in this understanding, we disagree with the Judge's reasoning as there is nothing in the Women's Charter that suggests that the simple act of commingling can transform an ordinarily excluded asset into a matrimonial asset. In fact, the Judge took the opposite view in the analysis of the [G] Money, acknowledging that the [G] Money had gone into DBS-3 before being used to fund some of the Husband's other investments. Yet, this did not preclude the Judge from finding that these investments were not matrimonial assets: GD at [62]. Despite this, in relation to the Disputed Assets, the Judge then went on to find that the [G] Money had been commingled and was "no longer separately identifiable": GD at [75]. In our judgment, the Judge had made inconsistent findings, and the approach that was adopted in addressing the [G] Money was to be preferred, *ie*, commingling did not affect the nature of the [G] Money.

23 We also acknowledge that it could be the case that the Judge was of the view that commingling made it unclear where the Inheritance Moneys went, *ie*, it was an evidential issue. While there is no difficulty with this in principle, this is not relevant, as we have already found that the Inheritance Moneys had gone into the Disputed Assets. As such, we find that the Judge ought to have excluded the Disputed Assets from the matrimonial pool.

ANZ-55

24 Turning to ANZ-55, we find that the Judge ought to have excluded this from the matrimonial pool as well. She had included it on the basis that both parties had operated on the common understanding that the funds therein were for the family's use. She stated that since the Husband had intended and considered the money in ANZ-55 to be part of the family's assets, it was not necessary to trace the source of the money: GD at [69].

25 The Husband has attempted to draw a parallel with the Judge's reasoning on the Australian Property which the Judge had excluded from the matrimonial pool. However, we note that the family did not stay at the Australian Property every time they went to Australia, as it was eventually rented out, while it was undisputed that the ANZ-55 account was used for the family's Australian vacations.

26 The question is whether ANZ-55 was used with sufficient regularity and frequency such that it was "ordinarily" used as per s 112(10)(*a*)(i) of the Women's Charter. In our judgment, it was not. Taking the Wife's claims at their highest, the trips to Australia were an "annual affair", with some recent trips lasting for only about one week each. This would still amount to a relatively small amount of time spent in Australia on aggregate out of a 16 year marriage. There is no other indication of ordinary usage by both parties in the earlier part of the marriage either. We are not persuaded that this meets the threshold of ANZ-55 being "ordinarily" used or enjoyed by both parties. As such, we find that the Judge should have excluded ANZ-55 from the matrimonial pool.

27 As a final point, with respect, we differ from the Judge's reasoning in determining that the commingling with the children's inheritance meant that they were no longer separately identifiable as inheritance. As we have already noted, commingling is not a legal basis for transforming excluded assets into matrimonial assets. Furthermore, the children's inheritance would *not* be treated as matrimonial assets in any event. Thus, the commingling should not affect the treatment of the Husband's inheritance. Whilst the children's money has been commingled, the present appeal is focused on the division of matrimonial assets. The issue of the children's inheritance should be dealt with between the children and the Husband subsequently, if the need arises.

The Adverse Inference Issue

28 The Judge drew an adverse inference against the Husband in respect of a discrepancy of S$496,419 which he had not adequately accounted for. With respect, the Judge erred on two main points in coming to this conclusion. First, as the Husband argued and we accept, the Judge erred in including an additional sum of S$360,000 for the purchase of Property 2 as part of the calculations in the GD at [86], as this sum had been paid in 2004 while the values of the other accounts listed in that same comparison were as of 2008 and after. In the absence of any evidence that this sum of S$360,000 was deliberately concealed, this means that it would already have been expended or otherwise accounted for in the value of the accounts as of 2008. This leaves only a sum of S$136,419 unaccounted for.

29 More fundamentally, as a result of our views on the Disputed Assets, there was no concealment or dissipation by the Husband. It is well-accepted that for an adverse inference to be drawn, a *prima facie* case of concealment should be established: *BPC v BPB and another appeal* [2019] 1 SLR 608 at [60]. However, in this case, there was no such concealment. In fact, the Husband had been open with his assets and had explained their movement through his accounts, albeit not very accurately. Furthermore, having found that the Disputed Assets are excluded from the matrimonial pool, there would be no dissipation of assets as they were his assets to begin with.

30 Lastly, we note that the remaining sum of S$136,419 is explicable. This figure, which reflects the difference between the Inheritance Moneys that could have been used to fund the Disputed Assets, and the actual value of the Disputed Assets (see [13] above), can be explained by interest rates in the bank accounts that the Inheritance Moneys were kept in, as well as the returns on the various

investments that the Husband had made. In and of itself, and in the absence of any evidence to the contrary, this discrepancy is not *prima facie* evidence of concealment or dissipation. As such, we find that the Judge ought not to have drawn an adverse inference.

The Indirect Ratio Issue

31 We turn to the final issue in this appeal concerning the ratio of indirect contributions. As is well-established, the court will approach the ascribing of the indirect contribution ratio in a "broad brush" manner: *ANJ v ANK* [2015] 4 SLR 1043. In the context of an appeal, given the discretionary nature of this task, a minor adjustment would not justify appellate intervention: see *USB* at [80].

32 The Judge ascribed a ratio of 55:45 for the parties' indirect contributions in favour of the Wife. The Husband has sought an indirect contribution ratio in his favour instead, pointing towards his indirect financial contributions, as well as his role as a stay-at-home caregiver to the two children to the marriage. Whilst the facts supporting the Husband's arguments are not in dispute, we do not see any reason for appellate intervention, as the Judge was not plainly wrong in the assessment of their respective contributions and involvement as caregivers.

33 On indirect financial contributions, the Husband has pointed to several instances of payments that he had made towards the family. His argument is flawed from the start, as it is clear from the GD that the Judge had taken these payments into account. Further, the instances that he has cited are without context – the point of a ratio is to compare it against the expenses incurred by the Wife. The Husband has not drawn any comparison, and thus it is difficult to determine what weight should be placed on them. In fact, this is exactly what

the Judge did, by comparing the payments made by the Husband against the payments made by the Wife. As such, we do not see any issue with the Judge's reasoning on this point.

34 With regard to the Husband's argument that more weight should be accorded to his role as a stay-at-home caregiver to the two children, we similarly find that the Judge was not plainly wrong on this point. In the letter written by the Husband in 2017, he acknowledged that the Wife had also taken an active role in raising the children. Further, it is clear that the Judge had indeed taken into account the Husband's time spent with the children: GD at [114] to [115]. Accordingly, we find that the Judge had not erred in the determination of the appropriate ratio of indirect contributions.

Proper ratio of division

35 Finally, we note that, having allowed the Husband's appeal on the Disputed Assets Issue and the Adverse Inference Issue, some recalculation is required with regard to the matrimonial assets, and consequently, the direct contribution ratio. The Disputed Assets, ANZ-55 and the sum quantified for the adverse inference should be removed from the matrimonial pool. Accordingly, the matrimonial pool would be reduced from S$13,233,139 to S$8,924,255 (see Annex 1 below). Originally, the Judge found that the direct contribution of the Husband was S$7,234,473, not including the amount quantified for the adverse inference. Deducting the Disputed Assets and ANZ-55 items, this would yield a figure of S$3,422,008 (see Annex 2 below). The Wife's direct contributions were S$5,501,970. Thus, the new direct contribution ratio would be 62:38 in favour of the Wife. Having found that the indirect contribution ratio should remain at 55:45 in favour of the Wife, the recalculated overall ratio is 58:42 in favour of the Wife. Thus, applying this ratio to the new matrimonial pool, the

Husband will receive S$3,748,187.10 of the pool, and the Wife, S$5,176,067.90 (see Annex 3 below).

Conclusion

36 We thus allow the Husband's appeal in part. As he has been substantially successful on appeal, we order that the Wife pay him costs of the appeal fixed at S$35,000 all in. The usual consequential orders will apply.

Quentin Loh JAD
Judge of the Appellate Division

See Kee Oon J
Judge of the High Court

Chua Lee Ming J
Judge of the High Court

Chiok Beng Piow (AMLegal LLC) (instructed), Anna Oei and Friedrich Heng for the appellant;
Yap Teong Liang and Tan Hui Qing (TL Yap Law Chambers LLC) (instructed), Lee Yuan Yu and Chen Yiyang (Tan Kim Seng & Partners) for the respondent.

Annex 1: table showing calculation of adjusted matrimonial pool

Adjusted matrimonial pool	
Item	**Amount (S$)**
Pool of matrimonial assets identified by the Judge	13,233,139
The Disputed Assets	(3,801,863)
ANZ-55	(10,602)
Sum quantified for adverse inference	(496,419)
Adjusted matrimonial pool	**8,924,255**

Annex 2: table showing calculation of the Husband's adjusted direct contribution

Adjusted direct contribution (Husband)	
Item	**Amount (S$)**
Husband's direct contributions as found by the Judge	7,234,473
The Disputed Assets	(3,801,863)
ANZ-55	(10,602)
Adjusted direct contribution (Husband)	**3,422,008**

Annex 3: table showing calculation of the adjusted division of matrimonial assets

Adjusted division of matrimonial assets		
Item	**Husband**	**Wife**
Direct contributions (adjusted for Husband)	S$3,422,008	S$5,501,970
Adjusted direct contribution ratio	38	62
Indirect contribution ratio	45	55
Adjusted overall ratio	42	58
Adjusted ratio applied to adjusted matrimonial pool	**S$3,748,187.10**	**S$5,176,067.90**