IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2024] SGHCF 2

District Court Appeal No 105 of 2022

Between

WJZ

… *Appellant*

And

WJY

…*Respondent*

JUDGMENT

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

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WJZ
v
WJY

[2024] SGHCF 2

General Division of the High Court (Family Division) — Divorce

HCF/DCA 105 of 2022

Chan Seng Onn SJ
15, 24 August, 18 December 2023

17 January 2024 Judgment reserved.

Chan Seng Onn SJ:

Appeal

1 This is an appeal by the wife ("W") against the decision of the District Judge that: (a) there be no order for back-dated maintenance for the son ("S") of the marriage; (b) there be no order for W's maintenance; and (c) each party is to retain assets in their sole names.

2 W dropped her appeal against the District Judge's order that there be no division of the respondent husband's ("H's") properties in India.

Background

3 H and W were married on 29 January 1992 in India. Their marriage was registered at the Singapore Marriage Registry on 14 May 1992. Soon thereafter on 28 May 1992, W returned to India. She would return to Singapore sporadically. Most of the time, she stayed in India whereas H stayed in Singapore.

4 Sometime on 15 August 1993, the parties bought an executive maisonette (the "Flat") for $375,000[1] using $109,927[2] from H's CPF funds and $35,000 in cash and registered it in the names of both parties.

5 In May 1994, W came back to Singapore. She returned to India sometime in August/September 1994 after she discovered that she was pregnant and encountered complications with the pregnancy. As medical expenses in Singapore were expensive, and W's parents and relatives were in India, W wanted to have the baby delivered in India. After H had discussions with his parents, he thought it best to allow W to seek treatment in India. H and W left for India together for consultation with a renowned gynaecologist in Chennai. W was placed under his care. She later gave birth to S on 9 May 1995 in India.

6 On 13 August 1996, H's father wrote to W telling her that life in Singapore was much better than in India and that she should settle down in Singapore. H's father expressed his hope that W and H could resolve their "petty differences soon" and "settle in life for healthy growth of the child [*sic*]".[3]

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[1] Record of Appeal, Volume 3 ("3 ROA") Part I at p 127.

[2] 3 ROA Part I at p 136.

[3] 3 ROA Part I at p 139.

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7 In January 1999, W and S came to Singapore together with W's parents. H had advised her parents to come to Singapore as they were grieving the loss of their son (W's brother). During this visit from January 1999 to April 1999, W worked as a relief teacher and S was enrolled in a kindergarten.

8 When H moved to New York to work, he rented out the Flat from June 2000 until it was sold in 2007. H was thus away from Singapore for a considerable period of time.

9 W next returned to Singapore on 24 September 2004 with S at the request of H's father, who was seriously ill at that time and wanted to see his grandson. However, H's father passed away before W and S could arrive in Singapore. W stayed until the funeral rights were over but left soon to return to India. She next arrived for the anniversary prayers in September 2005, 2006 and 2007. Each of these visits lasted 6 to 10 days.

10 After September 2007, the parties were no longer in any meaningful relationship or contact. However, H remained in contact with S. This could be seen from the long messages exchanged between H and S from November 2016 to 2017[4].

11 When W's father passed away on 2 January 2018, the financial support and assistance from W's father to maintain W and S ended. W commenced MSS 3132/2018 in August 2018 seeking maintenance. Some four months later on 12 December 2018, H decided to filed for divorce.

[4] 3 ROA Part I at pp 141 to 157.

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12 Interim Judgment ("IJ") was granted on 13 February 2019 on the grounds of four years of separation. By the time IJ was granted, S was already more than 21 years of age.

H's submissions

13 H's counsel submitted at the appeal before me that the parties led separate lives since the marriage in 1992 with very little interaction. From 1992 to September 2007, W stayed intermittently for short periods in Singapore. For the most part of the marriage, the parties lived apart and led independent lives in different countries. W spent no real meaningful time with H as she was living primarily in India. They had separate bank accounts with no accountability to each other for any of their expenses. According to H, W never regarded Singapore as her home in the first place and chose to separate S from H.

14 H's counsel contended that after September 2007, the parties no longer intended to participate in the joint accumulation of any matrimonial assets for the family. They no longer spent time together as a family. They had no marital relationship and no right to conjugal rights since September 2007. The marriage was over for all intents and purposes according to H's counsel. The Flat was sold after both parties separated in September 2007. No monies were refunded to W as she made no direct contributions towards the purchase of the Flat, where she hardly stayed although they had possession of the Flat for about 14 years.

15 H's counsel emphasised repeatedly at the appeal hearing before me that although the marriage lasted some 27 years "on paper", the parties in reality spent only 492 days together. Based on the H's characterisation of the 27 years marriage "on paper", they were essentially "married" for 16 years from January

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1992 to September 2007, and thereafter separated for 11 years before IJ was granted in February 2019.

16 Whilst H laid the blame entirely on W for the breakdown of communication and the separation and loss of contact that followed, W offered her own explanation for the marital breakdown.

W's submissions

17 W stated in her affidavit that the marriage irretrievably broke down as a result of H's adulterous and abusive nature. W had filed a police report[5] against H for slapping her face and pulling her hair on 11 December 1993. W had also written a short letter[6] dated 27 March 1994 to the officer-in-charge of Ang Mo Kio Police Station advising that further to the last complaint made, H had picked a quarrel with her on the morning of 26 March 1994 and hit her several times. She further informed the officer-in-charge that she had decided to go back to India and gave her address in India should the officer decide to contact her for further details.

18 W's mother filed an affidavit in support to state that H would often assault and abuse W every now and then and that W's attempts to return to H were in vain due to H's exacerbating violent behaviour. Further, H was never interested in committing and forming a family of his own. The marriage was forced upon by H's parents as his parents were never agreeable to H marrying his mistress.

[5] 3 ROA Part D at pp 65 to 67.

[6] 3 ROA part D at p 68.

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19 W alleged that she came home one day and found H in bed with a woman and that devastated her. H was also violent towards her. If these allegations were true, it would be understandable why W preferred to stay almost permanently in India rather than to be with H in Singapore.

20 W said that they lived together from the inception of marriage in 1992 to 2007[7]. W's counsel submitted that their living separate lives towards the later part of the marriage (*ie* after 2007) was not her choice. When W tried to contact H, he refused to answer her calls. In the words of W's counsel, H "ghosted" W. W wanted to save the marriage but failed.

21 W's mother stated that during the lifetime of her late husband, he assisted to pay for S's education and monthly expenses. After he passed away, W had to borrow moneys from family friends. According to W's mother, W fought till the end to save her marriage but all her efforts were in vain.

22 At this ancillary hearing, I do not need to make findings on the cause of the divorce which was already granted on the basis of 4 years of separation. Suffice to say that there may be more than meets the eye and that perhaps all the blame should not be placed on W for the long period of separation before H finally decided to file for divorce.

Circumstances relating to the sale of the Flat and the purchase of the disputed property ("Disputed Property")

H's contentions

23 In June 2007, H had a heart attack. The Flat was unoccupied. Both parties decided to sell the Flat. W wanted to go to India. W found it inconvenient

[7] 3 ROA Part B at p 65.

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to handle the sale and she wanted H to sell the Flat. Shortly before W left Singapore permanently in September 2007, she signed a Power of Attorney ("POA") dated 27 September 2007 in favour of H for the sale of Flat. Of the 14 years that the jointly owned Flat was in their possession, H highlighted that W only spent 294 days in the Flat.

24 H submitted that W knew that she had no interest of any kind in the Flat as she had made no direct or indirect contributions to its purchase nor looked after the Flat from the time of its purchase until she left Singapore in September 2007. That was why W made no inquiry as to what happened to the Flat after she signed the POA. After she gave H the POA, H alleged that W made no further contact with him.

25 When W travelled to Singapore sometime after 2007 to renew her re-entry permit permanent residence status, H alleged that W made no contact with him nor made any inquiry regarding the sale of the Flat or its sale proceeds. Furthermore, W did not follow up on an alleged oral promise by H to purchase a house to replace the Flat that was to be sold. H denied making such an oral promise to W.

26 W claimed that she lived in the Flat with S until the Flat was sold in March 2008. If that was the case, H's counsel submitted that she would have known of the exact date of sale and also recovered whatever she had contributed towards the purchase of the Flat.

27 H alleged that W's assertion that she came to Singapore in 2008 to look after him after his surgery was a fabrication, although H admitted that he had a surgical procedure done in August 2008. If W's assertion was true, she would have known that the Flat was sold and she could have found out the details from

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the Housing and Development Board ("HDB") if she wanted to. In short, H contended that W did not look after him even if W did return to Singapore in 2008.

28 When W came to Singapore in 2017 with S, who enrolled to study at Technische Universität München in Singapore ("TUM Asia") for his postgraduate (MSc) study on a scholarship, she also made no attempt to inquire about the sale of the Flat or follow up on her claims about her alleged 50% interest in the Flat.

29 It was only after S discovered in 2018 that H was living in a landed property that W commenced MSS 3132/2018 seeking a lump sum of $3,000,000 (disguised as a claim for maintenance) to buy a property in Singapore, despite 11 years of absence from the marriage. In the 11 years since W departed from Singapore, she required no maintenance for herself or S and led an independent life away from Singapore. H submitted that W's claim for maintenance is for future speculative wants, to be unjustly enriched and for H to be a sponsor and guarantor for the rest of her life.

30 H contended that he did not use any part of the sale proceeds of the Flat towards the purchase of the Disputed Property. This was hotly contested by W at the appeal. I will examine this in more detail later.

W's contentions

31 W submitted that the Flat was turned into an investment asset for rental when H was working in New York. Before the POA was prepared, there were prior discussions about selling the Flat. H persuaded her to sell the Flat and they viewed some private properties including one at Thomson Road. W claimed that H told her to sign a POA and made an oral promise to buy a private property

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and a bigger home for them after the sale of the Flat. In S's email to H on 13 Oct 2007,[8] S had even asked H, "*Did you search for any new house?*". W's counsel stressed that the only reason W agreed to sell the Flat was because of H's promise to buy another property for them. Without the oral promise made by H, W would not have agreed to sell the Flat and would not have given H the POA. In essence, W is saying that H deceived her into giving him the POA.

32 W asserted that monies from the sale of the Flat were used by H towards the purchase of the Disputed Property. W argued that H would not be able to finance the purchase of the Disputed Property without using the proceeds of sale of the Flat.

33 W maintained, contrary to what H had said, that she had tried to reach and keep in touch with him after 2007. To support her assertion, W relied on emails from S to H dated 10 April 2008, 9 May 2010, 8 July 2011 and 16 July 2016. W further relied on her SMS, emails and voice messages to him (the last of which was mentioned generally in one of her emails but not exhibited). W's reliance on her emails to H included one email on 28 March 2008 and two emails on 9 and 12 April 2010 (which were exhibited). In her email to H dated 28 March 2010[9], W had even ended with the words "With Luv". She wrote:

> Dear [H],
>
> Sairam. Trust by Gods grace all are fine at your end.
>
> I have been expecting your call for a long time. I am writing this to decide on conducting of Pranavs Upanayanam. Swamy and Sankaracharya has advised that Upanayanam should be conducted latest by 15 years of age.

[8] 3 ROA part D at p 96.

[9] 3 ROA Part D at p 109.

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> According to Vedic rites a boy should be initiated bramacharyam before 15 years of age.
>
> The auspicious dates available for us is 28th April and 16th May. As this is Utharayana punya kalam, it will bring good for the family esp. for pithrukkal.
>
> Please let me know ammas and your convenience, so that I can do the needful.
>
> [S] will be happy if you call him and speak to him. He has done extremely well in the exams and you can be proud to note that he has secured A + in all the papers.
>
> With Luv
>
> [W].

34 Clearly, W wanted H to fly to India and perform the "Poonul" or thread ceremony as a father. W made several attempts to call H for this significant societal event and wrote emails to him about it. But H refused to respond and showed no interest in attending and performing the important ceremony for S. From the contents of her email as set out above, W still regarded themselves as a married couple. According to W, she had returned to Singapore in 2011 and stayed with H's mother. Accordingly, W denied H's allegations that after signing the POA in September 2007, she completely left him and no longer had contact with him.

35 S's letter to his father H dated 16 Jul 2016[10] some 2½ years *before* H filed for divorce is also quite telling as to whether H had "ghosted" W and S, whether the oral promise alleged by H was a pure fabrication, whether H had showed W and S several houses at that time of the POA, whether H had provided

[10] 3 ROA Part D at pp 105 and 106.

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any financial support to W and S, and whether W had alienated S from H. S wrote as follows and I set it out in full:

> Sairam,
>
> I was pretty surprised to see you replying to my mail. Thanks for your compliment that I am more intelligent than I look.
>
> Well as you said, you sent me messages on Facebook and LinkedIn. It was a bolt from the blue. *You never bother to call me or know what I am doing all these years* and suddenly you want me to patch up with you.
>
> As you say your father and your mother were good enough to look after you. The reason being your father looked after your mother so well and that he was able to fulfil all your necessities. You were very lucky to have a good father like that. *My mother did take up the responsibility of being both father and mother to me. I am very privileged to have her as my mother*.
>
> You might beat around the bush saying several reasons. You say that there were several hindrances between you and me. You knew the school which I was studying and in fact you came with my mother once. *If you really loved me, then why didn't you come and meet me. You never looked after my necessities. Tell me one thing that you have done to me as a father. Have you ever paid a single fee for my school and college so far. Was there any hindrance for that? Did anyone prevent you from doing that?*
>
> You said that I did not wish you for a single fathers day. But did you live up to be a good father. Ask yourself. You had never bothered to wish for any of my birthday except for my eighteenth. Had someone stopped you from doing that?
>
> *In 2007, you showed us several houses and promised to buy in my mothers and my name. Did you fulfil that? NO. Post that incident you never kept in touch for ages. The scar of abandonment and treachery still remains in my heart*. After so many years you want me to start friendship with you after all that has happened. So how do you expect me to react.
>
> *I had called and sent you so many mails for you to perform my upanayanam. You never bother to respond even once. Whenever my mother had called, you never picked up the phone*. And suddenly after all

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> this you want me to forget and talk to you. As a father you failed to do that duty also.
>
> "If you need a father, you got to try harder", for what. Aren't you ashamed to ask such a question. First you prove to be a good father, then I will be a good son.
>
> You say your mother has dementia. But the veracity is that when I said hello, you immediately banged the phone. You could not talk to me. You were scared to talk because of the guilt that you *CHEATED* us. You are clueless to answer about this.
>
> I am an adult not a child. My mother has never interfered in any decision of mine. *Till date she hasn't spoke anything ill about you*.
>
> Please remember, my mother will always be a part of me. Her association with me is so thick that no one can break it.
>
> Remember one thing I wasn't robbed from you. But your egoism is the one that separated us. Today I am a very happy child. I have my mother, my grand parents, my relatives and friends who are ready to do anything for us.
>
> I, as a Bal Vikas student strictly adhere to the principles of right conduct and truth. Swami has made me understand the difference between good and bad. Despite all these I will always be a good son to you and fulfil all duties.
>
> Warmest regards
>
> [S]
>
> [emphasis in original omitted; emphasis added in italics]

My views

36 I am inclined to accept W's version of events that after the Disputed Property was purchased, H avoided telling her about it. He refused to answer her calls and did not disclose the existence of the Disputed Property to her. I also find it strange that W would have intended the marriage to be over and

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stopped contacting H immediately after having given the POA to H, thereby choosing to give up all her interest in the Flat and the proceeds of its sale. This situation as painted by H's counsel is too unrealistic to be believable. Contrary to H's allegations, there is evidence to show that W had tried to contact H by email after September 2007 and that she obviously did not regard the marriage to have ended for all intents and purposes as of September 2007.

37 In fact, on 21 Nov 2007, H and W signed a document "SELLER(S) DECLARATION AND AUTHORISATION FOR RESALE OF AN HDB/HUDC FLAT" ("Declaration")[11] in person. If W was totally disinterested in the marriage and had given up all interest in the Flat after giving the POA as contended by H, I do not think W would have bothered to sign this Declaration. In March 2010, W wanted H to be present as S's father for the important "Poonul" ceremony to be held in India, which I understand is a grand event where the father puts a thread on his son. W wrote a warm and sincere letter[12] requesting H's presence at the ceremony stating that "*it will bring good for the family*". W still regarded themselves as one family. But H chose not to attend. This invitation by W for H to go to India to perform the ceremony for S as his father showed that W continued to reach out to H as her husband and the father to S, their son. H chose instead to distance himself from W and S.

38 I pause here to point out that in ancillary proceedings to divide matrimonial assets, matrimonial assets secretly accumulated or purchased by one party in the course of a marriage must be disclosed to the court. The lack of knowledge of the existence of a matrimonial asset by any one party does not mean that it conveniently disappears from the pool of matrimonial assets. The

[11] 3 ROA Part I at p 134.

[12] 3 ROA Part D at p 109.

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same applies to monies secretly accumulated in the course of a marriage by a party and kept by that party in an undisclosed bank account. It must also be disclosed if they are matrimonial assets. I find that H's attempts to keep the Disputed Property a secret from W was calculated to deny W her entitlement to a share of that asset at the ancillary hearings. H had also avoided contact with W after getting the POA from W so that he would not have to account to her as to how he had used up the entire proceeds of sale of the Flat. H took advantage of W because W was in India and he had already obtained the POA from her before she left for India. H kept the entire proceeds of sale of the Flat and I find (as I shall explain later) that he had used matrimonial assets to purchase the Disputed Property without informing W about it. H kept it a secret from W. W only found out much later in 2017 that H had purchased the Disputed Property in his sole name.

Decision of the District Judge on the division of matrimonial assets

39 The District Judge found that the only matrimonial asset to be considered was their Flat which was their matrimonial home. The other two properties in India were not part of the matrimonial pool and W's counsel offered no cogent or legitimate legal arguments as to why they should be included in the matrimonial pool for division. One of them was inherited by H and had not been transformed or improved in the course of the marriage. The family had not lived in it and W made no improvements or contributions to this inherited property. As for the other property, W simply asserted that it was H's property without any basis and she failed to provide any proof of his ownership.

40 The District Judge noted that the Flat was purchased by the parties in 1993 and sold by H in 2008 pursuant to a POA executed by W in favour of H. The parties jointly owned the Flat.

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41 More than a decade had passed before W raised the issue of the sale proceeds of the Flat. The District Judge considered it to be an *afterthought* for W to now claim that the sale proceeds of the Flat had been utilised towards the purchase of the Disputed Property for which she is now seeking a share. The District Judge found that W made no direct or indirect contribution to the Disputed Property. In all likelihood, she chanced upon the Disputed Property and sought to capitalise on its appreciation and monetary gain. Her conduct was inequitable.

42 For all intents and purposes, whilst the parties remained legally married, their union and consortium were in reality over. They led separate lives and in separate countries, to the complete oblivion of the other. Neither party owed the other any obligation or accountability. On the facts, the District Judge found that it would be appropriate for a *clean break* to be made once and for all.

43 The District Judge thus ordered each party to retain all assets in their sole names. The District Judge did *not* ascertain what percentage of the total matrimonial assets each party was essentially given based on their respective contributions towards the marriage. W essentially was left with *no* share in both the Flat (described by the District Judge as their matrimonial home) and the Disputed Property as H retained all the proceeds of sale of the Flat and the entire interest in the Disputed Property without having to share any part of it with W in the division of matrimonial assets.

The Appeal

44 One of the main factual issues in dispute during the Appeal is whether the net proceeds of sale of the matrimonial Flat had been used in the purchase of the Disputed Property. This spawned the issue of whether the completion of

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the sale of the matrimonial Flat was earlier or later than the completion of the purchase of the Disputed Property.

Completion dates for the sale of the Flat and the purchase of the Disputed Property.

45 One would have imagined that there should not be any dispute over the completion date for the sale of the Flat and similarly, the completion date for the purchase of the Disputed Property as both these dates would be well documented. But these completion dates were in serious dispute between the parties.

46 W contended that the completion of the sale of the Flat took place earlier on 11 March 2008 whereas the completion of the purchase of the Disputed Property took place *6 days later* on 17 March 2008. As such, the net proceeds of sale of the Flat, their matrimonial flat, were available to H and he had in fact used the proceeds of sale to pay in part for the purchase of the Disputed Property.

47 On the other hand, H contended that the completion of the purchase of the Disputed Property was on 14 March 2008 whereas the sale of the Flat was completed three days later on 17 March 2008. Hence H argued that he could not possibly have used the proceeds from the sale of the Flat to purchase the Disputed Property because the completion date for the purchase of the Disputed Property was *3 days earlier* than the completion date for the sale of the Flat.

48 H provided a chronology of events from the grant of the POA to the completion date for the sale of the Flat as follows[13]:

[13] Respondent's Case ("RC") at para 102.

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(a) In September 2007, W granted a POA to H to sell the Flat.

(b) The option to purchase was granted to the purchaser on 23 October 2007;

(c) On 25 February 2008 (I note that H made a typographical error in stating the date as 25 March 2008 when it should have been 25 February 2008 based on the documents exhibited), HDB wrote to H and the buyers fixing an appointment for completion on 17 March 2008 at 3.45pm.

(d) On 5 March 2008, HDB wrote again to H and the buyers fixing an earlier appointment for completion on 11 March 2008 at 4.15pm.

(e) On 11 March 2008, H was present at the HDB's office but the buyer failed to turn up. H nevertheless signed the documents prepared by HDB. No completion took place according to H.

(f) On 12 March 2008 HDB wrote to H to re-schedule completion on the same day at 1.30pm. HDB also provided the completion accounts in another letter dated 12 March 2008. However, H did not receive the mail of the same date and did not go for the completion. HDB then refixed the date to the original date, *ie* 17 March 2008, for completion.

49 I pause here to point out that H did not exhibit any letter from HDB dated on or after 12 March 2008, which refixed the completion to the new date of 17 March 2008 as H had alleged. I have grave doubts that such a letter from

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HDB existed. If it existed, H would have exhibited it together with the other letters of HDB[14] referred to above.

50 I believe that the completion date of 17 March 2008 for the sale of the Flat is a fabrication by H in his attempt to shift it till after the date of completion of his purchase of the Disputed Property, in order to show that he could not possibly have used any of the proceeds of sale of the Flat to fund his purchase of the Disputed Property. H wanted to show that the Disputed Property was entirely financed with his own funds and as such it should not fall into the pool of matrimonial assets for division.

51 H further postulated that if completion had taken place on 11 March 2008 and not on 17 March 2008, then why was his CPF used to purchase the Flat refunded to him only on 1 April 2008? According to H, if completion had taken place on 11 March 2008, this sum would have been received on the same day as the cash proceeds. H's reasoning unfortunately does not take him very far because if on his case, completion of the sale of the Flat took place on 17 March 2008, then H should have received the refund of his CPF on 17 March 2008. H did not. According to him, the CPF refund was much later on 1 April 2008.

52 As for the date of completion of H's purchase of the Disputed Property, H relied on a letter dated 14 March 2008[15] from his lawyers acting for him in the conveyance, Matthew Chiong Partnership ("MCP"), to evidence that it took place on 14 March 2008. This is probably an error as the other documents written by MCP which W exhibited had pointed to completion taking place on

[14] Respondent's Core Bundle ("RCB") at pp 55 to 58; 3 ROA Part B at pp 47 to 50.

[15] RCB at p 61.

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17 March 2008. I also noticed some handwritten remarks with the date "17/3/08" being penned on two places in that letter, which appear to support the likelihood of an error in the completion date stated therein.

53 H claimed[16] that on 13 March 2008 (the day before the completion date on 14 March 2008), he had already made all payments towards the purchase of the Disputed Property. He further claimed[17] that he took possession of and moved into the Disputed Property on the day that the completion took place (*ie* 14 March 2008).

54 I shall now deal with the documents referred to by W to support her position that the date of completion of the sale of the Flat was 11 March 2008 and not 17 March 2008.

55 The Instrument of Transfer[18] for the purposes of the Land Titles Act 1993 (2020 Rev Ed) ("LTA") shows the date of transfer of title to the Flat to the new owners as 11 March 2008. The solicitor for the transferees Ms [A] had on 11 March 2008 certified[19] that the citizenship and other particulars of the transferees had been verified by her from their National Registration Identity Cards that were produced and shown to her and she had found them to be correct. This necessarily means that the buyers were in fact present before their solicitor for verification of their particulars on the date fixed for completion on 11 March 2008, contrary to the bald assertion of H that the buyers were absent for completion. The fact that H might not have seen the buyers at the place and

[16] RC at para 105.

[17] RC at paras 104 and 105.

[18] 3 ROA Part D at pp 147 to 150.

[19] 3 ROA Part D at p 149.

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at the time that H went for completion of the sale of the Flat on 11 March 2008 does not mean that the buyers were not present for the completion (perhaps at a different time on that same day).

56 The Certificate of Stamp Duty for the Instrument of Transfer[20] is also dated 11 March 2008. On 11 March 2008, an official receipt[21] for the sum of $8,660 was issued to H by the agent, one Ms Patrina Wong from Linkvest Network Services, for payment of commission for the sale of the Flat.

57 Based on the above documents referred to by W, I find that *the sale of the Flat was completed on 11 March 2008* and not 17 March 2008 as alleged by H. The documents relied upon by W are in my view far more reliable to establish the actual date of completion of the sale of the Flat.

58 Since H did not contend that completion of the sale of Flat took place on 12 March 2008 (which would not be helpful to H as it would still be earlier than 14 March 2008, being the date of completion of the Disputed Property as alleged by H), I do not need to deal with the letter from HDB dated 12 March 2008, which stated that the completion of the resale transaction had been fixed on the same day at 1.30pm.

59 If H wanted to put it beyond doubt that he did not use any of the sale proceeds of the Flat for the purchase of the Disputed Property, he could simply exhibit his bank statement to show that the actual date of his receipt of the net proceeds of sale of the Flat into his bank account was later than the completion date of the purchase of the Disputed Property. But H chose not to disclose his

[20] 3 ROA Part D at p 151.

[21] 3 ROA Part I at pp 132 and 133.

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bank statement to show *when* he received the cash portion of the net proceeds of sale of the Flat.

60 I turn next to consider the documents set out below, some of which were referred to by W to evidence the completion date for H's purchase of the Disputed Property as 17 March 2008 and not 14 March 2008 as contended by H.

61 The Instrument of Transfer[22] for the purposes of the LTA transferring the land comprising the whole of the Disputed Property to H was dated 17 March 2008.

62 The Instrument of Mortgage[23] for the purposes of the LTA where H mortgaged the Disputed Property to Oversea-Chinese Banking Corporation Ltd ("OCBC") to secure a total loan of $1,521,870 (comprising a housing loan of $1,360,000 plus a short-term loan of $161,870) to H and one SB as co-borrowers was also dated 17 March 2008. A letter[24] from MCP to the seller's lawyers Messsrs Loh Eben Ong & Partners forwarding documents for completion was also dated 17 March 2008. MCP's letter[25] dated 26 March 2008 to IRAS also stated that the completion date for the Disputed Property was 17 March 2008. IRAS would need to know when H's liability to pay property tax for the Disputed Property should begin. H started paying property tax for the Disputed Property with effect from 18 March 2008 as he was charged $1,795.81 for 9 months and 14 days of property tax from 18 March 2008 to 31 December

[22] 3 ROA Part D at pp 118 to 121.

[23] 3 ROA Part D at pp 122 to 128.

[24] 3 ROA Part D at pp 143.

[25] 3 ROA Part D at p 144.

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2008 in the completion accounts[26] presented by MCP to H. Importantly, OCBC in its letter[27] dated 17 March 2008 stated that the sum of $161,870, referred to as a "SHORT TERM LOAN" secured on the mortgage of the Disputed Property, was disbursed on 17 March 2008. OCBC charged interest on the "SHORT TERM LOAN" with effect from 17 March 2008 at 3.821% per annum on the principal sum of $161,870[28].

63 Clearly, there could not be any completion without the disbursement of the short-term loan from OCBC so that the sellers of the Disputed Property would receive the whole selling price before they transferred the title to the property to H.

64 Based on the reliable documents referred to above at [61] and [62], I find that the *completion for the purchase of the Disputed Property took place on 17 March 2008* and not 14 March 2008 as contended by H.

65 Accordingly, I find that the completion of the purchase of the Disputed Property took place *six days after* the completion of the sale of the Flat. The inference I draw is that the net proceeds of sale of the Flat *were available* for H to use for his purchase of the Disputed Property. The next question is whether he had in fact used any part of those proceeds of sale of the Flat to do so.

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[26] 3 ROA Part T at p 21.

[27] 3 ROA Part I at p 171.

[28] 3 ROA Part I at p 172.

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Use of the net proceeds of sale of the Flat for the purchase of the Disputed Property

Completion accounts for the sale of the Flat

66 The HDB's letter[29] dated 12 March 2008 setting out the completion accounts is a good starting point as it shows the following breakdown of the amount of net proceeds of sale of the Flat (including how much was refunded to H's CPF Ordinary Account from the net proceeds of sale and the balance amount that was paid to H and W in cash as joint owners):

Declared Resale price of the Flat		$433,000.00	
Less			
(a)	Outstanding loan	$148,755.91	
(b)	CPF Refund to H	$162,543.15	
	CPF Refund to W	$0.00	
(c)	Deposit	$5,000.00	
(d)	Resale Levy		$0.00
(e)	Penalty Fee		$453.50
Total Deductions			$316,752.56
Cash amount payable to H and W		**$116,247.44**	

67 The $5,000 deposit referred to in the completion account had been paid by the buyers to H earlier, comprising $1,000 as the option fee and $4,000 for

[29] 3 ROA Part I at p 138.

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the buyers' exercise of the option. W submitted that the cash deposit of *$5,000* plus the cash amount payable to H and W of *$116,247.44* (*ie* a total cash amount of *$121,247.44*) as the net cash proceeds of sale of the Flat were both kept by H and nothing was given to her.

68 H did not dispute that he took the cash amount of $121,247.44, being the total net proceeds of sale of the Flat. According to H,[30] when the Flat was sold in March 2008, there was "*a disbursement of $116,257.83 towards the Parties' joint account which [H] then withdrew and used it for his trading purposes*." The burden is on H to establish that fact, a burden which he has failed to discharge. H provided no bank statements to evidence that the withdrawn sum had been used for his trading purposes. I do not believe H's bald assertion that he had withdrawn the whole amount from the joint account of H and W and used it for his *trading purposes*.

69 I will deal in more detail later with a different amount of *$162,543.15* from the net proceeds of sale of the Flat that was paid directly into H's CPF Ordinary Account as a refund. Suffice to say now that it was subsequently withdrawn by H to repay in full a Short-Term Bridging Loan taken from OCBC at that time to fund in part the purchase of the Disputed Property.

Completion accounts for the purchase of the Disputed Property

70 For clarity, I set out below the completion accounts for the purchase of the Disputed Property provided by MCP in their letter[31] dated 10 March 2008 for completion on 17 March 2008:

[30] RC at para 126.

[31] RCB at p 59.

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Purchase price of the Disputed Property	$1,700,000.00
Less:	
5% deposit paid	$85,000.00
H's CPF lump sum withdrawal	$5,130.00
Housing Loan from OCBC Bank	$1,360,000.00
Short Term Loan from OCBC Bank	$161,870.00
	$88,0000.00
Add:	
Property tax from 18 March 2008 to 31 December 2008 (9 months & 14 days) @ 190 per month	$1,795.81
Solicitor's Tax Invoice	$1,297.72
CPF Board's solicitors' bill	$460.00
Stamp fees on Mortgage	$500.00
Stamp fees on Option to Purchase	$45,600.00
	$137,653.53
Less:	
Payment was made by H (vide POSB cheque No xxxxxx dated 1.2.2008)	$45,600.00

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Amount in cash payable by H latest by 11.00am on 14 March 2008 per directions of MCP	$92,053.53

71 H was given a $200 discount by MCP and he paid up $91,853.53 on 13 March 2008 according to some contemporaneous notes written on the completion document.

72 H stated in his document[32] "Ancillary Matters Fact and Position Sheet" dated 12 August 2022 that he made a total cash contribution of $130,600 towards the purchase of the Disputed Property. From the completion accounts, I can see that this comprised the $85,000 initial 5% cash deposit he paid plus the $45,600 stamp fees on the Option to Purchase, making a total of $130,600.

73 In my view, the entire $130,600 was paid by H *prior* to him receiving the net proceeds arising from the completion of sale of the Flat on 11 March 2008. First, of the 5% cash deposit of $85,000, 1% or $17,000 was paid by H at the time the option was granted to H to purchase the Disputed Property on 28 January 2008, and the subsequent 4% or $68,000 was paid by H at the time he exercised the Option to Purchase[33] on 1 February 2008. These two events took place well before the completion of sale of the Flat on 11 March 2008. I therefore accept that the $85,000 came from the cash accumulated by H during the marriage period *prior* to the date of completion of sale of the Flat.

74 The important question is whether these $85,000 of cash savings of H will nevertheless constitute matrimonial assets, where both parties have a share in them. I find that they are matrimonial assets because they were accumulated

[32] 3 ROA Part A at p 17.

[33] 3 ROA Part D at pp 134 to 136.

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by H during the period of the marriage which commenced from as far back as January 1992. Even going by H's case that they separated in September 2007, I do not think that it would have been possible for H to have accumulated this large sum of $85,000 between the start of their separation in September 2007 to 28 January 2008/1 February 2008 (when the two payments of 1% and 4% of the purchase price for the Disputed Property totalling $85,000 were made), which is a mere short period of 4 months. As all assets and savings accumulated during the period of the parties' marriage constitute matrimonial assets, H cannot deny that he had in fact used $85,000 of matrimonial assets in the nature of his cash savings accumulated during the period of their marriage to pay the 5% deposit for the purchase price of the Disputed Property. The same applies to the other payment of $45,600 by H with the POSB cheque dated 1 February 2008. I infer again that this sum must have come from his cash savings accumulated during the period of their long marriage commencing from as far back as January 1992, and must be regarded as the matrimonial assets of both parties. Again, H could not have accumulated this cash savings of $45,600 in the very short period of time from the start of their separation in September 2007 to 1 February 2008, when this payment was made.

75 In any event, even H's cash savings accumulated during the subsequent period of separation should be regarded as matrimonial assets, as defined in s 112(10) of the Women's Charter 1961 (2020 Rev Ed) ("the Charter"). The reason is that the parties must still be legally regarded as married until interim judgment for divorce is granted to the parties.

76 If H had wanted to stop the joint accumulation of matrimonial assets earlier, he should have applied for his divorce sooner (*ie* as soon as the 4 years' separation period was fulfilled when he could then be legally entitled to apply for divorce on this ground). H should not have waited until after 11 years of

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separation to do so. H should not be allowed to use that as a basis now to say that because he had been tardy in applying for divorce, he is to be treated in a better position than one who had not delayed applying for divorce as soon as it was possible to do so after 4 years of separation. H essentially is asking this court to grant him a notional interim judgment immediately upon the commencement of the parties' separation in September 2007, such that their joint accumulation of assets stopped immediately upon the first day of their separation. I reiterate that I am not prepared to place H, who had been tardy in taking divorce action, in a far more advantageous position than one who had promptly taken action to apply for divorce immediately upon reaching 4 years of separation, in which case the earliest possible grant of interim judgment would probably be in 2012. Here, H wants the court to grant him notional interim judgment in September 2007, being the first day of separation, so that he can achieve his aim of having the Disputed Property (purchased after the start of separation) fall outside the pool of matrimonial assets.

77 I next consider H's CPF withdrawal of $5,130 to pay for the purchase of the Disputed Property. I note that he had only $5,780.75 in his CPF Ordinary Account[34] as at 13 February 2008, which was before the completion of the sale of the Flat. Therefore, the CPF refund from the sale of the Flat had not taken place yet. As can be seen in the completion accounts, H thus arranged to withdraw almost the entire sum available to him in his CPF Ordinary Account at that time to help him pay for the purchase of the Disputed Property on its completion date fixed on 17 March 2008.

78 The sum of $5,130 accumulated in H's CPF Ordinary Account constitutes a joint matrimonial asset of both parties used to pay for the purchase

[34] 3 ROA Part I at p 136.

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of the Disputed Property as I infer that H accumulated this sum during the period of the marriage. I note that H used up $109,927 as a principal amount withdrawn from his CPF Ordinary Account[35] at the time when H and W purchased the Flat sometime in August 1993. Assuming that he withdrew almost all his money in his CPF Ordinary Account at the time they purchased the Flat, then the remaining sum of $5,780.75 available in his CPF Ordinary Account as at 13 February 2008 must have been accumulated during the period between August 1993 and 13 February 2008, which was almost the entire period of their marriage before their separation in September 2007. In any case, the aforementioned period of accumulation would fall well within the period of the marriage ending on the date of IJ. For the same reasons, I find that the $5,130 amount withdrawn from H's CPF Ordinary Account constitutes a joint matrimonial asset used to purchase the Disputed Property.

79 H next took a Housing Loan from OCBC Bank of $1,360,000, which was 80% of the purchase price of the Disputed Property. H also had to take a Short-Term Loan from OCBC Bank of $161,870 as the refund of CPF monies to H's CPF Ordinary Account from the net proceeds of sale of the Flat could not be re-disbursed out by CPF in time for H to use them to pay for the purchase of the Disputed Property at the time of its completion. SB was the co-borrower with H and also a guarantor for both the Housing Loan and the Short-Term Loan. The monthly instalments for the Housing Loan were $5,520.33 per month at that time.[36]

[35] 3 ROA Part I at p 136.

[36] Record of Appeal Volume 4 ("4 ROA") Part B at p 14.

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80 According to the completion accounts prepared by MCP for the purchase of the Disputed Property as shown above at [70], MCP required H to pay the balance sum of $92,053.53 at the latest by 11.00am on 14 March 2008.

81 H was subsequently given a $200 discount by MCP and he paid up $91,853.53 on 13 March 2008 according to contemporaneous notes written on the completion accounts.[37] Since the sale of the Flat was completed *two days earlier* on 11 March 2008, H clearly had available for his use the balance from the net proceeds of sale of the Flat of $116,247.44, quite apart from the $5,000 cash deposit that was paid to H earlier, to pay this cash sum of $91.853.53 as required by MCP.

82 H did not exhibit any bank statement to show that he had cash savings in his bank account *before* his receipt of the cash portion of the net proceeds of sale of the Flat of $116,247.44 that sufficed to pay the sum of $91,853.53 to MCP on 13 March 2008. The burden is on him to do so. I therefore find on a balance of probabilities that he paid the balance sum of $91,853.53 in cash to MCP for the purchase of the Disputed Property by using part of the net cash proceeds of $116,247.44 that H received from the sale of the Flat, which was completed *two days earlier* on 11 March 2008. Even if I am wrong on this, and that H in fact had further accumulated cash savings to pay the sum of $91,853.53 to MCP, I am still inclined for the same reasons to infer that these further cash savings were matrimonial assets that he accrued during the period of his marriage before their separation in September 2007. In essence, H on either event had used matrimonial assets accumulated prior to their separation in September 2007 to pay the balance sum of $91,853.53 in cash for the purchase of the Disputed Property.

[37] RCB at p 59.

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83 How was the quantum of the Short-Term Loan for the purchase of the Disputed Property derived? H had obtained a CPF statement[38] dated 13 February 2008 which showed that he should be expecting a refund to his CPF Ordinary Account of a sum of at least $161,870.09 from the net proceeds of sale of the Flat sometime after the completion of its sale. The $161,870.09 comprised $109,927 as the principal amount withdrawn for the purchase of the Flat and accrued interest up to January 2008 of $51,943.09. H therefore took a short-term bridging loan of $161,870 from OCBC, which he hoped to repay with the subsequent CPF refund from the net proceeds of sale of the Flat to his CPF Ordinary Account.

84 As expected, the total refund to H's CPF Ordinary Account from the net proceeds of sale of the Flat was slightly higher being a sum of $162,543.15, as can be seen in HDB's letter[39] dated 12 March 2008 for the completion accounts.

85 After the CPF refund to H's CPF Ordinary Account had taken place, H instructed MCP to request the CPF Board to release his CPF monies to repay in full the Short-Term Loan from OCBC Bank of $161,870 with accrued interest. On 25 March 2008, MCP wrote[40] to the CPF Board's lawyers Messrs Joseph Tan Jude Benny for the release of a sum of $161,870 from H's CPF Ordinary Account by 31 March 2008 towards full repayment of the Short-Term Loan from OCBC. On 2 April 2008, OCBC Bank informed[41] both borrowers, H and SB, that OCBC Bank had received $161,886.90 (*ie* with accrued interest)

[38] 3 ROA Part I at p 136.

[39] 3 ROA Part I at p 138.

[40] 3 ROA Part I at p 175.

[41] 3 ROA Part I at p 176.

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towards the redemption of the Short-Term Loan and this loan had been "fully settled on 2 April 2008".

86 The Short-Term Loan was a bridging loan from OCBC specifically to cover the short period of about 3 weeks between the refund of CPF monies from the net proceeds of sale of the Flat on 12 March 2008 to the release of the same on 2 April 2008. The Short-Term Loan was taken up at that time to help pay for the purchase of the Disputed Property. Accordingly, I find that matrimonial assets in the form of H's refunded CPF's monies, which originated from the net proceeds of sale of the matrimonial Flat, had once again been used to pay for the purchase of the Disputed Property. For all intents and purposes, the Short-Term Loan was merely to facilitate that.

87 From the above, I therefore conclude that almost the entire net proceeds of sale of the Flat (both the cash payment to H of $116,247.44 and the CPF refund to H's CPF Ordinary Account of $162,543.15) had been used by H in his purchase of the Disputed Property and they were all matrimonial assets. Since the other cash savings of H used to pay for the purchase of the Disputed Property (which included the cash sum of $130,600 referred to above at [72] to [75]) were also matrimonial assets as explained earlier, I find that the purchase of the Disputed Property was *entirely* funded with matrimonial assets of both parties accumulated during the period of their marriage.

Burden of Proof

88 Ultimately, H who was still in a subsisting marriage in 2008, who had full control of the sale of the Flat as he had the POA from W to do so, and who necessarily had all the knowledge of the sale transactions involving the matrimonial Flat and his purchase of the Disputed Property in his own name,

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and who had kept W ignorant of both of these property transactions, must in my view bear the burden of proving that he had not used matrimonial monies to purchase the Disputed Property. Not only has he failed to discharge that burden, for the reasons I have stated above, I find that W has succeeded in proving through the documents furnished through the discovery process that H had in fact used matrimonial monies to purchase the Disputed Property.

Ratio of financial contributions

89 In the absence of income tax statements, I will use the accumulated compulsory CPF contributions (computed on the basis that no party had withdrawn any of their CPF savings to purchase any property) for the entire period of the marriage up until the date of IJ as a rough and ready proxy to establish the total amount of monies each party is likely to have earned from their employment during the whole period of their marriage. Their total earnings from their employment are usually spent on their family expenses, and if not spent but saved or wisely invested, these earnings will morph into their matrimonial assets, whether they be in the form of monies saved in their bank accounts, or shares and property investments or other types of assets as the case may be. Their total earnings from employment therefore broadly represent their respective financial contributions to the marriage. The ratio of their respective total CPF contributions accumulated during the period of marriage (with the withdrawn sums for purchase of property and accrued interest added back) will effectively represent the ratio of their entire aggregated employment income during the marriage or their financial contributions to the marriage.

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90 W's CPF as of 14 May 2019 was *$4,275.74*. H's CPF as at 21 May 2019[42] comprised: (a) a total of $38,883.53 in his Ordinary Account, Special Account, Medisave Account and Retirement Account, (b) a sum of $10,000 used in Investment; and (c) $174,915.93 used in the purchase of property with accrued interest of $54,463.70. The total sum in H's CPF if nothing was withdrawn for the purchase of property or other investments would have been a total of *$278,263.16*.

91 The ratio of H's and W's accumulated CPF (if nothing was withdrawn) as at May 2019, which was close to the date of IJ in February 2019, works out to be $278,263.16 [H]: $4,275.73 [W] and the ratio is 98.5% [H] : 1.5% [W]. As a broad brush analysis, I will adopt the CPF ratio as a proxy to represent the ratio of their respective financial contributions being in the same ratio of *98.5% [H] : 1.5% [W]*. W also did not dispute that H had earned far more than herself throughout the entire marriage, and hence, H's total financial contributions to the marriage was far more substantial than hers.

92 There are however two factors that need to be considered. One is that H was trading to earn extra income for the family but he had instead sustained a loss of a large sum of $480,000 during his trading. This in effect would have dented his total earnings, and hence, his financial contribution to the family, as he was effectively earning negative income when he lost money. Instead of making positive financial contributions, he was making negative financial contributions to the family through his losses. If these trading losses are taken into account, it would have *reduced H's share* in the ratio of financial contributions.

[42] 3 ROA Part I at p 187.

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93 On the other hand, W had very supportive parents who gave her financial support to maintain S and herself in India for many years as H did not contribute financially to their maintenance. I accept that W's father had been the main benefactor of W in providing financial support to her all these years since H failed to maintain W and S, as he should have. W thus applied for backdated maintenance for S from the age of 5 years old (in the year 2000) to 21 years old (in the year 2016), *ie* a total of 16 years in these ancillary proceedings, which I shall deal with later in this judgment.

94 I regard all the monies given to W by her father to support her for all the 16 or so years that H had refused to provide maintenance for W and S, as *gifts* to W during the marriage. These gifts strictly speaking belonged to W exclusively (see the definition of matrimonial assets in s 112(10) of the Charter) and remain outside the pool of matrimonial assets. But W had instead applied and used these gifts from her father to support the family (*ie* herself and their son S). In doing so, she was in fact making financial contributions to the marriage using these gifts bestowed on her by her father. It is as if her father was her employer paying her wages, which she then wholly applied for the use of the family and her child. As such, these gifts to W, which W used for the welfare of the family, would have correspondingly *increased W's share* in the financial contributions.

95 On account of these two factors, I have decided as a broad-brush approach to give a 10% uplift to W's share of the financial contributions, which will vary the ratio to ***88.5% [H] : 11.5% [W]***.

96 I made some very rough estimates before arriving at this 10% uplift. I used $300 per month as the estimated amount needed to support W and S in India which W's father would probably have provided, and this would have

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added up to about $57,000 over 16 years. I tried to estimate by reverse engineering from the CPF contributions to obtain what H would have earned in total from his employment and then subtract the trading loss of $480,000 from that estimated total earning of H from his employment during the course of the marriage. After doing these approximate calculations, the uplift was slightly more than 10%. I then adopted a 10% uplift as the adjustment needed to account for the trading loss of $480,000 and W's application of the gifts from her father for the maintenance of herself and S.

Non-financial contributions

H's non-financial contributions

97 I give credit to H for all his efforts in looking after the Flat and later the Disputed Property almost single handedly, whilst W spent most of her time with S in India. H would have to spend time and effort to maintain these properties, get repairs done from time to time, deal with agents and tenants when he was renting out the Flat, attend to the collection of rents and deal with the administrative matter of handing and taking over when tenancies expire and new tenants move into the Flat. His efforts in looking after the properties would have continued until the Flat was sold in 2008, and as for the Disputed Property, it would have continued throughout the whole period of separation up to the date of IJ.

98 Being away from S who was in India, H obviously did not have much opportunity to make any substantial non-financial contributions in terms of attending to the needs of S as he was growing up.

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W's non-financial contributions

99 W had been the main caregiver of S since his birth, with minimal assistance from H. She cared for S and took care of all his needs. For the times she was with H, she also took care of H and the household.

100 Apart from the short stint of 6 months in 1998 when she took up employment in Botswana, W singlehandedly brought up S in India. Her indirect contributions by way of looking after the welfare of S would count for the entire period of the marriage up to September 2007 as well as during the period of separation from September 2007 all the way to the time S reached adulthood.

Ratio of non-financial contributions

101 After considering the submissions of the parties at the appeal and having read the affidavits of the parties, I am of the view that the ratio of the non-financial contributions of the parties should be tilted in favour of W and a just and fair ratio in all the circumstances of the case is ***15% [H] : 85% [W]***.

Overall ratio for H's and W's contributions to the marriage

102 I apply equal weightage to both the financial and non-financial contributions. There are no good reasons or any special circumstances that will justify an application of an unequal weightage.

Contributions	**H**	**W**	**Weightage applied**
Financial	88.50%	11.5%	50%
Non-Financial	15.00%	85.00%	50%

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Final Ratio	***51.75%***	***48.25%***	

103 Section 112(1) WC requires the division to be ordered in such proportions that the court thinks is just and equitable.

104 Using a broad-brush approach and with the above computations as a guide, I assess the final ratio for the division of all the items in the pool of matrimonial assets to be ***52% [H] : 48% [W]***, which I believe represents a just and equitable overall ratio for the division of matrimonial assets in all the circumstances of this case.

105 I shall now turn to consider what items are in the pool of matrimonial assets to be divided in the proportion as determined above.

The Flat and the Disputed Property are matrimonial assets

106 For an asset to be considered as a matrimonial asset, the said asset has to fall within the definition of a matrimonial asset under s 112(10) WC before it can be included in the pool of matrimonial assets. This is regardless of whether the asset is jointly or separately owned.

107 Section 112(10) provides, *inter alia*, that "matrimonial asset" includes "any other asset of any nature acquired during the marriage by one party or both parties to the marriage", but "does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage".

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108 H admitted that the Flat was their matrimonial flat (by describing it as "the Matrimonial Flat" in his Ancillary Matters Fact and Position Sheet[43]), although H said that W never regarded the Flat as their matrimonial home because they hardly stayed together in it. According to H, W should not be entitled to any part of the net proceeds of sale of the Flat since W made no direct or indirect contributions of any kind towards the marriage.

109 H said that the Disputed Property was not their matrimonial home. H submitted that it should not be included in the pool of matrimonial of assets because it was bought *after* the parties had separated in September 2007[44].

110 I disagree. H had in fact acquired the Disputed Property by using his cash savings and his CPF monies, which he accumulated during the course of their subsisting marriage (*ie* from the start of their marriage in 1992 to the time immediately preceding the completion of the purchase of the Disputed Property on 17 March 2008). Furthermore, almost the entire net proceeds of sale of the Flat, their matrimonial home, was used by H to help him pay for the purchase of the Disputed Property. From the totality of the evidence, I find that H purchased the Disputed Property using matrimonial assets that he had accumulated during the marriage. I therefore include the Disputed Property in the pool of matrimonial assets for division.

[43] 3 ROA Part A at p 12-13.

[44] 3 ROA Part A at p 17.

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Operative date for ascertaining the pool of matrimonial assets and the end date for assessing the respective financial and non-financial contributions of the parties

111 By default, both the operative date for ascertaining the items in the pool of matrimonial assets, and the end date or cut-off date for determining the parties' respective financial and non-financial contributions should be the same.

112 For the division of matrimonial assets, the parties' financial and non-financial contributions start on the first day of their marriage. Their contributions to the marriage do not end just because they have started living separately for whatever reason. Some married couples may live apart for a period of time because of work commitments or other family commitments (*eg* looking after aged parents living abroad or looking after children studying abroad) during their marriage. Mere physical separation of the husband and wife during a marriage does not terminate their respective financial and non-financial contributions during marriage, which are relevant considerations for the division of matrimonial assets. Due to marital difficulties, parties may also choose to live apart but stay married and not file for divorce. During that period of their physical separation, young children must still be looked after by either the husband or the wife (as the case may be). That non-financial contribution obviously continues and remains as a contribution to the marriage during the whole period of their physical separation and must be considered for the division of matrimonial assets. Their earnings even though when living apart must continue to be regarded as their financial contributions to the marriage during their period of physical separation.

113 However, there must be an end date or cut-off date for ascertaining their respective contributions, so that the ratio of their contributions (both financial and non-financial) can be determined. By default, the end date or cut-

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off date for ascertaining the contributions (both financial and non-financial) should be the date of the interim judgment. This makes sense as it will also coincide with the default date for determining the available pool of matrimonial assets for division, which as I shall explain later should be the date of the interim judgment as well.

114 H however submitted that the operative date for determining the matrimonial pool of assets was the point of first separation in September 2007 as if a notional interim judgment had been granted on the first day of separation and the marriage was essentially dissolved immediately upon separation. H seems to have suggested that all assets purchased by one party after the first day of separation belong to that party entirely because separation had commenced, regardless of whether any divorce application had in fact been made and whether any interim judgment had in fact been granted, and regardless of whether the funds to purchase those assets had been accumulated *during* the period of marriage *prior* to separation. Together with this, H effectively took the position that all accumulation of assets by the parties cease to be joint accumulations but become independent and separate accumulations of the respective parties the very moment they are first separated. As I understand H's submissions, joint accumulation of assets essentially ceases on the first day of separation, regardless of whether any divorce application had been filed or whether any interim judgment had been granted by the court.

115 I do not agree with all the above extreme propositions suggested by H's counsel, which obviously were targeted to exclude the valuable Disputed Property from the pool of matrimonial assets so that W would have no share in it whatsoever.

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116 W's counsel submitted that the operative date for determining the matrimonial pool of assets should be the date of IJ on 13 February 2019.

117 In *Oh Choon v Lee Siew Lin* [2014] 1 SLR 629 ("*Oh Choon*"), the court adopted the date of interim judgment as the operative date despite the long period between the breakdown of the marriage and the divorce proceedings. In *Oh Choon*, the husband moved out of the matrimonial home in 1999 but filed for divorce only 11 years later in 2010. Interim judgment was granted a year later in 2011. Prior to the interim judgment, the husband bought a car and a property in joint names with his mistress. The court did not accept the husband's argument to use the date of separation in 1999 as the operative date as that would have excluded the car and property from the pool of matrimonial assets. The court adopted the date of interim judgment despite the fact that the parties had already separated for 11 years. The court emphasised (at [14]) that there is no hard and fast cut-off date for the determination of the pool of matrimonial assets and everything would, in the final analysis, depend on the precise facts of the case itself. The court held that the date of the interim judgment was appropriate because there "*was a continuous (albeit clearly attenuated) relationship between the [husband and* wife] throughout" (at [12]) even after the husband left the matrimonial home and before he filed for divorce. Indeed, after moving out of the matrimonial home, the husband had visited the wife at the matrimonial home monthly and paid her maintenance of $1,200 (at [12]).

118 In the present case, does it mean that H's reprehensible conduct immediately following separation (*ie* in cutting off ties with W to prevent her from finding out that he had acquired a private property during the period of separation using the proceeds of sale of the Flat, and in failing to support and maintain W and S to save more money for himself and fortify the idea of a "clean break" the moment separation began) strengthens his legal position in

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pointing to the date of separation as the more appropriate operative date to determine the pool of matrimonial assets? If the date of separation were fixed as the operative date to determine the pool of matrimonial assets, H would succeed in excluding the most valuable asset, *ie*, the Disputed Property, from the pool of assets for division. It would be a travesty of justice that by H's failures and selfishness, he gains an undue advantage for himself by having the operative date for division of assets based on the date of separation simply because he decided, immediately upon the first day of separation in September 2007, to cut all ties with W and neglect one of his most basic duties as a parent to help support and maintain the young child S when he was the one with the financial means to do so. W continued to look after the young son aged 12 years at the time of the breakdown of the marriage in 2007 for the next 9 years until he reached 21 years of age in 2016, without any support or maintenance from H, who was the main breadwinner of the family throughout the marriage. W's indirect contributions in looking after their young son single-handedly without any assistance from H (especially throughout the period of separation until S reached 21 years of age) was therefore very substantial. In all fairness, full credit must be given to W for all her non-financial contributions made prior to the date of IJ. In contrast, H abdicated his duties immediately upon commencement of separation. He now uses that to justify the use of the date of first separation as the date for ascertaining the pool of matrimonial assets in the hope of excluding the Disputed Property from the pool when dividing the matrimonial assets. This is neither just nor equitable and is not a cogent reason to depart from the default position of the date of interim judgment as the operative date for deciding the pool of matrimonial assets. I reiterate that if H wanted to have a clean cut earlier in order to settle all the division of assets and to arrange his own financial affairs independently for himself, he should have applied for divorce earlier as soon as he was eligible to do so in order to obtain interim judgment as soon as possible.

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Instead, H delayed matters and filed for divorce in 2018 only *after* W filed for maintenance.

119 On the facts of this case, W produced evidence that even as late as March 2010, she had written emails to H ending with affectionate words such as "With Luv" to H. Even if a view is to be taken that the pool of matrimonial assets is to be established on a date when the parties were still keeping in contact, *ie*, in March 2010 because that was the last email that W sent to H signing off "With Luv", the Disputed Property (the main asset in contention between the parties as to whether it should be part of the pool of assets) would still fall into the pool of assets to be divided, having been acquired by H well before March 2010.

120 This is not a case where both parties mutually decided to have a "clean break" and have nothing to do with each other in every respect, financially and non-financially. This is not a case where W wanted no financial support and no share in any assets acquired during the legal subsistence of the marriage prior to the grant of IJ. In law, until the grant of IJ, the marriage is legally intact although the union may have undergone factual disintegration post separation. If H's argument is accepted (which I do not), then the operative date will in default be the date of first separation for all cases where the husband unilaterally chooses to "ghost" the wife and the children, have nothing to do with them (including not maintaining them) and simply does not even bother to apply for a divorce in order to have a proper legal "clean break". H basically is advocating a fallacious proposition that a factual "clean break" is all it takes, and that is achieved by simply running away from all his responsibilities as a husband and a father. I do not think such an approach as a matter of policy is supportable at all.

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121 In my judgment, unless the particular circumstances or justice of the case warrant otherwise, the starting point or default position for the operative date to ascertain the pool of matrimonial assets is the date of interim judgment, when the marriage can be treated as "practically at an end" and "it is in the interests of parties to settle all ancillary matters and bring closure to the divorce process" (*ARY v ARX* [2016] 2 SLR 686 ("*ARY v* ARX") at [31] and [34], citing Debbie Ong, "Family Law" (2011) 12 SAL Ann Rev 298 ("*Family Law*") at para 15.23). Parties will be able to plan their financial affairs with certainty as they move on to the post-divorce stage of their lives. Counsel will also be better placed to advise parties.

122 Accordingly, for the purposes of division of matrimonial assets, the default position is that the parties' respective financial and non-financial contributions to the marriage will be assessed for the period *commencing* on the first day of their marriage and *ending* on the date on which interim judgment is granted by the court. The concept is one of joint contributions (both financial and non-financial) during the whole period of marriage and the joint accumulation of assets during that same period. By default, both joint contributions and joint accumulation of assets end upon the grant of interim judgment, whereupon matrimonial assets that have been accumulated up to and that exist at the point of time of interim judgment are what is available for division.

123 There is also a strong justification for both these default positions as a matter of principle because the interim judgment "puts an end to the marriage contract and indicates that the parties no longer intend to participate in the joint accumulation of matrimonial assets nor in any further joint investment in any matrimonial assets with the associated market risk of a fall in the value of those joint investments, unless there is evidence to substantiate a mutual intention to

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the contrary." (*AJR v AJS* [2010] 4 SLR 617 at [4]). With the grant of interim judgment, the court also recognises that the marriage is at an end, and there is no longer any matrimonial home, no *consortium vitae* and no right on either side to conjugal rights (*Sivakolunthu Kumarasamy v Shanmugam Nagaiah and another* [1987] SLR(R) 702 at [25]). After interim judgment, parties are regarded as being released from the bond of marriage, and their joint contributions and joint accumulation of assets are treated as having finally ended. The use of the date of interim judgment is also most consistent with the statutory definition of "matrimonial asset" (see *Family Law* at para 15.23).

124 However, as stated in *ARY v ARX* (at [35]), the court may depart from the starting point when there are cogent reasons to do so in order to preserve the court's flexibility to ensure that justice is done in every case.

125 Fundamentally, if a party wishes to advocate a departure from the default position for the purpose of division of matrimonial assets (*ie* on a date well prior to the date of interim judgment), that party must at least be able to prove that *both* parties have mutually manifested a clear intention to have a clean break both financially and non-financially. This must be to the extent that *both* parties can clearly be said to have no more intention to participate in the joint accumulation of assets nor in making any further financial or non-financial contributions to the marriage from that particular date that is prior to the date of interim judgment, such that it is just and fair for the court to give weight to their mutual agreement.

126 The burden is on H in this case to show that despite being legally married and with no application for divorce having been made yet, the parties have already come to such a mutual agreement not to participate either in the joint accumulation of assets or in making contributions to the marriage. That H

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himself may harbour this intention himself is insufficient if he cannot show that W also has this same intention, making the whole arrangement a mutual arrangement agreed to by both parties. H cannot unilaterally determine this since they are still legally married in law.

127 If H wishes to sever all bonds including that bond of mutual contributions and mutual accumulation of assets during the legal subsistence of the marriage, then he should have applied for divorce as soon as he was eligible to do so (*ie* after the four years separation). H should have sought interim judgment as soon as possible, to put an end to the joint contributions and joint future accumulation of assets. Alternatively, H could have sought an express agreement (*eg* a deed of separation) from W at the start of their separation with clear terms to sever both their joint contributions and their joint accumulation of assets during the ensuing period of separation till the date of finalisation of their divorce, so that any assets acquired by either party from the date of the deed would remain an exclusive asset of the acquiring party with the other party having no share in it through the division of matrimonial assets. This H failed to do. It was his choice to delay matters and file for divorce only on 12 December 2018 after 11 years of separation. He only has himself to blame.

128 The important fact is that before interim judgment for divorce is granted, the parties remain legally married. In this case, H had not even commenced divorce proceedings at the time when he purchased the Disputed Property, although separation had just begun. The default position must apply in that both parties, being still married under the law, must be presumed to intend to continue with their joint contributions to their marriage and with their joint accumulation of assets and investments using matrimonial assets (together with the associated potential gains or risks of losses due to market forces) for the benefit of their subsisting marriage. The default position does not apply,

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however, if it can be shown that the other party is against such an investment, has no wish to participate in that investment to avoid the risk of loss, and accepts at the same time to forgo the potential gain.

129 Here there is no evidence produced by H to show that W had positively expressed the view that she did not want to participate in any property investment that was purchased by H with matrimonial monies saved in the course of the marriage. There can be cases where investments turn out to be losses (*eg* share investments), and if there is an express view from that other party not to participate in that investment, then in the division of matrimonial assets, the pool of matrimonial assets may exclude the losses, by adding back notionally to the pool the *initial* amount of monies paid for those investments as if the investments were never made. The party making the investments may then have to bear those losses through his own share of the matrimonial assets. The other party not wishing to participate in the investment will therefore not suffer from any losses in those investments. The same will apply if those investments happen to make money. The party making the investments will gain the entire benefit of those gains without having to share them with the other party. The other party not wishing to participate in the investments will not gain any benefit whatsoever from those gains. The amount added to the pool will simply be the *initial* amount paid for the investment and not the actual market value (whether higher or lower than the initial amount paid) of the investment asset at the time of the interim judgment.

130 Here, H used matrimonial assets accumulated during the marriage to fund his purchase of the Disputed Property and kept that as a closely guarded secret from W and S. Obviously, H never obtained any confirmation from W that she had no wish to participate in that investment in the Disputed Property because that would have revealed his secret.

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131 Furthermore, I believe W's evidence that W gave the POA because H had represented to W that he would purchase another property to replace the Flat that was to be sold. In such a situation, any appreciation or depreciation in the value of the property purchased with matrimonial monies/savings must accrue to both parties as both parties have jointly decided to bear the risks of the investment, and hence benefit from its appreciation or suffer from its depreciation in market value (as the case may be). The default position for the property investments is that unless the contrary is established, W is taken to have implicitly agreed to that property investment and to participate in it. If W had confirmed that she had no wish to participate in that property investment, then W will not gain any benefit if the property appreciates substantially after its purchase, and the converse will also apply in that W will not suffer from any loss if the market value of the property value were to drop after its purchase. The methodology is then to deem back into the pool of matrimonial assets, the *initial* price paid for the property investment and not the market value of the property investment at the time of the interim judgment for the purposes of division of matrimonial assets.

132 As for share investments, should the same rule apply? In principle the same rule above should apply unless matrimonial assets are invested in very speculative and risky shares by one party. The default position for investment in very risky and speculative shares is that there is no participation by the other party unless consent is sought from that other party. The result is that the party investing in very speculative and risky shares using matrimonial assets will bear the losses and keep the gains himself, unless consent to invest in such shares is obtained from the other party. However, if the shares do not fall into such a category but are instead safe, non-risky blue-chip shares, then the default position will be the same as if the investments are property investments. When

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considering how to achieve a just and equitable division of the pool of matrimonial assets, much depends on the overall facts and circumstances of each case, and a common sense approach must be applied to determine how the gains or losses are to be shared depending on the risks undertaken by each of the parties to the marriage when they decide to use matrimonial savings to make financial investments for the family.

133 In this case, there are supposedly very large trading losses incurred during the marriage of some $480,000. As a broad-brush approach, I have decided not to exclude such losses and therefore, I have not deemed back the losses as if they had been dissipated by H investing in highly risky, speculative shares, which is the equivalent of "gambling" in the stock market, without the express consent of W. Had W indicated to H that he was not to do so, and he continued to do so, I might be inclined to deem the very large trading losses of H back to the pool of matrimonial assets and have H bear the losses himself from his share of the matrimonial assets.

Items in the pool of matrimonial assets as of the date of IJ for division

134 I shall begin with the most valuable and hotly contested asset, the Disputed Property.

135 I first pause here to note once again that even if H had been far more diligent and had applied for divorce immediately after four years of separation had elapsed, the earliest date that he could possibly have filed for divorce would be in September 2011, and the earliest date he could have obtained interim judgment would have been sometime around the early part of 2012. H would still *not* have escaped having the Disputed Property falling *inside* the pool of matrimonial assets for division in this best-case scenario because the property

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was purchased in 2008, *well before* the grant of interim judgment in 2012. In other words, the Disputed Property would have been acquired *during* the period of the marriage and acquired some four years *before* the earliest date on which interim judgment could be granted. I cannot see how H can now be placed in a better position than the hypothetical scenario where he had been far more expeditious in applying for divorce and getting the court to grant interim judgment as soon as possible.

136 *A fortiori*, since I am applying the default position by using the actual date of IJ on 13 February 2019 as the operative date to determine the pool of matrimonial assets for this case, the Disputed Property acquired *during* the marriage way back in 2008, which was some 11 years *prior* to obtaining IJ, and more importantly, having been *entirely funded* with matrimonial assets accumulated during the marriage largely *prior* to their separation in September 2007, must clearly be an asset that falls into the pool of matrimonial assets ascertained as at the date of IJ.

137 As no party is in a financial position to buy out the other party's share in the Disputed Property (and neither has expressed any interest to do so), this property shall be sold in the open market within four months from the date of this judgment. Both parties shall have joint conduct of the sale. Parties will have liberty to apply to court if there are any difficulties in this regard. The proceeds of sale of the Disputed Property shall be dealt with as follows:

(a) the Outstanding Housing Loan from OCBC shall be repaid from the sale proceeds;

(b) the agent fees, legal fees and other expenses of sale are to be paid out of the sale proceeds;

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(c) As explained below at [188] to [190], an amount of **$559,300** to account for the sums of monies ostensibly lent by SB to H within the period of six years prior to the date of IJ is to be paid to H out of the sale proceeds *prior* to any division;

(d) the balance of the sale proceeds after accounting for the deductions mentioned above in (a) to (c) shall be divided and paid to H and W in accordance with the overall ratio of ***52% [H] : 48% [W]*** referred to at [104].

138 If H needs to refund to his CPF Ordinary Account monies used in the purchase of the Disputed Property, H will refund the required amount out of his own share of the balance of the sale proceeds of the Disputed Property.

139 Apart from the Disputed Property, there are *other* miscellaneous items in the pool of matrimonial assets to be divided in the same overall ratio of ***52% [H] : 48% [W]***. I have prepared an Excel Spreadsheet which automatically computes the amount of money that one party has to pay the other party as a set-off, depending on which items that the parties have chosen to keep for themselves, in order to achieve the desired overall ratio of ***52% [H] : 48% [W]***, which has to be fed as "input data" into the Excel Spreadsheet.

140 All the *other* miscellaneous items and their net asset values are shown in the various line items in the attached Excel Spreadsheet. The Excel Spreadsheet is self-explanatory. The net asset values of these miscellaneous items are largely not disputed. They add up to a total of *$129,551.59*. Due to the difficulty in getting the records, the net asset value for each item is ascertained based on the date as close as possible to the date of IJ. Based on the overall ratio of ***52% [H] : 48% [W]***, and with the parties largely allowed to keep the

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various miscellaneous assets in their own names, the Excel Spreadsheet computes that the amount which H has to pay W separately is ***$56,861.39*** in order to achieve the division of these miscellaneous matrimonial assets in accordance with the same overall ratio of ***52% [H] : 48% [W]***. After this setting off payment by H to W, the total of *$129,551.59* comprising all the remaining miscellaneous matrimonial assets in the pool will be distributed to them in the ratio ***52% [H] : 48% [W]***, such that H will in effect get $67,366.83 and W will in effect get $62,184.76.

141 This amount of ***$56,861.39*** shall be paid by H to W out of his share of the balance of the sale proceeds of the Disputed Property. This payment shall be dealt with together with the other deductions by the conveyancing lawyers acting jointly for both the parties in the sale of the Disputed Property.

Debts or liabilities as at the date of IJ to be taken into account in the division of matrimonial assets

142 Under s 112(2)(b) of the Charter, the court shall have regard to any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage.

Loans allegedly taken by W

143 W wanted the court to take into account several loans she took from her friends and relatives including her mother because she needed money to maintain herself and S in India since H did not provide for their maintenance during the course of their marriage. As the loans were taken many years ago, W exhibited a legal opinion from a lawyer practising in India that these loans were not time-barred in India and I note that H had not exhibited another contrary legal opinion.

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144 One [B] allegedly lent W a total of Rs 20,00,000 for which she signed two promissory notes. According to W, the equivalent amount was $40,000 based on the exchange rate at that time. The first promissory note[45] dated 19 January 2005 was for W to repay Rs 10,00,000 without interest on request with 3 months' notice. The second promissory note[46] dated 14 June 2013 was for W to repay Rs 10,00,000 also without interest on demand with 3 months' notice. I am not satisfied that W has proved the existence of these two loans as no documentary evidence was produced to show that W had in fact received the loan monies from [B]. No bank statements were exhibited by W. Furthermore, W's name as the purported borrower was not stated on both promissory notes and the signatures of the borrower on both promissory notes could not be deciphered.

145 W produced another a promissory note[47] dated 24 April 2014, which stated that W was to pay one [C] Rs 14,00,000 on demand together with interest at 18% per annum. According to W, the loan amounted to $27,668 based on the exchange rate at that time. I find that W has not proved the existence of this loan as no documentary evidence was produced to show that W had in fact received the loan money from [C]. Furthermore, this loan appears to be tainted with illegality and unenforceable because of the high interest rate charged on the loan amount.

146 Another promissory note[48] dated 5 October 2015 similar to that referred to at [145] above was exhibited, where W was stated as the named

[45] 3 ROA Part D at p 211.

[46] 3 ROA Part D at p 210.

[47] 3 ROA Part D at p 212

[48] 3 ROA Part D at p 213.

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borrower and W was to repay one [E] on demand Rs 5,00,000 together with interest at 18% per annum. According to W, the equivalent amount based on the exchange rate at that time was $9,881.00. I am again not satisfied that W has proved the existence of this loan as no documentary evidence was produced to show that W had in fact received the loan money from [E]. Furthermore, this loan appears to be tainted with illegality and unenforceable because of the high interest rate charged on the loan amount.

147 The last promissory note[49] referred to by W was dated 12 September 2016, where the named borrower W promised to pay one [K] on demand a sum of Rs 15,00,000 together with interest at 18% per annum. According to W, the equivalent amount based on the exchange rate at that time was $44,400. I think there might be an error here as the equivalent amount should be around $30,000. For the same reasons as stated in the preceding paragraph, I am not satisfied that W has proved the existence or enforceability of this loan.

148 Finally, W claimed that she had borrowed a sum of $40,000 from her mother.[50] W's mother filed an affidavit to verify that. As there was insufficient documentary evidence to prove that an amount of $40,000 was in fact received by W from her mother, I am not satisfied that W has established the existence of this loan.

149 As all of W's loans referred to above have not been proved, I will not factor them into the division of matrimonial assets.

[49] 3 ROA Part D at p 214.

[50] 3 ROA Part I at p 17.

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Loans allegedly taken by H

150 H said that he had borrowed a sum of $50,000 from his brother on 16 February 2022 to help him pay the mortgage loan instalments. H exhibited his bank statement to show his receipt of the loan amount of $50,000.[51] As this loan was not taken *during* the subsistence of the marriage for the parties' joint benefit or for the benefit of the son of the marriage, but was taken *after* the date of IJ, it is irrelevant for my consideration. I will therefore disregard this $50,000 loan in the division of matrimonial assets.

151 H next wanted the court to consider a judgment in default of appearance obtained by SB against him on 1 March 2022 for the sum of $2,034,430 plus interest of $3,564.99 and costs of $2,300, which add up to $2,040,294.99[52]. H wanted this judgment debt to be paid out of the proceeds of sale, if the court orders the Disputed Property to be sold and the net proceeds of sale divided.

152 There is a long history of events that led to this default judgment. I will first extract some brief facts from the judgment of the High Court, where SB first sought a determination of her legal interest in the Disputed Property in an Originating Summons ("OS") filed sometime in 2019 (and I note that this was filed soon *after* H filed for divorce on 12 December 2018). SB claimed that pursuant to a purported oral agreement between H and herself, H was to sell the Disputed Property once its price rose to $3,500,000 and the sale proceeds would be divided according to the financial contributions that each party made towards the purchase of the property and its related expenses.

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[51] 3 ROA Part E at pp 207 to 208.

[52] 3 ROA Part E at p 37.

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153 W however intervened in the OS to challenge the existence of the alleged oral agreement between SB and H, and to further dispute that SB had any beneficial interest in the Disputed Property on the basis that H had utilised the sale proceeds of the Flat and other matrimonial assets to fund the purchase of the property. W was obviously interested in this OS because the legal determination of any share that SB might have in the Disputed Property would immediately diminish the size of the pool of matrimonial assets available for division since W and H were undergoing divorce proceedings at that time.

154 The fact that H fully agreed with and supported SB's claim in the OS indicates to me that H's inclination was to reduce whatever share H might have in the Disputed Property to minimise W's share in the division of matrimonial assets. As between W and SB, H's actions consistently favoured benefiting SB rather than W, for reasons that will be apparent later when I consider the nature of the relationship between SB and H.

155 In the OS, SB claimed to have contributed (a) $30,000 towards part of the 15% down payment for the purchase of the Disputed Property; (b) $45,600 for stamp duty; (c) $22,000 for the renovations; (d) $9,900 for 11 years of insurance premiums; (e) $38,000 for 10 years of general maintenance; and (f) $717,600 for mortgage loan repayments based on an average of $5,200 loan repayment per month for the period from April 2008 to August 2019 (and ongoing). SB contended that their respective shares in the Disputed Property were 73% [SB]: 27% [H] as her total contribution amounted to $833,600[53] whereas H's total contribution amounted to only $310,000 (comprising $85,000 cash paid for the 5% option fee and deposit, his CPF contribution of $167,000 and cash of $58,000 for payment of part of the 15% down payment). In the OS,

[53] Computation error. Should have been $863,100.

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H agreed to this apportionment giving SB a significant share of 73% in the Disputed Property. H fully supported SB's case in every respect including the existence of the purported oral agreement in opposition to the position taken by the intervener W in the OS.

156 SB claimed to have regularly transferred approximately $7,000 to $10,000 monthly to H as SB had agreed to pay for the mortgage loan repayments and related expenses under the purported terms of the oral agreement. H did not dispute this. SB and H both argued that a common intention constructive trust arose at the time of the purchase of the Disputed Property in favour of SB, and H held SB's beneficial interest in the property on such a trust for her.

157 The High Court found that the alleged oral agreement existed and that there was a common intention between SB and H that their beneficial interest in the Disputed Property was to be apportioned according to their financial contributions to the property's purchase and related expenses. The High Court declared SB's and H's beneficial interest in the Disputed Property to be 73% and 27% respectively and further stated that H held SB's share in the property on a common intention constructive trust for her.

158 I quote from the judgment of the High Court, concerning the documentary evidence of the transfers of monies by SB to H, which is relevant for my consideration:

> 33 To support her case that the Alleged Oral Agreement exists, [SB] adduces extensive documentary evidence showing (a) the transfer of S$30,000 to [H] for the payment of the balance down payment, (b) the monthly transfers of sums (approximately S$7,000 to S$10,000) from her bank account to H's bank account and (c) the transfer of sums by [H] to OCBC Bank for mortgage loan repayments. These documents are mainly bank records. Having examined the evidence, I am satisfied that the moneys transferred by [SB] to [H] are ultimately then transferred to

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> OCBC Bank in service of the Housing Loan. I also find that the amounts transferred are also consistent with the amounts generally needed for property related expenses such as insurance premiums, property tax, and general upkeep.
>
> .....
>
> 41 I am also not persuaded by [W]'s submission that these monthly transfers were a gift or a loan by [SB] to [H]. [W] did not adduce any credible evidence to support this submission, so this is merely speculation on her part.

159 Dissatisfied with the decision of the High Court, W appealed to the Appellate Division of the High Court (the "AD"). At the appeal, W rejected the existence of the alleged oral agreement and generally denied SB's alleged contributions to the property's purchase and its related expenses. In respect of the $30,000 cash down payment which SB allegedly made, SB adduced bank statements showing that on 20 March 2008 she had made two transfers of $20,000 and $10,000 respectively from her bank account.

160 But W pointed out that this transfer took place only *after* the purchase of the Disputed Property was completed. Furthermore, there was no documentary evidence as to what the $30,000 allegedly transferred to H was used for and the recipient bank account for these transfers was not stated. There was no documentary evidence showing that SB paid $45,600 for the stamp duty and paid $22,000 for the renovation expenses for the Disputed Property.

161 The AD noted in its judgment that W could not seriously dispute that SB did make monthly transfers of money to H given that the said transfers were mostly supported by bank records. The AD was prepared to assume that SB did indeed transfer various sums of money to H, which H then applied to the monthly mortgage payments and other related expenses for the Disputed Property. The AD reasoned that SB and H would then not know what their

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respective shares in the Disputed Property would be at the time of purchase because their shares would supposedly be based on their respective contributions towards the purchase of the property and its related expenses, which could only be established at the time the property was sold at the agreed target price of $3.5m. The AD noted that there was evidence that SB had been *lending* significant sums of money to H. It was SB's and H's own evidence that she had *lent* him an aggregate sum of $480,000 in 2008 and 2009 to help H pay off the massive losses H incurred trading in his own account. The AD pointed out that SB was known to *lend* money to H. There was no ostensible benefit to her to do so but yet she did so. Since SB had *lent* $480,000 to H, the AD said that it was not inconceivable that she would also be willing to *lend* him another $833,600 without getting any proprietary interest in the Disputed Property in return.

162 The AD further observed:

> 36 In observing that one generally does not become a guarantor of a loan without the expectation of some concomitant benefit, the Judge had overlooked the **close relationship between Y and H** as well as the fact that **she was prepared to lend him a significant sum of $480,000 without getting anything in return**. (Emphasis in bold is mine.)
>
> 37 Furthermore, however close a friendship may be, we do not think it likely that parties would enter into a joint investment agreement (involving a large sum of money) without any idea as to what their anticipated shares would be at the time of the agreement. Y and H were not ignorant in financial matters. Common sense would suggest that at the point of agreement, they would at least have some idea as to their intended shares if the Alleged OA [Oral Agreement] was indeed genuine. It would be a separate matter if they had come to an agreement first, but subsequently varied their respective shares due to a change in financial circumstances. It is altogether difficult to believe that they simply had no idea of their respective shares at inception.

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163 The AD then turned to consider the central feature of the alleged oral agreement, which was that SB and H had supposedly agreed at the time of the property's purchase in March 2008 that it would be a joint investment. Unfortunately for SB and H, H had previously filed affidavits in the divorce proceedings with W which contradicted this central feature. In response to W's 2018 application seeking maintenance from H, H had filed an affidavit stating that "[i]n March 2008, *I* purchased [the Disputed Property] for $1.75 million".[54] There was no mention by H that this was in substance a joint purchase or investment with SB. H continued to make the same omission in his later affidavits during his divorce proceedings. Significantly, H's above-mentioned affidavit further indicated[55] that it was only *in* 2009, when H had allegedly suffered major trading losses, that he then made a proposal to SB about transferring his interest in the Disputed Property to her. The AD found that this undermined the central feature of the alleged oral agreement, which was that at *inception* in March 2008, SB and H had already formed an agreement to jointly invest in the property. The burden was on SB to establish the alleged oral agreement. SB relied on H's evidence but H's evidence given in the course of W's maintenance application severely undermined the existence of the alleged oral agreement.

164 The AD quoted H's affidavit of assets and means[56] filed some five months later dated 28 May 2019 which repeated a similar sequence of events and undermined again the central feature of the alleged oral agreement:

> **Purchase of [the Disputed Property]**

[54] 4 ROA Part B at p 13.

[55] 4 ROA Part B at p 14.

[56] 3 ROA Part I at pp 114 to 115.

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> (jj) *In 2008 I purchased [the Disputed Property].* As I did not have the requisite 20% for the down payment even after using my CPF I made an arrangement with a friend [SB] to leverage on her salary and get the loan. OCBC approved the loan for the purchase, with both of us as borrowers. …..
>
> (kk) *During the Asian Financial Crisis in early 2009* [SB] paid Philips Security $380,000.00 into my trading account RKR2616 at Phillips Futures to cover the losses. Then in late 2009 she paid another $150,000 into the same account. At this juncture I was indebted to [SB] in the sum of $530,000.00. …..
>
> (ll) *Pursuant to the debt owed, I proposed to [SB] that I transfer the property to her. However, she proposed that she would continue to pay the mortgage on the property and also assist me with other incidental payments.* Since January 2010 [SB] has transferred the sum of $10,000.00 into my POSB account to cover both the mortgage payments of $5,336.28 and other outgoings for the maintenance and upkeep of the property. *This was on the premise that eventually the property would belong to her. We agreed that these payments would reduce my share when the property is sold*. ….. [Emphasis added is in the original]

165 H clarified before the AD that the debt of $530,000 to SB for the alleged trading losses loans should have been $480,000 instead. H also stated[57] that SB made payments towards the discharge of the mortgage loan instalments from 2010 (not 2008) until December 2018. However, H prevaricated as to the actual total amount of accrued debt he allegedly still owed SB as can be seen in the affidavit H filed in the matrimonial proceedings as was observed by the AD at [49] of the judgment:

> 49 Thirdly, in para 13 of the A&M [Assets and Means] affidavit, H identified [SB] as a *creditor* for the amount of *$1,386,500*, and not $520,000 or $480,000. At the hearing before us, both [SB]'s counsel and H confirmed that [SB]'s *personal loans* to H (*ie*, the Alleged Trading Losses Loans) amounted to $480,000 in total, and certainly never exceeded $600,000 at any given time. H's statement in the A&M affidavit that [SB] was a *creditor for $1,386,500* was only explicable on the basis that H had treated all the moneys that [SB] had transferred to him as

[57] 3 ROA Part I at p 115.

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personal loans – including the $833,600 that he had used to pay for the Property's purchase and related expenses, as well as the initial figure of $520,000 that he had mentioned. In other words, the sum of $833,600 had not been transferred by [SB] to H pursuant to the Alleged OA, and did not entitle her to a beneficial interest in the Property. Indeed, H acknowledged before us that para 13 of his A&M affidavit contradicted his claim that [SB] had paid the sum of $833,600 towards the Property's purchase and related expenses in accordance with the Alleged OA.

50 We add that in para (mm) of the A&M affidavit, H said that his *total debt to [SB] amounted to $1,520,300*. Although he did not explain the difference between this figure and the figure of *$1,386,500* in para 13, this is not material for present purposes.

……

59 In our view, there was simply no such agreement when the Property was purchased. The fact that [SB] was already a guarantor was explicable on the basis that *[SB] was H's friend and was prepared to help him*, just as she helped him with the *Alleged Trading Losses Loans totalling $480,000*. It was not inconsistent with the fact that only H was to have any interest in the Property.

60 Whilst H's MSS affidavit and A&M affidavit do suggest that H and [SB] may have subsequently entered into an agreement in 2009 for Y to transfer money to H in exchange for a share of the Property, that is not the basis of [SB]'s case before us. …. In any case, the fact that H himself had considered [SB] as a creditor for $1,386,500 in the A&M affidavit militates against the suggestion that such an agreement existed even in 2009.

….

63 Ultimately, there are too many inconsistencies in the evidence of [SB] and H to support [SB]'s claim to any share in the Property.

Conclusion

64 In the premises, we allow W's appeal in respect of the Judge's decision as to [SB]'s share in the Property. We set aside the Judgment ([3] supra) in favour of [SB] and dismiss her claim to any beneficial interest in the Property. …..

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> 65 [SB] is not entirely without recourse in respect of the transfers of moneys that she had allegedly made to H in relation to the Property. She may still bring *a personal claim against H* to recover the sums *if these were loans made to him*. H is not without substantial assets since he remains the owner of the entire Property *(subject to any claim of W in the divorce proceedings)*.
>
> [emphasis added]

166 The AD allowed W's appeal in respect of the High Court's decision as to SB's 73% share in the Disputed Property. SB's claim to any beneficial interest in the property was dismissed by the AD. The AD observed that SB was not entirely without recourse in respect of the transfers of moneys in relation to the Disputed Property in that SB could still bring a personal claim against H to recover the sums *if these were loans* made to him.

167 Apparently, after the AD's decision, SB no longer made any further money transfers to H and H had to resort to taking a $50,000 loan (referred to at [150] above) from his brother on 16 February 2022 to help him pay the monthly mortgage payments, so that H would not be in default of the housing loan taken from OCBC.

168 Pursuant to these observations by the AD, SB filed a Writ of Summons against H[58], claiming that by an "oral contract" between SB and H, SB agreed to extend an interest-free loan to H for his purchase of the Disputed Property and pay for its outgoings. In the statement of claim[59], the loan breakdown was given as follows:

S/No	Reasons for the loan	Amount ($)

[58] 3 ROA Part E at p 38.

[59] 3 ROA Part E at p 40.

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1.	Payment for the down payment of the Disputed Property	$30,000
2.	Payment for the stamp duty for the purchase of the Disputed Property	$45,600
3.	Payment for the renovation of the Disputed Property	$22,000
4.	Various monies loaned to H from March 2008 to January 2022	$1,456,830
5.	Loans to H for his trading losses	$480,000
Total Amount Loaned		**$2,034,430**

169 I note that the AD did not make any specific finding that these were in fact loans extended by SB to H. The AD only said that SB could still bring a personal claim against H to recover the sums *if these were loans made to him*. The possibility remains that they could in fact be gifts or loans or a mixture of both. However, after the AD's decision, SB conveniently made a different assertion in the statement of claim of an oral loan contract. But was there *in fact* such a loan contract orally made and were all these money transfers *in fact* loans extended to H pursuant to such an oral loan contract?

170 H did not enter an appearance and conveniently allowed the judgment to go against him by default without challenging any aspect of the claim by SB. H could have easily entered an appearance and filed a defence to further challenge that a large part of these loans (even if such an oral loan contract can

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be proved to exist) would be time-barred by now or that part of the transfers of moneys were, in part, gifts to him in view of their very close relationship, if that was in truth the case. He did not. Up till now, he had taken no steps to set aside the default judgment. He was content to let the default judgment stand.

171 The failure of H to enter an appearance to defend the action by SB does not surprise me as it is consistent with his previous actions that he would try to diminish the pool of matrimonial assets for division to the detriment of W as much as possible and benefit SB in the process.

172 Loans extended to the family and used for family purposes in the course of a marriage that remain outstanding and enforceable have to be taken into account in the division of matrimonial assets. The default treatment is to subtract such outstanding loans from the pool of matrimonial assets prior to division, on the basis that these loans would have to be accounted for first (*ie* by having the loan treated as being discharged first) before the division takes place.

173 SB did not intervene in the ancillary hearing before me for the division of matrimonial assets to prove that she had extended a total of $2,034,430 in interest-free loans to H pursuant to an oral loan contract, and that these were all arms-length transactions with no part of any of the money transfers to him being gifts.

174 SB does not appear to have taken any enforcement action against H. It is unclear if SB is merely waiting for the division of matrimonial assets to be completed before enforcing on the default judgment against H personally or if there was no intention on her part to enforce the default judgment in the first

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place because it was simply to enable H to produce the default judgment in the ancillary proceedings to prove the existence of debts claimed by H.

175 I am further troubled by the fact that H has not been consistent on what exactly was the amount of outstanding principal debt (on the assumption for the moment that all of the money transfers by SB to H were in the nature of interest-free loans to him). There are now three figures: $1,386,500,[60] $1,520,300,[61] and finally, $2,034,430[62]. With these large discrepancies, the actual amount of the alleged outstanding debt owed to SB is called to question.

176 I recognise and accept that H had used part of the moneys transferred to H's bank account by SB to help him pay the monthly mortgage loan instalments for the Disputed Property from 2010 onwards until December 2018, and to assist him in paying for some of his daily expenses. However, I must also take into account the very close relationship between SY and H (which I shall examine in more detail below), such that I will not be surprised that part of those money transfers might not truly be loans but transfers to him for his use without any expectation on the part of both parties that the monies were to be returned to SB. SB never specified any dates for repayment of these allegedly interest-free loans. It was open ended. The purported loans do not appear to me to be arms-length transactions. I have some reservations if there was in fact any oral loan contract as alleged affirmatively by H and SB *after* they obtained the judgment from the AD.

[60] 3 ROA Part I at p 106.

[61] 3 ROA Part I at p 115.

[62] 3 ROA Part E at p 37.

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177 What is clear is that the AD had already ruled out that there was a purported oral agreement between H and SB where H was to sell the Disputed Property once its price rose to $3,500,000 and the sale proceeds would be divided according to the financial contributions that each party had made towards the purchase of the property and its related expenses (*ie* the first iteration). With the AD's decision, it leaves me to consider the remaining possibilities, *ie*, whether the money transfers were in fact loans, gifts or a mixture of both.

178 Between SB and H, a second iteration has now appeared that the transfers of monies from SB to H were pursuant to a purported oral loan contract between SB and H where SB agreed to extend an interest-free loan to H for his purchase of the Disputed Property and pay for its outgoings. Because of the very close relationship between H and SB, it is difficult to determine what was the true nature of these money transfers.

Nature of the relationship between H and SB

179 I will now examine the relationship between H and SB as this will have a bearing on whether the transfers of various sums of monies from SB to H during the period of the marriage are to be regarded as loans or gifts or a mixture of both because it affects how these transfers of monies (fully supported by bank documents) are to be treated in the division of matrimonial assets.

180 SB, who described herself as a single career lady, was referred to by the AD as a female friend of H. They had met as course mates in their Master of Business Administration programme in 1993 and the two were assigned to the same study group with three other course mates. SB referred to H as her mentor whom she learned a lot from. As a result of H’s guidance and tutelage,

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she received a masterclass in stakeholder management. She graduated in 1996 but H did not graduate with the class. SB kept in touch with H, who continued to mentor her.

181 Sometime at the end of 2007 (some 14 years after knowing each other), they allegedly decided to purchase a private property as an investment pursuant to an oral agreement. The Disputed Property was purchased in March 2008 but held in H's sole name. It is undisputed and the loan documentation established unequivocally that SB was a co-borrower with H of the housing loan from OCBC of $1,360,000 (*ie* 80% of the purchase price), with SB as the guarantor.

182 I asked myself the question: If she was not a very close friend of H at that time, would SB have stood as a guarantor in March 2008 and agreed to be a joint-borrower with H for the $1,360,000 OCBC housing loan for the Disputed Property, without any concomitant benefit and with all the attendant adverse legal and financial obligations if H defaulted in paying the housing loan?

183 I further note that in the Instrument of Mortgage for the Disputed Property, the registered addresses of H and SB were both the same[63] as at 17 March 2008. H was therefore even residing together with SB in the same flat as per their addresses stated in both their National Registration Identity Cards at that time. By then, SB and H would have known each other for 15 years.

184 I therefore draw the inference that SB and H were more than very close friends, which would then explain: (a) why such large transfers of monies were made to H by SB without any specification of repayment dates; (b) why the purported transfers were made without any interest charged; (c) why SB even

[63] 3 ROA Part D at pp 122 and 128.

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transferred an aggregate of $480,000 in 2008 and 2009 to help H pay for his trading losses; (e) why SB regularly transferred monies to H's bank account which exceeded the amount that H needed to pay for the mortgage instalments; (f) why SB was giving H financial support by helping him pay for his living expenses over and above the expenses strictly needed for the Disputed Property; (g) why SB was prepared to be so generous to H and be his financial benefactor in many respects; and (h) why SB never asked H for the return of the monies transferred until recently. Even if SB believed that she would eventually have some share in the Disputed Property (prior to the decision of the AD), it would not have explained why the total of her transfers far exceeded the amount of the mortgage loan instalments and expenses for the property, and why she was the one who was to bear the whole of the mortgage loan instalments without H bearing his fair share of it.

Amount allowed as debts of the marriage for division of matrimonial assets

185 I accept that SB had made substantial transfers of various sums of monies to H. However, I am not satisfied that these are arms-length loan transactions because of the very close relationship between H and SB, which started as early as in the 1990s and lasted for a considerable period of time.

186 I accept that H had used some of the monies he obtained from SB to help him pay for the mortgage loan instalments and other expenses in relation to the Disputed Property and to meet his daily expenses.

187 However, the burden is on H to prove that he had *in fact* borrowed monies from SB because he could not fulfil his financial obligations at that time. He must further establish (a) the true quantum of all the loans taken from SB; (b) that the loans were taken during the subsistence of the marriage: (c) that he

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had applied the loan monies for the benefit and the purposes of the marriage, *ie* for the joint benefit of H and W or for the benefit of S; (d) that the loans remain outstanding; and (e) that such loans are enforceable against him, and are not time-barred.

188 H has not shown to my satisfaction why he had not entered an appearance but allowed SB to enter a judgment in default of appearance against him. H has not shown to my satisfaction why he had not tried to raise the defence of time-bar for those purported debts that were extended to him more than six years before the date of the filing of the writ by SB. If they were in part gifts to him from SB in view of their very close relationship, then H ought to have defended the action additionally on that basis. Accordingly, H will have to bear the consequences of his own action for: (a) not acting in the interests of both parties to the marriage; and (b) not protecting and preserving the entire pool of matrimonial assets prior to its division, which would include the Disputed Property held in his sole name. H will not be allowed to act in such a way that is entirely in favour of the interest of a third party *ie* SB but to the detriment of W's interest and share in the pool of matrimonial assets.

189 In my view, it is fair and just in all the circumstances of this case to allow only the transfers of monies from SB to H during the period of six years preceding the date of the IJ to be taken into account and treated as debts of the marriage for the purpose of dividing the matrimonial assets between H and W. I have asked parties to verify the actual amounts that SB transferred to H as can be established from the bank records for the period 13 February 2013 to 13 February 2019. Parties have reverted that the amount is **$559,300**.

190 Accordingly, this amount of **$559,300** is to be first deducted from the net proceeds of sale of the Disputed Property and paid out to H before the

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balance is distributed in accordance with the overall ratio of **52% [H]:48% [W]** as set out at [137(c)] above.

191 Since H has acted consistently in favour of SB to diminish the pool of matrimonial assets to the detriment of W, H will bear the consequences himself. If SB were to enforce the default judgment she obtained against him, he will have to pay SB the full default judgment sum (unless the default judgment is set aside by H) out of his own assets. His assets will include his properties in India which have been determined to be outside the pool of matrimonial assets and his share of the pool of matrimonial assets, which will have the added contribution of $559,300 in his favour from the pool prior to division.

Maintenance for W after IJ

192 Although the parties' marriage had broken down irretrievably and they had separated for a number of years (even living in different countries during the period of separation prior to and post-IJ), this does not necessarily mean that H's obligation to maintain W after IJ disappears, if such maintenance is in fact justified to begin with.

193 It is not unusual for parties to be separated for several years before interim judgment is granted. Many (if not all) parties live separate lives after interim judgment is granted. If the only reason that no maintenance will be ordered is that parties have led separate and independent lives (as what H's counsel seems to be advocating), then no maintenance *per se* will ever be awarded to W after IJ even if the circumstances warrant it. That cannot be right.

194 H also submitted that W should be denied maintenance because she did not contribute to the family. First, I do not agree that W did not contribute to the family. I have set out her non-financial contributions at [99] and [100]. Second,

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the amount of maintenance for W is in any event not entirely dependent on or wholly correlated to the extent of her financial and non-financial contributions to the family during the period of the marriage. The factors for ascertaining the amount of maintenance are also not identical with the factors for determining the division of matrimonial assets.

195 Another reason proffered by H for denying maintenance for W is that W had denied H access to S. This is again not a valid basis in law to deny maintenance for W.

196 In any event, it is clear to me that W had contributed significantly to the marriage by looking after and bringing up S almost singlehandedly until he became an adult. I also do not believe that W had denied H access to S. For families living in different jurisdictions during the marriage, one parent will likely have to fly to where the children are to see them. Or the children will have to fly over to visit the parent living in another jurisdiction. However, for young children, this may be difficult if the other parent is not willing to accompany the child and fly over to the country where the other parent resides. In this case, there was nothing to prevent H from flying to India to see S. There is no evidence to show that W had denied H access to see S if he flew to India. In fact, W invited H several times to go to India to perform the very important "Poonul" ceremony for S in India. H never showed up. It was H who distanced himself from S.

197 H is presently 64 years old and in bad health. H is unemployed since 2009 but is "trading for friends and relatives", without disclosing who they are. H apparently also trades in the shares market for himself. But there is no certainty of a regular income from trading. There may even be losses. In H's case, he suffered substantial losses of some $480,000 from trading. While it may

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be possible for H to derive some rental income from his properties in India, both parties however did not provide any information on what that might be. The bank statements do show that H has been relying on SB for financial support for many years. SB has been regularly transferring fairly large sums of money to H to help pay for the housing loan and to assist H in meeting his living expenses.

198 From the evidence, it does *not* appear to me that H has enough financial means to pay maintenance for W. For several years, H has been relying heavily on SB, his very close friend, for financial support.

199 As for W, she is presently 63 years of age. W is a graduate and holds a master's degree. She had been a relief teacher and once held a high position in an airline.

200 W claims to have resultant disabilities arising from a Holstein-Lewis fracture of the shaft of humerus with radial nerve neuropraxia, as evidenced by the Discharge Summary on 7 November 2007.[64] W further claims to be seeking psychiatric help owing to the breakdown of the marriage and H's abusive behaviour.[65]

201 The District Judge found that W's claims for maintenance were premised on flimsy grounds and simply untenable in law. W's alleged medical conditions and claims were unsubstantiated and non-existent. Her desire to return to Singapore was speculative and arbitrary. She failed to show any need for maintenance for herself, much less maintenance in Singapore (for which she

[64] 3 ROA Part D at p 85.

[65] 3 ROA Part N at pp 134 to 135.

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included rental expenses in Singapore) when she had been living in India all this time.

202 At the appeal, W has asked for a lump sum maintenance based on $1,500 per month for 3 years or $54,000 to be taken from H's share of the Disputed Property.

203 H submits that given W's tertiary qualifications, she has the ability to work and the capacity to maintain herself. I do not accept H's submission because she has not been working for many years. At the age of 63, it will be unlikely that W can find employment in India even with her qualifications as she has left the workforce many years ago. Similarly, H had been unemployed for many years since 2009. At his age of 64 years old and given his poor health, he too faces problems in getting employment in Singapore. H in fact relies on SB to support him financially. Under these circumstances, H is in no position to pay maintenance to W.

204 In my view, it will be fair and equitable that no maintenance is ordered for W as she will have more than sufficient money to maintain herself in India after her share of the net proceeds of sale of the Disputed Property is distributed to her. Of course, she will have to spend wisely and prudently after receiving her share of the net proceeds of sale, which will be very substantial.

205 Having regard to all the relevant facts and circumstances of the case, the particular circumstances of each of the parties and the non-exhaustive matters specifically referred to in s 114 of the Charter (including the assets each party will receive after the division of matrimonial assets), I find that it is just and equitable that no order be made for the payment of maintenance by H to W.

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206 For the reasons stated above, I dismiss W's appeal for maintenance for both the period before and after the date of IJ. I uphold the District Judge's decision not to order any maintenance for W.

Backdated maintenance for S

207 W's counsel submitted that H had neglected and failed to maintain S. H refused to contact both W and S. Following his birth in India, S resided there (save for some short visits to Singapore) until 2017, when he came to Singapore to pursue a post-graduate course at TUM Asia on a scholarship.

208 The District Judge considered that the amount of $161,949 sought by W for backdated maintenance for S from the ages of 5 to 21 years old (*ie* 16 years in total) was an arbitrary amount. The claim for backdated maintenance was unsubstantiated and without legal basis. The District Judge noted that it was undisputed that W was the primary caregiver of S and that she had single-handedly brought him up without the involvement of H financially and emotionally. However, in the course of her single parenting and support of S, W made no claim for maintenance for S. The District Judge considered that it would not now be equitable for her to do so. The fact that maintenance was not paid nor sought prior to December 2018 could mean that W was self-sufficient or resourceful and did not require the assistance nor support of H to maintain the child.

209 I dismiss W's appeal for backdated maintenance for S for the period before he reached the age of 21 years for different reasons. By the time IJ was granted, S was already an adult. W's parents, in particular W's father, supported W financially during the period of the marriage whilst she was bringing up S in India. I regard the financial support from W's father as gifts during the marriage

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to W. As the financial support stretched over 16 years, I accept that these parental gifts would amount to a substantial amount if added up. These gifts belonged exclusively to W as they were non-matrimonial assets (see s 112(10) of the Charter). But W nevertheless applied those gifts for her own and S's maintenance in the absence of any financial support from H. These parental gifts, when injected into the marriage by W as payment for expenses of the family, are to be regarded as W's share of her financial contributions to the family, for which I have already taken into account by giving W an uplift of 10% in the ratio of the financial contributions in her favour. Based on an equal weightage, this uplift essentially will translate into an uplift of 5% in the overall ratio in her favour for the purpose of the division of matrimonial assets. With these financial contributions by W (*ie* by using the gifts from her father towards the family and S's expenses), it would mean that H had saved more in cash from his income as H did not need to expend his monies to support his family in India. His savings in cash accumulated in Singapore during the course of the marriage would have grown faster. H was thus able to accumulate more matrimonial assets in his own name during the period of the marriage, which he had used to purchase the Disputed Property during the subsistence of the marriage. These matrimonial assets accumulated by H will then become available for eventual division upon divorce. But W will gain a bigger share of the matrimonial assets through the increase or uplift of 10% in W's portion of the ratio of the parties' financial contributions. Thus, through the eventual increase in her share of the matrimonial assets, W has been indirectly compensated for the use of the exclusive gifts from her father towards the family expenses during the entire period of the marriage prior to IJ. As such, any backdated maintenance ordered either for herself or for S for the period prior to IJ on top of the increase in her share of the matrimonial assets will amount to an unjust double counting in her

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favour. With the 10% uplift that I have given to W, there is nothing more for W to claim from H for backdated maintenance for S.

Conclusion

210 I allow W's appeal in part and set aside the District Judge's order dividing the matrimonial assets on the basis that parties are to retain assets in their own names.

211 The matrimonial assets in the pool shall include the Disputed Property held in the name of H. As no party is in a financial position to purchase the other party's share in the Disputed Property, the property is to be sold within four months with both parties having joint conduct of the sale. The net sale proceeds are to be dealt with in accordance with [137], [141] and [190] above, which incorporates the division of the other assets in the matrimonial pool and takes into account a portion of the transfers of money by SB to H claimed to be in the nature of debts owed by H to SB that I have allowed to be factored into the division of assets. Parties will have liberty to apply to the court if there are any difficulties with the joint sale of the Disputed Property.

212 W's appeal against the District Judge's orders in relation to not ordering maintenance for W and back-dated maintenance for S are upheld.

213 H is to refund to his own CPF Ordinary Account (if applicable) from his own share of the matrimonial assets.

214 Although H is personally liable to SB on the default judgment sum for which he might choose to pay SB out of his own assets and the monies he will eventually receive from the division of assets, W is not liable to SB in any way because she never was a co-defendant in the suit brought by SB against H for

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which SB obtained the default judgment. The alleged loans were provided by SB directly to H. W never borrowed anything from SB.

215 Under s 112(2)(f) of the Charter, the court is to have regard to "any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party". I note that H had the benefit of the use of the entire Disputed Property both before and after IJ. Subsequent to IJ, H continued to stay in the Disputed Property without H paying to W any proportionate part in the notional rent for the property of which W has a share. If H had made payment of the mortgage loan after IJ from monies he personally earned and accumulated after IJ to reduce the principal amount of the loan (of which there is no evidence provided), H may be able to argue that he has helped to increase the net asset value of the Disputed Property after IJ for which he should be compensated in the division of matrimonial assets. In this case, there is nothing inequitable because if he did not stay in the Disputed Property but had vacated it and rented it out entirely, the rent obtained for the benefit of both parties could have easily paid for the monthly mortgage of about $5,000 to $6,000 per month. Since he chose to stay in the Disputed Property after IJ, it would be fair to regard his continued payment (if he had indeed paid for the monthly instalments) towards the mortgage loan instalment after IJ as the notional rent he would have to pay to stay in the Disputed Property following IJ.

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216 Finally, I will hear parties on costs, if these cannot be agreed.

Chan Seng Onn
Senior Judge

Seenivasan Lalita and Lim Ying Ying (M/s Virginia Quek Lalita & Partners) for the appellant;
Gurcharanjit Singh Hundal and Jayagobi s/o Jayaram (M/s Grays LLC) for the respondent.

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ITEM OF MATRIMONIAL ASSET (As at date of IJ (ie. 13 Feb 2019)	NET ASSET VALUE ON DISTRIBUTION DATE	HUSBAND TAKES	HUSBAND OWES WIFE $	WIFE TAKES	WIFE OWES HUSBAND $
			$ -		$ -
Wife's South Indian Bank Savings Account as at 12 April 2019 (see 3 ROA Part I at p 13)	$397.67		$ -	$397.67	$206.79
Wife's State Bank of India Savings Account as at 9 May 2019 (see 3 ROA Part I at p 13)	$649.76		$ -	$649.76	$337.88
Wife's CPF as at 14 May 2019 (see 3 ROA Part I at p 13)	$4,275.94		$ -	$4,275.94	$2,223.49
			$ -		
Husband's CPF as at 21 May 2019 (see 3 ROA Part I at p 187)	$38,883.53	$38,883.53	$18,664.09		
Husband's POSB Saving Account as at 30 Dec 2018 (see 3 ROA Part I at p 105) ($24,478.20 22 July 2022)	$5,272.00	$5,272.00	$2,530.56		
Husband's POSB Multipler Account as at 30 Dec 2018 (see 3 ROA Part I at p 105)	$1,000.09	$1,000.09	$480.04		
AUD 4,894.21 as at 30 Dec 2018; $1AUD = $0.9641 as at 13 Feb 2019 (see 3 ROA Part I at p 105)	$4,718.51	$4,718.51	$2,264.88		
USD 119.98 as at 30 Dec 2018; S1 SGD = US$0.7354 as at 13 Feb 2019 (see 3 ROA Part I at p 105)	$163.15	$163.15	$78.31		
Manulife Investment as at 21 Nov 2019 (see 3 ROA Part K at 18)	$15,686.27	$15,686.72	$7,529.63		
Punjab National Bank Account as at 24 December 2010 (see 3 ROA Part E at p 13)	$1,862.22	$1,862.22	$893.87		
Scrap Value of Toyota Car as at 25 July 2022 (see 3 ROA part E at p 154)	$1,788.00	$1,788.00	$858.24		
BMW Sedan 5 Series Car scrapped in May 2019 (see 3 ROA Part M at p 27)	$53,084.00	$53,084.00	$25,480.32		
Singtel 750 shares at $3.28 as at 5 Nov 2019. (H says $1,500) Today's price is $2.36 = $1770 (see 3 ROA Part K at p 12)	$1,770.00	$1,770.00	$849.60		
			$ -		
			$ -		
			$ -		
GRAND TOTAL	**$ 129,551.14**	**$124,228.22**	**$ 59,629.55**	**$ 5,323.37**	**$2,768.15**
NETTING OFF: TO SETTLE THE DISTRIBUTION, HUSBAND HAS TO PAY WIFE CASH OF				**$ 56,861.39**	
ULTIMATELY, HUSBAND RECEIVES A TOTAL SHARE OF		**$ 67,366.83**			
ULTIMATELY, WIFE RECEIVES A TOTAL SHARE OF		**$ 62,184.76**			
GRAND TOTAL IS		**$129,551.59**			

VERY IMPORTANT: DO NOT INSERT ANY DATA INTO OR ERASE THE YELLOW CELLS

NET AMOUNT, WHETHER NEGATIVE OR POSITIVE WILL BE SHARED IN THE SAME RATIO.

Husband's % =	52.00
Wife's % =	48.00

Plaintiff

Defendant

	Year	Purported Loan Amounts taken from SB in each year	Total Mortgage payments per year	Property Tax paid for Disputed Property		
	2008	$ 79,000.00	$ 46,600.00	$ 819.00		
	2009	$ 120,000.00	$ 62,400.00	$ 1,092.00		
	2010	$ 120,000.00	$ 62,400.00	$ 1,092.00		
	2011	$ 120,000.00	$ 62,400.00	$ 1,092.00		**Per W with 6 years' limitation from bank records**
	2012	$ 120,100.00	$ 62,400.00	$ 1,092.00		**13 Feb 2013 to 13 Feb 2019**
	2013	$ 120,000.00	$ 67,200.00	$ 1,092.00		94,000.00
	2014	$ 116,000.00	$ 60,415.00	$ 1,092.00		100,800.00
	2015	$ 109,500.00	$ 62,524.60	$ 1,092.00		94,000.00
	2016	$ 100,800.00	$ 63,135.00	$ 1,092.00		90,000.00
	2017	$ 100,000.00	$ 62,500.00	$ 1,092.00		87,000.00
	2018	$ 75,500.00	$ 60,000.00	$ 1,092.00		72,500.00
	2019	$ 85,000.00	$ 60,000.00	$ 1,092.00		21,000.00
	2020	$ 85,900.00	$ 60,000.00	$ 1,092.00		
	2021	$ 90,030.00	$ 60,000.00	$ 1,092.00	**TOTAL**	**559,300.00**
	2022	$ 15,000.00	$ 10,000.00	$ 182.00		
TOTAL MONTHLY TRANSFERS		**$ 1,456,830.00**	**$ 861,974.60**	**$ 15,197.00**		
Purported Contribution to Downpayment		$ 30,000.00				
Purported payment for Stamp Duty		$ 45,600.00				
Purported payment for renovations to the Disputed Property		$ 22,000.00				
Purported Loan to H for trading losses		$ 480,000.00				
Total ostensibly owed to SB. See Default Judgment Sum.		**$ 2,034,430.00**				