IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 4

Divorce (Transferred) No 1441 of 2019

Between

CYH

… *Plaintiff*

And

CYI

…*Defendant*

GROUNDS OF DECISION

[Family Law — Matrimonial Assets — Division]
[Family Law — Maintenance — Child]
[Family Law — Maintenance — Wife]

TABLE OF CONTENTS

BACKGROUND **1**

DIVISION OF MATRIMONIAL ASSETS **2**

FINANCIAL CONTRIBUTIONS OF THE HUSBAND AND WIFE 2

NON-FINANCIAL CONTRIBUTIONS OF THE HUSBAND 3

NON-FINANCIAL CONTRIBUTIONS OF THE WIFE 6

FINAL RATIO FOR DIVISION OF MATRIMONIAL ASSETS 7

RELEVANT DATE TO CRYSTALISE THE MATRIMONIAL ASSETS AND THE VALUATION OF EACH MATRIMONIAL ASSET 8

IDENTIFYING THE ITEMS OF MATRIMONIAL ASSETS AND LIABILITIES EXISTING AS AT THE DATE OF IJ 14

VALUATION OF THE HUSBAND'S SHARES IN THE VARIOUS COMPANIES **15**

VALUATION OF THE BUSINESS AND SHARES OF THE WIFE **21**

LIMITATIONS STATED IN THE CFE'S REPORT **22**

DIVISION BY DISTRIBUTION IN KIND **26**

MAINTENANCE **28**

CONCLUSION **31**

Version No 2: 10 Feb 2023 (10:40 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

CYH
v
CYI

[2023] SGHCF 4

General Division of the High Court (Family Division) — Divorce (Transferred) No 1441 of 2019
Chan Seng Onn SJ
15 August, 14 December 2022

7 February 2023

Chan Seng Onn SJ:

Background

1 The plaintiff ("the Wife") and the defendant ("the Husband") (collectively "the Parties") were married on 30 September 2012.[1] Both of them are 40 years old. They have two children, a son aged nine and a daughter aged seven. When the marriage broke down, the Husband moved out of the matrimonial home at Heron Bay ("Heron Bay") around late May 2017. On 28 March 2019, the Husband filed for divorce and Interim Judgment ("IJ") was granted on 17 June 2019.[2] The Parties were married for about 7 years.

[1] Statement of Particulars at [1(a)].

[2] FC/IJ 2672/2019

2 The Husband is a contractor involved in interior design and renovation. His highest qualification is a Polytechnic diploma. The Wife has a Bachelor's degree in Business Administration but is presently unemployed.

3 I gave my decision on the division of matrimonial assets and maintenance to Parties at the hearing on 14 December along with brief oral remarks. As the Wife has appealed against my decision, I now set out the full grounds of my decision.

Division of Matrimonial Assets

4 Before examining the division of the matrimonial assets, I shall first deal with the contributions of the Parties towards their marriage and derive an overall ratio ("final ratio") for the purpose of dividing all the matrimonial assets.

Financial Contributions of the Husband and Wife

5 The total income earned by the Husband and Wife from all their various sources of income in each of the relevant years from the date of the marriage to the date of the IJ was as follows:[3]

Income Earned	**Husband**	**Wife**
October 2012 to December 2012	$17,609.50	$8,750.25
2013	$85,737	$24,370
2014	$185,110	$40,501

[3] Letter from Husband's counsel dated 2 December 2022

Version No 2: 10 Feb 2023 (10:40 hrs)

2015	$203,530	$67,617
2016	$223,112	$48,203
2017	$233,096	$21,501
2018	$225,879	$1,105
January 2019 to June 2019	$88,267	$6,250.50
Total	**$1,262,340.50 (85.26%)**	**$218,297.75 (14.74%)**

6 Clearly the Husband was the main breadwinner in the family. Establishing the total income earned by the respective parties during the entire marriage was a relatively quick, easy and accurate method of assessing their respective financial contributions towards the marriage. As can be seen from the table above, the ratio of their financial contributions was 85.26%(Husband):14.74%(Wife).

Non-financial Contributions of the Husband

7 I will give a brief summary of the Husband's non-financial contributions towards the marriage.

Version No 2: 10 Feb 2023 (10:40 hrs)

8 According to the Husband, he bathed the children and changed their diapers when the children were younger.[4] He sent the children to school every weekday.[5]

9 When Parties were still married, the Husband devoted his weekends to running errands and purchasing the necessary groceries for the household.[6] He spent a lot of quality time with the children by having outdoor activities with them such as cycling, flying kites, picnics, excursions to the zoo, playgrounds, mushroom farms, goat farms and Sentosa.[7]

10 Despite having moved out of Heron Bay prior to the date of the IJ, the Husband continued to play an active role in the children's lives. He frequently contacted their ex-helper to check on the children and the household needs such as groceries. He would then replenish the supply during the weekends.[8] During access, he paid close attention to the children's clothes, shoes, water bottles, toiletries and other necessities.[9] He purchased new ones for them whenever their existing ones needed replacements.[10] He also assisted the children with their studies.

11 The Husband taught their then helpers how to cook to ensure that the helpers could cook food to the children's liking based on recipes taught to him

---

[4] Husband's Affidavit dated 12 May 2022 at [55(a)].

[5] Husband's Affidavit dated 12 May 2022 at [49], [51].

[6] Husband's Affidavit of Asset and Means dated 1 November 2019 at [68].

[7] Husband's Affidavit of Asset and Means dated 1 November 2019 at [68].

[8] Husband's Affidavit of Asset and Means dated 1 November 2019 at [73].

[9] Husband's Affidavit of Asset and Means dated 1 November 2019 at [74].

[10] Husband's Affidavit of Asset and Means dated 1 November 2019 at [69].

Version No 2: 10 Feb 2023 (10:40 hrs)

by his parents.[11] In view of the transition to Home-Based Learning due to the pandemic, the Husband assisted the children to set up their computers in Heron Bay.[12]

12 Despite having moved out of Heron Bay, the Husband still handled the repairs in Heron Bay.[13]

13 The Husband submitted that the non-financial contributions should be divided equally between him and the Wife (*ie* a ratio of 50% (Husband):50% (wife)). According to the Husband, the final ratio for division of matrimonial assets on a broad-brush basis should be somewhere between 65%:35% to 70%:30% in favour of the Husband. The Husband submitted that a just and equitable division of the matrimonial assets would be in the proportion 65% (Husband):35% (Wife).

14 On the other hand, the Wife said that the Husband entertained a lot. He drank and returned home drunk. His driving license was suspended for 1 year in January 2019.[14] The Wife further suggested that his involvement in an extra marital affair in 2016 when the daughter was one year old would have meant less time available for him to make his non-financial contributions to the family.[15]

---

[11] Husband's Affidavit of Asset and Means dated 1 November 2019 at [70].

[12] Husband's Affidavit dated 12 May 2022 at [55(f)].

[13] Husband's Affidavit dated 22 February 2022 at [65].

[14] Wife's Affidavit of Assets and Means dated 22 February 2022 at [104].

[15] Wife's Affidavit of Assets and Means dated 22 February 2022 at [105].

Version No 2: 10 Feb 2023 (10:40 hrs)

Non-financial Contributions of the Wife

15 The Wife submitted that she was and continued to remain as the children's primary caregiver since their birth. She was largely the homemaker, attending to the needs of the children.[16] She attended to the preparation of the children's meals as well as supervising their homework after school hours.[17] She further contributed to the growth of the Husband's businesses and acted as the company's Marketing Manager/Personal Assistant to the Husband prior to the breakdown of the marriage.[18] She also assisted to file the Husband's Income Tax Returns.[19]

16 The Wife submitted that the ratio of the non-financial contribution should be 30% (Husband):70% (Wife), and the final ratio for division matrimonial assets on a broad-brush basis should be 63% (Husband):37% (Wife).

17 The Husband however tried to diminish the significance of the Wife's non-financial contributions by submitting that a maid was employed when the first child came along to help out with the housework and look after the child.[20] The Wife's parents also helped out as they stayed with them.[21]

---

[16] Wife's Affidavit of Assets and Means dated 1 November 2019 at [21(l)].

[17] Wife's Affidavit of Assets and Means dated 1 November 2019 at [21(l)].

[18] Wife's Affidavit of Assets and Means dated 1 November 2019 at [21(m)].

[19] Wife's Affidavit of Assets and Means dated 1 November 2019 at [20].

[20] Husband's Affidavit of Asset and Means dated 1 November 2019 at [78], [81].

[21] Husband's Affidavit of Asset and Means dated 1 November 2019 at [81].

Version No 2: 10 Feb 2023 (10:40 hrs)

Final Ratio for division of matrimonial assets

18 I noted that the Parties were not very far apart in their submissions on the final ratio for division of matrimonial assets when the Husband's desired final ratio of 65% (Husband):35% (Wife)[22] was compared to the Wife's desired final ratio of 63% (Husband):37% (Wife).[23]

19 The following two tables show my assessments of their financial contributions, which I fixed at 85.26% (Husband):14.75% (Wife); their non-financial contributions, which I fixed at 30% (Husband):70% (Wife); and the final ratio, which I computed using two possible weightages for the financial and non-financial contributions:

Contribution	**Husband**	**Wife**	**Weightage applied**
Financial	85.26%	14.74%	55%
Non-Financial	30%	70%	45%
FINAL RATIO	**60.393%**	**39.607%**	

[22] Husband's Skeletal Submissions at [113].

[23] Wife's Skeletal Submissions at [80].

Version No 2: 10 Feb 2023 (10:40 hrs)

Contribution	**Husband**	**Wife**	**Equal Weightage applied**
Financial	85.26%	14.74%	50%
Non-Financial	30%	70%	50%
FINAL RATIO	**57.63%**	**42.37%**	

20 Using a broad-brush approach and with the above computations as a guide, I decided to fix the final ratio for the division of all the items in the pool of matrimonial assets at **60% (Husband):40% (Wife)**, which I believed was a fair and just distribution ratio for dividing all their matrimonial assets in all the circumstances of this case. In fact, my assessment giving the Wife 40% of all the matrimonial assets was slightly higher than the 37% asked for by the Wife as her fair share of the matrimonial assets.

21 I shall now deal with the items of matrimonial assets, their valuations and the implementation of the division in accordance with the final ratio of **60% (Husband):40% (Wife)** to assist the Parties.

Relevant date to crystalise the matrimonial assets and the valuation of each matrimonial asset

22 The Parties agreed that the items of matrimonial assets (including the matrimonial liabilities) were to be ascertained as at the date of the IJ. I did not have any conceptual difficulty with using the IJ date as the date to crystallise the pool of matrimonial assets and liabilities because the marriage was dissolved upon the issuance of the IJ.

Version No 2: 10 Feb 2023 (10:40 hrs)

23 Crystallisation of all the items of matrimonial assets in the pool of matrimonial assets for division is however a completely different exercise from ascertaining the ***valuation or fair market value*** of each item of asset (*ie* for ***non-cash assets*** only) in the pool of matrimonial assets. Ascertaining the relevant date to fix the valuation/fair market price of each matrimonial asset and the proper valuation to use for the purpose of division of matrimonial assets pose greater difficulty.

24 Where a non-cash matrimonial asset is ordered at the time of the ancillary hearing to be sold in the open market and the net proceeds of sale distributed to the parties in accordance with the ascertained final ratio for division of the matrimonial assets, the valuation of that asset (be it at the date of the IJ or the ancillary hearing) becomes irrelevant because what really matters is the agreed price at which the asset is sold for. The fair market valuation/price obtained from a professional valuer is merely a theoretical figure to guide the parties as to whether they are getting a fair deal from the buyer. The net proceeds received from the sale (and *not* the theoretical valuation figure) is in reality what is available for actual distribution and division in accordance with the final ratio as determined by the court.

25 However, when one party is going to buy over the other party's share of a jointly owned non-cash matrimonial asset (*eg* by way of a transfer of title of that asset from one party to the other), then the fair market value of that asset as at the time of the ancillary hearing becomes relevant and must be established. That is the time when the notional sale of one party's share of an asset to the other takes place as directed by the court. Accordingly, the valuation of that jointly owned asset is required in order to determine its fair market value as at or as close as possible to the date of the ancillary hearing for the purpose of transfer of the ownership or title by one party to the other. In essence, one party

Version No 2: 10 Feb 2023 (10:40 hrs)

is buying the other party's share of the matrimonial asset at the valuation figure assessed as the fair market price by a professional valuer. The valuation figure thus represents the actual buying and selling price between the parties to the ancillary hearing.

26 If the open market price of a jointly owned matrimonial asset is volatile due to the nature of the asset and changes significantly over time, then all the more so, its valuation must be ascertained at or as close as possible to the date of the ancillary hearing.

27 Where the market price (*eg* the market price of a house or the equity value of a company) has risen or fallen significantly because of market volatility, changes in market conditions and the long passage of time that has elapsed between the IJ date and the date of the ancillary hearing, then the valuation of the non-cash asset determined as at the date of the IJ will be very different from that as at the date of the ancillary hearing, depending on how significantly the market value has risen or fallen in the meantime between those two dates.

28 As such, it is only fair and equitable that a party is ordered to purchase the other party's share at a valuation based on the open market price ascertained as at or as close as possible to the date of the ancillary hearing when the order to purchase is made. Ordering a party to buy the other party's share based on a valuation as at an IJ date, that may be several months or even a few years prior to the date of the ancillary hearing cannot be fair to either the buying or the selling party because the historical market price at the date of the IJ will no longer be relevant or appropriate due to price fluctuations with the passage of time.

Version No 2: 10 Feb 2023 (10:40 hrs)

29 Between the dates of the IJ and the ancillary hearing, both parties having a share in a jointly owned non-cash matrimonial asset will jointly bear the risk of a falling market and jointly reap the windfall from a rising market until the ancillary orders for division are made. Before the sale, both are joint owners and must necessarily jointly bear all the risks. However, after the court has made the ancillary orders, the gain from any subsequent rise or the loss from any subsequent fall in the price of that asset will necessarily be a matter of concern only for the buying party. The selling party, having relinquished his share in the asset, will have nothing more to do with it. Essentially, the risk of price fluctuations passes from the seller to the buyer of the other's share in the matrimonial asset once the ancillary order is made.

30 Is it going to be different where the non-cash matrimonial asset is not jointly owned but is in the sole name of one party? In my view, the party holding the non-cash matrimonial asset in his sole name is akin to being a quasi-trustee (and hence may be treated as having quasi-fiduciary duties) in relation to the other party's share in that non-cash matrimonial asset prior to the division of matrimonial assets. He needs to act in good faith and preserve that non-cash matrimonial asset in his sole name from the time of the IJ to the time of the ancillary hearing so that it is available for distribution as ordered. Unless it is a perishable non-cash asset (where either party can in the interim apply to the court to sell the perishable asset first to preserve its monetary value), a party having sole title should not unilaterally deal with a non-perishable non-cash matrimonial asset after the date of the IJ by selling it and converting it to cash (and perhaps even re-investing or using up the cash proceeds) whilst waiting for the ancillary hearing to take place.

31 Suppose the party having sole title unilaterally sells it before the ancillary hearing and its market value falls after the date of sale, the other party

Version No 2: 10 Feb 2023 (10:40 hrs)

will not likely complain but will instead claim her share of the sale proceeds of that matrimonial asset and perhaps also thank him for his foresight. I think she should be entitled to claim her share of the sale proceeds received by him. I do not think he can say that the other party should not benefit from his foresight and good fortune in selling the asset before the price dropped. He cannot be allowed to assert that the lower market price of the matrimonial asset (assuming it was unsold) as at the time of the ancillary hearing should be used instead for the asset division in place of the actual sale proceeds he has received for his unilateral sale of the matrimonial asset after the date of the IJ but before the date of the ancillary hearing.

32 Suppose the open market value of a non-cash matrimonial asset has risen sharply after the sale by the party having sole title to the asset, the other party will naturally complain about the unilateral action of the party selling the asset before the court has had the opportunity to deal with the division of matrimonial assets at the ancillary hearing. The other party will claim her share of that matrimonial asset as if it has not been sold and as if it is still available in the pool of matrimonial assets for distribution at the ancillary hearing date. Accordingly, the other party will claim the notional and higher fair market value of the matrimonial asset as at the date of the ancillary hearing (*ie* as if the sale has not taken place). In my view, it is just and fair for the other party to make such a claim. In other words, when the party having sole title to the matrimonial asset unilaterally deals with such an asset by selling or disposing of it in the interim between the date of the IJ and the ancillary hearing, he as a quasi-trustee takes all the risk if the matrimonial asset subsequently appreciates in value after the sale and its open market value as at the date of the ancillary hearing is higher than the sale price he has actually obtained. As such, if the party as a quasi-trustee does not deal at all with the matrimonial asset in his sole name between

Version No 2: 10 Feb 2023 (10:40 hrs)

the date of the IJ and the ancillary hearing, and merely preserves it in order to avoid subjecting himself to the resulting risks from fluctuating asset prices, he cannot be faulted for doing so. In principle, where matrimonial assets in the sole name of any party have been preserved from the date of the IJ to the ancillary hearing, both parties will continue to share in the benefit of any appreciation in fair market value and share in the loss from any depreciation in fair market value by having to wait until the ancillary hearing for the matters to be resolved, which can be months or even years later. Ideally, the ancillary hearing should take place soon after the date of the IJ so that fluctuations in open market value/market prices are minimal. But reality is of course different.

33 In summary, if one party having sole title decides unilaterally to sell or dispose of a non-cash matrimonial asset between the date of the IJ and the ancillary hearing, he will take the risk of any fluctuation in fair open market value between the sale date and the ancillary hearing date, and he will have to account to the other party for the difference in value where the non-cash matrimonial asset has appreciated in value after the unilateral sale. Basically, the other party will have the **higher** of either the actual sale price or the open market valuation price ascertained as at or as close as possible to the date of the ancillary order (as if the non-cash matrimonial asset has not been sold).

34 Cash matrimonial assets are however in a different category. The valuation of a cash asset (*eg* a cash deposit in a bank account or cash in the CPF accounts) does not change with time as it is the same as the amount of cash held in that cash asset. There is no appreciation or depreciation in a cash asset to be concerned about. In other words, valuation of a cash asset is simply the amount of the cash itself that is available in the account holding the cash. Its open market value does not fluctuate between the date of the IJ and the ancillary hearing. Dividing cash matrimonial assets in accordance with the final ratio for the

Version No 2: 10 Feb 2023 (10:40 hrs)

purposes of the ancillary hearing is nothing more than dividing the amount of money/cash that is available in that asset. For that reason, the valuation of the amount of cash in bank accounts, the physical cash stored in a safe and CPF monies in the various CPF accounts may (without unfairness to any party) be ascertained as at the date of the IJ because it will, in any event, be the same as that at the date of the ancillary hearing (although I accept that there can be some interest added to the cash sum between the date of the IJ and the date of the ancillary hearing).

Identifying the items of matrimonial assets and liabilities existing as at the date of IJ

The table below sets out the items in the pool of matrimonial assets and liabilities that the Parties agreed to be pre-existing as at the date of the IJ.[24] The Parties further agreed that the valuations/amounts indicated in 2nd column of the table were to be used for the division of matrimonial assets in accordance with the final ratio determined by the court.

Car BMW 520	$ (18,000) Outstanding loan amount exceeded the market value of the car by $18,000.
Car BMW X5	$ 50,000
Joint OCBC Acct	$ 1,348
Husband's CPF	$ 47,937
Husband's DBS Acct	$ 214
Wife's CPF	$ 47,940
Wife's OCBC Acct	$ 1,094
Wife's POSB	$ 2,175
Wife's UOB Acct	$ 521
Wife's insurance	$ 21,265
Wife's Australian shares	$ 1,600
Husband’s shares in the various companies comprising the [L] Group	Valuations of the companies in the [L] Group were disputed. Hence, the corresponding values of the Husband’s shares in the various

[24] Joint Summary of the Parties filed on 10 August 2022 at Section 3.

Version No 2: 10 Feb 2023 (10:40 hrs)

	companies in the [L] Group were also disputed.
Husband's shares in [K] Pte Ltd	Parties agreed that the company would be struck out. Hence zero value was to be assigned to the shares.
Husband's shares in [J] Pte Ltd	Valuations of these companies/businesses were disputed. Hence, the corresponding values of the shares/interests in these companies/businesses were also disputed.
Husband's shares in [H] Pte Ltd	
[U] (Wife as the sole proprietor)	
Wife's shares in [V] Pte Ltd	
Amount owing to the Inland Revenue Authority of Singapore as at the date of the IJ	$ (35,442)
Matrimonial property at Blk 61 Upper Serangoon View, Heron Bay, Singapore ("Heron Bay")	Agreed by Parties to be sold and the net proceeds of sale apportioned accordingly.

Valuation of the Husband's shares in the various companies

35 The Husband had shares in the following four companies that formed part of the [L] Group of Companies (the "[L] Group"):[25]

(a) [M] Pte Ltd ("[M]") with the Husband having 50% of the shares;

(b) [N] Pte Ltd ("[N]") with the Husband having 30% of the shares;

(c) [P] Pte Ltd ("[P]") with the Husband having 32% of the shares; and

(d) [Q] Pte Ltd ("[Q]") with the Husband having 30% of the shares.

36 A Court-appointed Financial Expert ("CFE") provided the following

[25] Husband's Affidavit of Asset and Means dated 1 November 2019 at [3].

Version No 2: 10 Feb 2023 (10:40 hrs)

valuations of the [L] Group[26] and the Plaintiff's shares in the [L] Group assessed as at the three different dates stipulated by the Parties:

Valuation Date	Valuation of the [L] Group	Valuation of the Plaintiff's shares in the [L] Group
31 December 2017 (Start of breakdown of marriage per Wife)	$20,278,000	$6,796,680
31 December 2019 (Closest date to IJ)	$2,320,532	$761,372
31 December 2020 (Closest date to the ancillary hearing)	$749,649	$225,674

37 The CFE furnished the following three main reasons[27] for the sharp drop in the valuation of the [L] Group and why its business witnessed a downward trend in terms of revenue and margins during the review period between 2017 and 2020:

(a) Barriers of entry into the interior design and renovation business in the residential market space were relatively low. The reliance on aggressive marketing campaigns was essential to secure projects in this sector. The advent of disruptive and DIY online portals such as Renopaedia also weighed into the already saturated landscape as they exposed consumers to more options than before.

[26] Table 2 at p 8 of 32 of the Financial Expert Valuation Report dated 15 November 2021 prepared by Lee Dah Khang, FCA (Financial Expert) and Foo Sheue Chuan, CVA of Acumen Consultants Pte Ltd exhibited at HCB-194 of the Husband's Core Bundle at pg 212 ("the CFE's Report").

[27] [5.1] of the CFE's report at p 11 of 32 exhibited at Husband's Core Bundle HCB-206

Version No 2: 10 Feb 2023 (10:40 hrs)

(b) The suspension of the Housing Development Board ("HDB") approved contractor licence ("HDB Licence") held by [M] in March 2019 had a severe impact on [L] Group's business. [L] Group was concentrating on the Build-To-Order ("BTO") market and HDB resale flats market which made up 60% and 20% respectively of its total annual revenue based on the Husband's representation. With the loss of this credential, [L] Group made alternative business arrangements to execute projects secured, such as using partnering firms with a valid licence to front projects. The suspension of [M]'s HDB licence also adversely impacted the confidence and morale of its salespersons as well as their ability to secure projects from the BTO market. Consequently, it saw a high sales staff turnover between 2017 and 2020.

(c) The Covid-19 pandemic ("Pandemic") set foot into Singapore around the 1st quarter of 2020. A series of economic activity curbs that followed led to manpower crunches in the construction and renovation sub-sectors which dealt further blows to the business of [L] Group in terms of project execution and costing.

38 I accepted that the business of the [L] Group and hence its valuation was severely affected by the suspension in early 2019 of the operating HDB renovation licence, and the Covid-19 pandemic that followed. I also accepted the Husband's submission that the suspension of the HDB renovation licence resulted in a drop in new customers and existing customers cancelling their contracts. Homeowners were increasingly advised by CaseTrust to engage only HDB accredited companies for renovation works. The loss of the HDB renovation licence impacted 80% of the [L] Group's income. Moreover, the Covid-19 pandemic resulted in shortages of raw materials and contract staff, many of whom were Malaysians. Wages and prices of raw materials increased.

Version No 2: 10 Feb 2023 (10:40 hrs)

Post Covid-19, homeowners were more inclined towards doing basic works and some customers refused to pay promptly. According to the Husband's counsel, the HDB's renovation license was suspended in March 2019 due to the demerit points being accumulated. Appeals to HDB to reinstate the HDB license were unsuccessful.[28]

39 The Wife took the position that for the purposes of division of matrimonial assets comprising the Husband's shares in the [L] Group, a valuation of $6,796,680 by the CFE based on a valuation date 31 December 2017 should be used. The Husband on the other hand took the position that a valuation of $225,674 by the CFE as at 31 December 2020 closest to the date of the ancillary hearing should be used.

40 The Wife contended that the impact from the loss of the HDB renovation licence and the Covid-19 pandemic should be disregarded. Accordingly, the valuation prior to the loss of the HDB renovation licence should be used. The Wife submitted that the [L] Group should be valued as at 31 December 2017 when the companies were doing well financially. The Wife asserted that it was inconceivable that the valuation of the [L] Group could have plunged from $20,278,000 in December 2017 to a mere $749,649 in December 2020 in just three years, a drastic drop of $19,528,351.

41 In my view, the market environment can be very unforgiving and severe adverse impact may suddenly descend on a company that is not able to quickly adapt and cope with the fast-changing circumstances. Large sudden drops in valuation are not something that would surprise me. As I have explained earlier, a valuation as at or closest to the date of the ancillary hearing (and not the date

[28] [6.7.4] of CFE's report at HCB-215 at pg 20 of 32

Version No 2: 10 Feb 2023 (10:40 hrs)

of the IJ) should be used because of market volatility and the long interval of 3 ½ years between the date of the IJ and the date of the ancillary hearing in this case (*ie*, if the Husband was to be ordered to purchase the Wife's portion of her share in the non-cash matrimonial assets being the Husband's shares in the [L] Group). I found it difficult to accept the use of a valuation as at 31 December 2017 (as advocated by the Wife) that was five years before the date of the ancillary hearing. A valuation based on a market environment five years ago could hardly be relevant or appropriate to determine the current valuation of the [L] Group as at the date of the ancillary hearing. I had doubts even for the relevance and appropriateness of a valuation as at 31 December 2020 (as advocated by the Husband to be closest to the date of the IJ) that was already two years old. With the recovery from the pandemic in 2022, the current valuation of the [L] Group should have improved from the low valuation of $225,674 as at 31 December 2020, a time when the adverse impact from the pandemic would have been much greater than that currently.

42 The Wife next attempted to attribute the substantial reduction in equity value to the Husband's diversion of business from the [L] Group to another entity, [S] Pte Ltd. This new entity was incorporated by the Husband's brother on 8 January 2020. The Husband was neither a shareholder or director. The Husband explained that the new company was set up to his exclusion because they lost confidence in him and wanted to branch out without him as he had lost focus and interest in work due to the breakdown of the marriage and his late father's cancer. His performance plunged as a result of the stresses in his personal life and his indifference to his work. His business partners, though initially understanding, grew impatient with his incompetence and work attitude because by 2019, [M] started encountering problems in paying its

Version No 2: 10 Feb 2023 (10:40 hrs)

subcontractors' invoices, which damaged the collective image of all the companies in the [L] Group.

43 I found it difficult to accept the bald allegation of the Wife that the Husband diverted business from the [L] Group of companies to [S], in which the Husband was neither a shareholder or its director. I doubted that the other shareholders in the [L] Group of companies would have colluded with the Husband to do this in order to impede the fair division of matrimonial assets in the Husband's divorce proceedings. Neither would the other shareholders have tolerated the diversion of business from the [L] Group of companies to another entity by the Husband, who in any event did not have control of the [L] Group. There was also no good reason why the Husband, even if he had control of the Group, would want to damage the business of [L] Group to hurt himself and his long term interest as a shareholder just so as to drastically lower its valuation because of the pending ancillary hearing bearing in mind that the court might not necessarily allow him to notionally "buy over" the Wife's interest in a portion of the Husband's shares (which formed a part of the matrimonial assets) at a reduced and manipulated valuation. The court could alternatively order the Husband to transfer to the Wife a portion of his shares in the [L] Group which represented the Wife's share of the matrimonial assets (of which the shares of the Husband in the various companies in the [L] Group were a part of). As a shareholder, the Wife could later take up minority action against those directors (including the Husband) if any of them had breached their fiduciary duty by diverting business in the [L] Group to another entity.

44 The minority action could also include the Wife's allegations of money being siphoned from the [L] Group by the Husband through various nefarious methods including undisclosed rebates, commissions etc. I might add that if the Husband had done that and since there were no undisclosed items of

Version No 2: 10 Feb 2023 (10:40 hrs)

matrimonial property/cash/bank accounts by the Husband (and the Wife had not made any allegations of such non-disclosure), the money - if siphoned from the [L] Group to the Husband's own personal bank accounts - would have gone into the matrimonial pool and be available for distribution to the Wife too (with no real loss by the Wife), and therefore, it should have been the other shareholders who would be more interested in getting the money allegedly siphoned by the Husband returned to the [L] Group.

45 In any event, I noted that the CFE had opined that the value of the [L] Group had plummeted (see the CFE's valuation of [L] Group as at 31 December 2019) even before [S]was incorporated (*ie* on 8 January 2020). The Wife did not challenge the CFE's opinion on this point. I did not find the bald allegations of the Wife on the diversion by the Husband of business from the [L] Group to [S]to be credible and I rejected them.

46 As for the other companies [K] Pte Ltd, [J] Pte Ltd and [H] Pte Ltd in which the Husband had shares, the CFE could not provide any valuations for these companies. As such, I had no assistance whatsoever as to the current fair market value of these entities to assist me with the division of matrimonial assets.

Valuation of the business and shares of the Wife

47 The CFE had determined that the value of the business [U] was unlikely to be worth more than the value of the e-commerce platform that it had developed. The CFE opined that its value was insignificant.

48 The CFE stated that it was not able to express an opinion on the valuation of [V] Pte Ltd.

Version No 2: 10 Feb 2023 (10:40 hrs)

49 Again, there was no current valuation for [U] and [V] Pte Ltd provided to me to assist with the division of matrimonial assets.

Limitations stated in the CFE's report

50 The Wife highlighted the limitations mentioned in the CFE's report:[29]

(a) The CFE's report stated that a significant portion of the financial information relating to the [L] Group was not available for the purposes of the valuation report.

(b) The in-house accountant of the [L] Group was not familiar with the MYOB accounting system ("MYOB") as she was relatively new.

(c) The in-house accountant was not able to address the CFE's queries on the accounting treatment of transactions recorded before her on-boarding.

(d) Only three years of accounting data were available preceding the close of the last financial year.

(e) As the in-house accountant did not have full access rights to the MYOB, certain reports generated from MYOB were incomplete and not all the required data from the MYOB was retrieved for the CFE.

(f) The [L] Group also did not maintain hard copies of financial records/supporting schedules such as detailed general ledgers, accounts receivable reports and trial balances.

[29] CFE's report at [5.1], pp 4 & 5 of 32 exhibited at Husband's Core Bundle HCB-198-199; Appendix 4 of the CFE's report at pp 4 & 5 of 32 exhibited at Husband's Core Bundle HCB-233.

Version No 2: 10 Feb 2023 (10:40 hrs)

(g) Companies within the [L] Group maintained different financial year-ends.

(h) Basic financial statements including a balance sheet and profit and loss statement based on a calendar year-end could not be readily generated from the MYOB.

(i) The [L] Group changed their accounting system from the MYOB to the Xero accounting system ("XERO") in or around March/April 2020. As a result, the in-house accountant was not able to provide the financial information as of CY20 from a single accounting system.

(j) Companies within the [L] Group had not finalised their book for financial year ("FY") 20 as at the date of the CFE's report.

(k) Financial information for CY15 and CY16 and detailed general listings of transactions for certain companies within the [L] Group were not furnished as requested. The CFE also could not obtain reconciliation of discrepancies in the information provided to them, including differences between closing and opening retained earnings, discrepancies between Financial Statements filed with ACRA and accounting records from MYOB, as well as discrepancies between information gathered from their questionnaires/interviews with the Husband and that shown in the accounting records.

51 Given the limitations on the quality and completeness of the information furnished, the CFE had to rely to a large extent on the Husband's representations

Version No 2: 10 Feb 2023 (10:40 hrs)

with regard to certain observations in the financial information provided, the operations as well as the business environment of the [L] Group.[30]

52 The CFE highlighted the information gaps confronting them when preparing the valuation report, the core information required that was not available, the limitations of their work and the key assumptions they had to make. The CFE also mentioned that the Husband was not fully compliant in providing the requested information/documents which were listed in Appendix 3 to its report.

53 The CFE did not express an opinion on the net worth of [V] Pte Ltd. Not having been provided with any financial information for [K] Pte Ltd, [J] Pte Ltd and [H] Pte Ltd, and being unable to independently verify the Husband's representation that these companies did not have significant operations and material assets, the CFE also did not express any opinion on the valuation of these companies.

54 Given the limitations, the CFE in my opinion had tried his best to arrive at some valuation figures after making certain assumptions and extrapolations. It was not improbable that being small private companies, the records might not have been properly and systematically kept leaving big gaps in the financial records and in the information that could be retrieved to perform proper and accurate valuations. I would also not be surprised if the Husband skewed the information he furnished to the CFE and had not have made full disclosure of all the available information, which in turn would affect the reliability of the valuation figures arrived at by the CFE.

[30] CFE's report at [3.5], p 5 of 32 exhibited at Husband's Core Bundle HCB-200.

Version No 2: 10 Feb 2023 (10:40 hrs)

55 Given the various issues that I have enumerated earlier, I did not think that it was fair, just or appropriate to adopt the position of the Wife (*ie* to take the valuation as at 31 December 2017 which was five years before the date of this ancillary hearing), or the position of the Husband (*ie* to take the valuation of 31 December 2020 which was two years before the date of this ancillary hearing). It must also be recognised that market conditions had improved since 31 December 2020 with the post-COVID recovery. The valuation of the [L] Group as at the date of this ancillary hearing should have risen since 31 December 2020 with the market upturn. Furthermore, all the three valuations provided by the CFE were not quite as reliable due to the limitations mentioned above, which I must emphasise had nothing to do with the competency of the CFE. The CFE was also not able to value the other companies in which the Husband and Wife had shares.

56 For me to guess plausible figures to adopt as the current valuations for the [L] Group, [J] Pte Ltd, [H] Pte Ltd, [V] Pte Ltd and [U] as at the date of my ancillary hearing was not something that I would like to venture into. It would neither be fair nor just to do so as the practical reality of doing that would be to force one party to purchase the other party's share of these matrimonial assets at valuations derived from thin air, which would be in all likelihood drastically wrong. No professional valuation was provided to me by either party that was reliable and represented a recent valuation close to the date of finalisation of this ancillary hearing. There had been much delay to the completion of this ancillary hearing resulting in the latest CFE's valuation being out of date for more than two years. In today's fast changing market conditions, valuations of companies could fluctuate considerably even over a short period of time let alone over a two-year period since the latest CFE's valuation as at 31 December 2020.

Version No 2: 10 Feb 2023 (10:40 hrs)

Division by distribution in kind

57 I must emphasise that what I had for the division were the actual shares in these various private limited companies. Fortunately, these shares themselves were divisible and thus could simply be divided for the purpose of distributing the matrimonial assets. By doing that, the need to establish the current valuation for these shares in these companies (that comprised a part of the matrimonial assets) became unnecessary since I had not ordered any party to notionally buy from or sell to the other party at the current valuation price (which in any event remained unascertained) the respective portions of the matrimonial assets comprising their shares in these private limited companies.

58 There would be another practical problem if the division was not ordered to be made in kind. Assuming that the Husband's shares in the [L] Group had a very high valuation of $6,796,680 (which the Wife was asserting), the Husband if ordered to buy over the Wife's portion of the matrimonial asset (comprising the Husband's shares in the [L] Group) would likely face great difficulty in finding the money (*ie* 40% of $6,796,680 = $2,718,672) to pay to the Wife for them. He would have to liquidate or sell the Wife's portion of the shares to pay the Wife. But he would not find ready buyers for such shares in private limited companies. These shares might well have to be sold at a depressed price well below their current valuation to the other shareholders or to third parties due to their lack of marketability. If they had been shares of listed companies, there would generally have been less of an issue in selling them in the share market, obtaining fair value for them and paying off the Wife accordingly. Or the Wife could instead be given the shares in those listed companies, and she could choose to sell them off on the share market herself, which would then be the equivalent of an initial distribution in kind. But for shares in private limited companies with limited marketability, the Wife would have to be realistic to

Version No 2: 10 Feb 2023 (10:40 hrs)

accept these limitations that were an unfortunate attribute associated with these sorts of matrimonial assets in their possession for division. She could not expect to treat these shares as if they were fully marketable when they were not, and she should not expect the Husband to be able to pay for them as though the Husband could so easily find buyers for them. The best that could be done in the circumstances was for the Husband's shares in the [L] Group to be distributed to her in kind. The lack of marketability would apply as much to the Husband's shares in the [L] Group as to her shares in the [L] Group, once they have been distributed to her in kind. What was there to complain, if both the Wife and the Husband received their respective portions of the shares in the private limited companies in the course of the division of such matrimonial assets, which all suffer from restricted marketability inherent in their nature in the first place, whether they were the Wife's shares or the Husband's shares in the various private limited companies?

59 In implementing the 60% (Husband):40% (Wife) division, I did not think it was fair nor feasible to order any party to buy from the other party the respective portion of the matrimonial assets comprising shares of private limited companies which had restricted marketability and also at valuations as at the date of the ancillary hearing of which there had been no determination by any expert. But this did not preclude me from ordering a division by way of a distribution in kind. The parties were thereafter at liberty to sell to each other, to other shareholders or to third parties (if such buyers could be found at all) on a willing buyer and willing seller basis, the private limited company shares that were transferred to them by order of this court. If they could not reach a mutually agreeable price with the buyer, they could keep the respective shares for themselves.

Version No 2: 10 Feb 2023 (10:40 hrs)

60 Accordingly for the purpose of dividing the matrimonial assets in the ratio of **60% (Husband):40% (Wife)**, I adopted the practical and easy solution of a distribution in kind for all the shares in the various private limited companies, whose current valuations remained unknown and undetermined. Consequently, I ordered a transfer of title in the requisite number of shares by one party to the other that fulfilled the distribution ratio of **60% (Husband):40% (Wife)** for the division of the matrimonial assets comprising all these shares. The respective parties would thereafter be able to keep or dispose the shares as they deemed fit after the distribution of matrimonial assets in kind. The dispute before the court over the valuations of the various companies and the valuations of their respective shares in these private limited companies that comprise a part of the pool of matrimonial assets for division therefore became irrelevant.

Maintenance

61 The Husband stated that he had been earning a salary of $5,000 per month from the [L] Group of Companies since January 2021. He had to borrow money to make ends meet. I had no reason to disbelieve him. The [L] Group did not appear to be doing well based on the CFE's report on the valuations as at 31 December 2020. He prayed that there be no spousal maintenance for the Wife and offered to pay maintenance at $1,350 per month for each child, making a total of $2,700 per month with only $2,300 per month maintenance for himself essentially.

62 Clearly, $5,000 per month would hardly be sufficient to maintain the Husband, Wife and the two children. It would be unfair for the Wife, currently unemployed, to choose to remain unemployed and simply rely on the Husband's income to support herself and the two children especially when the Husband

Version No 2: 10 Feb 2023 (10:40 hrs)

was no longer earning a high wage. I agreed with the Husband's submission that an ex-Wife must exert herself to secure gainful employment, and earn as much as would be reasonably possible, in order to help with the financial obligations.

63 The Wife, presently 40 years of age, did not have any disabilities preventing her from finding gainful employment. After obtaining her Bachelor's degree in Business Administration, she worked for about 2 to 3 years as a customer service officer with Singtel. Her last drawn salary was $3,000 per month in July 2017 when she was working for [M]. I was confident that the Wife could find suitable employment if she was willing to work. It was not unreasonable in my view to deem that she would have an earning capacity of at least $3,500 per month given her degree in Business Administration. In other words, with reasonable effort, the Wife should be able to find a job with a salary of at least $3,500 per month. This would give a combined deemed income of $8,500 per month.

64 With a total amount of $8,500 per month of combined potential income, how much would each adult and child be getting for his or her maintenance? Based on the Husband's offer, the distribution of the maintenance was essentially $2,300 per month for himself (*ie* after paying $2,700 maintenance from his $5,000 salary per month), $2,300 per month for the Wife (on the basis of equality with the Husband), $1,950 per month for the son, and $1,950 per month for the daughter. This totalled up to $8,500 per month for the two adults and two children. Each child's maintenance of $1,950 per month was 85% of the amount of the maintenance of $2,300 per month for each adult, and I regarded that as more than reasonable.

65 In essence, the Husband would get only $2,300 per month for himself, whereas the Wife and the two children in her custody would get a combined

Version No 2: 10 Feb 2023 (10:40 hrs)

amount of $6,200 per month (*ie* $2,300 + $1,950 + $1,950 per month). I regarded $6,200 per month out of a combined deemed income of $8,500 per month for the maintenance of the Wife and two children to be fair and reasonable in all the circumstances. Given the financial constraints of a limited combined income, both Parties must somehow find a way to live within their means.

66 The Wife had drawn up her list of expenses totalling $13,149 per month for herself and the two children.[31] The Husband had drawn up his list of expenses totalling $5,484 per month.[32] These lists painstakingly drawn up were meaningless wish lists when the combined income was going to be only $8,500 per month even after assuming the Wife had secured a job with a salary of $3,500 per month. Both Parties simply have to be realistic and scale down their combined expenses to below $8,500 per month.

67 The amount of maintenance ordered must have regard to the Husband's earning capacity and ability to pay and should not drive him into heavy debt and worse bankruptcy.

68 I thus acceded to the Husband's request to pay a sum of $2,700 to the Wife for the maintenance of the children. This was to take effect after the Wife and two children have vacated the matrimonial home, whereupon the Wife should have received her share of the net proceeds of sale of the matrimonial home. Meanwhile, the interim maintenance order would continue to be in force. As it would take some months for the matrimonial home to be sold and the sale to be completed, the Wife should immediately use the available time to secure

[31] Wife's Affidavit of Asset and Means dated 1 November 2019 at p 120.

[32] Husband's Affidavit of Asset and Means dated 1 November 2019 at pp 813-814.

Version No 2: 10 Feb 2023 (10:40 hrs)

suitable employment as soon as possible. The interim maintenance order providing for maintenance of a total of $4,000 per month for the Wife and two children which would continue to apply until the matrimonial home was vacated should be sufficient to cover the period while the Wife looked for a suitable job. In my view, she should regain self-sufficiency, become independent to maintain herself and help out with her financial obligations to maintain the children and herself too.

69 If the financial circumstances of the Husband were to improve in the future and there was a substantial increase in his monthly income, the Wife would not be precluded from making an application for more maintenance.

Conclusion

70 Accordingly, the following were the orders I made to achieve a just and equitable division of all the matrimonial assets:

(a) Subject to (b), (c) and (d) below, all the matrimonial assets (including liabilities) were to be apportioned between the Husband and the Wife in accordance with the final ratio of **60% (Husband):40% (Wife)**. See the Table attached below for the computation of the amount that one party had to pay to the other party to attain the **60% (Husband):40% (Wife)** final ratio on the basis of the respective assets (including liabilities) that the Parties had chosen to retain for themselves arising from implementing the division and distribution.

(b) The matrimonial property, Heron Bay, was to be sold with both Parties having joint conduct of the sale. The sale proceeds less the outstanding mortgage and all the costs of the sale ("Net Sale Proceeds") would be divided between the Parties in the proportion

Version No 2: 10 Feb 2023 (10:40 hrs)

60% (Husband):40% (Wife). Each party was to pay their respective CPF refunds with accrued interest from his or her respective share of the Net Sale Proceeds.

(c) The Husband would have to transfer **40%** of his rights, shares and interests in the following entities to the Wife:

(i) The [L] Group of companies;

(ii) [J] Pte Ltd; and

(iii) [H] Pte Ltd.

(d) The Wife would have to transfer **60%** of her rights, shares and interests in the following entities to the Husband:

(i) [U]; and

(ii) [V] Pte Ltd.

(e) Each party would have the liberty to buy over the other party's rights, shares and interests referred to in (c) and (d) above if they so wish and at a price to be mutually agreed between themselves.

(f) Maintenance of $2,700 per month was ordered to be paid by the Husband with effect from the time of vacation of the matrimonial property by the Wife and the two children upon the completion of the sale of Heron Bay. In the meantime, the subsisting interim maintenance order of $4,000 per month for the Wife and two children was to continue.

Version No 2: 10 Feb 2023 (10:40 hrs)

(g) No order for costs was made at the ancillary hearing.

Chan Seng Onn
Senior Judge

Wong Kai Yun and Darryl Chew (Chia Wong Chambers LLC) for the plaintiff;
Yeo Kee Chye Raymond (Raymond Yeo) for the defendant

Version No 2: 10 Feb 2023 (10:40 hrs)

Item of Matrimonial Asset (As at relevant date)	Net Asset Value on Distribution Date	Husband Takes 60%	Husband Owes Wife	Wife Takes 40%	Wife Owes Husband
AGREED					
Car BMW 520 (Negative net value as the car loan exceeded the market price of the car)	$ (18,000)	$(10,800)	$ (4,320)	$ (7,200)	$ (4,320)
Car BMW X5	$50,000	$50,000	$20,000		
Joint OCBC Acct	$1,348			$1,348	$809
Husband's CPF	$47,937	$47,937	$19,175		
Husband's DBS Acct	$214	$214	$86		
Wife's CPF	$47,940			$47,940	$28,764
Wife's OCBC Acct	$1,094			$1,094	$656
Wife's POSB Acct	$2,175			$2,175	$1,305
Wife's UOB Acct	$521			$521	$313
Wife's insurance	$21,265			$21,265	$12,759
Wife's Australian shares	$1,600			$1,600	$960
NOT AGREED					
SHARES IN HUSBAND'S NAME					

Version No 2: 10 Feb 2023 (10:40 hrs)

Shares in [L] Group of Companies (comprising [M] Pte Ltd, [N] Pte Ltd, [P] Pte Ltd and [Q] Pte Ltd)	$-		$ -		$ -
[K] Pte Ltd (Company to be struck out)	$-		$ -		$ -
[J] Pte Ltd shares	$-		$ -		$ -
[H] Pte Ltd shares	$-		$-		$-
BUSINESS AND SHARES IN WIFE'S NAME					
[U]	$-		$ -		$ -
[V] Pte Ltd shares	$-		$ -		$ -
Debt to Income Tax Dept yet unpaid as of IJ date	$ (35,442)	$ (21,265.20)	$ (8,506.08)	$ (14,176.80)	$ (8,506.08)
Heron Bay Matrimonial Home (agreed to be sold)	$ -		$ -		$ -

Grand Total	$120,652	$66,086	$26,434	$54,566	$32,740
Netting Off: To settle the distribution, Husband has to pay Wife cash of				**$ (6,305.40)**	
Ultimately, Husband receives a total share of	$72,391				
Ultimately, Wife receives a total share of	$48,261				
GRAND TOTAL	**$ 120,652**				

Version No 2: 10 Feb 2023 (10:40 hrs)