

O'Connor Rosamund Monica v Potter Derek John  
[2011] SGHC 53

**Case Number** : DT No 310 of 2008/T  
**Decision Date** : 09 March 2011  
**Tribunal/Court** : High Court  
**Coram** : Lai Siu Chiu J  
**Counsel Name(s)** : G.R. Raman (G R Law Corporation) for the WifeV Kanyakumari (Tan Kok Quan Partnership) for the Husband  
**Parties** : O'Connor Rosamund Monica — Potter Derek John

*Family Law – Matrimonial Assets – Division*

9 March 2011

**Lai Siu Chiu J:**

**Introduction**

1 This was a rehearing of ancillary matters between O'Connor Rosamund Monica ("the Wife") and Derek John Potter ("the Husband"). The parties were married on 19 September 1986. They have no children. Their first matrimonial home was at No. 47B Block H, Jalan Arnap Singapore 249356 ("Kim Lin Mansion"). This was purchased by the Wife and her sister, before the parties' marriage. It became the parties' first matrimonial home when the Wife's sister moved out. After selling Kim Lin Mansion and renting two flats for 3 years, the couple purchased No.79, Farrer Drive, Sommerville Park #05-03 ("Sommerville Park") as their second matrimonial home.

2 The parties divorced on 14 October 2008 following a separation period of 4 years. On 22 September 2009, the parties appeared before this court for the first time ("the first hearing") wherein the following orders were made ("the first order"); see *O'Connor Rosamund Monica v Potter Derek John* [2009] SGHC 258:

- (a) The Wife and the Husband were to hold shares in Sommerville Park in the proportion of two-thirds and one-third respectively.
- (b) In the event the Wife chose to buy over the Husband's share in Sommerville Park, the Wife was to give notice of her election to the Husband's solicitors within ten days from 22 September 2009 and the sale of the Husband's one-third share should be completed within 90 days of 22 September 2009.
- (c) The purchase price to be paid by the Wife was to be determined by a valuation to be conducted by Knight Frank Pte Ltd as of 22 September 2009 with the costs and expense of the valuation and the transfer to be borne equally by both parties.
- (d) The Husband was not to occupy Sommerville Park after 22 September 2009 but was at liberty to have his personal possessions remain in Sommerville Park until the day of completion after which he was to remove them.

- (e) The Husband was to pay the Wife a lump sum of \$50,000 by way of maintenance. This amount was to be deducted from the Husband's one-third share in the sale of Sommerville Park.
- (f) The Husband was to refund the Wife a sum of \$10,000 for her contribution towards his purchase of the Tanglin Club membership.
- (g) The parties were to retain all other assets in their respective names.
- (h) Costs of the High Court proceedings up to 31 August 2009 were awarded to the Husband on a party and party basis. Thereafter the Husband would have his costs on an indemnity basis. Both sets of costs were to be taxed unless otherwise agreed.

Dissatisfied with the first order, the Wife appealed to the Court of Appeal in Civil Appeal No 132 of 2009 ("the Appeal") in relation to (a) and (b) under the first order.

3 The crux of the Appeal was that in dividing the matrimonial assets, this court had overvalued the Wife's assets. Her counsel accepted responsibility for this error. He explained that he had mistakenly submitted at the first hearing that cash gifts that the Wife had received from her mother and grandmother were in addition to, and not part of, her total assets.

4 The Appeal was heard on 6 April 2010. The issues before the Court of Appeal were:

- (a) Whether it was correct to award only two-thirds of Sommerville Park to the Wife.
- (b) Whether the order for lump sum maintenance of \$50,000 was fair and reasonable.
- (c) Was this court justified in estimating past maintenance at \$400 per month and future maintenance at \$500 per month with a multiplier of 6 when calculating the lump sum award of \$50,000?

5 After hearing the parties, the Court of Appeal made the following orders:

- (a) The action was remitted back to this court for further hearing.
- (b) The value of immoveable properties owned by the Wife and the Husband was to be fixed, and the assets of the parties involving foreign currencies were to be converted into Singapore currency, as at a date one month prior to the further hearing before this court.
- (c) The Wife was to pay the Husband costs fixed at \$12,000 inclusive of disbursements for the first hearing. The costs of the Appeal would be determined by the Court of Appeal after the conclusion of the further hearing before this court.

The Court of Appeal decided that the Husband should also have the right to request further discovery from the Wife.

6 On 10 January 2011, pursuant to prayer (a) granted by the Court of Appeal, the ancillary matters came on again for hearing before this court ("the second hearing"). This court varied the first order as follows:

- (a) Sommerville Park was to be sold in the open market within 90 days with the Husband

having conduct of the sale. The net sale proceeds less sales commission and other incidental expenses were to be divided equally between the parties. The Wife was to have the first right of refusal to purchase the Husband's 50% share in the property. If she exercised the option, the value of the matrimonial property was to be fixed at \$3m.

(b) Prayer (e) of the first order (see [\[2\]](#) above) awarding lump sum maintenance of \$50,000 to the Wife was rescinded.

(c) The Husband was entitled to set off and deduct from the Wife's share of the sale proceeds of Sommerville Park the costs of \$12,000 awarded to him by the Court of Appeal for the first hearing.

(d) In the event the Wife exercised the option to purchase the Husband's 50% share in Sommerville Park, she would also have to pay him the following:

(i) costs of the second hearing;

(ii) costs if awarded by the Court of Appeal (for the Appeal);

(iii) the costs of \$12,000 for the first hearing;

(iv) costs ordered under Summonses Nos. 2940/2010 and 4132/2010 by the courts below (for the Husband's applications for discovery); and

(v) notional rent of \$1,500 per month for the duration that the Husband had not occupied Sommerville Park since 30 September 2009 until completion of its sale.

(e) The Husband was awarded indemnity costs of \$18,000, excluding disbursements, which would be on a reimbursement basis.

7 As the Wife has appealed against the second order (in Civil Appeal No 13 of 2011), I shall now set out my reasons.

### **The issues**

8 There were several salient issues raised at the second hearing. In relation to the division of Sommerville Park, it had to be decided whether the Wife's disclosed assets included the monetary gifts she had received from her mother and grandmother. In addition, new evidence had been unearthed from the discovery process the Court of Appeal had ordered. In the light of those considerations, this court had to reassess the Wife's contributions towards the purchase of Sommerville Park.

9 On the issue of maintenance, this court was also required to re-evaluate the various statutory factors in view of the findings this court made in relation to the Wife's assets.

### **Sommerville Park**

#### ***Applicable Law on the Division of Matrimonial Assets***

10 The starting point for the division of matrimonial assets is s 112(1) of the Women's Charter (Cap

353, 2009 Rev Ed) ("Women's Charter"):

The court shall have power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable.

11 The court's discretion in deciding a division of matrimonial assets is guided by various factors listed in s 112(2) viz:

- (a) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the matrimonial assets;
- (b) 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;
- (c) the needs of the children (if any) of the marriage;
- (d) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party;
- (e) any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce;
- (f) any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;
- (g) the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation of business; and
- (h) the matters referred to in s 114(1) so far as they are relevant.

12 The parties' contributions to Sommerville Park were a particularly significant factor in this case. It is therefore useful to refer to *NK v NL* [2007] 3 SLR(R) 743 at [22] – [29] ("*NK v NL*") where Andrew Phang Boon Leong JA enunciated the principles governing the division of the matrimonial home:

- (a) First, he rejected the traditional approach, as illustrated by *Tan Bee Giok v Loh Kum Yong* [1996] 3 SLR(R) 605 at [47], which regarded direct contributions as a *prima facie* starting point before making adjustments to reflect the non-financial contribution of the parties.
- (b) Second, he stressed the importance of the courts not engaging in a minute scrutiny of the conduct and efforts of both spouses, since it may disadvantage the spouse whose efforts were difficult to evaluate in financial terms (*NK v NL* at [28]).
- (c) Third, at [29], Phang JA wrote,

...it is paramount that courts do not focus merely on a direct and indirect contributions dichotomy in arriving at a just and equitable division of matrimonial assets... At the end of the day, no one factor should be determinative as the court's mandate is to come to a just and

equitable division of the matrimonial assets having regard to all the circumstances of the case.

13 Another important factor in the present case was the parties' non-financial contributions. Dealing with this was tricky albeit necessary. As LP Thean JA noted in *Lim Choon Lai v Chew Him Keng* [2001] 2 SLR(R) 260 at [14] ("*Lim Choon Lai*"):

As for the non-financial contributions, they also play an important role, and depending on the circumstances of the case, they can be just as important. At the end of the day, taking into account both the financial and non-financial contributions, the court would adopt a broad-brush approach to the issue and make a determination on the basis of what the court considers as a 'just and equitable' division.

Phang JA in *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 at [39] ("*Lock Yeng Fun*") adopted the same position:

Our examination of the case law shows that the courts might not have given sufficient recognition to the value of factors like homemaking, parenting and husbandry when attributing to them a financial value in the division of matrimonial assets. This ought not to be the case. It is true that, by their very nature, such kinds of contributions to the marriage are, as pointed out in the quotation above, difficult to measure because they are, intrinsically, incapable of being measured in precise financial terms (we assume that this is what the authors meant when they said that such contributions were impossible to measure). Difficulty in measuring the financial value of such contributions has never been – and ought never to be – an obstacle to giving the spouse concerned his or her just and equitable share of the matrimonial assets that is commensurate with his or her contributions, taking into account (of course) the other relevant contributions and factors.

14 There are two main methodologies in attributing the parties' indirect contributions in a marriage: the global assessment methodology and the classification methodology. In *NK v NL* at [33], Phang JA noted that both methodologies are consistent with s 112 and that neither of them is superior to the other. The court should apply whichever methodology allows it to ensure a just and equitable division.

15 When considering the abovementioned factors in striving for a just and equitable division, the court is to exercise its discretion in broad strokes rather than unrealistically engaging in a nit-picking exercise (*Lock Yeng Fun* at [33]).

16 Further, the judge must bear in mind that equality of division should not be the default position when determining a just and equitable result. Phang JA in *Lock Yeng Fun* at [55] made this very clear:

We would also like to add that the experience of the courts in dealing with division of matrimonial assets shows that equality of division is *not* the norm (see above at [50]); indeed, in the large majority of the cases decided by the courts, equality of division was not achievable on the facts. This is not surprising given the current social conditions in Singapore, notwithstanding the fact that more and more women work and there is generally more equality in the workplace. We emphasise, however, that the focus of the court is always on the attainment of a *just and equitable* division of matrimonial assets (as required under s 112(1) of the Act). We have, consistent with this aim, in fact emphasised (at [39] above) the importance of giving the *fullest* effect to the non-financial contributions of the spouse concerned. [emphasis in original]

Earlier in his judgment, at [50], Phang JA said:

The decision in the present appeal is one of the occasions when this court has decided that an equal division of matrimonial assets is just and equitable on the facts of the case (the others being *Lim Choon Lai* ([35] *supra*), *Yow Mee Lan v Chen Kai Buan* [2000] 2 SLR(R) 659 ("*Yow Mee Lan*") and *Ryan Neil John v Berger Rosaline* [2000] 3 SLR(R) 647 ). This was the *end point* of our deliberations in this case, and not the starting point. However, it appears that the contrary proposition (to the effect that an equal division of matrimonial assets should be the starting point or presumption or norm) is still being advocated in academic circles: see, for example, *Halsbury's Laws of Singapore* ([40] *supra* at paras 130.817-130.821) and, by the same author, "The Just and Equitable Division of Gains between Equal Former Partners in Marriage" [2000] Sing JLS 208 as well as "The Laws in Singapore and England Affecting Spouses' Property on Divorce" [2001] Sing JLS 19 (*contra*, Debbie Ong Siew Ling & Valerie Thean, "Family Law" (2001) 2 SAL Ann Rev 226 at para 13.31). Such a proposition cannot, with respect, be accepted, as the legislative framework set out in s 112 of the Act neither expresses nor implies the idea of equality of division as a starting point or presumption or norm from which either spouse can either chip away or bolster the division in his or her favour. In the past, some judges have leaned towards the idea of equality as a starting point (see, for example, *Soh Chan Soon v Tan Choon Yock* [1998] SGHC 204 and *Louis Pius Gilbert v Louis Anne Lise* [1999] 3 SLR(R) 402 ), but these decisions are outnumbered by those which have decided otherwise (see, for example, *Lau Loon Seng v Sia Peck Eng* [1999] 2 SLR(R) 688 ("*Lau Loon Seng*"), *Yow Mee Lan* (*supra*), *Ryan Neil John v Berger Rosaline* (*supra*) and, most importantly, this court's decision in *Lim Choon Lai* ([35] *supra*) [emphasis in original]

17 It bears remembering that the court's discretion to divide the parties' assets is subject to the assets in question being matrimonial assets. Section 112(10) of the Women's Charter defines a matrimonial asset as:

- (a) any asset acquired before the marriage by one party or both parties to the marriage –
  - (i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or
  - (ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and
- (b) 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.

18 In *Chen Siew Hwee v Low Kee Guan (Wong Yong Yee, co-respondent)* [2006] 4 SLR(R) 605 ("*Chen Siew Hwee*"), Phang J considered the qualifying words in s 112(10) of the Women's Charter. At [37], he ruled that the qualifying words excluding gifts applied to both paragraphs (a) and (b) of s 112(10). The approach set out in the qualifying words had to apply to all situations where an asset by way of gift or inheritance had been conferred by the donor on one of the parties to the marriage, regardless of whether or not that asset was conferred before or during the marriage. To adopt a contrary approach was to embrace a distinction which would be arbitrary, unjust and unfair. This therefore meant that if one party receives a gift during the marriage from a third party that gift cannot be divided as a matrimonial asset upon divorce unless it is the matrimonial home or has been

improved upon by the other party or both. The owner of the gifted asset would have to show that it originated from the generosity of a third party in order to prevent it from being divided upon divorce. For the time being it appears that the matrimonial partnership stops short of extending to gifts received by either party.

### ***Decision on the matrimonial home***

19 At the first hearing, the Wife wanted Sommerville Park to be awarded to her entirely. The Husband had then argued for a half share in the property. The parties submitted the same arguments on Sommerville Park at the second hearing.

20 In the first order, this court awarded the Wife and the Husband shares in at two-thirds and one-third respectively. At the second hearing, this court ordered that each party would have an equal half share in Sommerville Park. This court varied its first order for two main reasons. First, it only emerged at the second hearing that the Wife's contributions to Sommerville Park were not as substantial as she had represented. Second, this court drew an adverse inference that the Wife had more assets than she had disclosed. The two reasons are elaborated below.

#### *The Wife's contributions to Sommerville Park had been exaggerated*

(1) Her direct financial contributions

21 The parties purchased Sommerville Park for \$1.1m in November 2003. The purchase was financed as follows:

- (a) proceeds from the sale of Kim Lin Mansions;
- (b) initial Payments; and
- (c) mortgage payments.

22 As the proceeds from the sale of Kim Lin Mansion were used to purchase Sommerville Park, it was necessary to determine the parties' respective shares in the former. In turn it required this court to ascertain the couple's contributions to Kim Lin Mansion.

23 At the first hearing, this court found that the Wife had contributed \$161,866.53 to the purchase of Kim Lin Mansion. As for the Husband, this court initially found he had contributed \$88,000 towards the purchase of Kim Lin Mansion when he paid for the half share belonging to the Wife's sister. The figures were inaccurate and had to be revised at the second hearing. The uncovering of new evidence of the Wife's assets by the discovery process required a relook of the earlier figures.

24 The Wife had submitted that amongst her contributions she had paid \$32,174.80 for the initial purchase of Kim Lin Mansion. She also paid \$15,750, being half of the deposit amount. In addition, she contributed \$18,117.60 towards the parties' purchase of her sister's half share. Lastly, she had paid \$29,041.33 for renovations and furniture. This court accepted the Wife's submissions on her contribution.

25 However, it was also not disputed that the Wife's sister moved out of Kim Lin Mansion in December 1984. After the Husband moved into the flat but prior to his purchasing the sister's share, the parties paid rental to the latter. This amounted to \$46,800. The Wife's income tax returns for the years 1986 – 1988 showed it was the Husband's then employer Oil Asia, which paid the \$46,800.

Therefore, this amount should be attributed as part of the Husband's contribution.

26 The Wife and her sister had taken a mortgage when they purchased Kim Lin Mansion. The Husband said he started paying half of the monthly mortgage payments of Kim Lin Mansion from the time the Wife's sister moved out. From July 1985 onwards, he paid in full the monthly instalment. Some of the payments were made through his employer from 1985 – 1987, and subsequently by himself. The Wife disputed this. To support her account, she adduced a letter from NTUC Income dated 13 April 1987 which stated \$132,825.30 of the loan had been repaid. However, it was revealed at the second hearing that the Husband had passed the monies to the Wife, who then made the mortgage payments from her account. As such, although a cursory glance at the NTUC Income letter would support the Wife's argument, more rigorous scrutiny showed that from 1985 onwards, the Wife made no contributions whatsoever towards the mortgage payments. Consequently, the Husband had paid \$202,800 in 13 years comprising of mortgage payments of \$1,300 per month.

27 After selling Kim Lin Mansion but prior to purchasing Sommerville Park, the parties rented two flats. During that period (2001 to 2004), the Husband paid the rent of \$1,400 a month. This totalled \$50,400 and should be considered as part of the Husband's indirect contribution towards Kim Lin Mansion.

28 For easier reference, the parties' financial contributions have been listed in Tables 1 and 2 below. As the two tables show, the financial contributions of the Wife and the Husband towards Kim Lin Mansion were respectively 17.7% and 82.3%. However, taking into account the parties' non-financial contributions, this court decided that each party should be deemed to have had a half share in Kim Lin Mansion. Kim Lin Mansion was eventually sold for \$2,024,193.54 in an *en-bloc* sale. As the proceeds were used entirely to fund the purchase of Sommerville Park, each party may be said to have contributed \$1,012,096.77.

Table 1: The Wife's contributions towards Kim Lin Mansion

Item of Contribution	Contribution amount
Initial purchase of Kim Lin Mansion	\$32,174.80
Payment of half the deposit	\$15,750
Payment for the share of the Wife's sister	\$18,117.60
Renovations and furniture	\$29,041.33
Total	\$95,083.73

Table 2: The Husband's contributions towards Kim Lin Mansion

Item of Contribution	Contribution amount
Payment for the share of the Wife's sister	\$58,000
Rent payments to Wife's sister between 1986 -1988	\$46,800
Mortgage payments (from 1985 onwards)	\$202,800
Paid balance of the mortgage loan	\$82,786.60



Rental of interim flats prior to purchase of Sommerville Park	\$50,400
Total	\$440,786.60

(2) Other direct financial contributions

29 The Husband had contributed \$242,000 from his CPF account and \$255,000 in cash. As for the Wife, she contributed \$134,800 from her CPF and cash of \$350,200. She also paid \$10,000 for the deposit.

(3) Indirect financial contributions

30 The Wife submitted she contributed \$100,000 towards furniture/fittings for the matrimonial home. However, she failed to produce any documentation to support her claims. Further, at the second hearing, her counsel conceded that the \$100,000 comprised furniture the Wife had purchased for both Kim Lin Mansion and Sommerville Park. Given the lack of supporting evidence and extensive double-counting, this court rejected the \$100,000 claimed by the Wife.

31 Tables 3 and 4 list the parties' financial contributions, direct and indirect, towards Sommerville Park. It can be seen therefrom that the parties' financial contributions were almost the same, with the Wife and the Husband paying 49.9% and 50.1% respectively.

Table 3: The Wife's financial contributions towards Sommerville Park

Item of Contribution	Contribution amount
Share of sale proceeds of Kim Lin Mansion	\$1,012,096.77
CPF account payments	\$134,000
Cash payments	\$350,200
Deposit	\$10,000
Total	\$1,506,296.77

Table 4: The Husband's financial contributions towards Sommerville Park

Item of Contribution	Contribution amount
Share of sale proceeds of Kim Lin Mansion	\$1,012,096.77
CPF account payments	\$242,000
Cash payments	\$255,000
Total	\$1,509,096.77

(4) Non-financial contributions

32 Having considered the parties' financial contributions, direct and indirect, towards the purchase

of Sommerville Park, their non-financial contributions will now be addressed.

33 The Wife said she purchased three cars that were used by the Husband. She also claimed to have done household chores such as cooking and cleaning, and to have paid much of the household expenses. Her claims were matched by the Husband's own claims of his indirect contributions. He said he too did household chores such as washing the dishes and contributing towards other household expenses. The impracticality of examining the minutiae of the parties' claims and the lack of evidence led this court to apply the broad brush approach in assessing the parties' indirect contributions. It seemed that even though it ended in divorce, the marriage for the most part in its early days was one where the parties contributed equally.

34 This court concluded therefore that the parties' financial contributions to Sommerville Park were nearly equal. Their non-financial contributions, although different, were not of such a large discrepancy as to warrant an adjustment to their equal financial contributions. This led to this court's decision to award each party an equal share in Sommerville Park and to maintain the part of the first order that allowed the parties to retain all other assets in their respective names.

*The Wife's assets did not include the two gifts*

35 Section 112(2)(h) of the Women's Charter states that when deciding the division of matrimonial assets, the court is to consider "the matters referred to in s 114(1) so far as they are relevant". One such matter, as listed in s 114(1)(b), is "the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future". Taking this factor into account, this court found that the Wife possessed substantial assets over and beyond the monetary gifts she had received from her mother and grandmother. This was the second reason why this court reduced the Wife's share in Sommerville Park from two-thirds to half. This court made the finding that the Wife had/has other substantial assets on the basis of two adverse inferences it had drawn. First, that she has other sources of income and assets. Second, she had transferred her monetary gifts elsewhere.

36 Before justifying the adverse inferences I drew, it would be helpful to set out the relevant principles on the drawing of adverse inferences. First, as the Court of Appeal made clear in *BG v BF* [2007] 3 SLR(R) 233 at [52] ("*BG v BF*"), the drawing of adverse inferences is based on the duty of full and frank disclosure:

... the general duty that every party to court proceedings owes to the court to make full and frank disclosure of all relevant information within his or her knowledge is particularly relevant in the context of the division of matrimonial assets. The position in law is that full and frank disclosure is important and in its absence the court is entitled to draw inferences adverse to the party who failed to do so: *Koh Kim Lan Angela v Choong Kian How* [1993] 3 SLR(R) 491.

The drawing of adverse inferences acts as a disincentive to parties to withhold information, which would be anathema to the process of reaching just and equitable division of the matrimonial assets.

37 Second, the court should only draw an adverse inference when the circumstances permit. A party cannot request the court to make an adverse inference of the other party's worth simply because he claims the other is worth at least a certain amount. The Court of Appeal in *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 at [50] ruled:

Whether or not in each case an adverse inference should be drawn depends on all the evidence adduced and the circumstances of the case. There is no fixed and immutable rule of law for

drawing such inference. Where, as was the case here, the trial judge is of the view that the Wives themselves had not made out their claim to the requisite standard, then no drawing of an adverse inference against the husbands is necessary. *The drawing of an adverse inference, at least in civil cases, should not be used as a mechanism to shore up glaring deficiencies in the opposite party's case, which on its own is unable to meet up to the requisite burden of proof.* Rather, the procedure exists in order to render the case of the party against whom the inference is drawn weaker and thus less credible of belief. [emphasis added]

Judith Prakash J said in *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 at [28]:

It is well established that in order for a court to draw an adverse inference, there must, in the first place, be some substratum of evidence that establishes a *prima facie* case against the person against whom the inference is to be drawn. In addition, it must be shown that the person against whom the inference is to be drawn has some particular access to the information he is said to be hiding (perhaps because it is peculiarly within his knowledge). In other words, the court's ability to draw an adverse inference does not and cannot displace the legal burden of proof that continues to lie with the Wife, or, as in this appeal, the Wife.

38 Third, having drawn an adverse inference, the court has to decide how to give effect to the same. There are two ways of doing so. The first is to order a higher proportion of the known matrimonial assets to be given to the other spouse, as was done by Phang JA in *NK v NL* and by Andrew Ang J in *BG v BF*. Alternatively, the court may determine the value of the undeclared assets. It may infer a value from the available information. Kan Ting Chiu J employed such an approach in *Tay Sin Tor v Tan Chay Eng* [1999] 2 SLR(R) 385.

39 In the light of established principles, this court concluded adverse inferences could be drawn against the Wife for several reasons. First, she had been extremely uncooperative throughout the discovery process which the Court of Appeal had ordered. Table 5 below provides illustrations of the Wife's conduct:

Table 5: The Wife's conduct

Time Period	Context	The Wife's Conduct
13 April 2010	Following the direction of Yeong Zee Kin AR at a pre-trial conference, the Husband made a written request for 33 lots of documents.	<ul style="list-style-type: none"> <li>There were numerous requested documents that were not provided.</li> <li>Of the documents provided, many were inadequate in detail.</li> </ul>
18 May - 14 June 2010	<ul style="list-style-type: none"> <li>The Husband wrote to the Wife with a revised list of requested documents, as directed by Cornie Ng AR on 18 May 2010.</li> <li>The documents were to be delivered by 11 June 2010.</li> </ul>	<ul style="list-style-type: none"> <li>The Wife's Counsel only delivered the documents on 14 June 2010.</li> <li>Even then, not all the documents requested in the revised list were provided.</li> </ul>

12 July 2010	<p>The Husband applied for an order for specific discovery of the requested documents not provided. Kenneth Wong AR granted the order (SUM 2940/2010/P).</p> <p>Yeong Zee Kin AR in a 20 July 2010 pre-trial conference brought forward the original deadline of 16 August 2010 set by Kenneth Wong AR to 2 August 2010.</p>	<ul style="list-style-type: none"> <li>• The Wife did not comply with Kenneth Wong AR's order. As such, Jordan Tan AR on 15 September 2010 ordered the latter be enforced.</li> <li>• It was only then, on 24 September 2010, that the Wife filed her discovery affidavit.</li> </ul>
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40 Second, despite numerous opportunities given to her, the Wife did not satisfactorily explain her failure to disclose the existence or details of several bank accounts that were revealed by the discovery process. One such example was her Standard Chartered E-saver Bank Account ("E-saver account"). In her 12 March 2009 and 3 September 2009 Declarations of the Value of Matrimonial Assets, the Wife did not disclose this account. In her 10 August 2010 Affidavit, she submitted that she had forgotten the account's existence since credit statements were not issued for E-saver accounts and the last time the account was in use was in 2007. She had assumed that all her funds had now been transferred to private banking. For a woman who took meticulous care in managing her finances (she even kept receipts for groceries she had purchased while on a Cameron Highlands trip in December 2007), this court found it hard to believe she would forget about an account that held \$275,671.95 at the time of the second hearing. The Wife sought to explain her omission by alleging that the Husband knew or should have known about this account. Such an argument was flawed because the burden was on her to provide disclosure.

41 The Wife made the same argument in relation to her Standard Chartered Foreign Currency Cheque and Save Account ("Cheque and Save account") which she also failed to disclose. She claimed the Husband knew about this account because he had accompanied her when she opened a Deutsche Bank account with a cheque drawn from the Cheque and Save account. The Husband said he could not recall this incident. However, even if he had accompanied her, he argued he did not know which account the cheque was drawn from. He therefore did not know about the Cheque and Save account. This court found the Wife's explanation of her non-disclosure of this account to be inadequate, even if one assumed the Husband knew of the same – the obligation was on the Wife not only to disclose the existence but also the details of, the bank account.

42 There were other instances where the Wife failed to adequately provide details about her accounts even after their presence had been discovered, for example the OCBC account she used for CPF investments. The Husband only learnt of the OCBC account because in a DBS Vickers statement, in relation to the Wife's DBS Vickers Trading Account, it was revealed that \$13,409.59 was credited to it from the OCBC account (transaction reference No 471211/003/01). The Wife refused to disclose information about the OCBC account. She merely provided a CPF Statement of Account (for July to December 1996) which stated she had a basic investment scheme account with OCBC. Following the orders for discovery on 12 July 2010 made below, the Wife simply stated at para 3(I) of her 24 September 2010 Affidavit that "the OCBC account merely facilitated CPF transfers" and that she "has nothing else to do with that account and as such has no documents pertaining to it". Her failure to provide a more detailed explanation was a clear and blatant breach of the duty to give full and frank disclosure.

43 This court therefore drew the adverse inferences that the Wife had other sources of income

and assets, and that she had transferred the monies elsewhere. This court drew the two adverse inferences due to the Wife's failure to explain large movements between her accounts. The tables below list the transactions for which the Wife failed to provide any details. For the sake of brevity, only transactions of \$10,000 and above have been listed.

Table 6: Unexplained withdrawals

Bank Account	Transaction Reference	Withdrawal Amount
HSBC account	TTOCB053770 BTSL FOR THE ACCOUNT OF LETTER OF 27 JUL2000 REF RE1A-00049	\$261,840
	Cheque 035885	\$17, 467
	HOUSE CHQ 13362	\$10,660
	TT OCB294889 BTSL A/C GTF FAX APPLN DTD 27 NOV 02 REF RE1F-00041 PAY BY 143-149664-496 TO 4921 6000 3017 9506	\$300,090
Standard Chartered Cheque and Save Account	F/D 0339998342	\$500, 000
	CLEARING CHEQUE 365704	\$10,000
	CLEARING CHEQUE 365708	\$28,400
	CLEARING CHEQUE 365742	\$100,000
	CLEARING CHEQUE 530903	\$15,925
Standard Chartered Foreign Currency Cheque and Save Account USD	"PCD", dated 24 September 2003	US\$200,000
Standard Chartered Private Bank @ Call Account	"TRANSFER OUT", dated 6 September 2008	USD\$208,074.63
E-saver Account	"TW-TRANSFER WITHDRAWAL" dated 27 July 2006	\$200,000
	"TW-TRANSFER WITHDRAWAL" dated 18 January 2007	\$800,000
	GBP165590.33@3.01955 dated 26 September 2007	\$500,000

Table 7: Unexplained deposits

Bank Account	Transaction Reference	Deposit Amount
Standard Chartered Private Bank	The source of the starting balance of this account is unknown.	On 30 September 2009, the account contained US\$257,727.06.

Standard Chartered Foreign Currency Cheque and Save Account USD	BERMUDA TRUST (S) LTD/RFB/REDP	US\$212,519
	FM 0330573071	US\$200,311.11
Standard Chartered Private Bank@ Call Account	"O'CONNOR ROSAMUND MONICA" dated 17 September 2008	\$20,000
HSBC Account	Cheque Deposit Reference No CQ1J-00083	\$76,873.51
	Cheque Deposit Reference No TG1D-00110	\$12,952
	Cheque Deposit Reference "TTMNY239034465 BTSL-CAM-GTF LTD IR29080229079"	\$31,198.34
	SPTDBU750278 PLUS 321 SPT022750278 VALUE	\$264,909.34
	Singapore Telecommun DIRECT DEBIT 68601909 DEPOSIT WITHDRAWAL 143-149664-500 REF NS1G-00004	\$276,773.03
	SPTDBU200233 PLUS 321 SPT031200233 VALUE	\$321,872
	CLG CHQ DEP REF TG2G-00109	\$100,000
	16JAN04 ATMA817 10:47:15 CLG CHQ DEP 365706	\$35,000
	CLG CHQ DEP 358665	\$10,000
	CLG CHQ DEP 107832	\$10,000
	CLG CHQ DEP 234102 REF YDDB-09148	\$58,467.23

The total amount of unexplained withdrawals, utilizing historical exchange rates for conversion to Singaporean currency, was \$3,404,866.17. The value of the unexplained deposits amounted to \$2,303,598.10. The Wife's failure to account for the withdrawals led to the inference that she had other assets elsewhere. This court also inferred that she had other sources of income and assets on the basis of the unexplained deposits. Those inferences, in turn, indicated that the Wife had more assets than she had disclosed.

44 The inferences were further justified by the Wife's failure to trace her monetary gifts. First, in her 24 September 2010 Affidavit para 3(j)(iv), the Wife disclosed a HSBC account statement, dated 3 September 2003, to show she had deposited her grandmother's gift of \$70,000 on 1 September 2003. This contradicted her first Affidavit of Assets and Means, filed on 28 November 2009 where she claimed she had received the amount in 2001. Second, the Wife stated in her 24 September 2010 Affidavit at para 3(j)(v) that she had deposited her mother's first gift of \$250,000 in her Cheque and Save account on 24 February 2004. This was inconsistent with her third Affidavit of Assets and Means, filed on 12 February 2009, where the Wife (at para 75) stated she received the gift in 2003. A

12 March 2004 statement showed a deposit (reference number FM0330603736) of \$250,637.67. Though the Wife had consistently claimed the gift was a round figure of \$250,000, she did not explain where the excess \$637.67 came from. Consequently, she failed to prove the monies in this account mainly comprised her mother's gift.

45 At the second hearing, this court gave the Wife's counsel the opportunity to rebut the adverse inferences. He submitted the Wife could not have had more assets than the monetary gifts as she had no source of income. However, the Wife's accounts clearly show her to be an active investor. In fact, she had been certified by the Institute of Banking and Finance to give financial advice on futures trading and commodity broking. It was entirely possible for her to have accumulated greater wealth through her investment activities. Second, to support her case, her counsel relied on an email from the Husband to his brother, dated 22 February 2008. In this email, the Husband wrote "she [the Wife] was given \$1,250,000 by her mother" and "[w]hat riles me is that she was given most of her money by her mother whereas I had to work hard for mine". He submitted that this showed that the Husband admitting that the Wife had little assets beyond her monetary gifts. This court was not convinced by this argument. It was entirely consistent for the Husband to moan about the Wife's "windfall" and for her to increase her assets by way of investing the monies.

46 As an argument in the alternative, the Husband submitted that the tracing rules pointed to the conclusion that the Wife's current assets were not traceable to the gifts. Therefore, the monies the Wife had disclosed should be placed into the pot of matrimonial assets to be divided. In support, the Husband cited *Chen Siew Hwee v Low Kee Guan* [2006] 4 SLR(R) 605 at [58] – [59]. In considering whether a gift given to either party in the course of a marriage should retain the characteristics of a gift if it is transformed into a new asset, Phang J held:

... a new asset will be 'acquired ... by gift' if the donee intends the new asset to assume the same nature as that of the original asset i.e. that of being a gift... However ... before one can even undertake this enquiry of whether the original asset should be that of the new asset, it would, in all cases be necessary to first consider whether the new asset is traceable to the assets which constituted the original gift (here, the shares) to begin with. If such tracing is not available, for example, where it is unclear what the source of funds used to acquire the new asset were, it would be logically impossible to additionally consider whether the new asset continues to be in the nature of a gift.

According to the Husband, if one employs the "first in, first out" rule of *Devaynes v Noble* (1816) 1 Mer 572 ("*Clayton's rule*"), one can conclude that the gift monies have already been dissipated. The case of *Neo Mei Lan Helena v Long Melvin Anthony* [2002] 2 SLR(R) 616 ("*Neo Mei Lan Helena*") was relied upon to show that the courts have used the rule before in a similar context.

47 However, a closer scrutiny of *Neo Mei Lan Helena* at [53] would show Woo Bih Li JC's point in the case was made only in passing:

Although Mr. Rai had sought to argue that not all the moneys in the husband's CPF account had been used to buy the Dairy Farm apartment, he was not able to establish this, even if the fresh evidence which he had sought to adduce had been allowed. That fresh evidence was simply a statement of his CPF account as at 13 July 1984, one day before the marriage. Besides, his argument might have been effectively countered by the "first in, first out" principle, but I need say no more thereon.

Woo JC's obiter remark cannot be taken as authority for the use of *Clayton's rule* in the context of dividing the parties' matrimonial assets. In addition, there is a more fundamental flaw in the Husband's

arguments. *Clayton's rule* is an equitable rule of tracing. Though much academic comment has been made of the arbitrariness of having two distinct tracing regimes, for one to avail oneself of equity's tracing rules, one still needs to show a trust relationship. As this is not present on the facts, this court dismissed this argument of the Husband.

48 Given the finding that the Wife had more assets than she had disclosed, this court then had to decide how to give effect to the adverse inference. The Wife's lack of candour despite the Court of Appeal's order for discovery meant it was impossible to put a value on the undisclosed assets. As such, this court chose to grant the Husband a larger share of the disclosed assets. Taking this approach was the second reason this court decided to increase the Husband's share in Sommerville Park. Even so, my finding that the Wife had undisclosed assets and that her contributions to the matrimonial home were much less than the Husband's were only two of the factors to be considered in the overall assessment of a just and equitable division. In the light of all the circumstances of the case, in particular the Wife's non-financial contributions, this court increased the Husband's share from a third to half.

49 The Wife had argued that as a Singaporean, she needed a home. In contrast, the Husband is only a Singapore PR. According to her, he frequently visited England for long periods and that was evidence that he still maintained roots in his country of birth. This court was not persuaded by such arguments. The Husband clearly regarded Singapore as his home and occasional visits to his family in the United Kingdom did not detract from the fact that he too needed permanent accommodation in Singapore. In any event, the Wife had little reason to complain since this court had given her the first right of refusal to buy Sommerville Park. Given this court's finding, the Wife should have no difficulty in buying over the Husband's half share, even based on her disclosed assets.

### ***Consequential orders***

50 Following the decision to give each party 50% share in Sommerville Park, this court ordered that the matrimonial home be sold in the open market within 90 days of 10 January 2011 but giving the Wife the first right of refusal. Should the Wife fail or decline to purchase the Husband's share in Sommerville Park, it would be sold and the net sale proceeds (less sales commission and other incidental expenses) were to be divided equally between the parties. Given the Wife's conduct during the discovery process, this court also ordered that the Husband shall have conduct of the sale.

51 At the Appeal, the Court of Appeal had ordered that the value of the parties' properties was to be determined on a date one month prior to the second hearing. The Wife submitted a revised valuation report from Knight Frank dated 19 October 2010, which valued the property at \$2.75m. The Husband responded by adducing current data from the Urban Redevelopment Authority which showed that a flat in the estate was sold in November 2010 for \$3.35m. It was not known whether there were dissimilarities between that flat and the parties' which would make such a comparison inappropriate. Taking this factor into account, along with the general upward trend of prices in the current property market, this court fixed the value of Sommerville Park at \$3m.

52 The last consequential order was necessitated by the first order that the Husband must move out of Sommerville Park by 30 September 2009. He complied with the order. However, the Husband was forced to move his possessions out of Sommerville Park by the Wife a week after the first hearing as she changed the locks, notwithstanding the first order that his possessions could remain in the property until the day of completion of the sale. While the Wife has had exclusive occupation of Sommerville Park since 30 September 2009, the Husband has had to pay rent for his accommodation at various places including hotels. In the context of this court having given the parties an equal share in Sommerville Park, I ordered the Wife to pay the Husband (half) notional rent amounting to \$1,500



per month for the duration that the Husband did not occupy Sommerville Park, viz from 30 September 2009 until completion of its sale.

## **Maintenance**

53 This court had in the first order awarded the Wife lump sum maintenance of \$50,000. This court rescinded this order at the second hearing. Again, this was a consequence of the finding that the Wife had more assets than she had disclosed.

## **Law on Maintenance**

54 Section 113 of the Women's Charter empowers the court to make an order for maintenance:

The court may order a man to pay maintenance to his wife or former wife -

- (a) during the course of any matrimonial proceedings; or
- (b) when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage.

55 In making such an order, the court has to consider all the circumstances of the case, including the factors set out in s 114(1) of the Women's Charter:

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contributions made by each of the parties to the marriage to the welfare of the family, including any contribution made by looking after the home or caring for the family; and
- (g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring.

56 The Court of Appeal had helpfully elaborated on the principles for maintenance in *BG v BF* at [74]-[75]. First, adequate provision must be made to ensure the support and accommodation of the children of the marriage. This was a non-issue in the present case as the parties have no children. Second, provision must be made to meet the needs of each spouse. Third, it is ultimately the court's sense of justice which demands and obtains a just solution to many a difficult issue. Fourth, the power to order maintenance is exercised in a manner supplementary to the power to divide matrimonial assets, such that the court takes account of each party's share of the assets, and the order for maintenance plays a complementary role to the order for assets. Lastly, citing *Tan Sue-Ann Melissa v Lim Siang Bok Dennis* [2004] 3 SLR(R) 376, the Court of Appeal held that

the rationale behind the law imposing a duty on a former husband to maintain his former wife is to even out any financial inequalities between the spouses, taking into account any economic prejudice suffered by the wife during marriage.

### ***Decision on maintenance***

57 At the second hearing, the Wife wanted arrears of maintenance for the three years preceding the second hearing (she claimed that the Husband failed to provide her any allowance for the period) and maintenance of \$5,000 a month thenceforth. Alternatively, she requested a lump sum of \$600,000.

58 This court found the Wife's claim to be unreasonable and excessive. As stated above, one main factor to consider is whether a wife has been adequately provided. Before the Court of Appeal, the Wife submitted that her monthly allowance was \$900. She should receive three years arrears for this sum and 25 years future maintenance. By her own admission, she needed only \$302,400 (based on a monthly sum of \$900 x 28 years x 12 months). This court failed to see why there was such a huge increase in her request at the second hearing. Her undisclosed assets may well have meant that she was much better off than the Husband and required no maintenance from him at all let alone \$600,000. Indeed, counsel for the Husband pointed out that based on her disclosed assets in foreign currencies, the Wife earned a monthly interest income of \$3,154.57.

59 The Wife had accused the Husband of passing to her two sexually-transmitted diseases (STDs), Herpes HSV-1 and Chlamydia, and she blamed her inability to have children on the latter. The Husband denied giving the Wife Chlamydia but acknowledged that he had infected her with Herpes. According to his counsel, the Husband married the Wife out of guilt that he had infected her with Chlamydia. Given that medical literature produced by the Husband's counsel showed it takes more than two weeks for symptoms of Chlamydia to manifest and appear, and the fact that the parties only commenced a sexual relationship a week prior to the Wife being diagnosed with Chlamydia (on 3 October 1983), this court agreed with the Husband that it was more likely than not that he was not responsible for that infection. The Wife had also claimed that due to the resultant breakout of lesions from Chlamydia, she could not work. As evidenced by her complaints of the Husband's termination of her supplementary memberships of the Tanglin Club and the Singapore Island Country Club, the Wife maintained an active social life notwithstanding her professed inability to work. In this court's view, her lifestyle undermined her claim that the STDs prevented her from interacting with people. This was not a case of an individual who was unable to work but one who deliberately chose not to do so.

60 Another argument of the Wife was that she had not worked for over 20 years. In addition, she claimed that her Fine Arts (Painting) degree from La Salle College of Arts and the Royal Melbourne Institute of Technology was not marketable. As such, she was unlikely to be able to support herself. This court was unconvinced. The Wife had been certified by the Institute of Banking and Finance to give financial advice on futures trading and commodity broking. Evidence was adduced by the Husband that the Wife had engaged in commodity futures trading in the late 1980s and early 1990s, in an affidavit filed by one Dorian Francis Ball. For reasons stated above, the Wife likely possessed more assets than she had disclosed. Taken together, the evidence refuted the Wife's claim that she would be unable to support herself. It was also telling that throughout the entire divorce proceedings from 18 January 2008 up to the first hearing, the Wife did not apply for interim maintenance. She had filed a maintenance summons on 20 November 2008 but that was dismissed as she failed to turn up for the mention of the summons. She filed a second maintenance summons on 6 October 2009 in the Subordinate Courts but withdrew the same when she was told the Subordinate Courts had no jurisdiction as the issue had been determined by this court at the first hearing.

61 This court then proceeded to consider the Husband's situation. He has been retired (since 2000) and although he immerses himself in various activities, such as his PhD research and organising golf tours, these were unlikely to be a regular source of significant income to support the Wife's maintenance claims in the long run. Granted, the Husband has considerable assets of his own. However, they were overshadowed by the Wife's assets which appeared to be more than his.

62 The Wife claimed that the Husband receives or will receive two pensions. He should therefore have no difficulty to support her. She pointed out that the Husband had already started receiving his monthly Merchant Navy pension of £84.77. The Husband has yet to receive his state pension. Since he is not resident in the European Union, the state pension is not index-linked. Consequently, the amount of this pension is unlikely to be significant either. Accordingly, the two pensions cannot realistically be considered to be a steady income stream for the Husband. Further, the Husband is in poor health. He suffered from ankylosing spondylitis, a disease which has affected his spine and causes him considerable pain. He has had hip replacements in 2004 and 2006. Unfortunately, X-ray and bone scans have recently revealed his hip implant may have loosened and further costly surgery may be necessary.

63 The above reasons explained this court's first order to the Husband to pay lump sum maintenance of \$50,000 to the Wife. This court decided to rescind the order following my findings in the second hearing that the Wife had more assets than she had disclosed. The object of maintenance is to "even out any financial inequalities between the spouses", according to the Court of Appeal in *BG v BF*. As there was every likelihood that the Wife had the same or even more assets than the Husband, there was no financial inequality to even out between the parties. Therefore, an order for maintenance was not necessary.

## **Costs**

64 This court awarded indemnity costs of \$18,000 to the Husband because his counsel produced to this court an Offer to Settle that her client had made to the Wife that contained terms that were more generous to her than the orders that were made at the second hearing. The costs excluded disbursements which were awarded to the Husband on a reimbursement basis.

65 This court allowed the Husband to deduct from the Wife's share of the sale proceeds of Sommerville Park, (in the event the Wife exercised her right of first refusal to purchase the Husband's share) and to add on to his 50% share, the following items:

- (a) costs of the second hearing;
- (b) costs to be awarded by the Court of Appeal (for the hearing of Civil Appeal No.132 of 2009);
- (c) outstanding costs of \$12,000 for the first hearing;
- (d) costs ordered under Summonses Nos. 2940/2010 and 4132/2010;
- (e) notional rent of \$1,500 per month.

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