IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 19

Divorce Transferred No 4401 of 2021

Between

WLL

… *Plaintiff*

And

WLM

… *Defendant*

JUDGMENT

[Family Law — Matrimonial assets — Division]
[Family Law — Maintenance — Wife]

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WLL
v
WLM

[2023] SGHCF 19

General Division of the High Court (Family Division) — Divorce Transferred No 4401 of 2021
Choo Han Teck J
16 February, 20 March 2023

3 April 2023 Judgment reserved.

Choo Han Teck J:

1 The plaintiff (the "Husband") and the defendant (the "Wife") registered their marriage in Korea on 9 September 1999. The Husband is 58 years old and is a procurement manager in a multinational corporation. The Wife is 51 years old and is a hair stylist operating a hair dressing salon. They have one daughter, born on 2 January 2002 (the "Child"). She is presently 21 years old and is pursuing her undergraduate studies in Singapore. The Husband filed for divorce on 16 September 2021 and obtained interim judgment on 16 February 2022. The only issues that remain are the determination of ancillary matters. Parties had agreed on all issues pertaining to the Child in the interim judgment. Accordingly, the remaining matters to be decided are the division of matrimonial assets and the maintenance of the Wife.

Division of Matrimonial Assets

2 The parties had agreed on most of the matrimonial assets (including the valuation), save for the following assets which parties dispute either as to their inclusion as matrimonial assets or their valuation:

S/N	Asset	Nature of Dispute
1.	Jointly owned Matrimonial Home	Valuation
2.	Husband's POSB Account	Adverse Inference
3.	Wife's NTUC Insurance	Classification as matrimonial assets
4.	Wife's Prudential Insurance	

3 At the hearing on 16 February 2023, counsel for the Wife informed the court that parties have agreed that the Wife's insurance policies (items 3 and 4) shall form part of the matrimonial assets. Accordingly, the remaining assets to be determined are items 1 and 2.

4 As to the matrimonial home, the Wife says that it should be valued at $3,8000,000 based on an independent valuation conducted on 17 June 2022. On the contrary, the Husband says that it should be $3,200,000 based on a valuation dated 15 March 2022. Both valuations are out-of-date by the time of this appeal, nine months on. Thus, at the hearing on 16 February 2023, I directed parties to commission a joint independent valuation report. That report, produced by CBRE Pte Ltd, values the matrimonial home at $3,520,000 as at 24 February 2023, which I adopt as the valuation for the purposes of asset division.

5 The second asset which the parties dispute is the Husband's POSB Account No 056756914, a joint account with his mother (the "Joint Account").

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The issue is whether an adverse inference ought to be drawn against the Husband. Counsel for the Wife, Ms Tee Lee Lian, submitted that the Joint Account should be addressed by way of an adverse inference drawn against the Husband instead of it being added to the matrimonial assets. This is an implicit acceptance that the that the Joint Account is not a matrimonial asset — neither party had referred to it previously as part of their matrimonial assets. Counsel invites me to make a finding that the Husband had breached his duty of full and frank disclosure which justifies the drawing of an adverse inference, giving her a 10% uplift of all the other known matrimonial assets. In reply, counsel for the Husband, Mr Trent Ng, says that the Husband had made full and frank disclosure of his assets. Mr Ng further explained that the Husband had taken the consistent position that the Joint Account was opened to store his mother's life savings and facilitate day to day transactions.

6 An adverse inference may only be drawn if there is evidence establishing a *prima facie* case against the Husband, and the Husband has access to the assets that he is said to be hiding: *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21. The Wife's argument for an adverse inference to be drawn is two-fold. First, she says that the Husband's late disclosure of two UOB trading accounts and three brokerage accounts with the Phillips Online Electronic Mart System ("POEMS") was a breach of his duty of full and frank disclosure when he did not disclose these accounts in his affidavit of assets and means sworn on 5 April 2022, and only disclosed them thereafter on 17 June 2022. Secondly, she refers to transactions of sizeable amounts in the Joint Account, which she says are evidence that the Joint Account was not used as the Husband's mother's day-to-day spending account (as he claims), but rather, for the purpose of share trading and the collection of dividends. This, the Wife says, is evidence that the Husband has been trading under his mother's name since the opening of this

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Joint Account in 2003, and had amassed certain assets in her account which he is said to be hiding.

7 On the first ground, although the Husband's late disclosure of his assets may be a breach of his duty of disclosure and a relevant consideration for costs, but not necessarily for the drawing of an adverse inference. A breach of the duty of full and frank disclosure alone does not automatically result in the drawing of an adverse inference. As the Court of Appeal held in *UZN v UZM* [2021] 1 SLR 246 ("*UZN*") at [29]:

> […] What is just and equitable must be seen in the light of the objective of drawing an adverse inference in this context in the first place – to counter the effects of non-disclosure of assets which diminishes the value of the matrimonial pool and thereby places those assets out of the reach of the other party for the purposes of division under s 112 of the Women's Charter as matrimonial assets (see [16] above). The preferred approach should enable the court to most appropriately reach a just and equitable division of the true material gains of the parties' marriage.

An adverse inference is not used as a punishment for breaching the duty of full and frank disclosure, but to make adjustments to the matrimonial assets by giving a value to assets which had been hidden, or siphoned from the matrimonial assets. In this case, notwithstanding the Husband's failure to disclose the assets, it is not the Wife's case that the Husband's late disclosure is evidence of undisclosed assets or bank accounts. An adverse inference cannot usefully be drawn in such circumstances.

8 The second ground that the Wife relies on concerns the transactions of large sums of monies in the Joint Account. The Wife refers to the withdrawals of $60,135.56 and $33,815.56 on 4 March 2022, as well as the deposits of $80,592.30 on 16 July 2021 and $25,007.70 on 23 January 2022. The Wife says that such significant movements of funds are inconsistent with the Husband's

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explanation that this account was opened to deposit his mother's savings and pay for day-to-day living expenses. On this basis, the Wife invites the court to draw an adverse inference that the Husband has been using his mother as a front to amass a sizeable amount of money in his mother's share trading account. The Wife says that since the mother's share trading account was not disclosed, an uplift of 10% to the Wife's share of the assets is justified.

9 I agree with the Wife that the Husband's explanation for the joint account is not consistent with the value of the withdrawals. But the Joint Account was not considered a matrimonial asset by the parties. Accordingly, transactions within those accounts, whatever the amount, is irrelevant to an adverse inference against the Husband, which concerns dissipation out of the matrimonial assets. What the Wife must show is that the Husband had been dissipating funds from matrimonial assets into that Joint Account with his mother, and not transactions within those accounts. This, however, has not been established by the Wife. In fact, the Wife's case was one step removed — not that the Joint Account was a matrimonial asset, but that the transactions in the Joint Account suggested that the Husband had been using his mother's trading account to hide his assets. It is not disputed that the mother's trading accounts are not matrimonial assets and were not disclosed. But when I asked Ms Tee whether discovery was sought over these trading accounts, it was conceded that this was not done. An adverse inference cannot be used as a remedy to a lapse by the party in the interlocutory process. If it is the Wife's case that the Husband had been using his mother's account to amass his own wealth, the burden lies on her to seek discovery over the documents necessary to prove her case. I therefore decline to draw an adverse inference against the Husband concerning the Joint Account.

10 Nonetheless, I find that the Husband's counsel's attempt to use an

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affidavit that had been sworn but not filed, to be unacceptable. At the hearing on 20 March 2023, he produced an affidavit sworn but not filed by the Husband. It contained the details of the Husband's mother's trading accounts. Counsel wanted to use that in defence against the Wife's call for the drawing of an adverse inference in regard to activities in that account. He said that whether they would file that affidavit depended on what orders I make at the hearing, that means, depending on how persuaded I was by the Wife's counsel's arguments. Arguments, not evidence, may be changed to adapt to the circumstances as the case progresses. Parties cannot choose to disclose evidence in instalments, depending on whether the situation has become desperate enough for them to do so. If they have the evidence, they must disclose or risk the court rejecting it.

11 The matrimonial assets (including their valuations) are as follows:

S/N	Manner of Holding	Asset	Net Value / in SGD
1.	Joint Names	Matrimonial Home	$3,520,000.00
2.	Husband's Name	DBS eMulti-Currency Account	$0.00
3.		DBS Multiplier Account	$2.66
4.		POSB Passbook Savings Account	$544,592.67
5.		POSB Current Account	$0.00
6.		NTUC Insurance	$63,003.17
7.		Prudential Insurance	$101,486.01
8.		SGX CDP Account (SGD)	$1,598,749.78

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9.		SGX CDP Account (USD) (US$ 6,910.00)	$9,447.01
10.		POEMS Account No xxx9077	$512,659.00
11.		POEMS Account No xxxx96 (US$ 45,706.78)	$64,861.35
12.		SRS Account Equities/Bonds	$538,875.72
13.		SRS Account Cash Balance	$15,510.74
14.		CPF Monies	$690,424.79
15.		Family Car	$141,000.00
Sub-total for assets under Husband's name			$4,280,612.90
1.	Wife's Name	Brokerage Account with POEMS by Phillips Securities Portfolio	$360,790.39
2.		SRS Account	$350,065.23
3.		Allianz Unit Trust	$913.05
4.		UOB Savings Account	$328,498.60
5.		CPF Monies	$400,571.93
6.		Shares in Salon	$49,783.65
7.		NTUC Insurance	$45,375.45
8.		Prudential Insurance	$18,036.28
Subtotal for assets under Wife's name			$1,554,034.58
Grand Total			$9,354,647.48

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Division Ratio

12 The only difference in the parties' computation of direct financial contributions was their contributions to the purchase of the matrimonial home purchased in 2007. The Wife says that their contribution should be attributed based on their respective holding as tenants-in-common in the ratio of 74% (Husband): 26% (Wife). The Husband says that their respective contribution is based on the amount they contributed to the purchase price, which he says amounts to $1,470,827.01 (Husband): $231,900.00 (Wife). I do not agree with the Wife's approach. She is hoping to ascertain the direct contribution of yesteryears based on today's valuation. This is incorrect in principle — the financial contribution of parties should be determined by reference to the monies expended at the time of acquisition of the matrimonial asset. Since the global ratio for direct financial contribution is determined by totalling up the monies applied to the marital partnership by each party, using the current valuation of the matrimonial home would inflate the raw values contributed for the purpose of calculating that ratio. Thus, I accept the Husband's approach of ascertaining contributions by the amount the parties actually paid.

13 Parties are in general agreement as to their contribution to the matrimonial home save for three items: the monthly cash repayment toward the outstanding HSBC mortgage loan, the renovations done to the matrimonial home and the furniture, fittings and finishings.

14 It was not disputed that the loan for the HSBC mortgage was $448,000.00. The Husband says that he paid for the entire loan. He produced monthly repayment statements from April 2011 to March 2016 in support of his assertion. The Wife says that she has reimbursed the Husband $120,000.00, by way of cash and telegraphic transfers. Although the Husband exhibited

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statements that the payment originated from his account, it does not prove that the entire mortgage repayment was made by him. It is not inconceivable that mortgage payments are made by one spouse who then receives a contribution or reimbursement from the other spouse. That is as convenient as sending money from a joint account, and more so than sending payments from the spouses individually.

15 The Wife's assertion that she paid $450 a month from her CPF account was made without supporting evidence. Thus, I am unable to accept this assertion. However, I accept that the Wife made certain contributions to the repayment of the HSBC mortgage. Although there is no conclusive proof that the other telegraphic transfers were earmarked for the mortgage repayment, I am satisfied on the balance of probabilities that these telegraphic transfers went toward the mortgage repayment. First, they were consistent with the mode of final repayment. The telegraphic transfers and cashier's orders exhibited (at Tab M of DAOM-1) are consistent with the cashier's order that the Wife drew up for the final redemption repayment of $76,600.00, which was not disputed by the Husband. Secondly, the payments of monies were made during the time when the mortgage was being repaid. Finally, the telegraphic transfers were sizeable amounts transferred to his bank account for which the Husband did not give any other explanation for these payments. Accordingly, I am of the view that the Wife contributed $64,029.93 to the mortgage repayment, being the amount of the transfers exhibited.

16 It is not disputed that the renovation costs amounted to $145,797.12. The only dispute concerns the Wife's claim that she contributed $20,000. However, to support her claim that she paid for the renovation costs, she uses the same telegraphic transfers exhibited at Tab M of DAOM-1. But they are the same exhibits which she claimed were used to reimburse the Husband for the

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mortgage. Each record of transfer can only be for one purpose. Since I have already credited the Wife for all the exhibits in Tab M of DAOM-1 toward her mortgage repayment, I accordingly reject her assertion that she contributed $20,000.00 to the renovation costs.

17 Finally, the Wife claims that she paid $50,000.00 for furniture and furnishings. This, however, was not supported by any documentary evidence. Not a single receipt was produced, even if only to show some contribution on her part. Accordingly, I am unable to accept the Wife's bare assertion of this head of contribution.

18 Accordingly, the breakdown of the parties' respective contributions to the matrimonial asset are as follows:

Item of Contribution	**Wife**	**Husband**
5% Deposit	0	$71,000.00
CPF Lumpsum including stamp duty and legal fees	$16,900.00	$296,300.00
Balance Payment	0	$19,849.25
Further CPF Withdrawal	$50,500.00	$181,500.00
Monthly $900 repayment of mortgage loan from CPF OA	$90,900.00	$90,900.00
Final redemption of HSBC Mortgage	$73,600.00	$216,680.64
Monthly cash repayment towards the outstanding loan	$64,029.93	$383,970.07
Renovations	$0	$145,797.12

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Furniture, fittings and furnishings	$0	$0
Grand Total	$295,929.93	$1,405,997.08

19 Accordingly, the direct financial contribution of the parties are as follows:

Matrimonial Asset	Wife	Husband
Matrimonial Home	$295,929.93	$1,405,997.08
Assets in Parties' sole names	$1,554,034.58	$4,280,612.90
Direct Financial Contribution	$1,849,964.51	$5,686,609.98
Ratio	**24.5%**	**75.5%**

20 Both parties have taken diametrically opposite positions on indirect financial contribution, with the Wife saying that the ratio should be 70:30 in her favour and the Husband saying that the ratio should be 70:30 in his favour. Counsel on both sides made extensive submissions detailing their own contributions while downplaying the other's. The assessment of indirect financial contribution ought not descend into an exercise of fault-finding. This was a long marriage of over 20 years. However, in assessing indirect contributions, the Court must consider only the facts and circumstances of the case. The evidence reflects that that not only did the Husband contribute more financially to the day-to-day running of the household, he was also the more involved parent in the upbringing of the Child. Although both parents held full-time jobs, I am of the view that the Husband was the primary caregiver. However, I can accept that the Wife played a part in this long marriage, albeit to a smaller extent. Thus, I am of the view that a ratio of 60% (Husband): 40%

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(Wife) would be a fair reflection of indirect financial contributions of the parties to the marriage.

21 I accord direct and indirect contribution equal weight. The overall ratio and entitlement to the matrimonial pool of $9,354,647.48 are as follows:

	Wife	**Husband**
Direct Contribution	24.5%	75.5%
Indirect Contribution	40%	60%
Overall Ratio	32.3%	67.7%
Share of matrimonial pool	$3,021,551.14	$6,333,096.34

Maintenance of the Wife

22 The Wife seeks a lump sum maintenance of $540,000.00 on the basis that she suffered financial inequity in having to sacrifice her career as a result of having to care for the Child. She also relies on the fact that her occupation as a hairdresser requires her to be in good health.

23 I do not agree with the Wife. First, the evidence shows that the Husband was the primary caregiver of the Child. I had interviewed the Child, and am fortified in this finding. Both parents made sacrifices to bring up the Child, not just the Wife. I thus do not accept the Wife's assertion that she was unduly crippled by her homemaking responsibilities. Secondly, her assertion as to reduced earning capacity due to ill health are speculative. This is evident in her written submission that "in short, if [the Wife] were to suffer any mishaps/medical illness and be unable to work [...]". Maintenance is not an insurance policy. If there is a material change in circumstances, the law allows for variation. I will not make contingent orders in the event of her ill health. I

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am of the view that the Wife is sufficiently capable of maintaining herself presently. I thus make no orders as to maintenance.

24 I will hear parties on costs at a later date.

- Sgd -
Choo Han Teck
Judge of the High Court

Trent Ng Yong En and Cheryl Tan Wee Tim (Kalco Law LLC) for the plaintiff;
Tee Lee Lian and Julian Koh Zhen Yang (Bih Li & Lee LLP) for the defendant.

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