**IN THE APPELLATE DIVISION OF**
**THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2024] SGHC(A) 34**

Appellate Division / Civil Appeal No 134 of 2023

Between

WQP

… *Appellant*

And

WQQ

… *Respondent*

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# JUDGMENT

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[Family Law — Custody — Access]
[Family Law — Matrimonial Assets — Division]

# WQP
# v
# WQQ

**[2024] SGHC(A) 34**

Appellate Division of the High Court — Civil Appeal No 134 of 2023
Kannan Ramesh JAD, Debbie Ong Siew Ling JAD and See Kee Oon JAD
13 August 2024

18 November 2024 Judgment reserved.

**Debbie Ong Siew Ling JAD (delivering the judgment of the court):**

1 Where a pool of matrimonial assets comprises substantial pre-marriage assets commingled with post-marriage assets, is that fact relevant to the division of matrimonial assets pursuant to s 112 of the Women's Charter 1961 (2020 Rev Ed) (the "Charter")? This judgment addresses this question and explains why it is indeed relevant and in what manner.

2 This is an appeal against the decision of a Judge of the Family Division of the High Court (the "Judge") in *WQP v WQQ* [2023] SGHCF 49 (the "Judgment") on ancillary matters following a divorce. The appeal focuses on two aspects: the handover arrangements for the children's access and the division of matrimonial assets.

**Background**

3 The appellant (the "Husband") and the respondent (the "Wife") were married in Hong Kong on 5 May 2010. At the time of marriage, the Husband was 44 years old, and enjoyed a successful career as a banker. He brought a considerable amount of wealth into the marriage, consisting of at least $5.4m in cash savings. The Wife was 29 years old then and was embarking on her own career in the finance industry.

4 There are two children of the marriage, a son and a daughter, who are respectively 14 and 11 years old at the date of this judgment (the "Children").

5 The family lived in Hong Kong in the initial years of the marriage. In March 2012, the family moved to Singapore so that the Husband could take up a position in Singapore. The Wife gave up her job in Hong Kong as a result of the relocation and found employment in Singapore soon after. In late 2013, the Husband partially retired, while the Wife continued with her career. The Wife is currently a Chief Corporate Officer with Company J.

6 The parties' relationship subsequently broke down and the Husband filed for divorce on 1 April 2020. The Wife moved out of the matrimonial home with the Children on 10 June 2020. An interim judgment of divorce (the "IJ") was granted on 29 September 2020. In total, the marriage lasted approximately 10 years.

**The decision below**

7 Before the Judge, the parties contested the Children's care and control and access, the division of the matrimonial assets and maintenance for the Wife

and the Children. The Judge's maintenance orders are not the subject of this appeal, and we say no more on them.

8 With respect to the Children's issues, the Judge ordered that both parties would have joint custody of the Children, and granted care and control of the Children to the Wife, with access to the Husband (Judgment at [5]–[22]). These orders have not been challenged on appeal. What has been challenged is the Judge's refusal to grant certain "facilitative access orders" sought by the Husband. These were orders that would require the Wife to send the Children to the Husband's residence at the start of the Husband's access, and thereafter for the Wife to physically leave the vicinity of his residence for the remainder of the period of access. We will elaborate on this below.

9 As for the division of matrimonial assets, the Judge identified and valued the pool of matrimonial assets to be worth S$13,239,640.90 (Judgment at [76]). This included moneys in several Hong Kong bank accounts in the Husband's name (the "Hong Kong accounts") which the Husband had sought to exclude on the ground that they consisted primarily of moneys derived from his pre-marriage income, as well as several other assets which the Husband claimed to have acquired using moneys from the Hong Kong accounts. The Judge rejected this argument on the basis that the Husband could not show that these moneys had retained their pre-marriage character. The Husband was unable to produce the bank statements for the Hong Kong accounts over the duration of the marriage and was therefore unable to prove the precise amounts of pre- and post-marriage moneys that were held in those accounts. The Judge therefore decided that any pre-marriage moneys in the Hong Kong accounts were no longer separately identifiable as the Husband's pre-marriage assets and therefore had to be included in the matrimonial pool (Judgment at [29]–[36]). The Judge adopted the global assessment methodology, rejecting the Husband's

argument that the Hong Kong accounts and assets acquired with moneys from those accounts should be divided as a separate class of assets pursuant to the classification methodology (Judgment at [23]).

10 The Judge assessed the parties' indirect contributions ratio to be 40:60 in favour of the Wife. She found, among other things, that:

(a) The Husband was responsible for paying the vast majority of the household expenses, at least until the last year of the marriage (Judgment at [85]).

(b) The Wife had made significant contributions at home, particularly when the Children were very young, and had moved to Singapore in support of the Husband's career development (Judgment at [88]).

(c) The Husband had made significant contributions to the Children's upbringing, at a time when the Wife was busy with her own career to the extent of being absent from Singapore for one out of every five days between 2014 and 2015 (Judgment at [90]–[92]).

11 The Judge held that the ratio of direct contributions between the Husband and the Wife was 70.32% and 29.68% respectively. Averaging the direct contributions ratio of 70.32:29.68 and the indirect contribution ratio of 40:60, the resulting average ratio was 55.16:44.84 (in favour of the Husband). She divided the matrimonial assets valued at $13,239,640.90 in the proportion of 55.16% to the Husband and 44.84% to the Wife.

**The parties' cases on appeal**

12 The Husband contends that the Judge erred in refusing to make the facilitative access orders he had sought. In respect of the division of matrimonial assets, the Husband argues that the Judge erred in two respects. The first is in assessing the parties' relative indirect contributions to be 40:60 in favour of the Wife, instead of 40:60 in favour of the Husband. The second is in failing to adopt the classification methodology to divide the moneys in the Hong Kong bank accounts and the assets acquired with those moneys separately as non-quintessential matrimonial assets.

13 The Wife did not file an appeal against the Judge's decision. Notwithstanding this, the Wife argues in her Respondent's Case filed on 5 June 2024 (the "Respondent's Case") that the Judge erred in refusing to exclude certain shares held by her from the pool of matrimonial assets. The Judge had referred to these shares as the "J Shares", and we adopt the same term. The Wife submits that she had acquired the J Shares herself in 2019 without contribution from the Husband at a time when the parties were in the midst of negotiations on the terms of their divorce.

**Issue 1: The J Shares**

14 We start with the Wife's argument for the J Shares to be excluded from the matrimonial pool. We make a preliminary observation with respect to the manner in which this argument was made. The tenor of the Respondent's Case was that the Wife was asking the court to exercise its discretion to exclude the J Shares from the matrimonial pool *in any event*. Such an argument would have been a non-starter given that the Wife did not file an appeal. Order 19 r 31(2)(*d*)(i) of the Rules of Court 2021, which was cited in the Wife's submissions, permits a respondent to include in the Respondent's Case a

submission that the lower court's decision should be varied where the appeal is wholly or partially allowed. The provision does *not* permit the respondent to argue for such a variation *in any event*.

15 At the hearing, however, counsel for the Wife, Ms Kee Lay Lian ("Ms Kee") clarified that the Wife seeks the exclusion of the J Shares only *in the event the Husband succeeds in his appeal on the division of matrimonial assets*. Counsel for the Husband, Mr Clement Yap ("Mr Yap"), accepted that the Wife could raise her argument on that basis. We therefore proceed on the basis of Mr Kee's clarification as accepted by Mr Yap.

16 Having considered the merits of the Wife's argument, we are not persuaded that the J Shares should be excluded from the pool of matrimonial assets. We note that in an appropriate case, it is open to the court to use its discretion to exclude from the pool of matrimonial assets an asset which would otherwise have fallen within that pool, but "[t]his is a power that is used very sparingly by the court and only in special circumstances": *BGT v BGU* [2013] SGHC 50 at [34]. An example is the case of *Ong Boon Huat Samuel v Chan Mei Lan Kristine* [2007] 2 SLR(R) 729 ("*Ong Boon Huat*"). In that case, the court excluded an apartment purchased by the husband during the marriage as the wife had wholly dissociated herself from the purchase of the apartment; she had testified that the husband should bear full liability for the property as it was for his sole benefit and would belong wholly to him (*Ong Boon Huat* at [22]). The facts of *Ong Boon Huat* are exceptional.

17 Ms Kee referred to several High Court decisions where the courts excluded matrimonial assets acquired around or after separation. Those cases should however be read in the light of this court's decision in *WOS v WOT* [2024] 1 SLR 437 ("*WOS*"), where the Appellate Division rejected any notion

that assets acquired after the parties' separation should generally be excluded from the pool of matrimonial assets.

18 In *WOS*, the parties had separated approximately ten years before the grant of the interim judgment of divorce. The husband submitted that the court should adopt the date of the parties' separation as the operative date for determining the pool of matrimonial assets, instead of the date of the interim judgment of divorce; if the date of the parties' separation was used instead, the substantial assets acquired by the husband after separation would not be included in the matrimonial pool. The Appellate Division rejected this submission, highlighting the problems with taking the husband's position that a marriage lasts only until separation such that assets acquired after separation are not matrimonial assets (see *WOS* at [21]–[34]). Amongst other reasons, the court highlighted that such a position would be at odds with the principle that a marriage practically ends only upon the grant of the interim judgment of divorce.

19 The Appellate Division in *WOS* also made the general observation that it was in fact quite common for parties to be separated for a period of time before the grant of a divorce (*WOS* at [2]). The fact that a matrimonial asset is acquired during the period of separation is thus not exceptional.

20 Consonant with the principles in *WOS*, we are of the view that the mere fact that a matrimonial asset was acquired after separation does not, without more, justify the exclusion of that asset from the matrimonial pool. The circumstances of separation can instead be relevant when the court considers the parties' indirect contributions to the marriage in deciding the proportions of division of the matrimonial pool (*WOS* at [58]).

21 In our view, there is nothing in the present case that justifies the exclusion of the J Shares. For example, there was no evidence of the Husband completely dissociating himself from the acquisition of the J Shares, as the wife in *Ong Boon Huat* had done. We reject the Wife's argument and decline to exclude the J Shares from the pool of matrimonial assets.

**Issue 2: The facilitative access orders**

22 We next address the Husband's appeal on the facilitative access orders. Before the Judge, the Husband had sought an order for the Wife to drop the Children off at his residence at the start of his period of access, and not park her car in the basement or remain in the vicinity of his residence during that period. He explained that this would send a message to the Children that they had to spend time with him and would ensure that the Children were not pressured into leaving early during his access time. The Judge declined to grant such an order, explaining that "[i]n light of the overnight access now given to the Husband, I do not see the need to make such an order given the length of time the Husband will have with the Children" (Judgment at [21]). We surmise that the Judge could have thought that ordering overnight access would send the message that the Children should spend substantial time with the Husband, and with overnight access it is not expected that the Wife would wait around near his residence overnight. We are much alive to the reality that in appeals against decisions involving the welfare of children, "the appellate court is slow to intervene and plays only a limited role, in recognition of the fact that the decisions in such cases often involve choices between less-than-perfect solutions": *TSF v TSE* [2018] 2 SLR 833 at [49]. Within this limited role, however, the court may make orders if doing so will be effective in assisting the parties to move forward and promote the welfare of the children.

23 In the present case, the Husband is not asking this court to reverse the Judge's care and control order or vary the access orders. Instead, the order sought by the Husband is in respect of handover arrangements and is intended to facilitate the effective exercise of his access.

24 We had earlier allowed the Husband's application in AD/SUM 4/2024 ("SUM 4") to adduce further evidence on appeal. We accept that the evidence shows that the Husband, for various reasons, has had difficulty exercising his access after the Judge's decision. In these circumstances, we are of the view that the Husband's exercise of his access could be assisted with the facilitative handover orders, although not on the exact terms sought by him.

25 Such facilitative orders, however, can only go so far. It is apparent to us that the more fundamental need is to repair the Husband's relationship with the Children, and we are of the view that this should be done with the assistance of therapeutic services. At the hearing, Ms Kee informed the court that the Wife and Children had been attending family counselling, without the Husband. We expressed our view that the whole family (*ie,* the Husband, the Wife and the Children) should undergo counselling so that the counsellor would have the benefit of hearing from the Children and *both* parents, and work with *all* the family members. Mr Yap and Ms Kee indicated that the parties would be willing to undergo counselling on these terms.

26 We made interim orders at the hearing and we now make the following orders:

(a) The Wife is to send the Children to the Husband's residence at the start of the Husband's access, and the Husband is to send the Children to the Wife's residence at the end of his access. The Husband

is to bear half of the Wife's transport costs in taking the Children to the Husband's residence at the start of his access, as agreed by the Husband at the hearing. This order on handover arrangements is made to support the access orders, so that the Children are able to meaningfully spend the entirety of the access time with their father. These orders should be complied with, not merely in letter but especially in spirit. A strong parent *supports the children as well as the other parent* in enabling close and healthy parent-child relationships.

(b) The parties and the Children are to attend counselling to be arranged by FAM@FSC. We are of the view that such therapeutic support will assist the parties to be stronger parents under these challenging circumstances of divorce and assist the Children to have healthy relationships with *both* parents.

**Issue 3: The parties' indirect contributions**

27 We turn next to the Husband's contention in respect of the parties' indirect contributions ratio. The Judge assessed the parties' indirect contributions ratio at 60:40 in favour of the Wife. The Husband argues that the Judge's attribution of 40% as his indirect contributions undervalues his contributions both as the spouse responsible for paying the vast majority of household expenses and as a stay-at-home father and caregiver of the Children after his semi-retirement in 2013.

28 While the appellate court would be slow to disturb the Judge's assessment of indirect contributions (which must be assessed adopting a broad-brush approach), we are of the view, with respect, that the Judge's factual findings on the parties' indirect contributions do not appear to be congruent with the ratio ultimately reached by her.

29 We note that in respect of the parties' indirect *non-financial* contributions, the Judge's findings indicate that the Husband and Wife had made more or less equal contributions, with each playing an active role in the Children's lives over the various stages in the marriage. The Judge recognised the Wife's contributions in taking time off from work when the Children were born and in moving to Singapore in support of the Husband's career, which involved a significant sacrifice by the Wife. She also found that there was significant documentary support for the Husband's assertion that he played a significant role in the Children's lives and observed that his contribution to the Children was recognised by the Wife herself. In respect of the parties' indirect *financial* contributions, the Judge found that the Husband had been responsible for payment of the vast majority of the family expenses until the last year of the marriage (Judgment at [85]).

30 We are of the view that based on the Judge's findings, a fair ratio to be assigned as the parties' indirect contributions should have been at least 50:50. We attribute 50:50 as the ratio of the parties' indirect contributions.

**Issue 4: Division of assets – use of the global assessment methodology or the classification methodology**

31 Finally, we address the Husband's appeal against the Judge's use of the global assessment methodology in the division exercise.

32 The Husband does not assert on appeal that certain assets should be excluded from division on the basis that they were pre-marriage assets. He contends that the Judge's use of the global assessment methodology does not give sufficient recognition to the fact that the matrimonial pool includes a proportion of "non-quintessential assets" which do not wholly represent the gains of the marital partnership. The Husband argues that these assets are less

attributable to the parties' indirect contributions since they include moneys earned before marriage or assets acquired with those moneys. He submits that the Wife would gain a windfall if these assets were to be divided in the same way as "quintessential matrimonial assets", where the parties' indirect contributions would *prima facie* be accorded equal weight to their direct financial contributions.

33 The Husband proposes two alternative ways to account for these non-quintessential assets being included in the pool. The first is by adopting the classification methodology to divide these assets separately, with greater weight being accorded to direct financial contributions for the class of non-quintessential matrimonial assets. The second is for greater weight to be accorded to direct financial contributions in dividing the *entire* pool of matrimonial assets (*ie*, *both* quintessential and non-quintessential assets).

34 The Wife argues that any assets acquired by the Husband before the marriage have lost their pre-marriage and non-quintessential character because they were commingled with post-marriage assets and have been transformed by the Husband's ordinary use of them for the family's expenses under s 112(10)(*a*)(i) of the Charter. The Wife denies that she would receive a windfall on the basis that all of the assets already constitute matrimonial assets and are liable to be divided as such. The Wife further contends that the Husband has already been given recognition for these assets by virtue of his direct financial contributions, and that there is no reason for further recognition to be given.

***The law on identification of matrimonial assets and the use of the two methodologies***

*Identifying matrimonial assets to be divided*

35 In *USB v USA and another appeal* [2020] 2 SLR 588 ("*USB*"), the Court of Appeal stated that "[t]he starting point of the division exercise … is the identification of the *material* gains of the marital partnership" (*USB* at [27]). The division of matrimonial assets under the Charter is founded on the prevailing ideology of marriage as an equal co-operative partnership of efforts; when the marriage is terminated, the contributions of the spouses to the marriage are translated into economic assets to be distributed according to s 112(2) of the Charter: *NK v NL* [2007] 3 SLR(R) 743 ("*NK*") at [20]. These economic assets which represent the material gains of the marriage partnership are matrimonial assets, defined in s 112(10) of the Charter as follows:

> **Power of court order division of matrimonial assets**
>
> **112.**—(1) …
>
> …
>
> (10) In this section, 'matrimonial asset' means —
>
> (a) any asset acquired before the marriage by one party or both parties to the marriage —
>
> (i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or
>
> (ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and
>
> (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.

36 From this provision, it is clear that "the intention of the legislature was to confine the court's powers of division to ***assets relating to marriage***" [emphasis added in bold italics]: *USB* at [18]. Professor Leong Wai Kum ("Prof Leong") has said that the "purpose of fulfilling the definition [in s 112(10)] is to ensure that the court's power to divide is *exercised only over the material gains of the marital partnership and nothing else*" [emphasis added] (Leong Wai Kum, "Definition of Property as Matrimonial Asset Through the Lens of Therapeutic Justice" [2024] SAL Prac 4 at [31]).

37 Assets which are most related to marriage and which wholly represent the material gains of the marital partnership are assets acquired *during* the marriage by the *efforts* of one or both spouses. These assets would fall within s 112(10)(*b*) of the Charter. Prof Leong first referred to such assets as "quintessential matrimonial assets" in 1997 (see Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at p 931).

38 Assets acquired *before* marriage and assets acquired by *gift or inheritance* are, without more, *not* related to marriage, and are *not* the material gains of the marital partnership. However, if these assets are substantially improved during the marriage, they attain some connection to the marriage, and are liable to division. Parliament has also seen it fit to include into the matrimonial pool *pre-marriage assets* which have been *used* by the family and *gifted or inherited assets* which have been used as the *matrimonial home*; the *usage* of these assets by the family also gives rise to some connection to the marriage.

39 The term "quintessential matrimonial asset" is not expressly used in the Charter. The term was first adopted judicially by the Family Division of the High Court in *TNC v TND* [2016] 3 SLR 1172 ("*TNC (HCFD)*") and subsequently by the Court of Appeal in *USB* (at [19(a)]):

> 'Quintessential matrimonial assets' (to use a term first adopted by Justice Debbie Ong in *TNC v TND* [2016] 3 SLR 1172 at [40]): these are assets which either spouse derived from income earned during the marriage or to which either spouse or both spouses obtained legal title during the marriage by applying their own money, and the matrimonial home, whenever and however acquired. The entire value of these assets assessed as at the ancillary matters date (generally) will go into the pool.

40 A quintessential matrimonial asset is "quintessential" in character as it wholly represents the gains of the marital partnership, being acquired by the *efforts* of either or both spouses *during* the marriage. However, less commonly, if a matrimonial home is acquired *before* marriage or by *gift or inheritance*, it does not have *this* quintessential character but may be said to be included as a quintessential asset only in the sense of being the "cradle of the family" (see *Chen Siew Hwee v Low Kee Guan (Wong Yong Yee, co-respondent)* [2006] 4 SLR(R) 605 at [33]).

41 An asset that is not acquired by effort during marriage may be a matrimonial asset if it is *transformed* into one by virtue of the other sub-sections in s 112(10) of the Charter. The Court of Appeal in *USB* has explained this category of "transformed matrimonial assets" as follows (*USB* at [19(b)]):

> 'Transformed matrimonial assets': we use this term to denote assets which were acquired before the marriage by one spouse (or, more rarely, by both spouses), but which have been substantially improved during the marriage by the other spouse or by both spouses or which were ordinarily used or enjoyed by both parties or their children while residing together for purposes such as shelter, transport, household use, *etc*. Once transformed, the whole asset goes into the pool but if there is no transformation then, subject to (c) below, any asset acquired

> before the marriage even if acquired by both parties would be dealt with in accordance with general principles of property law.

Assets acquired by *gift or inheritance* are *prima facie* not matrimonial assets but may also be transformed into matrimonial assets by substantial improvement or usage as a matrimonial home. If transformed in either of these ways, they will be treated in the same way as other transformed assets (*USB* at [19(d)]).

42 In identifying all the material gains of the marital partnership for the division exercise, keeping in mind the distinct notions of "quintessential matrimonial assets" and "transformed matrimonial assets" would be helpful. The former are the material gains of the marriage partnership while the latter may not always, or fully, represent the material gains of the marriage. Although both categories are matrimonial assets to be included in the pool for division, in appropriate cases, the distinction between the two categories may be relevant when the court considers which "methodology" of division to adopt. These notions also assist the court generally in considering how to exercise its discretion to divide the assets in a just and equitable manner. We will elaborate on this further below.

*The different methodologies*

43 We now address the use of the two methodologies in the division of matrimonial assets – the global assessment methodology and the classification methodology. These methodologies were considered by the Court of Appeal in 2007 in *NK* at [31]–[32]:

> 31 The first methodology consists of four distinct phases: *viz*, identification, assessment, division and apportionment ('the global assessment methodology'). According to this approach, the court's duty is to (a) identify and pool all the matrimonial assets pursuant to s 112(10) of the Act; (b) assess

> the net value of the pool of assets; (c) determine a just and equitable division in the light of all the circumstances of the case; and (d) decide on the most convenient way to achieve these proportions of division, *ie*, how the order of division should be satisfied from the assets (see Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths, 1997) at p 895). Pursuant to this approach, the percentage for indirect contributions is applied without distinction to all matrimonial assets (see, for example, *Ryan Neil John v Berger Rosaline* [2000] 3 SLR(R) 647 at [24]; and *Tham Lai Hoong v Fong Weng Sun Peter Vincent* [2002] 1 SLR(R) 391 ("*Tham Lai Hoong*") at [12]).
>
> 32 The second methodology, on the other hand, involves an assimilation of all four of the above steps into a broad judicial discretion which, in the first instance, separately considers and divides classes of matrimonial assets ("the classification methodology"). Pursuant to this method, the court apportions classes of matrimonial assets separately, for example, the matrimonial home, cash in bank accounts, shares, and businesses, *etc*. Any direct financial contributions and indirect contributions are considered in relation to each class of assets, rather than by way of a global assessment (see, for example, *NI v NJ* [2007] 1 SLR(R) 75).

44 In the global assessment methodology, the court determines a single ratio for the division of the entire pool of matrimonial assets. In the classification methodology, the court divides the assets into distinct classes and determines separate ratios for division in each class.

45 The Court of Appeal said that both methodologies were consistent with the legislative framework in s 112 of the Charter and that neither methodology was superior to the other. In the final analysis, the choice of which methodology to use depends primarily on the facts and circumstances of each case (*NK* at [33]).

46 The Court of Appeal in *NK* emphasised that pursuant to the classification methodology, only the direct contributions might vary while "the element of indirect contributions in the context of homemaking and child caring must

necessarily remain constant in relation to each class of asset": *NK* at [35]. We pause here to explain this principle.

47 The Court of Appeal's decision in *AYQ v AYR and another matter* [2013] 1 SLR 476 ("*AYQ*") held that in using the classification methodology, the "weightage" of indirect contributions should remain constant across *all* the classes of assets (*AYQ* at [23]). We observe that this reference to the "weightage" of indirect contributions must now be understood in the light of subsequent significant legal developments in the landmark decision of *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ*").

48 A common practice *before ANJ* had been to begin the division exercise by ascribing a ratio to the parties' direct contributions, and then applying a percentage "uplift" to account for a party's indirect contributions. This "uplift" approach was unsatisfactory because using direct contributions as a starting point might undervalue the homemaker's indirect contributions, which would in turn be inconsistent with Parliament's objective of equalizing direct and indirect contributions: see *ANJ* at [19].

49 *ANJ* set out a different approach from the "uplift approach". It set out the "structured approach" which may be summarised as follows (*ANJ* at [22]):

> (a) First, the court should ascribe a ratio that represents each party's direct contributions relative to that of the other party, having regard to the amount of financial contribution each party has made towards the acquisition or improvement of the matrimonial assets.
>
> (b) Second, the court should ascribe a second ratio to represent each party's indirect contribution to the well-being of the family relative to that of the other.

(c) Third, using each party's respective direct and indirect percentage contributions, the court then derives each party's average percentage contribution to the family which would form the basis to divide the matrimonial assets.

(d) Further adjustments may need to be made to the parties' average percentage contributions to take into account, among other things, the other factors enumerated in s 112(2) of the Charter.

50 In the structured approach, in calculating each party's average percentage contribution to the marriage (what is now commonly referred to as the "average ratio"), the direct contributions and indirect contributions are to be accorded equal weight. The Court of Appeal in *USB* emphasised that adjusting the *weightage* of the direct and indirect contributions should be done as an exception; where the court exercises its discretion to adjust the weightage, apart from cases involving a short marriage, cogent reasons should be provided to explain the departure from the norm of equal weightage (*USB* at [41]).

51 *AYQ* was decided two years before *ANJ* and had employed the former "uplift approach" – there, the "weightage of indirect contributions" referred to the percentage uplift representing the indirect contributions of the spouse given the uplift. Post-*ANJ*, it would be appropriate to understand *AYQ*'s reference to "weightage" of indirect contributions as referring to what is now described as the *ratio* of indirect contributions. The present position is thus that the *ratio of indirect contributions* should remain constant across all the classes of assets. However, it is permissible that unequal *weightage* be given to direct and indirect contributions when calculating the average and final ratios. In other words, where appropriate, the average ratio for each class of assets can be different if circumstances warrant an unequal weightage to be accorded to direct and

indirect contributions to the various classes of assets. The facts and holding of *TNC (HCFD)* on this issue illustrate this point.

52 *TNC (HCFD)* involved the division of matrimonial assets which included a property acquired by the husband before the marriage (the "Bayshore property"). The parties had resided in the Bayshore property for 15 months. In the context of the identification of matrimonial assets, the court found that the Bayshore property was ordinarily used by the parties for shelter and had therefore been transformed into a matrimonial asset under s 112(10)(*a*)(i) of the Charter (*TNC (HCFD)* at [18]).

53 In adopting the classification methodology, the court in *TNC (HCFD*) explained (at [42]):

> … the Bayshore property, acquired by the husband before marriage, and regarded as matrimonial property merely because the parties used it for shelter, should be divided differently from the rest of the matrimonial assets. Bearing in mind that *this was not a quintessential matrimonial asset although a matrimonial asset within s 112(10)(a)(i), I found it appropriate to treat its division separately from the quintessential matrimonial assets*. This should not be taken as suggesting that all properties falling within s 112(10)(*a*)(i) should be classed and divided separately. Rather, in this particular case, the period of use and enjoyment of the Bayshore property was significantly shorter compared to the length of the marriage, and the property had not been used by the parties for a long time.
>
> [emphasis added]

54 The court was of the view that on the precise facts and circumstances of the case, a transformed asset falling within s 112(10)(*a*)(i), not being a quintessential matrimonial asset, warranted a different treatment from the quintessential matrimonial assets when the court considers the proportions of division.

55 In dividing the matrimonial assets, the court in *TNC (HCFD)* accorded *different weightages* to the parties' direct and indirect contributions for each class of assets while applying the *same ratio* for *indirect* contributions across all classes. The court reached a final division ratio of 20:80 in favour of the husband for the class of assets in which the Bayshore property was placed. This ratio was different from the final division ratio of 40:60 in favour of the husband for the class of quintessential matrimonial assets. The classification methodology thus enables different classes of assets to be divided in different proportions if this will achieve a just and equitable division of assets. On appeal, the Court of Appeal did not disturb the High Court's holding in relation to the use of the classification methodology (see *TND v TNC and another appeal* [2017] SGCA 34).

## ***Our decision***

### *The appropriate methodology*

56 We turn to the facts of the present case. At the outset, we observe that much of the Husband's difficulties are evidentiary, stemming from his inability to produce the bank statements for the Hong Kong accounts for the period after 2011. These evidentiary difficulties were readily conceded at the hearing by Mr Yap. Mr Yap accepted that as a result of the evidentiary gaps, the Husband could not show with any precision what proportion of the assets or what specific assets in the matrimonial pool could be attributed to his pre-marriage assets. We note that the Hong Kong accounts were themselves commingled, containing income earned by the Husband both before and during the marriage. These mixed funds were then used to acquire the assets which the Husband now claims to be non-quintessential assets. Given that these assets were acquired using funds which included moneys earned during the marriage, we are not persuaded that they can be classified as wholly non-quintessential assets.

57 It is necessary that the adoption of both methodologies "be underscored by a principled approach" and the methodology adopted be the one that leads to the just and equitable division of the assets (*NK* at [33]). On the facts of the present case, the assets cannot be placed into the two distinct classes of quintessential and non-quintessential matrimonial assets, which is the basis of the Husband's contention in applying the classification methodology. We therefore see no reason to disagree with the Judge's adoption of the global assessment methodology.

*Dividing the material gains of the marriage partnership*

58 The Husband was unable to discharge his burden of proving that the assets in question were pre-marriage assets. Indeed, on appeal he has not sought to exclude these assets from the matrimonial pool. His contention instead is that the use of the global assessment methodology does not give sufficient recognition to the fact that the matrimonial pool includes assets which do not wholly represent the material gains of the marital partnership.

59 We first make some observations on the evidence. We accept that the bank statements which the Husband *was* able to provide do show that at the start of the marriage he had the equivalent of at least S$5.4m in his Hong Kong accounts. These pre-marriage assets were not ringfenced from the family. Instead, the Husband had mixed these funds with moneys earned during the marriage, and collectively used them for the benefit of the family. The Husband's estimation is that he had spent about $250,000 per year for the family's expenses. Given that he had semi-retired just three years into the marriage which lasted ten years, we accept that he would likely have used substantially his pre-marriage funds in addition to any income earned during the marriage to provide for the family.

60 Although the Husband cannot trace the specific assets which currently constitute the matrimonial pool to his pre-marriage assets, it is clear to us on the evidence that at least a substantial *portion* of the matrimonial pool can be attributed to those assets. On the available evidence on the parties' incomes and assets, it is improbable that the pool of matrimonial assets, valued at S$13,239,640.90, can be attributed solely to income earned or investment yields made by the parties during their 10-year marriage. This is especially so after accounting for the Husband's semi-retirement three years into the marriage and substantial provision for the family's expenses. We accept that a sizeable portion of the pool of matrimonial assets is attributable to the Husband's pre-marriage assets. It follows that, to that extent, there is a substantial portion of the pool of matrimonial assets which can be regarded as non-quintessential in character.

61 Had the Husband kept records of transactions and transfers throughout the marriage or kept his pre-marriage moneys separate from marital funds, he might have been in a better position to prove which assets were pre-marriage assets. But such behaviour is not what should be encouraged in marriage. Sad is the day when married couples keep records or organise their affairs in ways that will put them in a better financial position in the event that the marriage ends in divorce.

62 The Husband's conduct in this respect is consistent with the ideals of mutual cooperation to safeguard the interests of the union and to care and provide for the children as required by s 46 of the Charter. It seems ironic in the context of s 46 and s 112 of the Charter that a party who provides for the family in ways that are not calculative and consequently does not keep records of movements of his assets during marriage may be worse off financially in the

event of a divorce than a party who ringfences assets from the matrimonial estate.

63 We are of the view that in determining the proportions of division, the court should have regard to the circumstances of the Husband commingling his substantial pre-marriage assets with the marital assets, which impacts the very subject matter of division in s 112 of the Charter. We emphasise that this does not alter the principle already well established in the law on the burden of proving that an asset should be excluded from the matrimonial pool (*USB* at [31]):

> When a marriage is dissolved, in general all the parties' assets will be treated as matrimonial assets unless a party is able to prove that any particular asset was either not acquired during the marriage or was acquired through gift or inheritance and is therefore not a matrimonial asset. The party who asserts that an asset is not a matrimonial asset or that only a part of its value should be included in the pool bears the burden of proving this on the balance of probabilities.

As is demonstrated in the present case, all the assets in question have been *included* in the matrimonial pool.

64 We do not go so far as to say that the Husband's conduct evinced a *clear and unambiguous intention* on his part to treat all his pre-marriage moneys as part of the family estate, as the Wife had sought to argue below. In *CLC v CLB* [2023] 1 SLR 1260 ("*CLC*"), the Court of Appeal found ample evidence that the husband had clearly communicated his intentions to the wife to treat his inheritance moneys as part of the family estate, and had used the availability of those funds as part of their total wealth to assure the wife that the family had comfortable financial resources (*CLC* at [88]–[97]). It was held that it is not inconsistent with s 112 for the court to give effect to the party's clear intention to incorporate such assets into the matrimonial pool. This intention forms the

*basis* for the inclusion of non-quintessential matrimonial assets into the pool and the burden of proof lay with the party asserting that there was such a *clear and unambiguous intention*. In the present case, such an intention was absent.

65 Before going further into how the court should have regard to the circumstances set out above, we first address some of the arguments raised by the Wife in response to the Husband's contentions.

66 The Wife submits that the moneys in the Hong Kong accounts had been transformed into matrimonial assets because they had been ordinarily used by the Husband to provide for the family. This argument is not relevant to this appeal. The point that the assets in question are matrimonial assets liable to division has already been accepted by the Husband; the Husband no longer disputes that they should be excluded from the pool as they have been commingled with marital funds.

67 The Wife also submits that recognition has already been given to the Husband because he has been attributed with direct financial contributions for the assets in question. We disagree. Such attribution for direct contributions recognises the fact that these assets were acquired by the Husband's efforts, but not the fact that a substantial portion of the assets were acquired before marriage. As we have explained earlier (at [35]–[36]), the court's power to divide assets is exercised *over the material gains of the marital partnership*; crediting the Husband with direct contributions for his pre-marriage assets does not of itself address the fact that the pool consists of not only the material gains of the marriage but pre-marriage assets as well.

68 We elaborate on how the present circumstances can be taken into account within the *ANJ* approach. We have rejected the Husband's primary

submission of using the classification methodology (above at [57]). In the present case, based on the parties' direct contributions of 70.32:29.68 found by the Judge and indirect contributions of 50:50 (see our holding at [30] above), the average ratio is 60:40 (rounded from 60.16: 39.84) in favour of the Husband. We are of the view that the average ratio should be shifted by 5% in the Husband's favour. Circumstances in which the average ratio may be shifted were addressed in *ANJ* itself (at [26]–[28]):

> 26 … *the 'average ratio' is a non-binding figure*; it is meant to serve as an indicative guide to assist courts in deciding what would be a just and equitable apportionment having regard to the factual nuances of each case.
>
> 27 The circumstances that could shift the 'average ratio' in favour of one party are diverse, and in our judgment, there are at least three (non-exhaustive) broad categories of factors that should be considered in attributing the appropriate weight to the parties' collective direct contributions as against their indirect contributions:
>
> (a) The length of the marriage. Indirect contributions in general tend to feature more prominently in long marriages (*Tan Hwee Lee* ([18] supra) at [85]). Conversely, indirect contributions usually play a *de minimis* role in short, childless marriages (*Ong Boon Huat Samuel v Chan Mei Lan Kristine* [2007] 2 SLR(R) 729 at [28]).
>
> (b) *The size of the matrimonial assets and its constituents*. If the pool of assets available for division is extraordinarily large and all of that was accrued by one party's exceptional efforts, direct contributions are likely to command greater weight as against indirect contributions (see *Yeo Chong Lin v Tay Ang Choo Nancy* [2011] 2 SLR 1157 ("*Yeo Chong Lin*")).
>
> (c) The extent and nature of indirect contributions made. Not all indirect contributions carry equal weight. For instance, the engagement of a domestic helper naturally reduces the burden of homemaking and caregiving responsibilities undertaken by the parties, and to that extent, the weight accorded to the parties' collective indirect contributions in the homemaking and caregiving aspects may have to be correspondingly reduced. The courts also tend to give weighty consideration to homemakers who have painstakingly

> raised children to adulthood, especially where such efforts have entailed significant career sacrifices on their part.
>
> 28 The above principles are germane to the general run of matrimonial cases where the parties' direct and indirect contributions are the only two factors engaged under s 112 (*ie*, ss 112(2)(*a*) and 112(2)(*d*)) when the court's powers to divide matrimonial assets are called upon. We are mindful that there remains a number of other factors under s 112, including the needs of the children; the presence of an agreement between the parties with respect to the ownership and division of matrimonial assets; period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party; and the matters referred to in s 114(1) relating to a maintenance order for the wife. *In so far as the remaining factors become relevant for consideration in the appropriate case, the court is well-advised to make adjustments as it deems necessary to the principles stated in this judgment for the purposes of reaching a just and equitable result on the facts before it.*
>
> [emphasis added]

69 In these paragraphs, the Court of Appeal has made clear that the circumstances that could shift the 'average ratio' are *diverse*, and proceeded to state three *non-exhaustive* broad categories of factors that could warrant the shift. The average ratio can be shifted upon taking into consideration all relevant circumstances including the *constituents* of the matrimonial pool as well as the factors in s 112(2) of the Charter. As we have set out earlier at [36]–[37], the intention of the legislature was to confine the court's powers of division to "assets relating to marriage"; these assets would be the material gains of the marital partnership. We are of the view that the average ratio of 60:40 ought to be shifted to a final ratio of 65:35 in favour of the Husband. Pre-marriage assets are not matrimonial assets and not the material gains of the marital partnership, but in the present case, they have been included in the pool due to commingling and the lack of evidence identifying them as *distinct* assets. The Husband stepped down from full employment three years into the marriage and we accept that his pre-marriage assets, which were commingled with marital assets and

remained in the pool, were substantial. It is also significant that this is a marriage of 10 years, which is not a long marriage. A marriage of 11 years has been described as a "mid-length" marriage in *BOR v BOS* [2018] SGCA 78 ("*BOR*") (at [112]). In *BOR*, the Court of Appeal observed, in giving some context to the terms "long" and "short" marriages, that *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 ("*TNL*") involving a marriage of 35 years was a long marriage, and the cases referred to as long marriages in *TNL* involved marriages of between 26 to 30 years. A long marriage might have presented a different factual matrix where financial contributions may play a less significant role, and a different conclusion may be just and equitable.

70 We hasten to add that divorcing parties should not see this as an incentive to make similar arguments without cogent evidence of what are pre-marriage assets. Each case turns on its specific facts and circumstances. We have made the adjustment as a clear inference may be drawn in the present case that a substantial proportion of the matrimonial pool consists of the Husband's pre-marriage assets (at [56] above). As noted earlier, the Husband's failure to retain the relevant documents was consistent with how spouses who are committed to the marital partnership would organise their affairs. Therefore, we are of the view that shifting the average ratio in the present case enables us to reach a just and equitable division of the assets. This approach better reflects the underlying purpose of s 112 of the Charter to divide the *material gains of the marriage partnership*.

71 This approach supports marriage partners in discharging their responsibilities as required by s 46 of the Charter. It also minimises the incentive for parties in similar situations to submit inordinate amounts of documents and engage in the exercise of tracing multiple movements of dollars and cents over many years of marriage, in the hope of proving that certain assets are derived

from pre-marriage assets which retain their character as non-matrimonial assets. Such an exercise would involve substantial resources from the parties and the courts, especially as "married parties typically do not keep financial records with a view to collecting evidence for a future divorce": *UNE v UNF* [2018] SGHCF 12 at [96]. It would also protract proceedings and further aggravate the parties' relationship. It would grate against the aspirations of a therapeutic justice system that endeavours to support parties in reaching a harmonious resolution of disputes and in moving forward in their lives.

72 "[S]pouses must not be incentivised to be calculative, nor constrained from being generous and loving while they cultivate trust during their marriage and build their joint lives together": *UZN v UZM* [2021] 1 SLR 426 ("*UZN*") at [21]. The Court of Appeal in *UZN* exhorted:

> … Upon divorce, the termination of the marriage does not abruptly transform the parties into adversaries such that the past years of marriage are examined through the lens of a cold, commercial partnership. It would simply be unrealistic to ignore the fact that spouses in a marriage do not conduct themselves in the way they would with business parties. Even though divorced parties are no longer spouses, there is every reason to treat one's former spouse, and current co-parent of one's children, with respect and a measure of give-and-take.

73 Even after divorce, there is every reason for the parties to recast their future positively. Parties who have conducted themselves in ways that are bigger, kinder and wiser can rest in the knowledge that they have done their best for themselves and importantly, for their children. Their children, especially in their more mature years, will appreciate that their parents loved them so much that they were able to be bigger than their own hurt and pain.

74 Married parties must not forget that the law takes the view that the material gains of the marriage belong to both parties in their equal partnership of different efforts, which will be divided between them in accordance with the

legislative regime in the Charter. In the present case, while the final division ratio of 65:35 may appear on its face to award the Husband a significantly larger share of the matrimonial assets, this is due to awarding 65:35 of a pool that comprises both pre-marriage and post-marriage assets. This ratio may work out to be one that is in effect nearer to an equal division of the parties' *true material gains of the marriage* if we bear in mind the fact that pre-marriage funds have been commingled in the pool.

75 We note that the Husband's alternative proposal to accord greater weightage to direct contributions could possibly also achieve a similar result as that reached by shifting the average ratio in favour of the Husband. We find the latter approach to be principled and consistent with the broad-brush approach affirmed in *ANJ*. The court may adjust the average ratio in a manner that is just and equitable, taking into account all the circumstances; it is "not constrained to use the average ratio as the final ratio, as it could otherwise lead to the direct and indirect contributions of the parties gaining dominant importance amongst the factors in s 112(2)": *UBM v UBN* [2017] 4 SLR 921 at [32]. The Husband's alternative proposal, which requires another step of determining what specific weightage to attribute to direct and indirect contributions, is a more cumbersome process which also contains a measure of artificiality; it may also suggest that dominant importance is given to the parties' contributions.

**Conclusion and Costs**

76 For the reasons above, we allow the Husband's appeal in part with respect to the facilitative access orders and the ratio of the parties' indirect contributions. Taking into account our conclusion on the Husband's indirect contributions, the average ratio is 60:40 in favour of the Husband. We shift this average ratio to 65:35 in favour of the Husband. The Husband will receive 65%

and the Wife will receive 35% of the pool of matrimonial assets which was valued by the Judge at S$13,239,640.90.

77 As the Husband has not been wholly successful in the appeal, we award costs to the Husband fixed at $20,000, inclusive of disbursements. As for SUM 4, we award costs to the Husband fixed at $3,000, inclusive of disbursements. The usual consequential orders will apply.

Kannan Ramesh
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

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