IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 26

District Court Appeal No 83 of 2022

Between

(1) WGE

… *Appellant*

And

(1) WGF

… *Respondent*

JUDGMENT

[Family Law – Matrimonial assets – Division – Appropriate indirect contributions ratio to be assigned to homemaker wife]
[Family Law – Matrimonial assets – Pool of matrimonial assets – Homemaking efforts not leading to substantial improvement of a company's shares]
[Family Law – Matrimonial assets – Valuation of shares – Whether discounts for lack of marketability and for lack of control were warranted under the market approach on the facts]
[Family Law – Matrimonial assets – Valuation of shares – Appropriate value of discounts to be applied for lack of marketability and for lack of control on the facts]
[Family Law – Maintenance – Wife – Appropriate multiplicand and multiplier to be applied on the facts]
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General Division of the High Court (Family Division) — District Court Appeal No 83 of 2022
Mavis Chionh Sze Chyi J
25 January, 27 March 2023

22 May 2023 Judgment reserved.

Mavis Chionh Sze Chyi J:

Introduction

1 HCF/DCA 83/2022 is an appeal against a decision of the Family Courts in relation to the division of matrimonial assets and maintenance.

Facts

The parties

2 The Appellant is WGE ("the **Wife**").

3 The Respondent is WGF ("the **Husband**").

4 The Wife and Husband were married on 26 September 2010 and have one child to the marriage ("**D**"), who is seven years old this year.[1]

Background to the dispute

5 The Wife commenced divorce proceedings on 22 January 2021 against the Husband on the basis that the Husband had behaved in such a way that she could not reasonably be expected to live with him. The interim judgment was granted on 24 March 2021 on an uncontested basis.[2] This was a marriage of around ten years and four months.[3]

6 The parties resolved the child-related issues by way of a consent order dated 6 August 2021. The remaining contested issues are the ancillary issues relating to the division of matrimonial assets, and maintenance for the Wife and child.[4]

Decision below

7 I first summarise below the District Judge's ("DJ") decision.

Division of matrimonial assets

8 In respect of the division of matrimonial assets, the DJ valued the matrimonial assets as at the date of the AM hearing (17 August 2022) and found that the total pool of matrimonial assets available for division was

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1 ROA vol.1 at p39 Para 2.

2 ROA vol.1 p39 Para 3.

3 ROA vol.1 p39 Para 4.

4 ROA vol.1 p40 Para 6.

$2,673,518.45.[5] In arriving at this figure for the pool of matrimonial assets, the DJ excluded the Dutch bank accounts and the Husband's pension policy (from his previous employment) from the matrimonial pool.

9 The house at Sin Min Walk, which was the matrimonial home, was valued at $1,550,000 by the DJ.[6] This valuation is not the subject of any appeal.

10 In respect of the Husband's current shares in the company KS Pte Ltd ("**KS**")[7], the DJ found that most of the 939,657 current KS shares had been acquired in 2008 before the marriage to the Wife. The DJ excluded these KS shares from the matrimonial pool. Only the 557 KS shares which were acquired by the Husband during the marriage were included in the matrimonial pool.[8]

11 In respect of the Husband's shares in MS Pte Ltd ("**MS**"), the DJ found that all 210,000 MS shares should be included in the matrimonial pool.[9] In valuing the shares, the DJ noted that the Husband had tried to downplay the value of MS during the ancillary proceedings and that he had not fully cooperated in the valuation exercise.[10] The DJ rejected the valuation provided by the Husband's expert. He preferred the approach adopted by the Wife's expert, who had used both the market and the income approach,[11] but he differed from the Wife's expert in relation to the discounts he applied for lack of

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5 ROA vol.1 p65 Para 76.

6 ROA vol.1 p62 Paras 65-68.

7 ROA vol.2 p11, p115.

8 ROA vol.1 p49 Para 32.

9 ROA vol.1 p52-53 Para 40.

10 ROA vol.1 p55-56 Para 48.

11 ROA vol.1 p57 Para 52.

marketability and lack of control.[12] Ultimately, the DJ valued the Husband's MS shares at $466,561.24.[13]

12 In respect of the Husband's cryptocurrency assets, the DJ found these to be worth around $487,586.14 at the time of the ancillary matters ("AM") hearing. He rejected the Husband's request for these cryptocurrency assets to be divided *in specie*.[14]

13 Having identified and valued the matrimonial assets, the DJ next considered the parties' direct financial contributions and indirect contributions. The DJ apportioned the parties' direct financial contribution in the ratio of 88:12 in favour of the Husband.[15] Noting that the Husband had a significantly higher income than the Wife and that the latter had stopped working from September 2010, the DJ concluded that the Husband would have contributed the lion's share of indirect financial contributions during the marriage,[16] but that the Wife made significantly larger indirect non-financial contributions to the marriage.[17] The DJ apportioned the parties' indirect contributions in the ratio of 52:48 in favour of the Wife.[18]

14 The DJ accorded equal weightage to both ratios and arrived at a final ratio of 68:32 in favour of the Husband.[19]

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12 ROA vol.1 p57-60 Paras 53-59.

13 ROA vol.1 p60 Para 60.

14 ROA vol.1 p61 Paras 63-64; p70 Paras 93-94.

15 ROA vol.1 p66 Para 80.

16 ROA vol.1 p66-67 Para 82.

17 ROA vol.1 p68 Para 88.

18 ROA vol.1 p69 Para 90.

19 ROA vol.1 p69-70 Paras 91-92.

Maintenance orders

15 In respect of the issue of maintenance, the DJ found that the Husband had a much larger income compared to the Wife's: he had an undisputed income of $14,980 per month, excluding significant dividends from his various shareholdings.[20] Having assessed the Wife's reasonable monthly expenses to be around $3,013.15 per month,[21] the DJ found that the Wife's needs would exceed her present income, since her basic monthly salary was $3,000, with a take-home salary of around $2,400 per month after CPF deductions. Based on the amount allowed for the Wife's reasonable monthly expenses, the DJ found that a reasonable multiplicand for the Wife's maintenance would be $700 per month.[22]

16 As for the multiplier, the DJ held that four years would be reasonably sufficient for the Wife to weather the transition period following the divorce. He therefore awarded the Wife total maintenance of $33,600.[23]

17 As for maintenance for the child, D, the DJ found that D's reasonable monthly expenses amounted to $1,732 (excluding those to be reimbursed directly by the Husband).[24] Taking into account the large difference between the Husband's income and the Wife's income, and the Husband's significant dividends from his shareholdings, the DJ held that it would be fair for the Husband to pay 90% of this assessed quantum (*ie*, $1,560 per month) and to pay

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20 ROA vol.1 p72 Para 99.

21 ROA vol.1 p78 Para 105.

22 ROA vol.1 p79 Para 109.

23 ROA vol.1 p80 Para 113.

24 ROA vol.1 p81-83 Paras 114-115.

in full for the items to be reimbursed, with the Wife paying the remaining 10% of the $1,732.[25]

The parties' cases on appeal

Wife's Case

18 The Wife contends on appeal that the DJ erred in determining the pool of matrimonial assets. *Per* the Wife's case, the pool of assets should be of much higher value. It is also the Wife's case that the DJ erred in apportioning the parties' share of the matrimonial assets in the ratio of 68:32 in favour of the Husband, as she contends that she should have received a larger share in light of her significant indirect contributions to the marriage. In addition, she contends that the DJ erred in terms of the amount of maintenance he awarded her and the amount assessed for D's monthly expenses, as well as in ordering her to bear 10% of D's monthly expenses.

Husband's Case

19 The Husband maintains that no error was made by the DJ in determining the pool of matrimonial assets, in dividing the matrimonial assets, in determining the maintenance amounts awarded for the Wife and D, and in ordering her to bear 10% of D's monthly expenses.

Issues on Appeal

20 The following issues arose for my determination in the hearing of this appeal:

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[25] ROA vol.1 p84-85 Paras 118-119.

(a) Whether the DJ erred in finding that only 557 (and not all 939,657) of the Husband's KS shares were matrimonial assets ("**the KS Shares Issue**").

(b) Whether the DJ erred in valuing the Husband's 210,000 MS shares at S$466,561.24 ("**the MS Shares Issue**").

(c) Whether the DJ erred in assessing parties' indirect contributions in the ratio of 52:48 in the Wife's favour ("**the Indirect Contributions Issue**").

(d) Whether the DJ erred in awarding the Wife lump sum maintenance of S$33,600 ("**the Maintenance Issue**").

(e) Whether the DJ erred in awarding S$1,732 for D's monthly expenses and in ordering the Husband to bear 90% thereof instead of 100% ("**the Child Maintenance Issue**").

21 In the paragraphs that follow, I address these issues *seriatim*.

22 For the record, the Wife has indicated that she has abandoned her appeals in respect of the following other aspects of the DJ's decision:[26]

(a) The exclusion from the matrimonial pool of three of the Husband's accounts in Netherlands; and

(b) The refusal to backdate the Wife's maintenance.

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[26] Appellant's Case at Para 3.

Basis for review by an appellate court of a trial judge's decision

23 By way of general principle, it is trite that appellate intervention in respect of findings of fact made by a trial judge is warranted only when the trial judge's assessment is plainly wrong or manifestly against the weight of the evidence (*Nambu PVD Pte Ltd v UBTS Pte Ltd and another appeal* [2022] 1 SLR 391 at [8]; *Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 ("*Tat Seng*") at [41]; *Tuitiongenius Pte Ltd v Toh Yew Keat and another* [2021] 1 SLR 231 at [19]; *Simpson Marine (SEA) Pte Ltd v Jiacipto Jiaravanon* [2019] 1 SLR 696 at [59]; *North Star (S) Capital Pte Ltd v Yip Fook Meng* [2022] 1 SLR 677 at [21]). The rationale for this is that the trial judge is generally in a better place to assess the credibility of witnesses, especially in situations where oral evidence is concerned. In *Tat Seng*, the Court of Appeal ("CA") (at [41]) further clarified that where a finding of fact is not based on the veracity or credibility of the witness, but is instead based on an inference drawn from the facts or evaluation of the facts, the appellate court would be in as good a position as the trial judge to make findings of fact. This would involve the appellate court evaluating the cogency of the evidence from the witnesses by testing it against inherent probabilities or uncontroverted facts.

24 In respect of errors of law, the CA in *Ng Eng Ghee and others v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervener) and another appeal* [2009] 3 SLR(R) 109 at [90] has listed various types of errors of law (citing *Halsbury's Laws of England* vol 1(1) (Butterworths, 4th Ed Reissue, 1989) at [70]; see also *Mu Qi and another v Management Corporation Strata Plan No 1849* [2021] 5 SLR 1401 at [34]):

> Errors of law include misinterpretation of a statute or any other legal document or a rule of common law; asking oneself and answering the wrong question, *taking irrelevant considerations into account or failing to take relevant considerations into account*

> *when purporting to apply the law to the facts*; admitting inadmissible evidence or rejecting admissible and relevant evidence; exercising a discretion on the basis of incorrect legal principles; giving reasons which disclose faulty legal reasoning or which are inadequate to fulfil an express duty to give reasons, and misdirecting oneself as to the burden of proof. [emphasis in original]

Issue 1: Whether the DJ erred in finding that only 557 (instead of all 939,657) of the Husband's KS shares are matrimonial assets

25 Bearing these general principles in mind, I first address the KS Shares Issue.

Decision below

26 In the proceedings below, the DJ ruled that of the 939,657 KS shares held by the Husband (which had a value of S$492,399.32), only 557 of these shares were to be included in the matrimonial pool for distribution. This was because the DJ found that the Husband had clear documentary evidence to show that 1,000,000 KS shares had been acquired in 2008, whereas 557 shares had been acquired in the course of the marriage, in September 2019.[27]

27 As to the Wife's argument that the Husband's entire KS shareholding should be included in the matrimonial pool because her efforts in caring for the home had freed up the Husband to build the business, this was rejected by the DJ. The DJ did not agree that the Wife had substantially improved the assets such that it had been transformed into a matrimonial asset.[28] Instead, he found that KS had already developed the software by 2013 and sold it to MS for S$200,000; that this event had taken place early on in the marriage where both parties were still working; and that nothing much could be said about parties'

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[27] ROA vol.1 at p49 Para 32.

[28] ROA vol.1 at p50 Paras 33-34.

respective indirect contributions in that period.[29] Moreover, the position advocated by the Wife was against the weight of authority. Citing *USB v USA* [2020] 2 SLR 588 ("*USB v USA*") at [21]-[22], the DJ observed that the reference to "substantial improvement" of assets necessarily had an economic connotation: the court's focus had to be on whether there had been some expenditure or application of effort towards the improvement of the asset in an economic sense;[30] and this necessarily entailed either a direct investment or effort having an economic value. Applying *USB v USA*, the DJ held that the Wife's efforts in this case did not qualify as efforts going towards the improvement of the KS shares in an economic sense.[31]

28 As to the Wife's argument that the Husband had utilised his salary and dividends from the KS business for family expenses, and that these acts revealed his clear intention to treat all KS shares as matrimonial assets,[32] this was also rejected by the DJ. The DJ agreed with the Husband that he was utilising the *income* from the company, as opposed to utilising the assets themselves.[33] In this connection, the DJ distinguished between the usage of proceeds from a sale of the underlying shares on the one hand, and utilisation of income earned from employment in the company as well as dividends paid out from the shares on the other hand.[34]

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29 ROA vol.1 at p50 Para 34.

30 ROA vol.1 at p50-51 Para 35.

31 ROA vol.1 at p50-51 Para 35.

32 ROA vol.1 at p50 Para 33.

33 ROA vol.1 at p51 Para 36.

34 ROA vol.1 at p51 Para 37.

Wife's Case

29 On appeal, the Wife submitted that the DJ had read *USB v USA* incorrectly: the CA in *USB v USA* (so the Wife claimed) did not rule that indirect non-financial contributions had no economic value for the purpose of the "substantial improvement" exception.[35] The Wife also argued that in *USB v USA*, the words "in an economic sense" were used by the CA to describe or to qualify the words "the improvement of the asset", rather than the nature of the effort itself.[36] According to the Wife, therefore, the court should focus, not on the effort, but on "whether there was an improvement in the assets in some measurable sense".[37]

30 According to the Wife too, the view that indirect non-financial contributions did not qualify for the "substantial improvement" exception was contrary to the position taken in the earlier cases of *Hoong Khai Soon v Cheng Kwee Eng* [1993] 1 SLR(R) 823 ("*Hoong Khai Soon*") and *Chen Siew Hwee v Low Kee Guan* [2006] 4 SLR(R) 605 ("*Chen Siew Hwee*").[38]

Husband's Case

31 The Husband, on the other hand, submitted that there was no "substantial improvement" made by the Wife to the Husband's KS shares, because there was no direct causal connection between the Wife's actions and the value of the shares – such causal connection being a requirement for "substantial improvement" *per* the CA in *USB v USA*.

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35 Appellant's Case at Para 6(b).

36 Transcript of 27 March at p 4 ln 10 to ln 27.

37 Transcript of 27 March at p 4 ln 29 to p 5 ln 14.

38 Appellant's Case at Para 6(a).

32 Insofar as the Wife had taken care of D and thus freed the Husband up to focus his energies on building the business, her contributions should be characterised as non-financial contributions to the marriage – and not as a "substantial improvement" of the KS shares.[39] In this connection, the Husband submitted that caselaw had established clearly that a spouse's efforts in taking care of the children of the marriage would not qualify as substantial improvement of the other spouse's assets.[40] Instead, examples of effort which qualified as "substantial improvement" included cases where a spouse had direct involvement in the business: *ie*, the spouse took on a role as a director, employee, shareholder or advisor with the company. In this case, the Wife was indisputably not involved in KS in any way, and so could not claim to have substantially improved the KS shares.[41]

33 Further, citing *USB v USA* (at [22]), the Husband contended that the CA in that case had made it clear that improvement of the asset must entail investment or money's worth for the improvement of the asset. Such investment referred to "effort of money or money's worth"; the expression "economic sense" must therefore qualify the effort and not just the outcome.[42]

My Decision

34 Having considered the relevant authorities and parties' submissions, I reject the Wife's understanding of the "substantial improvement" exception in *USB v USA*. I am satisfied that the DJ was correct in finding that the Wife's efforts in taking care of D did not amount to effort "in an economic sense", such

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39 Respondent's Case at Paras 20-23.

40 Respondent's Case at Paras 24-26.

41 Respondent's Case at Para 27.

42 Transcript of 27 March at p 33 ln 12 to ln 30.

that it could have substantially improved the KS shares and transformed them into a matrimonial asset within the meaning of s 112(10)(*a*)(ii) of the Women's Charter (Cap 353, 2009 Rev Ed) ("Women's Charter"). My reasons are as follows.

35 As a starting point, s 112(10)(*a*) of the Women's Charter defines "matrimonial asset" as follows:

> (10) In this section, "matrimonial asset" means –
>
> (*a*) any asset acquired before the marriage by one party or both parties to the marriage –
>
> (i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or
>
> (ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and
>
> …

It is trite that pre-marriage assets are excluded from the matrimonial pool unless they were substantially improved by the other spouse or used for family purposes (*USB v USA* at [19(c)]). As the DJ noted in his grounds of decision, in *USB v USA*, in elaborating on the meaning of "substantial improvement", the CA highlighted that it "necessarily has an economic connotation" (*USB v USA* at [21]). Further, the CA made the following observations (*USB v USA* at [22]):

> ***First, the improvement of such an asset must entail the investment of money or money's worth for the improvement of the asset. The mere increase in the value of the asset does not mean that the asset has "improved". In order for the asset to be transformed into a matrimonial asset, there must have been investment of some kind in the asset. The paradigm example would be renovation works performed on a residential or commercial property***. These can easily be understood as increasing the sale value of such a property. However, even if the resale value does not increase

> because of market forces, a substantial renovation which makes a previously barely habitable home very much more comfortable or able to attract higher rental income could be considered a substantial improvement. ***Second, the improvement must arise from effort which can be understood as having economic value. For example, if the asset is a business belonging to one spouse, then development of the business by the other spouse or by both spouses during the marriage by sustained efforts could transform that asset into a matrimonial asset. In this regard, however, carrying out administrative or minor public relations activities or being a nominal director may not be sufficient. There should be an increase in turnover or in profitability or some other measurable improvement. It will always be a question of fact as to how the efforts of the non-owning spouse have contributed to an improvement in the asset.*** Ultimately, the court's focus is on whether there has been some expenditure or application of *effort* towards the improvement of the asset (in an economic sense).
>
> [emphasis added]

36 The Wife's submission that the words "in an economic sense" were used by the CA to describe or to qualify the words "the improvement of the asset", rather than the nature of the effort itself, calls for a skewed reading of the final sentence in this passage which ignores everything else said by the CA in the same passage. It is a submission that is plainly wrong. Reading the above passage in its entirety, there can be no doubt that the CA has made clear what "substantial improvement" of an asset involves: either the improvement entails some investment of money or money's worth, or the improvement arises from effort that can be "understood as having economic value". In respect of the second limb, the CA provided an illustration by citing the example of a non-owning spouse who develops the business owned by the other spouse, taking pains to point out that minor administrative or public relations activities or being a nominal director might not be enough to be considered effort "having economic value".

37 Applying *USB v USA*, I find that while the Wife's actions in taking care of D were an important and weighty contribution to the marriage as a whole, they did not amount to "substantial improvement" of the Husband's KS shares: her actions in taking care of D did not constitute an "investment of money or money's worth" for the improvement of the said asset, nor could they be characterised as the application of effort "having economic value" towards the improvement of the asset.

38 *Chen Siew Hwee*, which the Wife cited, also does not assist her case. According to the Wife, *Chen Siew Hwee* established that indirect contributions could amount to "substantial improvement". The Wife quoted[43] the following passage from Phang J's (as he then was) judgment (at [51] of *Chen Siew Hwee)*:

> …This is *not* to state that indirect financial contributions can never justify such a finding (*cf Hoong Khai Soon* at [10] and [11]). But even so, and as I have already pointed out, a *direct causal connection* needs to be proved between the contributions and the improvement of the asset. This was clearly *not* proved on the facts of the present case. It is also important to note that indirect financial contributions would, in any event, *be taken into account in ascertaining the proportion* of the matrimonial assets that ought to be given to the spouses concerned and hence otherwise serve an important function.
>
> [emphasis in original]

39 It must be pointed out, first of all, that Phang J was talking about indirect *financial* contributions. However, even assuming that his remarks were intended to apply to all indirect contributions (*ie*, both financial and non-financial), it must also be pointed out that in quoting the above passage, the Wife omitted the earlier portion of this passage. I now reproduce below the omitted portion:

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[43] Appellant's Case at Para 14.

51 I should note that ***Ms Koh did in fact attempt to argue that the shares had been "substantially improved" by the wife during the subsistence of the marriage through her indirect financial contributions. I rejected this argument for the simple reason that there was no direct causal connection whatsoever between these contributions and the shares*** (see the Singapore Court of Appeal decisions of *Hoong Khai Soon v Cheng Kwee Eng* [1993] 1 SLR(R) 823 ("*Hoong Khai Soon*") at [11] and *Lee Yong Chuan Edwin v Tan Soan Lian* [2000] 3 SLR(R) 867 ("*Lee Edwin*") at [37]). This is obviously a question of fact (see *Hoong Khai Soon* at [11]). Indeed, in the context of the present proceedings, there was no substantial improvement of the shares to begin with (see also the Singapore Court of Appeal decision of *Shi Fang v Koh Pee Huat* [1996] 1 SLR(R) 906). Though Ms Koh cited the Singapore Court of Appeal decision of *Koh Kim Lan Angela v Choong Kian Haw* [1993] 3 SLR(R) 491, this particular decision is readily distinguishable from the situation in the present proceedings. In that case, the wife concerned *did* in fact *actually assist* the husband *in the business* which had been given to him (the husband) by his father. Mr Khoo cited, on the other hand, the Singapore High Court decision of *Chow Hoo Siong v Lee Dawn Audrey* [2003] 4 SLR(R) 481 ("*Chow Hoo Siong*"), where S Rajendran J observed thus (at [13]–[15]):

> *The wife was not a director, shareholder, employee of or advisor to any of the companies in the group: her only link was that she was the wife of the husband.* That being so, the affairs of the Teo companies, even if fully disclosed by the husband to the court, would not have revealed any contributions by the wife: *even the wife did not claim that she had made any direct contribution to the Teo Shares*. Any "indirect" contribution she may have made – such as looking after the welfare of the family – would not appear in the records of the Teo companies. There was therefore no basis for the district judge to have made the inference from the husband's conduct that had he made full disclosure the wife's contribution would have been revealed.
>
> Apart from the adverse inference that the district judge drew from the husband's conduct, *the district judge enumerated the following 'indirect contributions' by the wife towards the 'improvement' of the Teo Shares*:
>
> > It was pertinent to note that the Respondent's admission that his salary in ESC [Eng Seng Cement Products – a company controlled by the Teo companies] remained the same "since

> graduation. I am the lowest paid because I'm youngest in the generation hierarchy". Clearly Chow has enhanced the shares through his employment in ESC. By accepting no increment in salary over 13 years of service to the company, he has in fact enhanced the profits of the company and in turn the value of the shares of the companies. His sacrifice would also affect the lifestyle of his wife who, according to the Respondent, was required to share in the family expenses. She also had contributed financially towards the household and hence had participated towards the acquisition of the asset by her efforts towards the family life. …
>
> These "contributions" were, in my view, far too remote and far too insignificant to justify the conclusion that the district judge arrived at that the Teo Shares have been improved by the contributions of the wife during the marriage.
>
> As the wife had not on her own or together with the husband contributed in any way to the improvement of the Teo Shares, these shares should not be included in the pool of matrimonial assets available for division between the parties.
>
> …..
>
> ***This decision supports, in my view, the proposition to the effect that indirect financial contributions alone are too vague and remote to justify a finding that the spouse concerned had helped to substantially improve an asset within the meaning of s 112(10)****…*
>
> [emphasis added]

40 From the above, it is clear that Phang J's starting point vis-à-vis "indirect financial contributions" was that such indirect contributions "alone [were] too vague and remote to justify a finding that the spouse concerned had helped to substantially improve an asset within the meaning of s 112(10) [of the Women's Charter]". It is also clear that while Phang J did not rule out the possibility that indirect financial contributions might justify a finding of substantial

improvement, he emphasised the need to prove a direct causal connection between the alleged contributions and the improvement of the asset. Indeed, he repeated this caution in the portion of the passage which the Wife cited (see above at [38]).

41 Applying the principle articulated by Phang J, I agree with the Husband that the Wife has no evidence at all to show a direct causal connection between her actions in taking care of D and the value of the KS shares.[44]

42 The Wife also sought to rely on the case of *Hoong Khai Soon* as authority for the submission that her efforts on the home front qualified as "substantial improvement". I reproduce below the passage which she quoted[45] from the CA's judgment in that case (at [11]):

> It is plain that the efforts which bring the asset, *ie* the partnership interest acquired before the marriage within s 106 must bear a direct causal link to the substantial improvement of the asset. The question is one of fact. There has been no evidence to show that the wife's effort at domestic chores and as a cashier at an unrelated business contributed to an increase in the profits of Soon Heng Restaurant. Counsel for the wife asks us to infer such a causal link but, in our view, there is no reasonable basis to draw such a link. This was not a case where a spouse's efforts in the home frees the other spouse to devote his or her energies to the running of a business. Here, the husband took no active role in the running of the restaurant. We therefore see no ground for interfering with the decision of the learned judge that the partnership was not an asset acquired during the marriage.

43 I do not find that *Hoong Khai Soon* assists the Wife's case. As the DJ observed in his grounds of decision,[46] the above comments were not the *ratio*

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44 Respondent's Case at Paras 20-23.

45 Appellant's Case at Para 9.

46 ROA vol.1 at p50-51 Para 35.

decidendi in that case: they were simply made in passing. It must moreover be pointed out that in *Hoong Khai Soon*, where the wife gave evidence of having done all the domestic chores as well as having looked after her husband's family and helped out in another business owned by her husband's father, the CA found that there was no evidence of any direct causal link between her actions and the substantial improvement of the disputed business (at [11]).

Issue 2: Whether the DJ erred in valuing the Husband's 210,000 MS shares at S$466,561.24

44 I next address the MS Shares Issue.

Decision below

45 In the proceedings below, the DJ found that all of the Husband's 210,000 MS shares formed part of the matrimonial pool.[47] This finding was not disputed by the parties on appeal. The DJ then ascribed to these 210,000 MS shares a value of S$466,561.24.[48]

46 In valuing the shares at S$466,561.24, the DJ adopted a hybrid approach whereby he used both the income approach and the market approach, taking the average of the valuation figures derived under these two approaches. This was the same approach adopted by the Wife's expert's Mr Wan Yew Fai ("**Mr Wan**"). However, the DJ's approach differed from Mr Wan's in two key aspects. Firstly, the DJ decided to apply a discount for the lack of marketability ("DLOM") under the market approach.[49] This contrasted with the position taken by Mr Wan, who declined to apply a DLOM under the market approach.

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47 ROA vol.1 at p52 Paras 39-40.

48 ROA vol.1 at p60 Para 61.

49 ROA vol.1 at p57 Para 53.

Secondly, the DJ also applied a discount for lack of control ("DLOC") under both the market approach and the income approach.[50] This contrasted with Mr Wan's decision to apply a DLOC only under the income approach.

47 By way of clarification, the DLOM is a discount that is applied to account for the difficulty of selling shares in a private company as a result of the typical transfer restrictions that apply in this context and the narrowness of the market, regardless of whether the shares constitute a minority or a majority shareholding in the company concerned (*Liew Kit Fah and others v Koh Keng Chew and others* [2020] 1 SLR 275 ("*Liew Kit Fah*") at [46]; *Thio Syn Kym Wendy v Thio Syn Pyn and another* [2018] SGHC 54 ("*Thio Syn Kym*") at [21]).[51] The DLOC is a discount that is applied to reflect the lack of control that a minority shareholder has over the management of a company in contrast to the control that a larger shareholder has (*Liew Kit Fah* at [45]; *Thio Syn Kym* at [21]; also *Re Blue Index Ltd; Murrell v Swallow* [2014] EWHC 2680 (Ch) at [48]).

48 The DJ's approach to the application of the DLOM and the DLOC in respect of the MS shares explains why he ended up with a very different valuation figure, compared to Mr Wan – despite both having adopted a hybrid approach of using the market approach as well as the income approach. Mr Wan had valued the 210,000 MS shares at S$724,503 using the hybrid approach of applying both the market approach and the income approach, with a DLOM of 30% under the income approach (totaling one discount applied across the two approaches).[52] The figure which the DJ landed on was significantly lower:

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50 ROA vol.1 at p59 Para 57.

51 ROA vol.1 at p58 Para 55.

52 ROA vol.5 at p141.

having applied an additional DLOM of 30% under the market approach, and an additional DLOC of 25% under both the market approach and the income approach (*ie* four discounts applied across the two approaches), the DJ arrived at the valuation figure of S$466,561.24,[53]

49 In choosing to adopt the same hybrid approach as Mr Wan, the DJ rejected the valuation report of the Husband's expert Mr Farooq Ahmad Mann ("**Mr Mann**"). For one, the DJ noted that Mr Mann had chosen to value the shares as at 24 March 2021 – instead of the date of the AM hearing. The DJ found that this was done upon the Husband's specific instructions.[54]

50 Next, in his expert report, Mr Mann had elected to use the cost approach to value the Husband's MS shares instead of either the market approach or the income approach (or a hybrid of the two). The DJ found Mr Mann's choice of the cost approach to be inappropriate. This was because the software was the main revenue generator for MS; and it would not have been appropriate to apply the cost approach for an intangible asset such as software. Such an approach would have also ignored MS's future revenue streams, which showed a continuing upward trend.[55]

51 Further, the DJ pointed out that the value which Mr Mann had ascribed to the shares – S$104,840[56] – was even lower than the figure which would have

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53 ROA vol.1 at p59-60 Para 58-60.

54 ROA vol.1 at p55-56 Para 48.

55 ROA vol.1 at p56 Para 50.

56 ROA vol.4 at p29.

been obtained in the most extreme scenario of liquidation – as well as being lower than the dividend payout received by the Husband in 2021.[57]

52 It should be highlighted that in valuing the MS shares, the DJ noted that the Husband had failed to disclose FY 2021 documents relating to the financial status of MS,[58] and that MS's FY 2021 financial statements had eventually been surfaced in August 2022 only as a result of the efforts of the Wife's counsel.[59] The FY 2021 financial statements revealed that for FY 2021, the Husband received dividends of S$139,288.61 while the company itself saw its profits increase by 30% from the previous year. The DJ was of the view that the Husband had downplayed the value of the company in the course of the ancillary proceedings and that he had failed to give his full assistance in the valuation exercise.[60] However, the DJ rejected the Wife's contention that an uplift of 20% should be applied to the value he had arrived at for the MS shares to give effect to the adverse inference to be drawn against the Husband for his non-disclosure of the FY 2021 financial documents. In the DJ's view, the percentage figure proposed by the Wife was speculative and not backed by the expert. In any event, he reasoned that he had already taken into account the Husband's non-disclosure by applying a lower DLOM (30%).[61]

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57 ROA vol.1 at p56-57 Para 50-51.

58 ROA vol.1 at p54 Para 45.

59 ROA vol.1 at p55 Para 48.

60 ROA vol.1 at p56 Para 49.

61 ROA vol.1 at p60 Para 60.

Whether MS's FY 2021 financial statements should have been taken into consideration by the DJ in valuing the Husband's shares

53 In respect of the MS Shares Issue, the first question which arose on appeal was whether the company's FY 2021 financial statements should have been taken into consideration by the DJ in valuing the shares. Although the FY 2021 financial statements had become available by the time of the AM hearing, the DJ apparently chose not to direct the experts to consider these FY 2021 financial statements and / or to file further reports to explain the impact of the information therein (if any) on their respective valuations. The DJ did not record his reasons for leaving the FY 2021 financial statements out of the equation, but in his grounds of decision, he alluded (at [60]) to the Wife's expert Mr Wan having stated in his reply affidavit that he "[would] not be amending the original position about the market value of MS… even where the new partnerships the company [had] with companies such as KBC and Schlumberger were taken into account".[62] I infer from these remarks that the DJ thought that it was unnecessary to have regard to the FY 2021 financial statements if Mr Wan had not changed the opinion expressed in his first expert report even after becoming aware of some new information.

54 With respect, the DJ was in my view wrong to disregard the FY 2021 financial statements in valuing the shares. Insofar as Mr Wan had stated in his reply affidavit that he "[would] not be amending the original position about the market value of MS… even where the new partnerships the company [had] with companies such as KBC and Schlumberger were taken into account", it must be pointed out that this reply affidavit was filed on 10 June 2022 without Mr Wan

62 ROA vol.1 at p60 Para 60.

having had sight of the FY 2021 financial statements.[63] These financial statements were only made available in August 2022. Indeed, Mr Wan had expressly highlighted in his reply affidavit that his opinion in both his 1st and 2nd expert reports was formed on the basis of financial information as at 31 December 2020; and that "apart from some new partnership announcements", he had "not been provided with [nor was he] able to find any significant changes in business circumstances that affected [MS]" between 24 March 2021 and 31 March 2022.[64]

55 Given the above caveats to his valuation, it is clear that Mr Wan's valuation of the MS shares was hampered by the lack of financial information from the most recent financial year. Indeed, since he had used the income approach for his valuation (as part of his hybrid approach), I accepted that the lack of the most recent financial information would have had a material impact on his valuation. Thus, for example, the much higher figure of *30.8%* growth provided in the FY 2021 financial report indicated that Mr Wan's original estimate of *15%* growth in FY 2021 had severely underestimated MS's profits for FY 2021.[65] The significantly higher actual figures in 2021 would also have had a further knock-on effect on Mr Wan's projections for all subsequent years, since the trajectory of profit growth would necessarily steepen.[66]

56 With respect therefore, the DJ was wrong to have considered neither the FY 2021 financial statements, nor any expert reports that had considered the FY 2021 financial statements. In my view, a fair and accurate estimation of the

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63 Appellant's Case Para 53; ROA vol.5 at p 534.

64 ROA vol.5 p547.

65 Appellant's Case at Para 54.

66 Appellant's Case at Para 55.

value of the MS shares would be possible only if the FY 2021 financial statements were also taken into consideration. I therefore gave directions for the tendering of further expert reports from the two experts and further submissions from counsel on the MS Shares Issue.

57 I next summarise the further expert reports from Mr Wan and Mr Mann, as well as the parties' further submissions.

Wife's further expert report

58 In his further expert report, Mr Wan maintained 31 March 2022 as the operative date for the valuation of the MS shares.[67]

59 In his further report, Mr Wan elected to use only the income approach to value the MS shares. This, he explained, was because MS was in a very niche segment providing services to the oil and gas industry, and there was limited information on comparable companies.[68] He also clarified that the income approach adopted in the further report was substantially similar to the methodology adopted in his first report – save for some parameters which he had updated.[69] Given the assumptions made about the parameters of the company (including revenue projections, predicted gross-profit margins, predicted operating expenses, predicted capital expenditure and predicted taxes), he explained that it was highly unlikely that there would be a material difference between a valuation conducted as at 31 March 2022 (the valuation

67 3rd Affidavit of Wan at p 29.

68 3rd Affidavit of Wan at p 18-19.

69 3rd Affidavit of Wan at p 25.

date he had adopted) and a valuation conducted as at 17 August 2022 (the date of the AM hearing).[70]

60 In applying the income approach in the further report, Mr Wan emphasised that it was important to add back excess cash into the valuation of the company. In 2021, MS had seen its cash holdings increase significantly – by about 58% – to US$1,175,755, even after taking into account the US$430,476 paid out in dividends. Based on historical data, a cash balance of US$1,175,755 was beyond the operating needs of the company; and from the FY 2021 financial statements, all the expenses of the company amounted to only US$869,857.[71] After accounting for the expenses of the company, Mr Wan calculated the excess cash left in the company (as of 31 March 2022) to be US$754,572.[72]

61 Using the income approach, Mr Wan estimated the value of MS to be US$4,990,110 (inclusive of the excess cash of US$754,572), with a pre-excess cash value of US$4,235,538. Mr Wan explained that this pre-excess cash value of US$4,235,538 was 21.8% higher than the figure of US$3,477,876 derived under the income approach in his first report, because more reliable and up-to-date information had resulted in a much higher starting base and a "revised size premium discount".[73]

62 Applying a DLOM of 30%, a DLOC of 25%, and a USD/SGD exchange rate of 1:1.3548, Mr Wan arrived at a valuation of **S$824,506 for the**

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70 3rd Affidavit of Wan at p 26.

71 3rd Affidavit of Wan at p 23.

72 3rd Affidavit of Wan at p 23.

73 3rd Affidavit of Wan at p 28.

Husband's 23.23% shareholding (210,000 shares) – as compared to the valuation of S$574,642 which had been derived using the income approach in his first report (now also including a DLOM of 30% and a DLOC of 25% to the previous figure).[74]

63 Mr Wan further explained that this valuation of S$824,506 translated to a value of around **US$2.90 per share** – which was consistent with other independent measures. In this connection, he noted that a value of US$2.90 per share represented a 20.8% increase in the value of the shares – which was reasonably conservative given the considerably higher 45.5% increase in revenue since 2018, and the even higher 66.3% increase in profit since 2018. The value of US$2.90 per share was also reasonably conservative when comparison was drawn with a 2018 transaction wherein the Husband had purchased 19,000 shares from another shareholder at US$2.40 per share. In Mr Wan's view, a private sale of a minority lot of shares at US$2.40 per share has already accounted for DLOM and DLOC in its sale price – and this made it a suitable base for independent comparison.[75]

64 In his further report, Mr Wan did not use the market approach as he did not find it suitable. He reasoned that the most recent transaction where the Husband bought shares from another shareholder had taken place in 2018 – and that since this transaction in 2018, the company has experienced rapid growth.[76] No details were available in respect of a more recent transaction in July 2021, wherein one of the directors, Mr H, had appeared to no longer be a shareholder

74 3rd Affidavit of Wan at p 29.

75 3rd Affidavit of Wan at p 30.

76 3rd Affidavit of Wan at p 19.

of MS.[77] More specifically, Mr Wan opined that the previous transactions were no longer relevant, as the FY 2021 financial statements showed revenue to have grown by 45% and profits to be up by 66% since the year of the previous transactions.[78]

65 As with his first report, Mr Wan also ruled out using the cost approach. He pointed out that MS was a software company; and that the plant and equipment listed in its financial statements as of 31 December 2021 amounted to only US$4,821 in value. The cost approach did not accord any value to the software which helped MS to generate further revenue. Such an approach thus failed to capture the true worth of the company. Most pertinently, the books of MS had written off all the software development cost even though the software was the company's main income-generating asset.[79]

66 In Mr Wan's view, a DLOC of 25% was suitable in the case of the MS shares because while the Husband was a director of the company and held a significant number of shares, he was not a majority shareholder, and there were three other directors. In other words, there were limitations to his ability to exercise control over the company. On the other hand, he was not in a situation where he found himself a non-family member in a family-run company, where he held a very small stake with no role at all except as a shareholder. In the latter situation, the appropriate DLOC would be 50%.[80]

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77 3rd Affidavit of Wan at p 19.

78 3rd Affidavit of Wan at p 24.

79 3rd Affidavit of Wan at p 19.

80 3rd Affidavit of Wan at p 19-20.

67 As for the DLOM, Mr Wan took the position that a DLOM of 30% would be reasonable to reflect the fact that MS was not a listed company and that its shares changed hands irregularly, with various restrictions on the sale of shares. Additionally, MS did not pay regular dividends; and its nature as a software company meant that its success in the longer term was uncertain given the risk of new technologies and competition emerging.[81]

Husband's further expert report

68 In his further report, Mr Mann maintained 24 March 2021 as the operative date for his valuation of the MS shares.[82]

69 Whereas in his first report Mr Mann had adopted the cost approach in valuing the shares, in the further report he opted for the hybrid approach used by the DJ in his grounds of decision (and by Mr Wan in his first report).

70 In respect of the income approach, Mr Mann adopted the same methodology as that used by Mr Wan in his first report, while factoring in the change to the figure for net profit after tax in FY 2021 in light of the FY 2021 financial statements. Mr Mann also chose to apply a 25% DLOC and a 50% DLOM – compared to the 30% DLOM applied by Mr Wan in his first report.[83] Although Mr Mann stated that he did not agree with the parameters used by Mr Wan (for the reasons set out in Mr Mann's second report),[84] he continued to use the parameters which Mr Wan had used in his first report. Applying a 25%

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81 3rd Affidavit of Wan at p 19-20.

82 3rd Affidavit of Mann at p 13.

83 3rd Affidavit of Mann at p 17.

84 3rd Affidavit of Mann at p 17; ROA vol.5 at p 421-429.

DLOC and a 50% DLOM, Mr Mann valued the Husband's shareholding at **US$344,689, or S$466,984**.[85]

71 In respect of the market approach, Mr Mann took the position that the shares should be valued at US$2.40 per share. He justified this by reference to Mr Wan's report which utilised the Husband's 2018 purchase of 19,000 shares from another shareholder at US$2.40 per share.[86] Reliance was also placed on the fact that 96,000 treasury shares had been retired at US$230,400 in each of the two years in 2018 and 2019.[87] Further, Mr Mann applied a 50% DLOM – as compared to the 30% DLOM applied by the DJ. This yielded a valuation figure of **S$256,057.20** in respect of the Husband's 210,000 shares.[88]

72 In applying a 50% DLOM to the valuation of the MS shares, as opposed to a 30% DLOM, Mr Mann opined that the higher 50% discount he used was justified by the following factors: MS shares were not publicly traded; there were onerous restrictions on share transfers (such as a shareholders' agreement which required consent from the other shareholders before shares could be sold); the shares were unregistered shares; the close-knit relationship among the company's owners / shareholders who had previously worked with each other (which might deter other buyers from wanting to enter the company); and a relatively minute and/or thin market for the block of shares in question.[89] Further, Mr Mann opined that MS's business was extremely niche, since it was tied to specialised software applications relevant only to oil and gas producing

85 3rd Affidavit of Mann at p 17.

86 ROA vol.5 at p 138.

87 ROA vol.5 at p 138, 145.

88 3rd Affidavit of Mann at p 16.

89 3rd Affidavit of Mann at p 11-12.

companies – and used only for one specific discipline in the industry (*ie*, process engineering). In Mr Mann's view, this would lead to an extremely thin or minute market for MS's business.[90].

73 Using the hybrid approach and taking the average of the valuation figures obtained under the income approach and the market approach, Mr Mann came up with a valuation figure of **S$361,520.50** for the Husband's 210,000 MS shares.[91]

74 Additionally, although the DJ had rejected the cost approach in the proceedings below, in his further report, Mr Mann sought to put forward an alternative valuation figure based on this approach. He acknowledged that MS's main asset was its exploitation of the software application which it had purchased from a related party (KS) for a sum of S$200,000; that MS derived the bulk of its revenue from the sales of licenses pertaining to the use of this software application; and that the software application had been written down completely by FY 2017. He also acknowledged that it would be neither practical nor correct to ascribe a nil value to the software since MS continued to use and exploit this asset in generating increased revenues and increased profits for MS – even after FY 2017. As such, he ascribed a value of S$200,000 to the software application, *ie*, the purchase price which MS had paid KS for the software. The other assets of MS, in the form of plant, equipment and inventory, were also taken into consideration before he made adjustments to reinstate the value of MS's software application using a figure of S$200,000 (at an exchange rate of approximately 1 USD to 1.349 SGD). This meant that pursuant to the cost approach, MS was valued at S$1,446,768. Mr Mann then applied a further 25%

90 3rd Affidavit of Mann at p 11-12.

91 3rd Affidavit of Mann at p 19.

DLOC and 50% DLOM to this figure, which eventually translated to the Husband's 210,000 shares being valued at approximately S**$126,032**.[92]

Wife's Case

75 In arguing for Mr Wan's revised valuation of **S$824,506** to be accepted on appeal, the Wife highlighted that the FY 2021 financial statements showed MS had performed exceedingly well in FY 2021, as compared to FY 2020. In particular, the following metrics showed great improvement:[93]

(a) Revenue (increased by 19%);

(b) Gross profit margin (increased by 27%);

(c) Net profit before tax (increased by 39%);

(d) Cash position (increased by 58%); and

(e) Shareholders' funds (increased by 22%).

In respect of the last item, the 22% increase in shareholders' funds was arrived at *after* taking into account the dividend payments of US$430,476 in 2021 – which, *per* the Wife's submission, further highlighted the company's substantially enhanced performance in FY 2021.[94]

76 Whilst Mr Wan had chosen no longer to rely on the market approach in his further report, the Wife submitted that he was justified in doing so, because the past transactions in 2018 were no longer relevant for the purposes of MS's

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92 3rd Affidavit of Mann at p 13-15.

93 Appellant's supplemental submissions at paras 11-12.

94 Appellant's supplemental submissions at para 13.

valuation as of 31 March 2022: after all, the company had seen rapid growth since those sales transactions. As for the cost approach, the Wife submitted that this was clearly inappropriate as it did not accord any value to the software which MS used to generate future revenue: in other words, the cost approach failed to capture the true worth of the company.[95] In any event, the DJ had already rejected the cost approach in the proceedings below.

77 In the alternative, the Wife submitted that the value of the Husband's MS shares should be increased to **S$723,501.74**. This was because the figures in the FY 2021 financial statements indicated a higher valuation of MS than previous valuations based on the FY 2020 financial statements. Indeed, Mr Mann himself – having had sight of the FY 2021 financial statements – had increased his valuation from S$104,580 to S$361,520.50 – *ie*, an increase of S$256,940.50. The Wife submitted that this amount of S$256,940.50 should be added to the DJ's valuation figure of S$466,561.24 so as to yield a higher valuation of S$723,501.74.[96] The Wife argued that the Husband could not complain about this alternative course of action since Mr Mann's increased valuation of S$361,520.50 was based on a 50% DLOM: if the lower DLOM of 30% were to be adopted, Mr Mann's revised valuation would in fact be even higher than S$361,520.50.[97]

78 As for Mr Mann's revised valuation figures, the Wife urged me to reject them on the basis that the Husband's attempt to rely on these revised figures amounted to a backdoor appeal[98]. In the first place, Mr Mann's revised figures

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95 Appellant's supplemental submissions at para 14.

96 Appellant's supplemental submissions at paras 22-24.

97 Appellant's supplemental submissions at para 25.

98 Appellant's supplemental submissions at para 10.

were even lower than the DJ's figure of S$466,561.24 – and yet the Husband had not filed any cross-appeal to challenge the correctness of the DJ's figure. Secondly, Mr Mann had continued to use a 50% DLOM in his further report, even though this had been expressly rejected by the DJ in favour of a 30% DLOM.

Husband's Case

79 Unsurprisingly, the Husband argued for Mr Mann's further report to be preferred over Mr Wan's. In relation to the issue of the appropriate DLOM, the Husband argued that Mr Mann's choice of a 50% DLOM should be preferred over Mr Wan's opinion because Mr Wan had (allegedly) failed to justify his choice of a 30% DLOM despite having devoted two short paragraphs in his further report to listing the factors "that affect DLOM".[99] In contrast, the Husband argued that Mr Mann had cited textual authority for the proposition that DLOM generally ranged from 5% to 50%; and he had explained in his report why a DLOM on the higher end of this scale was appropriate in the case of the MS shares.

80 As to the appropriate valuation methodology, the Husband devoted a large portion of his submissions to criticising Mr Wan's further report. According to the Husband, it was wrong of Mr Wan to abandon the market approach in his further report.[100] The change in methodology to a singular focus on the income approach had led to a new valuation of S$824,506 which was objectively very high and represented a 76.7% increase from the value of S$466,561.24 assessed by the DJ below. The Husband argued that taken at face

99 Respondent's supplemental submissions at paras 58-61.

100 Respondent's supplemental submissions at para 14.

value, this implied that MS had almost doubled in value for the financial year 2021.[101]

81 In contrast, according to the Husband, the market approach which Mr Wan had abandoned actually relied on past transaction prices; and as the last relevant transaction had taken place in 2018, the FY 2021 financial statements would have no impact on the share value derived from applying the market approach. If Mr Wan had applied the market approach using a 30% DLOM and a 25% DLOC, the value of the MS shares would have been S$358,479.98. The Husband argued, therefore, that by dropping the market approach in his further report, Mr Wan had drastically increased the value of MS by S$233,013.01.[102] Moreover, according to the Husband, Mr Wan's explanation for dropping the market approach (*ie*, that revenue and profits had grown) did not hold water because from FY 2018 to FY 2020, revenue and profits had also grown – and yet Mr Wan had found no issues with relying on the 2018 share transaction in his earlier valuation.[103]

82 As for Mr Wan's application of the income approach, the Husband appeared to take the position that my directions to parties to submit further expert reports which took into account the impact of the FY 2021 financial statements meant that Mr Wan was permitted simply to input the data from the FY 2021 financial statements into his model. Instead, as the Husband claimed, Mr Wan had unjustifiably changed the parameters and assumptions in his model (compared to those used in his first valuation), thereby artificially increasing the

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101 Respondent's supplemental submissions at para 12.

102 Respondent's supplemental submissions at paras 15-16.

103 Respondent's supplemental submissions at paras 17-18.

value of the MS shares.[104] The Husband argued that Mr Wan should not be permitted to "arbitrarily" change the parameters of his model, as this prevented any meaningful comparison of his further report with his first report. A further element of unfairness, according to the Husband, arose from the fact that his own expert, Mr Mann, had in his further report adopted the parameters from Mr Wan's first report: Mr Wan's choice of different parameters in his latest report therefore meant an unfair shifting of the goalposts for the Husband and his expert.[105]

83 The Husband also found fault with Mr Wan's decision to add a sum of US$754,572 to the value of MS under an "excess cash adjustment".[106] The Husband argued that Mr Wan had not made such adjustment in his first valuation because of the uncertainty as to whether projects coming online would require cashflow to sustain their continued growth. According to the Husband, this rationale should apply with even greater force in the latest valuation, given that at least six new partnerships had emerged since Wan's first valuation, all of which would require cash flow to sustain. In other words, there should be even less reason to make an "excess cash adjustment" in the latest valuation, as compared to the first valuation.[107]

84 In gist, the Husband argued for the hybrid approach (using both the income approach and the market approach and taking the average of the two

104 Respondent's supplemental submissions at para 32.

105 Respondent's supplemental submissions at paras 35-39.

106 Respondent's supplemental submissions at para 44.

107 Respondent's supplemental submissions at paras 46-47.

valuation figures) to be adopted on appeal, albeit subject to the substantially higher DLOM and other parameters and assumptions applied by Mr Mann.[108]

My Decision

Whether the appellate court may consider and determine matters relating to the valuation of the MS shares which were not raised by the Wife in her Appellant's Case or which were not the subject of a cross-appeal by the Husband

85 As a preliminary point, both the Wife and the Husband have made the argument that the court should disregard matters brought up by the opposing side which were not raised by the Wife in her Appellant's case or which were not the subject of a cross-appeal by the Husband. For example, the Wife argued that Mr Mann's valuation should be rejected because his revised valuation figures were even lower than the DJ's figure of S$466,561.24; and yet no cross-appeal had been filed by the Husband to challenge the correctness of the DJ's figure.[109] In similar vein, the Husband argued that since the DJ had already accepted Mr Wan's use of a hybrid approach and since the Wife had not objected to the DJ adopting the same hybrid approach, Mr Wan must be precluded on appeal from adopting a new methodology involving the use of only the income approach.[110]

86 Both parties are wrong in their understanding of the High Court's powers when hearing an appeal from the Family Courts. Since the present case involves an appeal to the Family Division of the High Court from ancillary orders made by a DJ of the Family Court, r 831(3)(*a*) and (4) of the Family

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108 Respondent's supplemental submissions at para 55.

109 Appellant's supplemental submissions at para 10.

110 Respondent's supplemental submissions at para 55.

Justice Rules 2014 ("FJR") are applicable (see r 821(*a*)). Rule 831(3) and (4) of the FJR provides that:

> **General powers of Court**
>
> **831.**
>
> …
>
> (3) The Family Division of the High Court has the power to –
>
> (*a*) draw inferences of fact and to give any judgment and make any order which ought to have been given or made; and
>
> (*b*) to make such further or other order as the case may require.
>
> (4) The powers of the Family Division of the High Court under paragraphs (1), (2) and (3) may be exercised even if –
>
> (*a*) no notice of appeal has been given in respect of any particular part of the decision of the Court below or by any particular party to the proceedings in that Court; or
>
> (*b*) any ground for allowing the appeal or for affirming or varying the decision of that Court is not specified in any of the Cases filed pursuant to rule 828 or 829,
>
> and the Family Division of the High Court may make any order, on such terms as it thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

87 As can be seen from r 831(3)(*a*) read with r 831(4), this court has the power to give any judgment and make any order which ought to have been given or made, notwithstanding that no notice of appeal has been given by any particular party to the proceedings in that Court – and notwithstanding that *any* ground for allowing the appeal or varying the decision of that Court is not specified in any of the Cases filed pursuant to r 828 or r 829.

88 As such, even though the Husband has not filed a cross-appeal on the MS Shares Issue and even though the Wife has raised several points which were not set out in her Appellant's Case, I am empowered to consider all the

arguments they have put forward and to make an order on such terms as I think just, so as to ensure the determination on the merits of the real question in controversy between the parties.

Whether it was open to Mr Wan to adopt a different approach from the hybrid approach adopted in his previous expert report

89 I turn to another preliminary issue: the Husband's contention that the Wife's expert Mr Wan should be precluded from adopting a different approach from the hybrid approach adopted in his first expert report and/or from changing the parameters and assumptions behind his model under the income approach. In gist, the Husband argued that my directions for further expert reports limited both sides' experts to simply inputting the data from the FY 2021 financial statements into the models used in their earlier reports.[111]

90 The Husband's argument is a wholly incorrect characterisation of the further directions I gave. In giving directions for the filing of further expert reports, I had expressly informed parties that I required the experts to explain *whether and how the FY 2021 financial statements would impact their original valuations*.[112] Clearly, the experts were not limited to considering how the new information disclosed in the FY 2021 financial statements would impact the figures in their earlier reports: there was no reason why they were precluded from concluding, on examining the new information, that their valuation approach would need to be changed or modified – so long as they had cogent reasons for making such changes or modifications.

111 Respondent's supplemental submissions at para 33.

112 25 January 2023 Minute Sheet

91 This appeared to be Mr Mann's understanding as well: like Mr Wan, Mr Mann decided to adopt an approach in his further report which differed from that used in his original valuation. Whereas in his original valuation he had relied simply on the cost approach, in his further report Mr Mann chose to emulate the DJ's use of the hybrid approach (*ie*, using both the income approach and the market approach) – *but* subject to his own modifications; in particular, the use of a 50% DLOM instead of the 30% DLOM applied by the DJ.

92 To sum up on this point: nothing in my further directions could be construed as limiting the experts to simply inputting the data from the FY 2021 financial statements into the models used in their earlier reports. Both experts were entitled to conclude, after examining the FY 2021 financial statements, that their valuation approach would need to be changed or modified – so long as they had cogent reasons for making such changes or modifications.

The parties' experts

93 Having dealt with the preliminary issues, I next address the contents of the expert reports.

94 First, as a general point, having considered the reports presented by each expert, I have reservations about the reliability of Mr Mann's report. For one, I note that Mr Mann chose 24 March 2021 as the operative date for valuing the shares[113] – both in his first expert report and in his further report. The DJ found that Mr Mann chose this valuation date on the specific instructions of the Husband – and the Husband has not challenged this finding on appeal. The general position is that matrimonial assets should be valued as at the date of the

[113] 3rd Affidavit of Mann at p 13.

AM hearing (*per* the CA in *TDT v TDS* and another appeal and another matter [2016] 4 SLR 145 ("*TDT v TDS*") at [50]; also *WAS v WAT* [2022] SGHCF 7 at [4]; *VTU v VTV* [2022] SGHCF 23 at [2]; *VOW v VOV* [2023] SGHCF 9 at [10]). As the CA noted in *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 at [39], "[o]nce an asset is regarded as a matrimonial asset to be divided, then for the purposes of determining its value, it must be assessed as at the date of the hearing". The court does of course retain the discretion to depart from the AM hearing date – if there are facts shown to warrant the exercise of such discretion (*TDT v TDS* at [50]).

95 In the present case, no effort has been made by the Husband – either in the proceedings below or on appeal – to put forward facts which would warrant the court exercising its discretion to depart from the AM hearing date. This is in spite of the DJ's express criticism of Mr Mann's decision to value the shares as at 24 March 2021 instead of using the date of the AM hearing. Given that Mr Mann valued the MS shares at a date nearly a year and a half before the actual AM hearing date, it seems to me likely that the accuracy of his valuation will be adversely affected. At the very least, Mr Mann should have furnished an explanation as to why the (significantly) earlier valuation date would have had no material impact on the accuracy and reliability of his valuation, as compared to a valuation conducted as at the date of the AM hearing.

96 It is true that the Wife's expert Mr Wan also did not use the AM hearing date as the operative date for his valuation of the MS shares: Mr Wan valued the shares as at 31 March 2022. However, I do not find the accuracy of Mr Wan's expert report to have been adversely affected. The date he used – 31 March 2022 – was less than six months before the AM hearing date. In his report, Mr Wan expressly noted that he had not used the AM hearing date of 17 August 2022 – and he took pains to explain that it was highly unlikely that there

would be a material difference between a valuation as at 31 March 2022 and a valuation as at 17 August 2022 (the ancillary hearing date).[114] In gist, Mr Wan explained that he had conducted the valuation on a going concern basis; that there had been no significant changes in the industry and market outlook of MS between the two dates; and that his consideration of updates and latest news from MS throughout 2022 made it highly unlikely that there would be a material difference between a valuation done at both dates.[115]

97 Next, I note that in addition to having departed from the AM hearing date without giving any reasons, Mr Mann adopted in his further report the valuation approach adopted by Mr Wan in his first expert report – despite the fact that he had, in his second report, heavily criticised Mr Wan's approach.[116] In his second report, Mr Mann had decried Mr Wan's use of the market approach valuation methodology as being clearly inappropriate and unsound (besides being incorrectly applied, according to Mr Mann).[117] As for Mr Wan's use of the income approach in his first report, Mr Mann had asserted that it was "improper" for Mr Wan to have chosen the income approach; further, that the assumptions and projections relied on by Mr Wan under the income approach were erroneous and inherently unreliable.[118]

98 Given his detailed criticism of Mr Wan's valuation approach, I find it disconcerting that in his further report, Mr Mann has nevertheless elected to adopt, firstly, the market approach substantially similar to that which was relied

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114 3rd Affidavit of Wan at p 26.

115 3rd Affidavit of Wan at p 21-22 and 26.

116 ROA (vol.5) at p 412-429.

117 ROA (vol.5) at p 419.

118 ROA (vol.5) at p 429.

on in Mr Wan's first report. Mr Mann also chose in his further report to adopt the income approach, applying substantially the same parameters used in Mr Wan's first report. Unfortunately, Mr Mann did not provide any explanation for this apparent about-face. In light of these circumstances, I am inclined to question the objectivity of Mr Mann's expert opinion, and the reliability of the valuation figure(s) put forward by him.

99 This does not mean that I endorse in entirety the approach adopted by Mr Wan in his further report, wherein he jettisoned the hybrid approach and relied solely on the income approach. In the next section of this judgment, I explain my reasoning.

Whether Mr Wan had erred in abandoning the market approach

100 In gist, Mr Wan justified his decision to jettison the market approach on the basis that the FY 2021 financial statements showed considerable growth in the company's revenue and profits.[119] Aside from the increase in revenue and profits, Mr Wan did not give any other explanation for his decision to drop the market approach in his further report.

101 It should be highlighted that in his first report, Mr Wan had actually explained in detail his rationale for adopting a hybrid approach whereby he applied both the market approach and the income approach before taking the average of the two valuation figures obtained. For ease of reference, I reproduce below the relevant passages from Mr Wan's earlier report:[120]

> 5.3.1 We believe that we should weight equally the values of both income and market approaches and arrive at a composite average value. This is because the market value based on

[119] 3rd Affidavit of Wan at p 24-25.

[120] ROA (vol.5) at p 141.

> retired share value and the historical purchase price was derived from transactions 2-3 years ago. Should they have been more current, the weightage for the market approach would have been more than 50%.
>
> 5.3.2 Therefore, applying a 50% weight to the Income Approach and 50% weight to the Market Approach. The value of [MS] is US$2,302,056. Thus, we value D's holding in [MS] at US$534,768 or S$724,503.

102 *Per* Mr Wan's reasoning in his earlier report, it appears that a key consideration in the use of the market approach would be the availability of current or at least recent transactions in the shares. As he noted (above), a purchase price derived from transactions closer than "2-3 years ago" would be considered more current and would accordingly justify a larger than 50% weightage for the market approach. In the present case, since the relevant transactions had taken place "2-3 years ago", he chose to assign a 50% weightage to the market approach in the application of the hybrid approach. He did *not* at any point caveat that an increase in the company's revenue and profits would also affect the weightage to be assigned to the market approach.

103 Indeed, as the Husband pointed out,[121] revenue and profits had *also* risen between FY 2018 and FY 2020: this was evident from the financial statements already available prior to August 2022 (which included the FY 2020 financial statements) – and yet Mr Wan had not found any issues with relying on the 2018 share transactions in his earlier valuation. As the Husband pointed out, in the period between FY 2018 and FY 2020, the company's revenue increased by 22% and its profits increased by 27%; whereas in the period between FY 2018 and FY 2021, the increase in revenue and profits amounted to 45.5% and 66.2%

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121 Respondent's supplemental submissions at paras 17-18.

respectively.[122] Mr Wan has not explained in his further report why an increase in revenue and profits of 45.5% and 66.2% respectively would render the market approach unsuitable for use in valuing the shares – whereas an increase in revenue and profits by 22% and 27% respectively would not.[123]

104 In the circumstances, I find that Mr Wan was unable to proffer any reasonable explanation for his decision to abandon the market approach in his further report. I agree with the DJ that the hybrid approach is appropriate in the present case, *ie*, applying both the market approach and the income approach with a 50% weightage for each approach, and then taking the average of the two valuation figures. I add that I have chosen to maintain the 50% weightage for each approach in view of the absence of any submissions from either party for the weightage to be modified.

Whether DLOM and DLOC should be applied to the shares under the market approach

105 Having determined that a hybrid approach should be used to value the MS shares, I next address the issue of whether under the market approach, a DLOM and a DLOC should be applied in the valuation of the shares. It will be recalled that the Husband argued for this, on the basis of Mr Mann's opinion evidence; whereas the Wife argued against it, on the basis of Mr Wan's opinion evidence.

106 In *Kiri Industries Ltd v Senda International Capital Ltd and another and other appeals and other matters* [2022] SGCA(I) 5 ("*Kiri Industries*"), the CA held (in the context of minority oppression proceedings) that "[l]ack of

122 Respondent's supplemental submissions at para 22.

123 Respondent's supplemental submissions at paras 19-21.

marketability would be industry specific"; and it would be best left to the expertise of an independent valuer to decide whether to apply the DLOM to the valuation exercise of the shares (at [241]-[243] of *Kiri Industries*). In the present case, given that the two experts have given differing opinion evidence on the applicability of a DLOM (and a DLOC) to the valuation of the MS shares under the market approach, it fell to the court to decide the issue based on its evaluation of the experts' evidence.

107 In his earlier report, Mr Wan explained that in valuing the shares under the market approach, he did not apply a DLOM and a DLOC to the Husband's 2018 purchase of 19,000 shares at US$2.40 per share because the transaction was already subject to DLOM and DLOC conditions. This was because the 2018 share purchase was carried out at a time when the company was not listed; and the shares which changed hands in that transaction also formed a non-majority and non-controlling stake. Given these factors, Mr Wan explained that applying a DLOM and a DLOC to the US$2.40 figure would be double counting the discounts.[124]

108 Mr Mann disagreed with Mr Wan and maintained that a DLOM of 50% and a DLOC of 25% should apply in the context of both the market approach and the income approach.[125] According to Mr Mann, a non-controlling interest in an unlisted company would normally be valued at a discount of the equivalent shares of the same company (if listed) given the lack of a ready market for shares in an unlisted company and the potential share transfer restrictions that may have existed.[126]

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124 3rd Affidavit of Wan at p 25.

125 3rd Affidavit of Mann at p 19.

126 3rd Affidavit of Mann at p 11-12.

109 Having considered the experts' evidence and the parties' submissions, I am of the view that Mr Wan's position is the correct one. My reasons are as follows.

110 So far as I can tell, when the 19,000 MS shares changed hands in 2018, the purchaser (the Husband) and the seller (his fellow shareholder) were acting as rational players dealing at arm's length with each other. The International Valuation Standards ("IVS") defines an "at an arm's length transaction" as one that is conducted "between parties who do not have a particular or special relationship, *eg*. parent and subsidiary companies or landlord and tenant, that *may* make the price level uncharacteristic of the market or inflated".[127] *Per* this definition, the "Market Value transaction is presumed to be between unrelated parties, each acting independently".

111 Mr Mann has highlighted that the shareholders of MS previously worked together in another company, and for that reason, he has sought to characterise their relationship as being a "tightly knit" one.[128] However, on the evidence available, there is nothing to suggest that their previous experience of working together had forged such an intimate or special relationship between the MS shareholders that each of them would not have been capable of acting independently in the sale and purchase of shares as among themselves. As such, there is no reason for me to doubt that in the 2018 transaction, the Husband and his fellow shareholder would have factored into the pricing those considerations relating to the lack of marketability and lack of control which a minority shareholding in a company such as MS (non-listed, niche business, restrictions on share transfers, *etc*.) necessarily entailed.

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127 ROA (vol.1) at p 58; ROA (vol.5) at p 357-358.

128 3rd Affidavit of Mann at p 12.

112 The inference I draw above is buttressed by the fact that 96,000 treasury shares were retired in each of the two years in 2018 and 2019 at US$230,400 – which worked out to US$2.40 per share as well. To my mind, the retirement of treasury shares must (in the absence of evidence otherwise) be taken to be an assessment of the market value by the MS shareholders. As I have noted, there is nothing in the evidence to suggest any sort of special relationship as between the MS shareholders which would have caused them not to act independently. In the retirement of treasury shares, therefore, I would expect the shareholders to have acted independently, in a manner consistent with their own commercial interests. There was no reason why the shareholders would have wanted to retire the treasury shares for anything other than what they believed to be market value, given the likelihood of these past transactions being relied on to arrive at a valuation in future sales of MS shares.

113 For the reasons explained above, therefore, I am of the view that the US$2.40 figure seen in the Husband's 2018 purchase of shares and in the retirement of treasury shares represented the market value of the shares, as perceived by the shareholders themselves. This means the figure would already have factored in those considerations relating to lack of marketability and lack of control. As Mr Wan put it in his first report, the value of US$2.40 per share would have been based on the collective knowledge and decision by the shareholders of the company premised on the outlook as well as the potential of the company.[129] I agree with Mr Wan that to apply further discounts to this value by way of a DLOM and a DLOC would be to double-count the considerations of lack of marketability and lack of control.

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[129] ROA vol.5 at p 138.

114 For completeness, I note that Mr Mann has said that the IVS requires valuers to consider the application of both a DLOM and DLOC under the market approach.[130] I reproduce below the relevant portion of the IVS cited by him:[131]

> **Other Market Approach Considerations**
>
> …
>
> 30.17 In the market approach, the fundamental basis for making adjustments is to adjust for differences between the subject *asset* and the guideline transactions or publicly-traded securities. Some of the most common adjustments made in the market approach are known as discounts and premiums.
>
> (a) Discounts for Lack of Marketability (DLOM) ***should*** **be applied when the comparables are deemed to have superior marketability to the subject *asset*.** A DLOM reflects the concept that when comparing otherwise identical *assets*, a readily marketable *asset* would have a higher value than an *asset* with a long marketing period or restrictions on the ability to sell the *asset*. For example, publicly-traded securities can be bought and sold nearly instantaneously while shares in a private company *may* require a *significant* amount of time to identify potential buyers and complete a transaction. Many bases of value allow the consideration of restrictions on marketability that are inherent in the subject *asset* but prohibit consideration of marketability restrictions that are specific to a particular owner. DLOMs *may* be quantified using any reasonable method, but are typically calculated using option pricing models, studies that compare the value of publicly-traded shares and restricted shares in the same company, or studies that compare the value of shares in a company before and after an initial public offering.
>
> (b) Control Premiums (sometimes referred to as *Market Participant Acquisition Premiums or MPAPs*) and Discounts for Lack of Control (DLOC) **are applied to reflect differences between the comparables and the subject *asset*** with regard to the ability to make decisions and the changes that can be made as a result of exercising control. All else being equal, *participants* would generally prefer to have control over a subject *asset* than not. However, *participants'* willingness to pay a Control Premium or DLOC will generally be a factor of whether the ability to exercise control enhances the economic

130 ROA (vol.5) at p 417 at para 3.18.

131 ROA (vol.5) at p 366

> benefits available to the owner of the subject *asset*. Control Premiums and DLOCs *may* be quantified using any reasonable method, but are typically calculated based on either an analysis of the specific cash flow enhancements or reductions in risk associated with control or by comparing observed prices paid for controlling interests in publicly-traded securities to the publicly-traded price before such a transaction is announced. Examples of circumstances where Control Premiums and DLOC *should* be considered include where:
>
> 1. shares of public companies generally do not have the ability to make decisions related to the operations of the company (they lack control). As such, when applying the guideline public comparable method to value a subject *asset* that reflects a controlling interest, a control premium *may* be appropriate, or
>
> 2. the guideline transactions in the guideline transaction method often reflect transactions of controlling interests. When using that method to value a subject *asset* that reflects a minority interest, a DLOC *may* be appropriate.
>
> [**emphasis added**]

115 I do not think the above extract is of any assistance to the Husband's case. From this extract, it is clear that although a DLOM and DLOC may be something for a valuer to consider when utilising the market approach, it is not mandatory for both forms of discount to be applied whenever the market approach is adopted. Rather, a DLOM should be applied under the market approach when *the comparables are deemed to have superior marketability to the subject asset*. Likewise, the DLOC should be applied under the market approach to reflect *differences between the comparables and the subject asset*. In the present case, since the comparables and the subject asset under the market approach adopted *are one and the same* (*ie*, past transactions of MS shares are used to derive the present market value of MS shares), it would follow that the DLOM and the DLOC should not be applied.

The appropriate DLOM to apply

116 I next address the issue of the appropriate DLOM to be applied in this case. In gist, the Wife has submitted for a DLOM of 30% while the Husband has submitted for a DLOM of 50% to apply. Having considered the experts' evidence and the parties' submissions, I accept the Wife's submission that a 30% DLOM should apply. My reasons are as follows.

117 As a starting point, Mr Mann gave evidence that the range for DLOM "could generally range from 5% to 50%".[132] I do not think this range has been disputed by Mr Wan. Both experts also agreed that the following factors would lead to the imposition of a higher DLOM:

(a) Shares in MS are not publicly traded;[133]

(b) There are share transfer restrictions in force;[134] and

(c) There is a relatively minute and/or thin market with respect to the block of shares in question.[135]

118 In selecting a 50% DLOM, Mr Mann opined that the following other factors would also lead to the imposition of a higher DLOM:

(a) Shares of MS are unregistered shares; [136]

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132 3rd Affidavit of Mann at p 11.

133 3rd Affidavit of Mann at p 11; 3rd Affidavit of Wan at p 20.

134 3rd Affidavit of Mann at p 11; 3rd Affidavit of Wan at p 20.

135 3rd Affidavit of Mann at p 11; 3rd Affidavit of Wan at p 20.

136 3rd Affidavit of Mann at p 11.

(b) MS's business is extremely niche;[137] and

(c) A new shareholder would have no significant influence in the company and lack control.[138]

119 As for Mr Wan, he also considered the following other factors in arriving at a 30% DLOM:[139]

(a) The shares have changed hands – albeit irregularly;

(b) There may be long-term risks associated with MS being a software company.

120 On considering the factors highlighted by the experts, I find that although they do point towards a higher DLOM within the "5% to 50%" range, they do not justify a 50% DLOM. *A 50% DLOM is at the very top of the range* and would be much more appropriate in cases with a much more severe lack of marketability. These may include *inter alia* cases where there are much larger risks associated with the future of the business, where the business of the company is on the decline, where the industry of the company is generally on the decline, and where the shares in question make up a tiny proportion of the total shareholding of the company. In my view, the present case is not a case that warrants the application of a DLOM figure at the highest end of the range.

121 Additionally, I reject Mr Mann's attempt to rely on the lack of control associated with the Husband's minority shareholding as one of the factors

137 3rd Affidavit of Mann at p 11.

138 3rd Affidavit of Mann at p 12.

139 3rd Affidavit of Wan at p 20.

justifying a DLOM figure at the top of the range.[140] It must be noted that the lack of control associated with the Husband's minority shareholding has already been accounted for in the DLOC of 25% which both parties adopted in their valuation methodologies. In relying on this lack of control as a factor justifying a 50% DLOM, Mr Mann has essentially accounted *twice* in the valuation process for the impact of a lack of control. I do not think this can be correct. In this connection, the judgment of the CA in *Liew Kit Fah* is instructive.

122 In *Liew Kit Fah* (at [43]-[46]), the CA noted that Judith Prakash JA in *Thio Syn Kym* had formulated the discount for lack of control as one that arose from the minority shareholder's inability to exert control over the management decisions of the company, while the discount for lack of marketability accounted for the difficulties one would face in selling the shares of a private company with share transfer restrictions. In *Liew Kit Fah* itself, the judge at first instance did not disagree with Prakash JA's formulation of the DLOC. However, as the CA noted –

> … he considered that the discount for lack of marketability, which accounted for the difficulty of selling shares in a narrow market, would additionally have to be affected by the unattractiveness of a bloc of shares that does not confer upon its holder control over the management decisions of the company. In other words, he took the view that a discount for lack of marketability would necessarily take into account certain matters that would already have been taken into account when one applies a discount for lack of control, namely, the minority status of the subject shares. He accordingly thought that the term "lack of free transferability" better describes the considerations that arise from the narrowness of the market for the shares in a private company,

123 The CA observed that there was no definitive answer when it came to a choice of labels, since terms such as DLOM and DLOC were not terms of art.

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140 3rd Affidavit of Mann at p 12.

That said, for the purposes of the appeal in *Liew Kit Fah*, the CA held (at [45]-[46]):

> 45 …we adopt Prakash JA's formulation in *Thio Syn Kym (HC)* of the discount for lack of control, which the Judge below adopted as well. This discount refers to the one that applies as a result of the minority status of the bloc of shares being sold, which consequently do not confer on its holder any ability to exert control over the management decisions of the company.
>
> 46 ***As to the discount for lack of marketability, we use this term, advisedly, to refer to the difficulty of selling shares in a private company as a result of the typical transfer restrictions that apply in this context. This difficulty is independent of the status of the bloc of shares being sold, and thus applies regardless whether the shares constitute a minority or majority shareholding in the company concerned***. See *Re Blue Index Ltd; Murrell v Swallow* [2014] EWHC 2680 (Ch) at [48]–[49], where Mr R Hollington QC (sitting as deputy judge of the High Court) distinguished between a discount for lack of control and a discount for non-marketability in the same manner. After all, ***considerations as to the minority status of the bloc of shares on sale are already accounted for by the discount for lack of control.*** It appears to us that the Judge intended to adopt the same formulation that Prakash JA adopted in *Thio Syn Kym* (HC) at [32] when she stated that the discount for lack of marketability "arises from the difficulty of selling shares due to share transfer restrictions and the narrowness of the market, regardless of whether the shares are majority or minority shares". The Judge, however, chose to describe this discount as a discount for lack of free transferability because he thought it better captured, without any overlap, the matters that are respectively accounted for by the discount for lack of control and the discount for lack of marketability. Nonetheless, for the sake of consistency with the authorities that have employed the term (see [43] above), we shall stick with the "lack of marketability" label. Indeed, the use of this label to refer purely to the difficulty of selling shares in a private company (unrelated to the minority status of the bloc of shares being sold) finds traction in one of the foremost authorities on the valuation of shares in private companies: Christopher G Glover, Valuation of Unquoted Companies (Gee Publishing, 4th Ed, 2004) ("Glover") at p 188:
>
> > Unquoted shares lack *marketability*. This arises in two ways. First, most unquoted companies have *few* shareholders. The *resulting narrow market* for a company's shares makes it difficult, and sometimes

> impossible, to deal. Secondly, many private companies' articles of association contain *share transfer restrictions*. These typically provide that an intending seller must offer his shares to existing members who, if they do not like the intending seller's offer price, *can elect to have the fair value of the shares determined by the company's auditors*. Only if there are no buyers among existing members is the intending seller free to find a buyer outside the company. And in all private companies the directors usually have the right to refuse to register a transfer of shares.
>
> [emphasis added]

124 From the above passages, it is clear that the CA regarded the DLOM as something that should be assessed "independent of the status of the bloc of shares being sold, and [that] thus applies regardless whether the shares constitute a minority or majority shareholding in the company concerned". This is because "considerations as to the minority status of the bloc of shares on sale are already accounted for by the discount for lack of control". Following *Liew Kit Fah*, therefore, I am of the view that it is wrong for Mr Mann to use the lack of control associated with a minority shareholding as a reason for adopting a DLOM at the top of the range.

The income approach

125 I next address the Husband's criticism of Mr Wan's methodology vis-à-vis the income approach; specifically, the criticism of Mr Wan's decision to add the amount of US$754,572 to the value of MS pursuant to an excess cash adjustment.

126 The Husband pointed out that in his earlier report, Mr Wan did not make an excess cash adjustment because of the uncertainty over whether new projects coming online would require cashflow to sustain their continued growth. According to the Husband, this reasoning should apply with even greater force

in Mr Wan's further report because at least six new partnerships have emerged since his earlier valuation, and all these new partnerships would require cash flow to sustain. Compared to the earlier valuation, therefore, there would be even less reason to make an "excess cash adjustment" in the latest valuation – or so the Husband claimed.[141]

127 To understand correctly Mr Wan's rationale for making the excess cash adjustment in his latest valuation, it is useful for me to reproduce below the relevant portions of his further report:[142]

> 3.4.1 We note that cash and cash equivalent have increased significantly by 58% in 2021 even after $430,476 was paid out as dividends…
>
> 3.4.2 It must be noted that the cash balance of $1,175,755 is beyond the operating needs of the company (as shown by the historical data). From the 2021 financial statements we note that all the expenses of the company for the whole year – both fixed and variable – amount to only $869,857. MS therefore has kept 16 months of cash needs in the bank balances. Excess cash must be added back to the value of the company and cannot be left out.
>
> …
>
> 3.4.4 In **STR-1**, we noticed that the cash was also a substantial amount of $743,705 but we did not make an excess cash adjustment because we were unsure if all the projects that were coming online (such as the 2 new partnerships) were going to require cashflow to sustain their continued growth. As it turned out, there was no need for this cash amount and in fact, MS even declared dividends amounting to $430,473.

128 In essence, Mr Wan's point was that he had not made an excess cash adjustment in the first valuation because he had been uncertain at that juncture whether the upcoming projects would require cashflow to sustain their growth.

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141 Respondent's supplemental submissions at paras 46-47.

142 3rd Affidavit of Wan at p 23.

However, when the FY 2021 financial statements were made available to him, the numbers therein showed that not only did the upcoming projects *not* eat into MS's (already substantial) excess cash, the company actually continued to build on its excess cash – even after declaring significant dividends for the year. In gist, not only did the two new partnerships accounted for in the first valuation *not* eat into the excess cash from that year, the excess cash had actually grown by over S$400,000 in spite of MS having also declared dividends of S$430,473.

129 I am satisfied that Mr Wan's explanation is reasonable, commercially sensible and backed up by the evidence of the FY2021 financial statements. I therefore reject the Husband's submission that Mr Wan should be precluded from making the excess cash adjustment in his application of the income approach in the latest valuation.

The cost approach

130 Finally, I address the cost approach which Mr Mann appeared to revisit in his further report. In the further report, he opined that if the cost approach were to be used, the Husband's shareholding would be valued at approximately S$126,032.[143]

131 Having considered the experts' evidence and the parties' submissions, I agree with the DJ that the use of the cost approach must be rejected in the present case. As the DJ has pointed out, the value of the MS shares pursuant to a valuation using the cost approach would be "lower than the value made under the most extreme scenario of liquidation where the company has only cash or cash equivalent's left where it is unable to collect a single dollar from its

143 3rd Affidavit of Mann at p 13-15.

receivables and prepayments".[144] In terms of the company's cash and cash equivalent *alone*, there was a value US$1,175,755 for FY 2021.[145] In the event of liquidation, therefore, the Husband's MS shares would be worth approximately US$273,127 (23.23% x US$1,175,755) – *excluding* other potential sources of value from other assets of the company. This amount of US$273,127 is already approximately three times the value of S$126,032 which Mr Mann attributed to the Husband's shares based on his application of the cost approach. In the circumstances, it is plain that adopting the cost approach will result in a valuation figure that makes no commercial sense and is patently unfair to the Wife.

132 Further and in any event, as the High Court in *Chong Barbara v Commissioner of Estate Duties* [2005] 4 SLR(R) 771 ("*Chong Barbara*") pointed out, the cost approach ("assets basis") should only be used to value companies that have readily realisable assets with a value independent of business.[146] In that case (at [24]), the court quoted and relied on the following extract from "The Valuation of Unlisted Shares", *Accountants Digest* No 132, (1983) at p 30:

> The assets basis alone should be used only to value companies which have readily realisable assets with a value independent of the business. Property companies, investment trusts and ship-owning companies and, of course, companies in liquidation are examples of businesses which might well be valued on this basis. Nevertheless, the value of small minority holdings in such companies, other than those in liquidation, should always be justifiable in terms of the dividend yield since, barring a take-over or possibly a listing, the only way those assets are likely to represent a cash return to the minority shareholder is in the form of future dividends.

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144 ROA (vol.1) at p 56.

145 3rd Affidavit of Wan at p 23.

146 Transcript of 27 March at p 9 ln 6 to ln 29.

133 In the present case, MS is a very different company – in terms of the sort of assets owned – as compared to "property companies, investment trusts and ship-owning companies". As a software company, its software generates income but does not appear to have a value independent of the business. It would be highly inappropriate to apply the cost approach in valuing the MS shares.

Summary of findings on the MS Shares Issue

134 In summary, I agree with the DJ that a hybrid approach should be used such that both the income approach and the market approach are applied, with equal weightage of 50% each. However, for the reasons explained earlier, I am of the view that the DJ erred in his application of the DLOM and DLOC. In this regard, it is Mr Wan's methodology and reasoning that I adopt: I accept Mr Wan's proposal to apply a 30% DLOM and 25% DLOC under the income approach, and to refrain from applying any DLOM and DLOC under the market approach. I also accept that Mr Wan was correct to make the excess cash adjustment in his latest valuation.

135 Applying the above methodology and parameters, the Husband's 210,000 MS shares have a value of **S$753,662.50** [0.5 X (S$824,506[147] + S$682,819[148] = S$1,507,325)].

136 In the interests of completeness, I should state that I agree with the DJ that the evidence showed the Husband to have held back MS's FY 2021 financial statements: as the DJ observed, these financial statements became available in August 2022 only as a result of the efforts of the Wife's counsel. At the AM hearing below, since the DJ appeared to have chosen not to have

147 3rd Affidavit of Wan at p 29.

148 ROA (vol.5) at p 139.

regard to the FY 2021 financial statements, the Wife had submitted for an adverse inference to be drawn against the Husband and for a 20% uplift to be applied to the valuation of the MS shares. Since the FY 2021 financial statements were available for the purposes of the appeal, it became unnecessary for me to consider the submission for an uplift.

137 Finally, I am grateful to the Husband's counsel for pointing out that the increase in the value of the Husband's MS shares would necessarily increase the total value of the matrimonial pool of assets. Mathematically, it follows that an adjustment will also be required to the parties' direct financial contributions ratio. With the value of the MS shares being adjusted to S$753,662.50, there is an increase of S$287,101.26 from the valuation by the DJ below[149] (S$753,662.50 – S$466,561.24 = S$287,101.26). This leads to the total pool of matrimonial assets being valued at S$2,960,599.71, up from S$2,673,498.45. Accordingly, the Husband's contribution to the matrimonial pool has increased from S$2,347,894.45 to S$2,634,995.71, whilst the Wife's contribution to the matrimonial pool remains at S$325,604. The direct contributions ratio is adjusted to 89:11 in favour of the Husband.

Issue 3: Whether the DJ erred in assessing parties' indirect contributions in the ratio of 52:48 in the Wife's favour

138 I next address the the Indirect Contributions Issue, where the Wife is appealing against the DJ's decision to assess the parties' indirect contributions in the ratio of 52:48 in her favour.

149 ROA vol.1 at p 89-91.

Decision below

139 In the proceedings below, the DJ considered first of all the parties' indirect non-financial contributions. He was of the view that the Husband would have contributed the lion's share of indirect financial contribution during the marriage[150] since he had a significantly high income than the Wife. The Wife had stopped working from September 2015 onwards; and the DJ opined that her indirect financial contributions would have been limited at best to the payment of household bills, with the Husband bearing nearly the entirety of the family expenses.

140 As to the indirect non-financial contribution ratio, the DJ opined that in respect of the five-year period after marriage and up until September 2015, nothing much could be made of the parties' respective indirect contributions, as this was a childless period during which both parties were working.[151]

141 The DJ accepted, however, that following the birth of their son D, the Wife was the primary caregiver for the child. He observed that the Husband himself had acknowledged on affidavit that D became the sole focus of the Wife's life (although the Husband also sought to castigate her behaviour as being overly obsessive).[152] The DJ agreed with the Wife that the Husband would have spent much of his time at work and travelling for work. Again, the Husband himself conceded that he had spent long hours at work. He also admitted that from May 2017 onwards, he would visit pubs to "decompress" from time to time (although it may be noted that the Wife alleged he did so frequently rather

150 ROA vol.1 at p66-67 Para 82.

151 ROA vol.1 at p67 Para 83.

152 ROA vol.1 at p67 Para 84.

than occasionally).[153] Additionally, it was common ground that since October 2019, the Husband had left the matrimonial flat in October 2019, and that from that point onwards, the Wife became solely responsible for looking after the child, except for the occasions when the Husband had access. There was no domestic helper to alleviate the Wife's burden.[154]

142 Having found that the Wife bore a significantly larger share of the indirect non-financial contributions,[155] the DJ nevertheless stated that the Husband's conduct was "not so abysmal", as there was evidence he spent "some time" with the child.[156] He eventually assessed parties' indirect contributions as being 52:48 in the Wife's favour.[157]

Wife's Case

143 On appeal, the Wife submitted that parties' indirect contributions should have been assessed at 70:30 in her favour.[158] While the Wife agreed that the Husband had borne responsibility for a large part of the indirect financial contributions, she submitted that the DJ had given excessive weight to his indirect financial contributions. After all, since the Wife had stopped working from September 2015, it was only to be expected that the Husband's indirect financial contribution far outstripped the Wife's.[159] The Wife also argued that in assessing parties' indirect contributions, the DJ appeared to have broken down

153 ROA vol.1 at p68 Para 85.

154 ROA vol.1 at p68 Paras 85-86.

155 ROA vol. at p68 Para 88.

156 ROA vol.1 at p68 Para 87.

157 ROA vol.1 at p69 Para 90.

158 Appellant's Case at Para 57.

159 Appellant's Case at Para 59.

the process into two sub-steps by separately analysing the indirect financial and non-financial contributions in the very manner prohibited by the CA in *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 ("*TNL*", at [47]).[160]

144 Further, *per* the Wife's submission, that while the couple were in a dual-income household for the first half of their marriage, they were clearly a single-income household for the second half of the marriage. As such, the Wife contended that the court should apply the structured approach adopted in *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ*") for the first half of the marriage and the single-income approach under *TNL* for the second half of the marriage. This would mean a downward modulation of the significance of the indirect financial contributions because the second half of the marriage would be more properly characterised as a single income marriage. This would also be consistent with the broad-brush approach.[161]

145 Finally, the Wife argued that the DJ had given too little weight to her non-financial contributions. On the objective evidence before the court, the Husband's non-financial contributions from October 2016 to the IJ Date (March 2021) were significantly less than the Wife's,[162] especially considering that the Wife had been caring for the child virtually single-handedly without the benefit of a helper or a family support network in Singapore. In finding the Wife responsible for a significantly larger share of the non-financial contributions and in nevertheless assessing indirect contributions at an odd 52:48 ratio in her

160 Transcript of 27 March at p 13 ln 14 to p 14 ln 29.

161 Appellant's Case at Paras 60-61.

162 Appellant's Case at Paras 64-65.

favour, it appeared that the DJ had merely chosen a tokenistic figure to avoid pronouncing a 50:50 split of indirect contributions.[163]

Husband's Case

146 The Husband, on the other hand, submitted that the DJ's assessment of the parties' indirect contributions should be upheld. An appellate court will seldom interfere in the orders made by the court below unless the court below has committed an error of law or failed to appreciate certain facts (*Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 ("*Koh Bee Choo*"));[164] and in this case, the Husband argued that the DJ had done neither. In this connection, the Husband also disputed the Wife's submission that the DJ had improperly applied sub-ratios between the parties' indirect financial contributions and non-financial contributions

147 In gist, the Husband agreed with virtually all of the DJ's findings; in particular, his finding that the Husband had borne the lion's share of indirect financial contributions during the marriage. As for the non-financial contributions, the Husband argued that since the DJ had found that he clearly did spend time with the child, this meant that his non-financial contributions were not negligible either.[165]

148 Further, the Husband submitted that the Wife's proposed hybrid approach (*ie*, applying *ANJ* to the first half of the marriage and *TNL* to the second half) had no basis in law and that it also represented a misconceived

163 Appellant's Case at Para 68.

164 Transcript of 27 March at p 46 ln 29 to p 47 ln 8.

165 Respondent's Case at Para 71.

conflation of the *ANJ* and *TNL* approaches.[166] Noting that the Wife had submitted for an indirect contributions ratio of 80:20 in her favour during the proceedings below but was now seeking a 70:30 ratio on appeal, the Husband argued that the Wife's position appeared to be entirely arbitrary.[167]

My Decision

149 In considering the parties' submissions on the Indirect Contributions Issue, I note that the CA has held that the structured approach set out in *ANJ* is not to be applied in a rigid, mechanistic and overly-arithmetical manner. In (*UYQ v UYP* [2020] 1 SLR 551 ("*UYQ*"), the CA held (at [4]) that "courts should discourage parties from applying the *ANJ* approach in a rigid and calculative manner". In *USB v USA*, the CA stressed (at [43]) that the broad-brush approach was to be adopted with particular vigour by the court in assessing parties' indirect contributions. As the CA pointed out:

> 43 In our judgment, the broad-brush approach should be applied with particular vigour in assessing the parties' *indirect* contributions. This would serve the purpose of discouraging needless acrimony during the ancillary proceedings. Practically, this means that, in ascertaining the ratio of indirect contributions, the court should not focus unduly on the minutiae of family life. Instead, the court should direct its attention to broad factual indicators when determining the ratio of parties' indirect contributions. These would include factors such as the length of the marriage, the number of children, and which party was the children's primary caregiver.
>
> [emphasis in original]

150 Case law has also been instructive in elucidating the courts' approach to the determination of the appropriate indirect contributions ratio under the *ANJ* approach. In *TIT v TIU and another appeal* [2016] 3 SLR 1137, the DJ had

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166 Respondent's Case at Para 81.

167 Transcript of 27 March at p 47 ln 9 to ln 22.

awarded a ratio of 100:0 in the husband's favour for direct contributions, a ratio of 50:50 for indirect contributions and an overall ratio of 75:25 in the husband's favour for the final ratio. On appeal, Thean JC (as she then was) found that the indirect contribution ratio was too low in favour of the wife. This was because for the first 11 years of the marriage, it was not disputed that the wife was the sole anchor at home (at [36]-[37]). The wife had relocated multiple times and had four children in the span of seven years. Thean JC found that the care of four babies and young children "born in quick succession in unfamiliar surroundings would have been extremely demanding", notwithstanding the help the wife received from relatives at various points. Although the husband took over household matters in the 14th year of the marriage, this was with the help of a maid – when the most punishing baby-sitting years were over. As such, Thean JC found that the indirect contribution ratio should properly be 35:65 in favour of the wife.

151 In *UAP v UAQ* [2018] 3 SLR 319, the parties were married for 22 years and had one son. The wife was a flight stewardess prior to marriage. After marriage, she was a full-time homemaker, apart from shot stints of employment. The husband was a pilot who also had other business interests. Thean JC found that the appropriate indirect contribution ratio was 80:20 in favour of the wife (at [80]). Thean JC considered that the wife had made serious sacrifices to support her husband "in his overseas attachments and night classes to obtain his post-graduate degree, and to take care of the son". Although the wife had some external help from her mother-in-law and a domestic helper, "these were not significant in duration or extent". The husband's focus was on his career, which "entailed not only piloting but also the management of his side businesses and other ventures". Taking into account these factors, Thean JC assessed the indirect contribution ratio at 80:20 in favour of the wife.

152 In *TUV v TUW* [2016] SGHCF 15, the parties were married for about 13 years, with four children to the marriage ("the Children"). Debbie Ong JC (as she then was) found that "[the wife] had been the main caregiver of the Children during the marriage and had taken care of the Children for many years after the parties were separated" (at [39]). Although the wife had spent some time away from the family during the early years of the marriage, she had played a "much more active role in the family during the later years of the marriage, when she managed the Children's daily needs, assisted them with their homework, and sent the Children for their various extra-curricular activities". The wife was also heavily involved in caring for one of the children who was diagnosed with cancer: she would alternate between home and hospital to take care of all the children. As for the husband, Ong JC found that he too had contributed to the family's welfare in no small amount (at [40]). When one of the Children was ill, the husband had "played a role in taking care of the home and the other children". He had also "contributed substantially to the family's welfare financially". Ong JC observed that "due weight had to be given to the Husband's efforts in providing a comfortable life for the family". Ultimately, Ong JC found the ratio of parties' indirect contributions to be 60:40 in favour of the wife.

153 *BNS v BNT* [2017] 4 SLR 213 involved a marriage of about ten years, with two children to the marriage. Thean JC noted (at [42]) that the husband had been an involved father who had also made significant indirect financial contributions in absolute terms. On the other hand, Thean JC observed (at [43]) that the wife had been the children's primary caregiver who had spent a "significant amount of time with the children after their birth". She had also left her job for the sake of the family when the husband relocated to Singapore and Bangkok for work purposes. Ultimately, Thean JC assessed parties' indirect contributions to be in the ratio of 60:40 in favour of the wife (at [44]); and in so

deciding, she highlighted that this was lower than in other cases involving homemaker mothers because she had taken into account the husband's "very substantial indirect financial contributions in absolute and relative terms".

154 In *TYS v TYT* [2017] 5 SLR 244, parties were married for 17 years, with one son to the marriage. The husband worked as a corporate banker and rose to a management position in a large and reputable international bank. The wife worked at various companies till somewhere around the mid-point of the marriage, when she became a housewife. Thean JC found that in the initial years of the marriage, "the indirect contributions as a whole would tend to be a favour of the Husband" (at [42]). This was because "the husband was the primary breadwinner, even though both parties were working". As a result, "the significantly higher income of the Husband allowed the Wife to enjoy a standard of living that she otherwise might not be able to". The husband was given credit "for his significant indirect financial contributions". On the other hand, she noted that it "must have been extremely difficult for the Wife to serve as the primary caregiver of their son who, being on the autistic spectrum, required particular care and attention." The wife only had help for the first ten months after the son's birth. After the husband's relocation to the US, the wife "had to bear even greater responsibility in taking care of the son and household". Thean JC found that "it was clear that the Wife made significant greater indirect contribution to the family across the length of the marriage than the Husband, who concentrated on his career throughout the marriage, travelled extensively, and left the household to the care of the Wife". Parties' indirect contributions were assessed at 75:25 in favour of the wife.

155 There have of course also been cases where parties' indirect contributions were found to be evenly split at 50:50. It is helpful to look at two cases as examples. In *UZM v UZN* [2019] SGHCF 26, parties were married for

14 years, with no children to the marriage. Tan Puay Boon JC found that since "the Husband was the main breadwinner in the relationship, it would naturally follow that he would have been in the position to make larger indirect financial contributions" (at [75]). On the other hand, Tan JC also observed that "the Wife made more significant indirect non-financial contributions" because "even though she was assisted by domestic helpers during the marriage, she would have taken on some managerial role to ensure the smooth running of the household (with all the accompanying logistical requirements)." The wife had also contributed to the marriage by working for the husband at his law firm instead of another law firm – at a lower pay than what she had previously earned in another law firm. This went towards enabling the husband "to enjoy success at work and to generate a substantial income". On these facts, Tan JC assessed the ratio of indirect contributions to be 50:50.

156 The case of *UWL v UWM* [2021] 5 SLR 1012 involved a marriage of about 15 years, also with no children to the marriage. Tan Puay Boon JC observed (at [47]) that since parties did not have any children, there was no need for either of them to take a role of a caregiver. Since both husband and wife were very much focused on their careers, and the court was unable to meaningfully conclude that neither had contributed to a greater extent than the other, Tan JC assessed the ratio of indirect contributions to be 50:50.

Whether the indirect contribution ratio of 52:48 in favour of the Wife is correct

157 Having reviewed the DJ's grounds of decision and the parties' submissions, I accept the Wife's submission that the DJ erred in giving too little weight to her indirect non-financial contributions. While the marriage was a childless one in the early years when both parties were working, it was not disputed – and the DJ himself found as a fact – that after the birth of the child,

the Wife became the primary caregiver. The Husband, on his own account, spent the bulk of his time at work and on traveling for work. Following the Husband's departure from the matrimonial home, the DJ again found as a fact the Wife would have "undertaken the sole responsibility of caring for the child". Indeed, insofar as the assessment of parties' indirect contributions was concerned, the only factor on which the DJ clearly found in favour of the Husband related to his substantial indirect financial contributions.

158 Bearing in mind the findings of fact made by the DJ, I find that the indirect contributions ratio he arrived at (52:48 in favour of the Wife) was clearly inequitable to the Wife. This was extremely close to a 50:50 split which was plainly not justified on the facts. While credit ought to be given to the Husband's substantial indirect financial contributions, that alone cannot swing the balance towards a roughly equal ratio of indirect contributions. As the DJ himself accepted, the Wife had left her job as a lead stewardess with Singapore Airlines to take on the onerous burden of caring for the child and the home during the second half of the marriage. It is not disputed that she did so without the assistance of a domestic helper and/or family members. Her burden has become even more onerous in the last few years since the Husband's departure from the matrimonial home in October 2019, as she now has virtually sole responsibility for the care of their child – and at a time, moreover, when she has had to rejoin the workforce. As for the Husband, while it is true that he has been busy with working and work-related travel, I note that even he does not dispute that he has found time outside of his work hours to visit pubs to "decompress" – and it is not disputed that he has incurred significant expenditures at the pubs.[168] Weighing all the above factors together, I find that the DJ's

[168] ROA vol.1 at p68 Para 85.

apportionment of parties' indirect contributions at 52:48 in favour of the Wife was plainly inadequate in terms of the recognition given to the Wife's non-financial contributions.

159 I note that the DJ found the Husband's conduct to be "not so abysmal" because he made the effort to spend some time with the child and continued "to spend weekend days with the child even after [he] moved out". With respect, the fact that the Husband did spend some time with the child did not equate to his being an involved father: it is not disputed that since D's birth, the Wife has been the primary caregiver who has borne substantially most of the responsibility of raising him – and even more so since October 2019.

160 I should also point out that the DJ's decision to award an indirect contributions ratio of 52:48 in the Wife's favour was clearly against the grain of existing precedents. As I have noted, this was extremely close to a 50:50 split. In the cases I have examined above (at [150] to [156]), where the wife has borne the bulk of the responsibility for the child(ren) of the marriage, the courts have tended to attribute to the wife a far higher percentage of the parties' indirect contributions than 50% – even where the husband is the sole breadwinner. On the other hand, where the marriage is a childless one and both parties have been working, the courts have tended towards a 50:50 indirect contributions ratio.

161 For completeness, I add that I do not agree with the Wife that in her reasoning process vis-à-vis the Indirect Contributions Issue, the DJ had assigned sub-ratios to indirect financial contributions on the one hand, and indirect non-financial contributions on the other. In my view, the error which the DJ made was to assess parties' indirect contributions at virtually 50:50 after having made the findings he did in respect of the Wife's non-financial contributions versus the Husband's.

162 Applying a broad-brush approach to the facts of this case, therefore, I find that **an equitable indirect contributions ratio in this case would be 70:30 in the Wife's favour**.

163 To sum up then: taking into account the fact that the direct financial contributions ratio has now been adjusted to 89:11 in favour of the Husband (at [137] above)[169], and applying equal weightage to direct and indirect contributions, **the final ratio stands at 59.5:40.5 in favour of the Husband**.

Issue 4: Whether the DJ erred in awarding the Wife lump sum maintenance of S$33,600

164 I next address the Maintenance Issue, in which the Wife has appealed against the DJ's award of S$33,600 for lump sum maintenance as being too low.

Decision below

165 In the proceedings below, the DJ found that the Husband had a much larger income than the Wife: he enjoyed an undisputed income of S$14,980 per month (not including significant dividends from his various shareholdings[170]), whereas the Wife's income was S$3,000 per month.[171] The DJ also found that the Husband would have given the Wife an allowance in excess of S$5,000 per month during the marriage. This figure would have covered the period of time where the Wife stopped working and might also have included the child's expenses.[172]

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169 ROA (Vol.1) at p 66 para 80.

170 ROA vol.1 p72 Para 99.

171 ROA vol.1 p72 Para 101.

172 ROA vol.1 p73 Para 103.

166 As for the Wife's monthly expenses, the DJ found that a reasonable sum would be around S$3,013.15 per month.[173] Noting that her basic monthly salary was S$3,000 and her take-home monthly salary around S$2,400, the DJ found it clear that the Wife's needs would exceed her existing income and rejected the Husband's argument for no maintenance order to be made. Having regard to his assessment of the Wife's monthly expenses, the DJ found that a reasonable multiplier would be S$700 per month.[174]

167 In considering the appropriate multiplier, the DJ took into account the Wife's relatively young age (42) and the fact that she had worked for just over half of the marriage before the child was born. The DJ also accepted the Husband's submission that the Wife was able to increase her salary to meet her expenses because the evidence showed that she had seen a notable rise in her salary since her first ancillary affidavit – from S$2,200 per month in October 2021 to S$3,000 per month in June 2022.[175]

168 In the DJ's view, a multiplier of four years would allow the Wife a reasonable period in which to weather the transition following divorce. This amounted to S$33,600 in total which the DJ found to be a reasonable sum. In so concluding, he took into account the fact that the Husband would also be bearing the bulk of the child's expenses.[176] He also alluded to the total amount of S$890,000 which the Wife would receive from the division of matrimonial assets, and which he believed would be sufficient for her to find accommodation for herself and the child.

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173 ROA vol.1 p78 Para 105.

174 ROA vol.1 p79 Para 109.

175 ROA vol.1 p79 Para 110.

176 ROA vol.1 p80 Para 113.

The Wife's Case

169 On appeal, the Wife argued that the multiplicand of S$700 was grossly insufficient as it would leave her with no savings for a rainy day. She therefore asked for the multiplicand to be increased by S$300.[177] It was argued as well that the DJ should have allowed her claim of S$300 for monthly MCST charges, instead of the S$70 he awarded for this item.

170 Notwithstanding her claim for monthly MCST charges, the Wife argued that there was a possibility that she would not be able to afford to buy out the Husband's share of the matrimonial home and that she would have to purchase a new home instead. According to the Wife, this meant that she should be awarded an additional lump sum maintenance of S$54,000 to cover 18 months' rent (based on monthly rent of S$3,000). This was because she would need at least that length of time to purchase a new home, given the recent imposition of a 15-month wait-out period for current and former private homeowners seeking to buy non-subsidised HDB resale flats.

171 In oral submissions, it was further argued on behalf of the Wife that the amount she would receive from the distribution of matrimonial assets was significantly less than the S$890,000 figure alluded to by the DJ. For one, the Wife contended that the DJ must have included the lump sum maintenance of S$33,600 in the S$890,000 figure.[178] The Wife argued that she should not be expected to utilise the S$33,600 allocated for maintenance to provide a roof over their son D's head, given the great disparity between her income and the Husband's income, and given that this sum was meant to cover her expenses

177 Appellant's Case at Paras 72-74.

178 Transcript of 27 March at p 24 ln 29 to p 25 ln 12.

(which did not include accommodation expenses).[179] It was also contended that various sums should be deducted from the Wife's share of matrimonial assets: *eg*, S$56,570 in the Wife's CPF Special Account and S$49,703.22 in her MediSave account, the surrender value of her insurance policies, and legal fees. According to the Wife, after deducting these various sums and allowing for an amount of S$54,000 in total rental for an 18-month period, she would be left with a sum of only S$607,277.17, which would not be enough for her to acquire a residence similar to the condominium in which their son D had spent the first seven years of his life.[180] Even if she and D were to reside in rented accommodation (on an assumed rental of S$3,000 per month), she would only be able to afford rental for about 15 years – at which point D would still be in tertiary education and thus still a dependent.[181]

172 As to the multiplier, the Wife submitted that a multiplier of four years was grossly insufficient. Prior to her resignation from SIA in September 2015, she had been earning a monthly salary of S$5,000 after 15 years of service with SIA. Assuming a generous annual increment of 10% on her present salary of S$3,000, it would take her six years before she could reach a monthly figure of S$5,000. She had also been obliged to join a completely different industry when she started working again, because her age and the need to take care of D made it unsuitable for her to rejoin SIA.[182]

173 Insofar as she had seen her salary increase from S$2,200 to S$3,000 following a job switch, the Wife submitted that this should not be construed as

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179 Transcript of 27 March at p 25 ln 13 to ln 24.

180 Transcript of 27 March at p 30 ln 4 to ln 9.

181 Transcript of 27 March at p 30 ln 10 to ln 19.

182 Appellant's Case at Para 81.

a sign of her ability to increase her salary to meet her expenses. This was because according to her, the large increase was a one-off anomaly attributable to the fact that when she first rejoined the workforce, she had taken the first job available despite its low salary. While she had managed to land a better paid job on her own initiative, she argued against this being used as a barometer to gauge her future increments.[183]

174 Taking into account the above factors, the Wife submitted that a more appropriate multiplier would be six years.[184]

Husband's Case

175 The Husband, on the other hand, contended that the Wife's submission that the maintenance amount should factor in the need for her to accumulate savings was misconceived and had no basis in law.[185] In respect of the MCST item, the Husband argued that S$70 was a reasonable figure for MCST or S&C charges; and that the court should not make minor adjustments for idiosyncratic reasons (see *Koh Bee Choo* at [46]).[186]

176 As for the Wife's claim for contingent maintenance in the form of S$54,000 for 18 months' rental, the Husband contended that this too had no basis in law and that the CA in *TDT v TDS* had rejected the wife's claim for contingent maintenance.[187] Moreover, such a claim ran contrary to the need for

183 Appellant's Case at Para 83.

184 Appellant's Case at para 84.

185 Respondent's Case at Para 107.

186 Respondent's Case at Paras 112-113.

187 Respondent's Case at Para 115.

finality and certainty in matrimonial proceedings,[188] as it would completely negate the point of the court ordering a lump sum maintenance to achieve a clean break between the parties.[189]

177 In terms of the Wife's ability to find suitable accommodation, the Husband agreed with the DJ's finding that the total amount of S$890,000 which she would receive from the division of matrimonial assets would more than suffice for her to find accommodation for D and herself – whether she chose to rent or to buy. In making these arguments, the Husband submitted information from the HDB website which showed the median resale price of a 3-room HDB flat and a 4-room HDB flat in Ang Mo Kio as being S$378,000 and S$555,000 respectively.[190] He also submitted that the Wife was not entitled to rely on the cooling measures to the property market introduced by the Government on 29 September 2022, since these measures had come into effect after the AM hearing on 11 August 2022. In any event, the Husband argued, the wait-out period could be appealed against;[191] and HDB would review appeals on a case-by-case basis.

178 In respect of the multiplier, the Husband pointed out that the Wife's figure of six years was actually quite close to the DJ's figure of four years.[192] There was no rule that the multiplier should be calculated with reference to how long it might take the wife to regain her last-drawn income;[193] and in any event

188 Respondent's Case at Para 113.

189 Respondent's Case at Para 120.

190 Letter from Respondent dated 28 March at para 3(a).

191 Transcript of 27 March at p 49 ln 20 to p 50 ln 23.

192 Respondent's Case at Para 127.

193 Respondent's Case at Para 131.

the Wife had clearly tried to downplay the increase in her salary (from S$2,200 per month in October 2021 to S$3,000 in June 2022). In this connection, the Husband sought to average out the increments so as to demonstrate that there was a steady but consistent increase in the Wife's earning capacity over the period of a year.[194]

My Decision

The appropriate multiplicand for the Wife

179 Having considered both parties' submissions, I reject firstly the Wife's argument that the multiplicand should be increased to enable her to put aside savings. It seems to me counter-intuitive that savings should be treated as part of her reasonable expenses which the Husband should pay maintenance towards. In any event, as the Husband has pointed out, the Wife has shown no legal basis for this proposition.

180 As to the S$70 awarded by the DJ for monthly MCST charges, I also agree with the Husband that this appears to be a reasonable amount for MCST or S&C charges; and I do not find any basis to interfere with the amount awarded.

The appropriate multiplier for the Wife

181 Second, I also reject the Wife's submission for the multiplier to be increased from four years to six years. I agree with the Husband that there is no rule in law that requires the multiplier to be calculated with reference to the length of time it may take the Wife to attain her last-drawn salary. In any event, the Wife has not provided any authorities to support this proposition.

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194 Respondent's Case at Para 129.

182 In considering the appropriate multiplier for the purpose of assessing the maintenance for the Wife, I note that in *Ong Chen Leng v Tan Sau Poo* [1993] 2 SLR(R) 545 ("*Ong Chen Leng*"), the CA approved the lower court's methodology, which involved taking the monthly maintenance to be paid on a straight-line basis over a period of 17 years, as a compromise between the average life expectancy of a woman (70 years) and the usual retirement age of a male Singaporean worker (65), less the wife's age (50). This methodology has been endorsed by the CA in other cases; *eg*, *Wan Lai Cheng v Quek Seow Kee and another appeal and another matter* [2012] 4 SLR 405 ("*Wan Lai Cheng*", at [89]-[91]).

183 However, in the recent case of *TNL v TNK*, the CA highlighted (at [62]) that the *Ong Chen Leng* method was simply a guide rather than a rule of law. Whilst the CA clarified that it was not proposing to discard the *Ong Chen Leng* method, it stressed that ultimately, the award of maintenance "was a multi-factorial inquiry which, pursuant to s 114(1) of the Women's Charter", "requires the court to have regard to all the circumstances of the case including the following matters listed in ss 114(1)(*a*) to 114(1)(*g*) of the [Women's Charter]." In *UBM v UBN* [2017] 4 SLR 921 ("*UBM v UBN*"), Debbie Ong J (as she then was) pointed out that the *Ong Chen Leng* formula was not as helpful in cases involving younger wives, and was more helpful as a guide in cases of older wives who had taken on the homemaking role in the marriage and who had little or no earning capacity at the time of the divorce (at [77]). As Ong J explained:

> The *Ong Chen Leng* formula is not as helpful in cases involving younger wives. An application of the formula to a 35-year-old wife would yield a multiplier of 40 years – this is calculated on the basis of 85 years being the updated average life span of a woman (see *Wan Lai Cheng v Quek Seow Kee* [2012] 4 SLR 405 at [89]) and 40 being the solution to the equation ([(85 + 65) ÷ 2] – 35). Ironically, a young wife is far more capable of earning income and for more years than an older wife of say, 60 years of age. The older wife would have obtained a far lower multiplier

> of 15, being the solution to the equation ([(85 + 65) ÷ 2] – 60). This anomaly arises because the formula does not take into account the wife's earning capacity and her income but assumes that she has none. The formula may be more helpful as a guide in cases of older wives who have taken on the homemaking role in the marriage and who have little or no earning capacity at the time of the divorce.

184 In *ACY v ACZ* [2014] 2 SLR 1320 ("*ACY v ACZ*"), the parties were married for three years and had no children. Both parties worked, with the husband having a significantly high income of about S$48,000-S$78,000 a month (exact amount disputed), whilst the wife too had a fairly high income of about S$13,000-S$32,000 a month (exact amount disputed). In considering the appropriate multiplier to be applied to the 51-year-old wife's maintenance, George Wei JC (as he then was) reasoned that a multiplier of three years would be excessive when the marriage itself had lasted for only three years; and that instead, a multiplier of 18 months – which was approximately half the duration of the marriage – would be appropriate.

185 In *CGX v CGY and another appeal and other matters* [2014] SGHC 256, the marriage had lasted about five years, with no children. The husband earned a monthly income of S$5,950 and the wife earned a monthly income of S$2,150. Thean JC (as she then was) reasoned that a two-year multiplier was appropriate because the marriage was a short childless one, and both parties were working.

186 In the case of *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506 ("*Foo Ah Yan*"), the parties' marriage had lasted for about 13.5 years. There were no children to the marriage. At the time of the AM proceedings, the wife was 60 years old and the husband was 72. Both husband and wife had retired shortly after they were married in October 1995, although the husband continued to receive an income of S$2,600 per month after retirement, by virtue of an annuity and rental income. The CA held (at [27]) that a multiplier of seven years was

appropriate in the circumstances, reasoning that the husband was able to meet the maintenance order due to his (non-employment) income, while the relatively shorter length of the multiplier took into account his status as a retiree.

187 From the above cases, it is clear that whereas the *Ong Chen Leng* methodology continues to be a guide in cases where the wife is older and unable to rejoin the workforce, it may not be as helpful in cases where the wife is younger and able to rejoin the workforce. In the latter category of cases, there is no one formula that can be applied to determine the appropriate multiplier: the court will consider the individual circumstances of each case, and reference can be made to the factors found in the Women's Charter. For ease of analysis, s 114(1) of the Women's Charter is reproduced as follows:

> **Assessment of maintenance**
>
> 114.—(1) In determining the amount of any maintenance to be paid by a man to his wife or former wife, or by a woman to her incapacitated husband or incapacitated former husband, the court must have regard to all the circumstances of the case including the following matters:
>
> (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
>
> (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
>
> (c) the standard of living enjoyed by the family before the breakdown of the marriage;
>
> (d) the age of each party to the marriage and the duration of the marriage;
>
> (e) any physical or mental disability of either of the parties to the marriage;
>
> (f) the contributions made by each of the parties to the marriage to the welfare of the family, including any contribution made by looking after the home or caring for the family; and

> (g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring.

188 In my view, the factors in s 114(1)(*a*), (*b*), (*d*), (*f*) would be most relevant in the determination of the multiplier in the present case. On the one hand, there are several factors that appear to point towards a higher multiplier. Firstly, the Husband's income is significantly higher than that of the Wife's. Secondly, the maintenance amount for the Wife is not a very large portion of the Husband's income. Thirdly, the Wife has made considerable contributions in caring for the family.

189 On the other hand, there are other factors which tilt the balance towards a lower multiplier. Firstly, as a result of my decision on the MS Shares Issue and the Indirect Contributions Issue, the Wife will get a significant increase in the amount due to her from the division of matrimonial assets. Secondly, the Wife is relatively younger at age 42; and the marriage was of moderate length (10.5 years). Thirdly, the Husband has been the main financial provider for the family.

190 Taking all these factors into account, I find that the multiplier of four years is reasonable. A multiplier of four years on the present case also appears to me to be is in line with the range of multipliers seen in the cases I examined earlier (at [184] To [186]).

Whether the Wife should receive rental expenses

191 As for the Wife's submission for an additional S$54,000 to cover 18 months of rent in a scenario where she is unable to buy out the Husband's share of the matrimonial home, I find this submission to be without merit as well. No

such rental expenses have actually been incurred by the Wife; and it is not certain whether rental expenses will even be necessary. As the Husband has pointed out, therefore, the Wife's submission really amounts to a claim for contingent maintenance. An award of contingent maintenance would in this case negate the whole point of a lump sum maintenance award – which was to enable parties to achieve a clean break.

192 For the avoidance of doubt, I am not saying that a maintenance award cannot include rental expenses. That is certainly not the case. In *UEB v UEC* [2018] SGHCF 5 for instance, Debbie Ong J (as she then was) held that "both the moneys that go towards rent and the moneys that go towards a mortgage loan… are accommodation expenses which the court can take into consideration" in determining maintenance (at [7]). The question is whether there is sufficient evidence before the court of such expenses. As I have noted above, the Wife's claim in this case for an additional sum of S$54,000 for rental expenses appeared to me to be speculative.

193 I would add that given the findings I have made in the Wife's favour on the MS Shares Issue and the Indirect Contributions Issue, the amount she will now receive from the division of matrimonial assets will be increased significantly. Both counsel have agreed that following from the adjustment of the parties' direct financial contributions ratio (at [137]), the monetary value of the Wife's share will increase from S$855,519.50[195] to S$1,199,050.98. This should allay her concerns about being able to find suitable accommodation for the son and herself.

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195 ROA vol.1 at p90-91.

Issue 5: Whether the DJ erred in awarding S$1,732 for D's monthly expenses and in ordering the Husband to bear 90% thereof instead of 100%

194 Finally, I address the Child Maintenance Issue. Here, the Wife contended that the S$1,732 which the DJ awarded for the child's monthly expenses fell short of a reasonable maintenance amount, and that the Husband should have been ordered to bear the full amount of the child's monthly expenses instead of only 90%.

Decision below

195 In arriving at the figure of S$1,732 for the child's monthly expenses, the DJ excluded those items of the child's expenses which the Husband would already be directly reimbursing (*eg*, school fees, medical and dental fees, etc.).[196] The DJ also noted that since the Wife was gainfully employed, she should contribute to the maintenance of the child.[197] The DJ estimated the ratio of the Husband's income to the Wife's – taking care to include dividends from the Husband's shareholdings, assets from the division of matrimonial assets and assets out of the matrimonial pool – before concluding that it would be fair for the Husband to pay 90% of the child's monthly expenses, with the Wife paying the remaining 10%.[198]

Wife's Case

196 On appeal, the Wife argued that based on the current maintenance award and her existing salary, she would have no savings; and paying for 10% of the

196 ROA vol.1 at p81-83 Paras 114-115.

197 ROA vol.1 p84 Para 117.

198 ROA vol.1 p84-85 Paras 118-119.

Child Maintenance would eat even further into her already limited financial resources.[199] She argued that the Husband, on the other hand, was in a far superior financial position – and that her contributions to the marriage were at least partially responsible for his having attained such a position.[200] With his high income (about S$25,000 per month, including his dividends), he was well able to afford the additional 10% or S$172[201]; and he should therefore be ordered to bear 100% of the Child Maintenance.

197 It should be noted that on appeal, the Wife suggested that she was prepared to abandon this aspect of the appeal if her lump sum maintenance were to be increased to the amount she was seeking.[202] In oral submissions, it was also argued on behalf of the Wife that the issue of accommodation expenses would shade into the issue of maintenance for the child as well, as the Husband should contribute towards providing accommodation for the child as well.[203]

Husband's Case

198 The Husband, on the other hand, submitted that pursuant to the CA's decision in *AUA v ATZ* [2016] 4 SLR 674 ("*AUA v ATZ*"), it was clear that both parents had a duty to provide for their children, although their precise obligations might differ depending on their means and capabilities.[204] The Husband also argued that it was wrong for the Wife to justify her position on the Child Maintenance Issue by reference to her own alleged needs and

199 Appellant's Case at Para 87(a).

200 Appellant's Case at Para 87(b).

201 Appellant's Case at Para 87(c).

202 Appellant's Case at Para 87.

203 Transcript of 27 March at p 29 ln 10 to ln 28.

204 Respondent's Case at Para 143.

contributions to the marriage instead of the son's reasonable needs and expenses.[205]

My Decision

199 Insofar as the Wife has argued for the Husband to be liable for 100% of the Child Maintenance, I find her arguments to be without merit. As the Husband has pointed out, both parents are equally responsible for providing for their children, although their precise obligations may differ depending on their means and capacities (*AUA v ATZ* at [41]). The Husband's contribution towards the son's maintenance has already been set at a very high rate – 90% of the assessed maintenance amount, versus the Wife's 10%. In my view, this difference in the parties' respective contributions to their son's maintenance sufficiently accounts for the difference in their earning power. I would also highlight that in addition to being responsible for 90% of the assessed Child Maintenance amount, the Husband is required to make full and direct payment for D's school fees, medical expenses, dental expenses and current insurance policies.[206] The Wife is not responsible for any of these expenses.

200 I have disregarded the Wife's suggestion that she would be prepared to abandon this aspect of her appeal if her lump sum maintenance were increased, as the suggestion appears to me to be unprincipled and without merit.

201 In the circumstances, I see no reason to interfere with the DJ's decision to award S$1,372 for D's maintenance.

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205 Respondent's Case at Para 142.

206 ROA vol.1 at p 84-85.

202 For completeness, I note that the Wife's submission on accommodation expenses has already been dealt with by me earlier (at [191] - [193] above).

Conclusion

203 In conclusion, I allow the Wife's appeal in part as follows:

(a) In relation to the MS Shares Issue, the value attributed to the Husband's MS shares is increased to S$753,662.50. Accordingly, the total value of the pool of matrimonial assets is increased to S$2,960,599.71[207];

(b) In relation to the Indirect Contributions Issue, the ratio of the parties' indirect contributions is adjusted to 70:30 in the Wife's favour. Taking into account the direct contributions ratio (which is now adjusted to 89:11 in favour of the Husband),[208] the average and final ratio is 59.5:40.5 in favour of the Husband. As noted earlier (at [193]), counsel for both parties have agreed that the Wife's entitlement to the matrimonial pool is accordingly increased to S$1,199,050.98.

204 The Wife's appeal in respect of the KS Shares Issue, the Maintenance Issue and the Child Maintenance Issue is dismissed.

205 In respect of the matrimonial home, the DJ had in the AM hearing below given the Wife three months from the date of his decision in which to exercise her right of first refusal to purchase the Husband's share of the matrimonial home. Given that the Wife has had some eight months since the filing of her

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207 ROA vol.1 at p 89-91.

208 ROA vol.1 at p 66.

notice of appeal to mull over this issue, I do not think another three months' wait is necessary. As such, the Wife has 14 calendar days from the date of this judgment in which to notify the Husband in writing of any decision on her part to exercise her right of first refusal. If the Wife decides against buying out the Husband's share of the property, then the Husband has 14 calendar days from the expiry of the deadline given to the Wife, in which to notify the Wife in writing of any decision on his part to buy out her share. If neither side wishes to take over the property, then it will be sold on the open market within seven months from the expiry of the above-mentioned 28 calendar days, with both the Husband and the Wife having joint conduct of the sale; net sale proceeds after settling outstanding mortgage loans (if any), CPF refunds (if any) and costs and expenses of sale to be divided in the final ratio I have determined. For the avoidance of doubt, in the event either the Wife or the Husband decides to buy over the other party's share of the matrimonial home, the value of the matrimonial home as assessed by the DJ shall apply for the purpose of determining the amount to be paid by the Wife or the Husband, as the case may be.

206 As to the costs of the appeal, I am inclined to think that since the Wife has succeeded on the two most important issues in her appeal (in terms of the impact on the state of her finances), she should be awarded the costs of the appeal, but these costs should be adjusted to take into account the fact that she has failed on the remaining issues raised. I will hear parties before I make any order on costs.

207 Post division of matrimonial assets, based on the final ratio I have determined, the Wife should have in her name assets totalling a higher value than the aggregate amount to which she is entitled. I leave it to parties to work out the necessary computations. Parties may submit the draft order of court for

my approval before extracting it. Both have liberty to apply in the event any clarification is required.

Mavis Chionh Sze Chyi
Judge of the High Court

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