

Li Kong v Cheng Lai Nar
[2005] SGHC 164

Case Number : D 600357/2003, RAS 720117/2004

Decision Date : 01 September 2005

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Petitioner in person; Ellen Lee (Ellen Lee and Co) for the respondent

Parties : Li Kong — Cheng Lai Nar

Family Law – Maintenance – Wife and children -Whether maintenance ordered too high – Whether external circumstances affecting income should correspondingly affect quantum of maintenance

Family Law – Matrimonial assets – Division – Tracing of direct financial contribution to assets

1 September 2005

Judgment reserved.

Judith Prakash J:

Introduction

1 This is an appeal by the husband against the decision of District Judge Jocelyn Ong relating to the ancillary matters arising from the divorce proceedings between the parties.

2 The orders made by the judge, against which the husband appealed, were as follows:

(a) that the husband was to pay the wife \$950 per month as maintenance for their daughter and \$750 a month as maintenance for their son with effect from 18 November 2004;

(b) that the husband was to pay the wife a lump sum maintenance of \$12,000; and

(c) that the husband was to transfer his interest in and title to the flat known as Block 545, Bukit Panjang Ring Road, #17-883, Singapore ("the Bukit Panjang flat") to the wife free of consideration and, to achieve this, was to refund his own account with the Central Provident Fund Board ("CPF") with the principal moneys (and the interest that would have accrued thereon) that he had withdrawn from his CPF account to pay for the Bukit Panjang flat.

3 In his notice of appeal, the husband asked for the following orders to be made in place of those granted by the judge:

(a) that the Bukit Panjang flat be either transferred to the husband upon him paying the wife 10% of the net sale proceeds or sold in the market with the husband being entitled to 90% of the net sale proceeds;

(b) that the husband be entitled to 80% of all other matrimonial assets;

(c) that the monthly maintenance for the children and the wife be reduced to \$500; and

(d) that the wife reimburse the husband with the sum of \$7,200 for certain shares sold by the wife.

At the hearing of the appeal which he conducted in person, the husband moderated his claims in respect of the Bukit Panjang flat and the other matrimonial assets but he contended that the wife had more assets in her possession than the judge had found and that, in any case, the order that the flat be transferred to her free of consideration had to be set aside.

Background

4 Both the husband and wife grew up in Hong Kong. They met shortly after the wife started working for Juki (Hong Kong) Ltd ("Juki") in July 1987 at a salary of HK\$3,500 per month. At that time, the husband was also employed by Juki. He was a salesman earning HK\$4,500 a month. The wife's monthly salary was increased to HK\$3,900 with effect from 1 October 1987 and, on her being promoted in August 1988, her salary increased again to HK\$7,110 per month. The parties married in Hong Kong in May 1989. By then, the husband had left Juki and was working for an outfit called Y & H Enterprise Ltd which allegedly paid him HK\$18,000 per month. The husband did not produce any evidence of this assertion and the wife, relying on the income tax returns he filed, maintained that his salary from Y & H Enterprise Ltd during the period January 1989 to April 1991 did not exceed HK\$6,500 per month. In May 1990, the wife left Juki and found a new job which paid her HK\$8,300 per month.

5 The parties' first child, a daughter, was born in November 1989. The husband's mother helped to look after her while the parties were at work and the husband paid her HK\$3,300 every month for her baby-sitting services. According to the wife, that was the husband's only contribution to the family expenses at that time. She was the one who paid the household expenses and bought milk powder and other necessities for the baby. In addition, the wife claimed that she had been the sole person servicing the housing loan of HK\$6,000 per month.

6 During their courtship, the parties had opened a joint bank account. Both contributed to this account but the wife maintained that she was the main contributor as her earnings were higher than those of the husband. In September 1989, they bought an apartment for HK\$500,000 ("the Hong Kong flat"). They paid a deposit of HK\$100,000 from their savings and borrowed the remaining HK\$400,000 on the security of the flat. The Hong Kong flat was sold in March 1991 after the parties decided to migrate to Singapore. The sale price was HK\$663,000 and, after deduction of the outstanding loan and the legal costs, the net proceeds received by the parties were HK\$274,816.53.

7 The parties arrived here on 14 April 1991. It is more or less common ground that they brought with them about \$100,000 derived from the proceeds of sale of the Hong Kong flat and the balance of their savings in the Hong Kong joint account. In May 1991, the wife started work as an assistant merchandiser at a salary of \$1,000 per month. Towards the end of the same month, the husband accepted an offer from Asia Radio Singapore Pte Ltd ("Asia Radio") to work for it as a salesman with a salary of \$1,200 a month and a transport allowance of \$450 per month. During the probation period, he was also paid a monthly commission of \$300. It was a condition of his employment that he should have his own motor car.

8 In September 1991, the couple bought a flat in Yishun Ring Road ("the Yishun flat"). It cost them \$51,500. They paid cash of \$27,333 and financed the balance by way of a loan from the Housing and Development Board ("HDB"). The monthly repayment was deducted from the husband's CPF account.

9 In August 1992, the husband's mother, who had been looking after their daughter in Hong Kong, brought the child to Singapore for the couple to look after. The wife resigned from her job and became a full-time homemaker. From then on, the husband was the sole income earner and he met all

the family's expenses from his earnings. This situation continued up to the time the marriage broke down in early 2003.

10 While living in the Yishun flat, the parties applied directly to the HDB for a five-room flat. Eventually, they were allocated the Bukit Panjang flat. They completed the purchase of this flat on 1 February 1998. The husband paid the deposit of \$18,602 and the initial capital payment of \$20,102. The wife contributed \$1,757 from her CPF account and the parties took a loan from the HDB for the balance of the purchase price. This loan was serviced by the husband from his CPF contributions.

11 In June 1998, the parties sold the Yishun flat at a price of \$150,000. From the sale proceeds, the sum of \$32,312.87 was repaid into the husband's CPF account and a further \$112,687.13 was paid into the parties' joint account with OCBC Bank ("the OCBC joint account"). The husband withdrew the sums of \$50,653 and \$62,800 from the OCBC joint account in early July 1998. These withdrawals later became one of the points of contention between the parties.

12 Apart from the dispute over their respective shares in the Bukit Panjang flat, the parties also laid conflicting claims to certain shares and savings. As regards the shares, sometime in 1993, the wife opened a share trading account with Philips Securities Pte Ltd ("Philips Securities"). This was done at the request of the husband. The wife asserted that the husband used her trading account to trade and that, at his insistence, savings of about \$26,000 from the parties' joint account were put into a new bank account (see [13(h)] below) and used for share investment. The husband said that he had stopped using the wife's trading account in 1997 and thereafter, the wife continued to trade in shares without his prior knowledge and consent. In 1998, there were ten counters of CLOB shares and two lots of Singapore Bus Service ("SBS") shares in the wife's name. The latter were subsequently sold. The husband claimed that these shares actually belonged to his father, the sale was wrongful and the wife should repay him the price of the shares. He also wanted the wife to pay him part of the value of other shares acquired by her.

13 During the marriage, the parties held various bank accounts. According to the wife, three joint bank accounts were established when the parties arrived in Singapore in 1991. These were:

- (a) account no 149-001968-060 with the Hongkong & Shanghai Banking Corporation Ltd ("the HSBC account");
- (b) the OCBC joint account (account no 530-5-022195); and
- (c) account no 030-27533-0 with the Post Office Savings Bank Ltd ("the first POSB joint account").

Subsequently, there were the following additional accounts:

- (d) the husband's sole account with the Post Office Savings Bank Ltd, account no 027-22745-7 ("the 1994 POSB account");
- (e) the parties' second joint account with the Post Office Savings Bank Ltd, account no 030-33189-3 ("the second POSB joint account");
- (f) the wife's sole account with the Post Office Savings Bank Ltd, account no 010-57559-1 ("the wife's POSB account");
- (g) the wife's sole account with United Overseas Bank Ltd, account no 112-132-337-6 ("the

wife's UOB account");

(h) the wife's sole account with the Post Office Savings Bank Ltd, account no 049-40319-4 ("the share trading account") which the wife established to facilitate the parties' dealings in shares; and

(i) the husband's sole account with DBS Bank, account no 006-010857-1 ("the husband's DBS account").

14 Finally, a short account of the husband's employment history in Singapore is pertinent. The husband left Asia Radio in October 1991 and then joined a company called Plantek International Pte Ltd where he remained until September 1994. In that month, he joined Kosmo Poultry Industries Pte Ltd ("Kosmo"). He stayed there for over three years until January 1998 when he joined Hup Heng Poultry Industries Pte Ltd ("Hup Heng"). According to the husband, his position with Hup Heng was that of a sales executive. The wife, however, alleged that in July 1998, the husband had started a business venture with Hup Heng supplying frozen poultry and meat to hawkers in the wet market and earned commissions for his sales. She asserted that the husband was in partnership with Hup Heng and that when the Comptroller of Income Tax queried him in the year 2000 on his claims for expenditure incurred in respect of the commissions earned, he procured Hup Heng's help to support his lie that he was under its employment and drawing a monthly salary from it. The wife also exhibited a number of receipts on the letterhead of Hup Heng that the husband had issued when he collected cash from various customers. This was intended as evidence that the husband operated "a very lucrative business in the name of Hup Heng".

15 The husband denied running his own business selling poultry. He maintained that all collections made by him were received on account of Hup Heng and that he had accounted to Hup Heng for all these moneys. He also adduced copies of bank-in slips showing deposits that he had made into Hup Heng's account after collecting money for it.

The decision below

16 In relation to the Bukit Panjang flat, the judge noted that the husband had paid \$20,102 in cash for it and that he claimed to have spent \$76,450 on renovations and \$561,980 on household expenses from November 1989 to August 2003. She disregarded the household expenses as the sum was not substantiated by evidence and, in any case, as she rightly noted, household expenses cannot be factored into the equation when computing the parties' direct financial contributions towards the purchase of a matrimonial flat. The wife had pointed out that the invoices issued for the various renovation works done showed only \$40,523.40 had been spent, but the judge accepted that at least \$50,693 (the amount which had been withdrawn from the OCBC joint account in July 1998) had been used to renovate and furnish the matrimonial flat. She also attributed the cash portion of \$20,102 to the parties equally. The judge's attitude was that the \$50,693, which was a sum derived for the proceeds of sale of the Yishun flat, had to be credited jointly to the parties because the Yishun flat had been purchased with their joint savings from Hong Kong. She took a similar view on the sum of \$20,102. Accordingly, the judge found that the direct financial contributions of the parties to the purchase of the Bukit Panjang flat were as follows:

		<u>husband</u>	<u>wife</u>
(a)	CPF	\$81,782.68	\$1,757
(b)	Cash	\$10,051	\$10,051

(c)	Renovations	\$25,346.50	\$25,346.50
	Total	\$117,180.18 (76%)	\$37,154.50 (24%)

17 The judge took the then current value of the flat (end October 2004) as being \$285,800 based on the average of the two values submitted by the parties. As the loan amount then outstanding was \$125,954.85, the net value of the flat would be in the region of \$160,000. Taking account of the length of the marriage, the wife's contributions to the care of the family, her greater financial contributions to the family in the initial years of the marriage and the children's need for a roof over their heads, the judge considered an equal distribution of the net value of the flat to be fair. She noted that this would mean that each party would in effect receive \$80,000. The wife, however, wanted the flat awarded to her free of consideration and the judge concluded that this would be equitable because of two important factors – the moneys that the husband had not accounted for and the wife's claim on the husband's other assets.

18 The judge found that the husband had not accounted for two sums. These were the sum of \$62,800 that he had withdrawn from the joint OCBC account on 9 July 1998 and the sum of \$41,894.93 being proceeds from share trading that the judge found that the husband had kept for himself. These two sums totalled \$104,694.93 and the judge awarded the wife half of this, ie, \$52,347.50.

19 The wife had asserted that the husband was more than just a sales manager with Hup Heng. In support of her contention, she exhibited a number of letters that the husband had written to his parents in Hong Kong. The judge found that these letters revealed his relationship with Hup Heng and gave an idea of his income and how he managed it. They showed that he had been under-declaring his income. They also lent credence to the wife's allegation that the husband had cash savings that he preferred to keep at home. The judge rejected the husband's explanation that the letters were "white lies meant only for comfort" in order to reassure his family that he was doing well in Singapore. In her judgment, it was clear that the husband had more assets than he had disclosed to the court. The wife wanted a share of these other assets but due to his failure to make full and frank disclosure it was impossible to say what these were worth. In these circumstances, the judge thought it would be fair and equitable to award the whole of the Bukit Panjang flat to the wife and to make no order on her claim on these other assets.

20 The husband had asked to be awarded 80% of all other matrimonial assets. He wanted a share in the wife's assets which he itemised as follows:

- (a) Shares worth \$47,445.68.
- (b) The wife's UOB account with a balance of \$1,951.25.
- (c) The wife's POSB account with a balance of \$638.10.
- (d) Jewellery worth \$5,000.
- (e) CPF moneys amounting to \$2,887.20.

21 The judge found that there was no evidence of any jewellery forming part of the matrimonial assets and that the wife's POSB account was the one into which the monthly maintenance ordered against the husband was deposited. Thus, that account could not be treated as part of the matrimonial assets. As regards the shares, the judge accepted the wife's evidence that she had

traded in shares on behalf of her parents and sister and that in November 2002 she had returned all the shares that were held on their behalf to them. The only shares available for division were 2,000 shares held in the husband's name and 6,000 shares held in the wife's name.

22 The judge then found that the other matrimonial assets held by both parties were as follows:

	<u>Husband</u>	<u>Wife</u>
CLOB shares	\$4,695.18	\$2,762.52
		\$6,122.43
CPF moneys	\$36,512.38	\$2,887.20
Bank accounts	\$1,919.95	\$1,951.25
Insurance policies	\$13,785.00	\$5,596.08
Total	\$56,912.51	\$19,231.99

As the husband had 75% of the matrimonial assets and the wife 25% of these assets she made no order on the husband's claim to the other matrimonial assets.

23 On maintenance, the judge moderated the expenses for the two children claimed by the wife and considered that the sum of \$950 a month for the daughter and \$750 for the son would be adequate. She did not accept the husband's position that he had a meagre income of \$2,000 a month. She considered that his income must be much more than that because if his income when he was working for Kosmo, which was the company he worked for immediately prior to working for Hup Heng, was approximately \$4,000 a month, his income must have increased substantially by the date of the hearing.

24 As for the wife, the judge awarded her lump sum maintenance of \$12,000 being \$1,000 a month for 12 months as she believed that the wife would have to go back to work eventually to meet the expenses of the family and it was only reasonable to give her some time to get back into the workforce.

25 Finally, in regard to the SBS shares, the judge did not accept the husband's contention that these shares actually belonged to his father and that he should be reimbursed the purchase money for these shares. The judge accepted the wife's evidence that she had sold these shares in 1998 when the husband had not given her maintenance and had used the \$5,600 so raised for the family's expenses.

The appeal

Division of assets

26 First, a general observation. It is well known that an appellate court is loath to interfere with the findings of fact of a trial court where the judge has had the benefit of seeing the witnesses and assessing the weight of their evidence when given in person and subjected to the test of cross-examination. It is also well known that this reluctance of the appellate court does not apply when the lower court has made its findings based on inferences drawn from documents presented to it and not from the witnesses in person. In such a situation, the appellate court is in as good a position as the

trial court to assess the weight of the evidence and draw the necessary inferences. One example of the latter type of situation is, generally, a decision made on the ancillary matters in a divorce proceeding. This is because ancillary matters are usually decided on the basis of the parties' affidavits and the documents they have been able to attach to those affidavits. Very rarely is there cross-examination. In the present instance, there was no cross-examination. Thus, I am in as good a position as the judge was in relation to the assessment of the evidence.

27 As stated above, at the hearing of the appeal, the husband no longer challenged the 50-50 division of the Bukit Panjang flat. He was more concerned to show that the order that he transfer the whole of the flat to the wife free of consideration was an unfair order and based on flawed findings made by the judge. He argued that she had taken into account irrelevant evidence tendered by the wife and had failed to take sufficient account of evidence tendered by the husband when the judge decided on two factual issues, to wit, first, the moneys that the husband had not accounted for and second, the husband's claim on the wife's other assets.

28 Dealing first with the amount of savings that the parties had brought from Hong Kong, the husband calculated that of the \$100,000 (HK\$450,000), \$46,270 (HK\$208,216.53) came from the net sale proceeds of the Hong Kong flat. (I should point out here that both the husband and wife used the figure of HK\$208,216.53 as the net sale proceeds but that it became clear in the course of the appeal (and was accepted by both) that this figure had wrongly excluded the deposit which the parties had been paid on the sale of that flat and that therefore the net sale proceeds were in fact HK\$274,516.53 (\$61,016)). The husband then asked, apart from the money received from the Hong Kong flat, who was to be credited for the contribution of the balance.

29 The husband's answer was that although during the period 1989 to 1991 the wife had earned more than he had, he had started work a year before her and that until her promotion in August 1988, he had earned more than she. He also renewed his contention that he had earned a total of HK\$504,000 during the period from January 1989 to April 1991, when he worked with Y & H Enterprise Ltd. He said although his declared income was HK\$6,500 per month, that was only his basic salary and he had, additionally, earned sales commission amounting to about HK\$6,000 to HK\$12,000 a month. It was the undeclared commission income solely contributed by him that accounted for the remaining money brought from Hong Kong to Singapore. The judge did not deal with this assertion directly but appears to have accepted the wife's argument that during the early years of the marriage, she had drawn a higher salary than the husband.

30 There was no evidence apart from the husband's bare assertion that the husband had earned HK\$504,000 over the relevant period. Although the wife had in the course of the proceedings below challenged the husband to substantiate the HK\$504,000 figure, he did not produce any documents to support it. More importantly, he had filed documents with the income tax authorities in Hong Kong showing a different state of affairs to be the case. The court cannot act without evidence. There was nothing before the judge and nothing before me to show that the husband's earnings during the relevant period were other than as he had himself declared them to be to the authorities.

31 The husband also asserted that of the HK\$100,000 deposit for the Hong Kong flat, HK\$50,000, which he referred to as the "confirmation deposit", had come entirely from his savings while the remaining HK\$50,000 had come from the parties' joint savings account. The husband was willing to agree, for simplicity, that there were equal contributions of HK\$25,000 from each party to these joint savings.

32 As regards the confirmation deposit, the position taken by the husband in his second affidavit was that this had been derived from the HK\$39,000 he had received when he sold some shares in a

company called Hysan Development Co Ltd ("Hysan") which he had then added to some of his personal savings. The husband produced a copy of the transaction note showing the sale of these shares in January 1999.

33 The wife's response was that the parties had accumulated savings of HK\$200,000 from their combined incomes before their marriage because they had started the joint savings account sometime after they met in 1987 and there was a period of 23 months from July 1987 when they met up till their marriage in May 1999. During this period, they had earned, together, a total of HK\$284,623. The HK\$100,000 deposit came from these joint savings. She also said that the husband had sold his shares in January 1989 whereas the Hong Kong flat had been bought in September 1989, more than nine months later, so he could not have sold his shares in order to buy the flat. Instead, he had used the sale proceeds to buy a new Honda motorcycle that cost between HK\$30,000 and HK\$40,000. The husband did not reply to this assertion in his affidavit but in his submissions for the appeal, he said that the Honda motorcycle he had bought was a 125cc re-conditioned imported motorcycle and he had bought it for HK\$6,000 with the sale proceeds of a 2000cc Mitsubishi Galant car. Before owning this car, the husband was driving a small automatic Honda Civic which he had bought for HK\$1,500 and sold for HK\$3,000 in 1987 as mentioned in one of his letters exhibited to the wife's affidavit. The husband argued that the wife had no idea about vehicle prices since no one would buy a second-hand Honda motorcycle for HK\$30,000 if a Honda Civic car cost only HK\$3,000. He said in his submissions that the truth was that before the parties starting looking for a flat, he had sold his Mitsubishi vehicle and downgraded to riding a motorcycle. He had made use of the money obtained to help pay for the HK\$50,000 confirmation deposit.

34 Both parties appear to me to have been guilty of some exaggeration although it is difficult to work out the extent of the same. On the one hand, the husband's account in his submissions of all these dealings with the vehicles and motorcycles was suspect in that he had not put any of these facts on oath in an affidavit after the wife had made her allegation that he had spent HK\$30,000 to HK\$40,000 on a motorcycle. Instead, the facts were contained in his submissions for the appeal and the wife had no chance to rebut any of these alleged facts. Secondly, the husband produced no proof of the amount involved in any of these sale and purchase transactions apart from a passing reference in a letter to his family in 1998. Thirdly, on the husband's own story, an automatic car had been sold for HK\$3,000 in 1987 whilst a re-conditioned small motorcycle had cost HK\$6,000 in 1989. Those figures did not seem consistent with each other.

35 On the other hand, the wife's claim that the parties were able to save HK\$200,000 before they were married was also suspect. The judge did not accept it. She simply stated that before they got married the parties had "accumulated quite a bit of savings". The difficulty with accepting the wife's account is that it is unlikely that the joint savings account was opened immediately after they met and, even if it had been, in order to save HK\$200,000 they would have had only HK\$84,263 to live on over a period of 23 months, *ie*, HK\$3,663 per month. If the parties had been living on such a pittance, it was hardly likely that the husband would have spent the relatively vast sum of HK\$30,000 on a motorcycle. Even if the parties had saved a substantial amount, they must have incurred some expenditure when they got married in May 1989. I also think that simply because the Hysan shares were sold in January whilst the Hong Kong flat was bought eight months later, that does not mean that the proceeds of one could not have been put aside towards the purchase of the other, especially as by then, the parties were deeply involved and had already set up their joint account. The husband's possession of those shares also indicates that he had some savings of his own apart from the joint savings.

36 On the husband's best case, he contributed HK\$39,000 to the confirmation deposit since there was no documentary proof that he had kept other savings separate from the joint account

apart from the moneys derived from the Hysan shares. Both parties agree that he did buy a motorcycle at about that time. Although the husband says that the purchase money came from the sale of his car, there is no proof that that was the source of such moneys. Accordingly, it would probably be reasonable to deduct HK\$6,000 towards the cost of the motorcycle and find that the husband contributed HK\$33,000 to the confirmation deposit and that the remaining HK\$17,000 came from the joint account so that overall, the joint account funded HK\$67,000 of the deposit for the Hong Kong flat. It is not improbable that the parties had more than HK\$67,000 in the joint account at the relevant time. Thus, the parties' separate contributions to the deposit would have been HK\$33,500 each from the joint account and a further HK\$33,000 from the husband's Hysan shares.

37 The wife's assertion was that in any case, she had contributed more to the purchase of the Hong Kong flat than the husband because she had paid the monthly loan instalments of HK\$6,000 throughout the 18-month period that the parties owned the flat. The husband denied this at first but when the matter came on appeal, he was willing to accept that she had done so because, as a matter of logic, her having used up her funds to pay the loan would have meant that all contributions made to the joint account after the flat was bought came from him. Going on this basis, the total amount paid by the wife was HK\$108,000 plus the HK\$33,500 paid towards the deposit (HK\$141,500) while the total amount paid by the husband was HK\$66,500. Thus, the amount paid by the wife was 68% of the total amount paid for the flat whilst the husband's contribution amounted to 32%. This meant that the parties contributed in the same proportions to the proceeds of sale they received from the Hong Kong flat. The proceeds from the Hong Kong flat actually amounted to \$61,016 (HK\$274,816.53). On the basis set out above, that means the husband should be credited with \$19,525 and the wife with \$41,490.

38 The remaining \$38,984 brought to Singapore as part of the parties' seed money when they emigrated came from their joint savings. The question is who contributed what to the joint savings. Up to August 1988, the husband earned more than the wife and therefore, up to that stage, he probably contributed more to the joint account. Between August 1988 and the purchase of the flat in September 1989, the wife would have become the larger contributor by reason of her greater income. From September 1989 until March 1991 when the flat was sold, however, the position may have changed.

39 The wife asserted in her affidavits that after they bought the flat and their daughter was born, she had paid for all the household expenses and all the loan instalments whilst the husband had only paid a babysitting fee to his mother. The husband's position was that they had jointly contributed to the instalments of the loan but, for the purpose of the argument, he accepted the wife's position and contended that if the court was to accept it as well, the court had no option but to find that he was the only one contributing to the joint account from September 1989, since the wife's income would have been fully utilised in paying the instalments and the household expenses. Bearing in mind that the wife, by her own account, earned only HK\$8,300 per month from May 1990 up to the time she left Hong Kong in April 1991, this argument has the force of logic. On the basis that she bore all the expenses she said she did, it does not appear as if the wife could have made much, if any, contribution to the joint account after the loan was taken. Accordingly, any savings that were accumulated thereafter must have come from the husband. There are, however, no documents indicating how much savings the parties had when the purchase of the flat was completed nor how much was added to those savings thereafter.

40 It is impossible now to determine exactly who contributed what to the joint account. As at September 1989, probably, the balance in the account had come from the parties in equal shares. Thereafter, the husband contributed the bulk of the savings whilst the wife's contribution to savings came in the form of the payment of the housing loan. On this basis, I would attribute 75% of the

savings of \$38,984 to the husband and 25% to the wife. This means that the husband contributed \$29,238 and the wife contributed \$9,746. Putting these figures together with those in [37] above, the wife's contribution to the \$100,000 seed money was \$51,236 (51.2%) and the husband's contribution was \$48,763 (48.8%). I am aware that this calculation is full of estimates but given the scarcity of documentary evidence supporting the assertions of each party, it is the best that I can do. I am fortified in my arguments as they have led to my reaching a conclusion that shows that the parties contributed more or less equally to their savings and one thing is incontrovertible from the evidence, and that is that while they were in Hong Kong, they both unstintingly devoted all their efforts to improving the economic standing of the family.

41 The next issue brought up by the husband was as to how the \$100,000 had been utilised. He noted that the judge had accepted the wife's account which was that \$30,000 had been deposited in the HSBC account, \$42,400 had been deposited into the OCBC joint account and \$26,000 had been paid into the first POSB joint account. For the purpose of the appeal, the husband accepted this finding. He argued, however, that the judge had not properly considered how the money had been utilised. First of all, she had failed to take into account the parties' purchase of a car for \$35,000 shortly after they arrived in Singapore. This purchase was adverted to in the husband's second affidavit. In argument, he drew the court's attention to Asia Radio's job offer to him that contained the condition that he should have his own motor vehicle and stated that this car was bought to enable him to accept the job offer. The car was paid for in cash. Secondly, he noted that the judge had found that in acquiring the Yishun flat, the parties had paid cash deposits amounting to \$27,333 and \$12,000 for renovations and that these sums had come from the seed money. The husband accepted that finding for the purpose of the appeal although he said that his position was that the \$27,333 had come from a loan of \$30,000 made to him by his father. Finally, the judge had found that between August and December 1993, the parties had put various sums from their joint savings accounts into the share trading account so that they could deal in shares. The husband, relying on various account statements exhibited in the wife's affidavits, demonstrated that between 30 August 1993 and 3 December 1993, the parties had withdrawn a total of \$35,500 from their POSB and OCBC joint accounts and deposited these sums into the share trading account. The total amount spent by the parties between April 1991 and end December 1993 was therefore \$109,833. Thus, the husband argued that by the beginning of 1994, the parties had entirely used up their seed money and any money used thereafter to open any new bank accounts could not have originated from their joint savings.

42 The purpose of the foregoing argument was to establish that the moneys in the 1994 POSB account which was opened on 13 January 1994 were not from the parties' savings but originated from the husband's family. The husband said that after the parties moved to Singapore, his parents had visited them two or three times a year and whenever they had surplus funds in Singapore dollars, they would leave this surplus with him for safekeeping. In order not to mix his parents' money with the parties' money, he had opened the 1994 POSB account. The husband challenged the finding of the judge that the wife had demonstrated that the moneys used by the husband for share trading and other purposes originated from the joint accounts and that there was no evidence that any of the moneys in any of the bank accounts came from the husband's father as the husband had alleged.

43 Before me, the husband argued that as the seed money had been depleted by the end of 1993, it was not possible that any moneys in the 1994 POSB account had come from the parties. As additional evidence that the money in the 1994 POSB account belonged to his family, the husband drew my attention to a letter that he had written to his family in about March 1997 and which had been exhibited by the wife in which it was mentioned that his father had asked him to withdraw \$500 from the account to spend on his (the husband's) birthday celebrations. This letter also referred to deposits being made in respect of his mother's "birthday gift and contribution" and the husband

correlated that reference to a deposit of \$1,000 made into the 1994 POSB account on 28 February 1997. He said that he paid \$500 into the account every month as a contribution to his parents. Over the ten years preceding the divorce, the husband said, at any one time there were cash balances of between \$10,000 and \$60,000 in the 1994 POSB account. That was so even after deducting the money that was tied up in share investments and it was, he contended, impossible to rule out that the funds came not from the parties but overseas from the husband's parents. The husband thought that it was clear that the 1994 POSB account was funded by his father and belonged to his father and that the father was only using the husband's name to maintain a bank account in Singapore.

44 The wife's response to the husband's argument was that the \$26,000 that had been paid initially into the first POSB joint account had subsequently been transferred into the share trading account and that this was all that had gone into that account. Prior to the appeal, the husband had not drawn the attention of the judge nor the wife to the withdrawals made from the OCBC joint account which he now said were part of the funding of the share trading account. The same went for a further sum of \$2,500 which had been withdrawn from the first POSB joint account on 3 December 1993. The husband was trying to cause confusion by raising this issue for the first time and, therefore, the judge's finding of fact that the initial amount transferred to the share trading account was \$26,000 should be upheld.

45 On this point, I cannot accept the wife's argument. The evidence of the transfers was in the documents produced before the judge. It is true that the husband should have made the necessary submissions on this point to the judge. The fact that he did not does not preclude him from doing so now since the evidence is already on the record. The husband was able to show by reference to those documents that the total sum of \$35,500 deposited in the share trading account between August and December 1993 had come from the parties' joint accounts with OCBC and POSB. Accordingly, I accept that by 1993, the parties had spent \$109,833 on their house, car and for the purpose of share trading. The seed money had been fully utilised.

46 This finding does not mean, however, that I must accept as well the husband's argument that all funds in the 1994 POSB account belonged to his father. There was no real evidence of this. The judge's finding to that effect cannot be criticised. The account was held by the husband solely in his own name at all times. He did not produce any documents showing any transfer into the 1994 POSB account of funds from his father nor even of payments made by him to his father from this account. He did not produce documents showing the sums of money that his parents had brought to Singapore on their various visits here.

47 Whilst the husband's letter to his family appears to show that he was making deposits to the account which he intended to be contributions to his mother and father, there was no evidence that he needed their permission when he took moneys out of the 1994 POSB account. The husband did say during his submissions that he borrowed money from his father for the Bukit Panjang flat but it turned out that what he meant by this was that he had taken funds from the 1994 POSB account. He seemed to have made withdrawals from that account as and when he pleased as he certainly did not produce any document showing that he had asked his father for permission to take out any money or that his father had voluntarily given such permission without being asked for it. The husband also took funds out of the 1994 POSB account and placed them on fixed deposit for various periods before returning them to the 1994 POSB account. The husband seems to have had a free rein in the way that he handled the funds in the 1994 POSB account. If any money that went into that account originated from his parents, such money would probably have been a gift to him to use as he saw fit. If he put any money into the account with the intention of using it for his parents' benefit, he still retained the freedom to deal with it thereafter as he saw fit. There was no evidence that the husband had been obliged to send statements of account to his father or to account to his father in

any way for the manner in which he dealt with the credit balance of the 1994 POSB account. Except to the extent that moneys in the 1994 POSB account could be shown to have emanated from the parties' dealings in shares through the share trading account, therefore, I would consider such moneys to belong to the husband.

48 The husband's treatment of the 1994 POSB account can be seen in relation to the purchase of the Bukit Panjang flat. The parties first paid a booking fee of \$1,500 in cash. Then, on 3 February 1996, upon selection of this flat, the parties had to pay HDB the sum of \$18,602. The husband took this money from the 1994 POSB account. In his submissions for the appeal, he said that because the moneys in the 1994 POSB account actually belonged to his father, this payment was another loan taken from his father. This argument was not raised below and I must reject it as well since I have found no evidence that the 1994 POSB account belonged to anyone other than the husband. The judge recognised that the total sum of \$20,102 had come from the husband but attributed it to the parties in equal shares. She did not explain why.

49 Before I move on to consider how the Bukit Panjang flat was acquired, I must deal a little more with the Yishun flat. The cash outlay of the parties came to \$27,333 being a payment towards the purchase price and \$12,000 for furniture and fittings. As these moneys came from their seed money, the husband initially contributed \$19,194.50 (48.8%) and the wife \$20,138.50 (51.2%) to the acquisition. The purchase was completed in December 1991 and the balance of the purchase price was paid by instalments of \$469 per month serviced through the husband's CPF account. The flat was sold in June 1998 and a sum of \$32,312 was refunded into his CPF account. Adding that figure to the initial contribution makes the husband's total contribution approximately \$51,506.50 and the total cost of the flat \$71,645.50. In percentage terms, the husband contributed 71.9% of the cost while the wife contributed 29.1% thereof.

50 Coming to the Bukit Panjang flat, there was no dispute over the judge's findings that the husband had contributed \$81,782.68 from his CPF account and the wife had contributed \$1,757 from her CPF account. As regards the cost of renovations which the judge found to total \$50,693, the husband contended that this was incorrect and the renovations in fact cost \$81,063. The husband exhibited a list of the renovations and the amounts paid for the various items as part of his submissions in the appeal. Most of these items, however, were not supported by any documents and the husband had not named most of these items in his affidavits in the court below. The wife, therefore, had not had a chance to deal with his assertions in relation to most of the specific items. The documentary evidence produced substantiated only \$50,763 in spending. This figure is only very slightly different from the figure found by the judge. I can adjust the figure slightly to \$50,763 but there is no basis on which I can accept the husband's arguments that the renovations cost \$81,063. The judge found that the renovations had been funded from the proceeds of sale of the Yishun flat and attributed the sum of \$50,693 to the parties equally. As the sale proceeds did not derive from the parties' equal contributions, I must differ from the judge and attribute 71.9% of the renovation cost to the husband and the other 29.1% of it to the wife.

51 That brings me back to the final component in the acquisition of the Bukit Panjang flat, the \$20,102 cash payment. Of this, \$18,602 came from the 1994 POSB account. The wife's position is that the moneys in that account belonged to the husband, and as I have held that to be the case, this \$18,602 must be attributed to the husband. There is no indication where the remaining \$1,500 came from and I therefore divide it between the parties. In consequence, the husband contributed \$137,633.28 (\$81,782.68 + \$36,498.60 (71.9% of \$50,763) + \$18,602 + \$750), while the wife contributed \$17,279.03 (\$1,757 + \$14,772.03 (29.1% of \$50,763) + \$750). Of the total sum of \$154,912.31 expended on the Bukit Panjang flat, the wife's share amounted to 11.2% and the husband's share amounted to 88.8%. The wife's share was thus about 13% less than the 24% found

by the judge. As during the course of the appeal, the husband agreed that the Bukit Panjang flat should be shared on a 50-50 basis, however, I do not have to set aside the equal distribution of the net value of the matrimonial flat made by the judge. I do have to consider, however, whether in all the circumstances, it is still fair to order the husband to transfer the flat to the wife free of consideration. Such an order would mean that the husband, in addition to giving the wife a much greater share of the flat than her direct financial contribution would entitle her to, would also have to find about \$82,000 to repay to his CPF account.

52 One of the factors that the judge took into account in making this order was her finding that the husband had not properly accounted for the sum of \$62,800 that he had withdrawn from the parties' joint account in July 1998. This \$62,800 was part of the net sale proceeds of the Yishun flat. The judge considered that the wife was entitled to a half share of the \$62,800 but based on my calculations as set out in [49], the wife's entitlement would have been a little less, 29.1% or \$18,274.80. The judge did not accept the husband's explanation that the \$62,800 had been used to repay \$30,000 to his father and \$20,000 to his father-in-law. She held that there was no evidence of such loans.

53 On the appeal, the husband renewed his assertions that the \$62,800 had been used to repay parental loans. He pointed out that on 27 March 1998, \$30,000 had been transferred from the 1994 POSB account into the husband's DBS account. He said that was the loan that he took from his father. He then pointed to a deposit of \$30,000 into the parties' joint OCBC account on 27 April 1998 and said that that was the loan taken from the wife's father. On the same day, this \$30,000 was withdrawn from the OCBC account and on 28 April 1998 it was put into the husband's DBS account. He said it was tolerably clear that the parties had borrowed \$60,000 from their parents and after they had received the net sale proceeds of the Yishun flat in July 1998, he had used the \$62,800 to repay the \$60,000 loans from their parents.

54 The net cash proceeds of the Yishun flat totalling \$112,687.13 were paid into the joint OCBC account on 6 July 1998. The husband withdrew \$50,693 from this account on 8 July 1998 and a further \$62,800 on 9 July 1998. The total amount withdrawn exceeded the said proceeds. The husband said in his submissions that these withdrawals were eventually deposited into the 1994 POSB account and into his DBS account. The statements of the 1994 POSB account do not reflect any such deposit having been made in 1998. The July 1998 statement of the husband's DBS account reflects a deposit of \$50,693 made on 9 July 1998. There is no trace of a deposit of \$62,800 either that month or in any other month in 1998. Accordingly, the husband's account of what he did with the sum of \$62,800 is suspect. I also note here that the husband did not point out any other account into which the \$62,800 was deposited. That sum seems to have vanished.

55 It is also difficult for me to accept the husband's explanation that he applied \$60,000 from the sale proceeds towards repayment of two loans of \$30,000 each. Firstly, there was no evidence at all of any loan made by his father-in-law. Secondly, before the judge, the amount of this loan was said to be \$20,000 but, on appeal, it appeared to have increased to \$30,000. Thirdly, there was no withdrawal of \$30,000 from his DBS account in July 1998 or in any succeeding month that year. On 15 July 1998, a cheque payment of \$50,000 was debited against the account and for the rest of that month, the balance of account did not exceed \$4,833. The DBS bank statement does not support the husband's assertion that he paid the sum of \$30,000 to his father-in-law and another sum of \$30,000 to his own father from that account. As regards the loan made by his father, if the 1994 POSB account in fact belonged to his father, then the sum of \$30,000 should have been deposited into that account. Instead, from the bank statement it appears that the \$50,000 taken out from the DBS account on 15 July 1998 was put into the 1994 POSB account on the same day and that on 25 July 1998 a sum of \$60,000 was withdrawn from the 1994 POSB account. No evidence was produced that

any part of this sum was paid to the father directly in Hong Kong or elsewhere. Instead, it seems to have gone to the OCBC bank and, after being divided into one sum of \$10,000 and another of \$50,000, to have been placed on fixed deposit there in the sole name of the husband. In October 1998, these fixed deposits were withdrawn and the principal and interest were re-deposited into the 1994 POSB account. Neither then nor thereafter in 1998 was any single sum of \$30,000 withdrawn. So there was no evidence that the husband treated any sum of \$30,000 as belonging to his own father.

56 The holding of the judge that the husband had not accounted for the sum of \$62,800 was therefore, in my view, manifestly correct. The wife's share of that sum was \$18,274.80 and the same must be awarded to the wife. The only difference between my finding and that of the judge is that the judge awarded the wife half of the \$62,800 whereas, as I have explained above, the wife's actual entitlement was to 29.1% of it.

57 The next sum that the judge found that the husband had kept for himself was the sum of \$41,894.93 which she found to constitute the profit made from share trading undertaken through the share trading account. In reaching this finding, the judge had accepted the wife's assertion that between 17 January 1994 and 29 March 1995, the wife had transferred a total sum of \$41,894.93 from the share trading account to the 1994 POSB account. Whilst the husband had contended that these shares had been bought by him with his own funds, the judge found that the wife had demonstrated that the purchase moneys had originated from the parties' joint account. Further, in any case as there was no evidence that any of the moneys in any of the bank accounts came from the husband's father, it was only fair that the wife be entitled to half of the moneys transferred out of the share trading account.

58 Looking at the wife's third affidavit, she had tried to substantiate her assertion that \$41,894.93 had been transferred from the share trading account to the 1994 POSB account by pointing out the relevant withdrawals from the share trading account and correlating those with various deposits made into the 1994 POSB account. From the statements exhibited to the wife's affidavit, it appears that the following sums were deposited into the 1994 POSB account between 17 January 1994 and 6 October 1994, *viz* \$13,729.26 on 17 January 1994, \$4,155.50 on 29 April 1994, \$14,624.94 on 28 May 1994, \$6,385.23 on 6 October 1994 and \$3,000 on 29 March 1995. Entries in the share trading account passbook show that these five sums were withdrawn from the share trading account. The wife was thus able to substantiate transfers totalling \$41,894.93 from the share trading account to the 1994 POSB account.

59 Challenging the judge's finding on appeal, the husband referred to his affidavit of 7 July 2004. There, he dealt with the transfers of the sums of \$13,729.26, \$4,155.50 and \$14,624.94. He said that, as the wife well knew, these three sums were the sales proceeds of shares that he had purchased and had either paid for by cheque to Philips Securities or were "contra" sales when he sold them at a profit. As regards the sum of \$13,729.26, the husband said that he had on 29 November 1993, paid Philips Securities \$12,950 from his DBS account in respect of his purchase of some SIA shares. These shares were subsequently sold for \$13,729.26 and that was why that amount was transferred to the 1994 POSB account. Concerning the sum of \$4,155.50, this was the aggregate profit from the husband's sale of shares that he had bought on a "contra" basis. Finally, concerning the sum of \$14,624.94, this represented the sale price of 1,000 Jurong Shipyard shares that the husband had purchased on 18 January 1994 with a sum of \$13,756.80 taken from the 1994 POSB account. The husband did not give any explanation in respect of the sum of \$6,385.23 transferred to the 1994 POSB account.

60 Taking the three sums that he dealt with in turn, the husband did not produce proof that the

sum of \$13,729.26 related to 1,000 SIA shares that he had purchased on 29 November 1993 nor that the sum of \$12,950 ostensibly paid for those 1,000 SIA shares came from his DBS account. As regards the sum of \$4,155.50, it was a bare assertion on the husband's part that this amount represented "aggregate profits from my sale of shares which I had bought on contra". There was no substantiation of this assertion. Thirdly, regarding the sum of \$14,624.94, whilst the 1994 POSB account did show a withdrawal of \$13,756.80 on 20 January 1994, there was nothing to connect this withdrawal with the purchase of 1,000 Jurong Shipyard shares or to show that this amount had been paid to Philip Securities. In any case, the parties had, by the husband's own account (see [43] above), put \$35,500 into the share trading account from their joint savings in order to fund their share purchases. That sum of \$35,500 was more than sufficient to fund the purchases of the SIA and Jurong Shipyard shares and support trade in some other counters that may have resulted in what the husband described as his "aggregate profit" from "contra" dealings. Since it was a mutually accepted fact that the share trading account was funded with the parties' joint savings for the purposes of dealing in shares, the onus lay on the husband to show that any shares purchased in the wife's name through the account with Philips Securities were not purchased with their joint funds but from money that he alone contributed. The husband has not been able to discharge that onus. Thus, the amount of \$38,894.93 which the wife established had been taken out of the share trading account and put into the 1994 POSB account has to be attributed to both parties in proportion to their interests in the seed moneys. I have found at [41] above the wife's interest therein to be 51.2% and that means that her interest in the \$41,894.93 amounted to approximately \$21,450.20. The husband must account to the wife for this sum.

61 In the course of the appeal, the husband queried two withdrawals made by the wife from the second POSB joint account on 9 July 1998. The first withdrawal was in the sum of \$4,000 and the second was in the sum of \$8,200. The latter sum was deposited by the wife on the same day into the share trading account but the husband was not able to find out what had happened to the sum of \$4,000. He accused the wife of having kept it for herself. The wife's response was that it was not correct of the husband to bring this matter up on appeal when he had never raised it in the court below and had thereby deprived her of a chance to investigate the allegation and respond on affidavit. I accept the wife's submission on this point. Since the husband did not ask the wife to account for the sum of \$4,000 in the District Court, it is too late for him to seek to ventilate this issue before me.

62 The next issue raised by the husband in relation to the parties' investment in shares concerned his claim that the wife should account to him for shares held by her. The husband's assertion was that between September 1993 and November 1993, the wife had traded in about \$650,000 worth of shares. He produced statements from the Central Depository Pte Ltd ("CDP") showing the wife's shareholdings from time to time. The statement dated 31 October 2002 showed that as at that date, the wife owned shares worth \$27,482.50. The statement dated 30 November 2002 showed that the wife had disposed of all her shares during that month. The wife maintained that the husband was not entitled to any of these shares. He had known that since her family migrated to Singapore in 1997, all of them had been speculating in stocks and shares in her name and that she was using the share trading account to conduct these transactions on their behalf because her parents were not literate in English while her sister was not used to transactions conducted in English. They would give her cash or cashier's orders with which to buy the shares. The husband was aware, she asserted, that all the shares that she had traded in after 1994 belonged to her parents and her elder sister and that she had transferred all these back to the latter because, after they learnt in November 2002 of the husband's intention to divorce the wife, they did not want the husband to make a claim on the shares.

63 The judge accepted the wife's explanation that all the shares in her account with the CDP

had been returned to her family and found that thereafter the wife had only held two lots of CLOB shares. The husband criticised the judge's finding as being against the weight of the evidence. I consider that this criticism is a justified one. The wife's assertion that the shares in her CDP account belonged to her family members was not supported by any evidence. She did not produce any documents at all relating to the financial affairs of her parents and her sister. If they had paid for her share purchases, she should have been able to produce bank statements showing their bank balances and the withdrawals by way of cash or cashier's orders of amounts which correlated with payments made by her for shares purchased on their account. As was clear from the affidavits, the wife was a careful person who kept masses of documents belonging both to herself and to her husband. She was the one who produced most of the documents that served as evidence in the case. It is not unfair to infer that if there had been documents showing her parents' payment for the shares and/or her repayment to her parents of amounts that she realised on trading in shares for them, she would have produced the same. The judge disbelieved the husband's assertions that the money in the 1994 POSB account came from his father because the husband could not substantiate his assertions. She should have applied the same burden of proof to the wife's assertions.

64 The money in the share trading account came from the parties' joint savings and was used to buy shares as investments for both of them albeit the shares were placed in the wife's name. The wife must therefore account to the husband for 48.8% of the value as at November 2002 of all the shares that she transferred to members of her family or other third parties. There is no direct evidence as to the actual value of the shares at that date. The best evidence available is the CDP statement showing that in October 2002, the shares were valued at \$27,482.50. For want of better evidence, I will assume that the value of the shares remained the same in November 2002. In addition, the wife must account for the balance of \$2,364.83 which remained in the share trading account and was withdrawn by her on 20 November 2002 when she closed that account and also the dividends of \$852.43 which she received in 2002 on the securities that she held during that year. The total amount that the wife must account for is \$30,699.76 and the husband's share of that amount at 48.8% would therefore be \$14,981.50.

65 Next I turn to the husband's claim for the SBS shares. He stated that in July 1996, he had asked the wife to buy some SBS shares and the wife understood that this purchase was meant as an investment of his father's money. The husband paid \$7,180.79 for these shares from the 1994 POSB account. Subsequently, the wife sold the shares without his consent and kept the proceeds. The husband said that the wife had agreed to repay the amount received when these shares were sold. In this connection, the husband relied on a document described as the "IOU" letter that he said had been signed by the wife in 2001. This document said "Total amount outstanding \$7,200. Release Singapore Bus shares then repay \$7,200" and it was signed by "Lana Cheng".

66 The wife replied that she had never borrowed any money from the husband's father and therefore was under no obligation to write any IOU note to him. She averred that the first time she had sight of the purported IOU was when the husband exhibited it in his affidavit and said that it did not mention the creditor's name. The wife then went on that what she recalled about the SBS shares was that the husband had bought 1,000 such shares on 19 July 1996 and that he withdrew \$7,180.79 from the 1994 POSB account to pay for them. The shares were registered in her name. In February 1998, she obtained a PPO against the husband and he then threatened to stop supporting the family unless she had it revoked. The wife retaliated that if the husband did so, she would be forced to liquidate the SBS shares and use the proceeds to support the family. The husband then changed his tune and said he would continue to give her money for family expenditure if she agreed to deposit the sale proceeds from the SBS shares into his personal account. To remind herself of this agreement, she wrote in Chinese on a piece of paper that when she liquidated the SBS shares, she would repay. As far as the document exhibited as the IOU by the husband was concerned, the wife said that the only

words in her handwriting were the Chinese words "Release Singapore Bus shares then repay" and her signature "Lana Cheng". All other words and figures were not in her handwriting and she believed they were in the husband's handwriting and inserted by him without her knowledge. Moreover, she could not have agreed to repay \$7,200 which was more than the original price especially when the price of the SBS shares was rapidly dropping at that time.

67 The judge found that the husband's claim for reimbursement of \$7,200 for the SBS shares was not made out. She did not think that the document exhibited by the husband was an IOU and it was not clear from that document that the wife was acknowledging a debt of \$7,200 to the husband's father. She therefore did not order the wife to reimburse the husband with that amount.

68 Whilst I agree that the IOU does not indicate that the wife was acknowledging a debt of \$7,200 to the husband's father, that does not mean that the wife was entitled to keep the SBS shares for herself. She clearly acknowledged in her own affidavit that the SBS shares had been paid for, as asserted by the husband, by a withdrawal from the 1994 POSB account. It was also her position in that same affidavit that the husband had used the 1994 POSB account to pay for his share purchases. The wife, therefore, could not claim to have an interest in the SBS shares in the same way that she was interested in the shares bought with the parties' joint savings. Secondly, the wife in fact admitted that she had agreed to repay the proceeds of sale of the SBS shares to the husband. She might not have agreed to pay him \$7,200 since it was not logical that she would agree to repay the original purchase price when she might realise much less for the shares upon their sale. The IOU did, however, function as an acknowledgement that the shares were not hers and that any sale proceeds would be payable to him. Further, the wife was not truthful in her account of what she did with the shares. In her first affidavit, she said that in about July 1998 she was forced to sell the SBS shares for \$5,600 when the husband refused to give her money for the family's expenditure. In her third affidavit, however, she said that after the husband had agreed to continue to support the family if she agreed to deposit the proceeds of the SBS shares into his personal account she had written out part of the IOU. Further, the wife's CDP statements do not show any sale of SBS shares in 1998 much less for \$5,600. In my judgment, the weight of the evidence established that as between the husband and the wife, the SBS shares belonged to the husband and the wife did not dispose of them in order to meet the family's expenditure. The wife must therefore account to the husband for the shares. Since the figure of \$5,600 cannot have come from nowhere, I am inferring that that was the amount that the wife realised when she eventually sold the SBS shares. She must return that sum to the husband.

69 In holding that it would be equitable to award the Bukit Panjang flat to the wife free of consideration the judge also considered the wife's claim on the other assets. Relying on evidence from letters sent to his family, the judge held that the husband had been under-declaring his income, that he was able to get the co-operation of someone in Hup Heng to give false documents when he required them and that he kept cash at home. She concluded that he had more assets than he had disclosed to the court. Since it was not possible to say what those assets were worth, the judge thought that it would be fair to award the entire flat to the wife and made no order on her claim for a share in the other assets.

70 On appeal, the husband criticised the judge's reliance on his letters. He pointed out that he had sent over 2,000 letters to his family over the preceding 12 years. The wife, however, had relied on extracts from only 12 letters and had thereby provided a distorted account of what was stated in the letters so much so that the judge had found the letters to be damning evidence against the husband. He pointed out that one of the letters relied on by the wife had in fact shown that the 1994 POSB account actually belonged to his father. This example, the husband submitted, showed that with every additional letter read, more truth could be uncovered and it was wrong to condemn him on

the basis of only 12 letters. As the wife submitted in reply, however, throughout the proceedings in the court below, the husband had never challenged any of the letters and their translations into English exhibited in her affidavits. He had not produced any additional letters from his store of over 2,000 in order to rebut the inferences that the wife was asking the court to draw. She contended, and I agree, that the judge was right in accepting the husband's letters as evidence. The judge had to work with what she had. The husband was aware of the use to which the wife intended to put the letters she had adduced and, as the writer of the letters, he was the best placed to extract other letters that contained information that was helpful to his case. He did not do this. He cannot criticise the judge for drawing inferences from his own letters as long as the contents of the letters made it reasonable to draw such inferences.

71 In his letters, the husband said things such as that if he declared \$30,000 as his income to the Singapore tax department, then he would need to pay less than \$200 in taxes and so he had declared his annual income as being \$30,000 although when he was working for Kosmo his income was already close to \$50,000. He also said that he tried not to deposit too much money in his bank account. He did not want to have a bank balance that exceeded five figures so he kept some money in his safe at home. All this was because of his tax problems. In April 1998, he also boasted about his relationship with Hup Heng. He said that it was not an employee/employer relation but that he was more like Hup Heng's customer. He would place orders, Hup Heng would deliver the goods and he would then collect the money and guarantee payment. Hup Heng would have to give him the lowest price but he was able to quote a different price to his customers and the difference in prices was his profit. In January 1999, he declared he had made \$2,000 in three days out of Hari Raya orders. In July 2000, he said that in 1998 and 1999, he submitted his income tax returns "randomly" by submitting a round figure. When the income tax authorities wrote to query his income, one of the bosses of Hup Heng co-operated with the husband by reporting amounts that the husband asked him to.

72 The judge inferred from the letters that the husband's income was higher than disclosed by his income tax returns and also that he had a habit of keeping money in cash in the house so as to make it difficult for the tax authorities to ascertain his true income. She did not believe the husband's story that his assertions in his letters were white lies to allay concerns that his family had about his financial situation as the assertions were too detailed and not the general sort of statement as to the fact that one was doing well in business that one made in order to reassure concerned parents. As I have said above, the judge was entitled to draw reasonable inferences from the language used in the letters and having read the letters myself, I cannot say that she had no basis for those inferences. As she pointed out, the husband went far beyond reassurance and into great detail about how he conducted his business and made a living and sought to pay as little income tax as possible.

73 In the court below, the wife had produced an analysis of deposits made into the husband's DBS account between 1998 and 2002. She had pointed out that in many years, there had been very high deposits into the account: in 1998, a total of \$134,624.59 had been deposited; in 1999 \$131,911.41; in 2000, \$72,451.04; in 2001, \$79,362.89 and in 2002, \$135,760.53. The husband, on the appeal, produced a table to try and explain these deposits. Some of them, he said, came from his salary, some were deposits he had made when he sold his car and others were cash deposits that he had made when he collected sales proceeds on behalf of Hup Heng. These latter deposits were only put in the bank for a short time before he made payments to Hup Heng. When I went through the bank statements, however, I could not see a pattern of amounts being deposited in cash and shortly afterwards having been paid out of the bank by cheque. Such a pattern would have supported the husband's contentions that these cash deposits were only temporary and were moneys that he was holding on behalf of Hup Heng. The husband was not, in my view, able to satisfactorily account for these cash deposits apart from those few that related to his sale of his motor cars. It certainly appeared from his bank statements that he did well in 1998 and 1999, and although 2000 and 2001

were bad years for him, things improved substantially in 2002.

74 The difficult question before the District Court was how to assess whether the husband had assets which he had not disclosed and if so how much those assets amounted to. As far as bank accounts are concerned, there was no allegation from the wife that the husband had not disclosed all his bank accounts. Her main target was the money that he had kept in cash at home. The husband had three safe deposit boxes in the house which he said that he used for keeping documents. The wife contended that there was cash in these boxes and relied on the husband's own assertions in his own letters and the fact that the cash deposits into his bank account showed that he had more money than disclosed by his income tax returns in support of this contention. Looking at the husband's bank statements, although he made many cash deposits, he does not appear to have made large cash withdrawals. Whilst I tend to agree with the holding of the judge that the husband did keep cash at home, I am not sure whether it amounted to as much as \$60,000 which would seem to be the figure that the judge had in mind since she awarded the wife roughly \$30,000 as her share of the husband's undeclared assets. The husband also stated that his income had suffered considerably in 2003 and 2004 because of SARS, the bird flu and the ban of Malaysian poultry. In order to meet expenses, he had depleted all of his savings and surrendered the three insurance policies as well as used moneys in the 1994 POSB account that belonged to his father. In the circumstances, I think that the figure of \$30,000 must be reduced and I accordingly reduce it to \$15,000. This sum is a lump sum award to the wife as her share in the husband's cash holdings. It is not made on the basis that he had \$30,000 or any other particular amount in those boxes. It is simply the figure that I think is fair in all the circumstances to award her considering the substantial amounts that the husband was able to deposit in his bank accounts from time to time and inferring from those that the moneys at home would not have been insignificant.

75 The judge found the other matrimonial assets to be as set out in [22]. The husband criticised her finding that his CLOB shares were worth \$4,695.18 since he said they were valueless. If the husband's CLOB shares were valued at nil and the wife's CLOB shares were also valued at nil on the same basis, then the total assets belonging to the husband would amount to \$52,217.33 and those of the wife to \$16,469.47. This would mean that the husband had 76% of the total of these assets whilst the wife held 24% of them. The judge made no order on the husband's claim on these matrimonial assets and there is no reason for me to interfere with that decision. The husband really cannot complain of being allowed to keep his 76% of the assets and not being given a share in the wife's 24%.

76 The result of the above analysis of the judgment and the arguments presented on appeal is that the wife is entitled to a half share in the Bukit Panjang flat; the husband has to account to her for \$18,274.80 (see [56]) and \$21,450.20 (being 51.2% of \$38,894.93, see [60]); and pay her \$15,000 (see [74]); and the wife has to account to the husband for \$14,981.50 (see [64]) and repay him \$5,600 (see [68]). In total the husband has to pay the wife \$54,725 while the wife has to pay him \$20,581.50. Setting off one against the other, there is a balance of \$34,143.50 to be paid by the husband to the wife.

77 In these circumstances, I do not think it would be the correct order for the Bukit Panjang flat to be transferred to the wife free of consideration. I would also comment that, in most cases, it would not be right to make such an order if the consequence would be that the party who is transferring his or her interest free of consideration would, at the same time, have to have recourse to other resources to repay his or her own CPF contribution. Such an order should only be made if it is clearly apparent that the paying party has more than sufficient assets to refund the CPF account as otherwise the parties will end up in a stalemate. I set aside the order for the transfer of the flat to the wife free of consideration. Instead the flat shall be sold in the open market within six months of

the date hereof and the net sale proceeds after payment of transfer fees and agent's commission, shall be divided equally between the parties. Each party shall be responsible for refunding his or her CPF account from his or her share of the sale proceeds. If the husband has not paid the wife the \$34,143.50 by the time of the sale, there shall be a charge over the balance in the husband's ordinary account with the CPF in favour of the wife in respect of the said amount and interest thereon at the same rate as paid on CPF balances from time to time.

Maintenance

78 The husband did not object to the decision of the judge to award the wife a lump sum figure as her maintenance. His quarrel was with the quantum. He argued that under the maintenance order made in 1998, the wife had been awarded \$300 per month for her personal expenses. He said that the judge had awarded her \$1,000 per month for a year simply because the wife had asked for it and that was effectively an upgrade for the wife. The fact that the wife had started work in March 2005 should also be considered. The wife responded that the \$300 per month was intended for her personal expenses only because under the 1998 maintenance order, the husband was paying \$600 for the family's food, \$300 for the personal expenses of the wife and, in addition, bearing the utilities and the outgoings of the home, pocket money and insurance premiums for the children's policies. The wife denied that she had started work in March and said that she was still unemployed. She needed more than \$12,000 maintenance in a lump sum as she was not equipped to enter the job market without retraining.

79 The judge considered all the relevant factors in making the award for the wife's maintenance. I think that the award was, if anything, somewhat on the low side in restricting maintenance to a period of 12 months only since it might take a while for the wife to be able to obtain a well-paying job in view of her long absence from the job market. The wife did not, however, appeal against the maintenance order. There is no reason for me to reduce the quantum of the lump sum further. If the husband does not pay this lump sum within six months of the date of this order, there shall be a charge for the sum against his CPF balance for the same and interest thereon at the same rate as paid on CPF balances from time to time.

80 In relation to the maintenance for his children, the husband said that he could not afford to pay \$1,700 a month for both of them because of his financial situation. The \$1,700 per month was a significant increase from the \$900 per month paid under the previous maintenance order. He said that his current income was only \$2,000 to \$2,200 per month including trade commissions. This was due to the tribulations suffered by the poultry industry and his employer, Hup Heng, since August 2000. In 2000, his income had peaked at \$5,700 per month but the poultry business had dropped by 30% by the end of 2001 due to the outbreak of bird flu. In July 2002, his basic salary was reduced to \$1,668 per month. This was still his basic salary. In February 2003, the food industry was hit by the outbreak of SARS and Hup Heng's business had dropped by 50%. There was further difficulty in August 2004 when the government imposed a ban on live poultry from Malaysia. This ban was partially lifted in October 2004 and as a result Hup Heng's business could only operate at 70% of normal volume. One of the husband's important sideline sources of income, that of selling ducks, which used to earn him \$600 to \$800 per month, stopped completely in August 2004. He was only able to start dealing in ducks again in January 2005 but in the first ten days of January he made less than \$120 from trading in ducks.

81 There is no doubt that the poultry industry has suffered setbacks over the past few years due mainly to external circumstances. The husband, however, is a capable man who has a proven income-earning ability. Whilst he may be facing hard times at the moment, I have no doubt that the husband will be able to recover from his setbacks. There is also the difficulty of knowing whether his

declared income is his only income. In this regard, the husband's previous record would seem to indicate that his income may be greater than it appears to be on paper. Bearing the present situation in mind, however, I reduce the children's maintenance to \$1,400 a month. Either party may apply hereafter for a variation if the situation changes.

Conclusion

82 In the result, the appeal is allowed in part. As the husband represented himself, there will be no order as to costs. The parties shall have liberty to apply on the issue of the implementation of the orders for sale of the Bukit Panjang flat and the CPF charging orders.

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