Tan Hwee Lee
v
Tan Cheng Guan
and another appeal and another matter

[2012] SGCA 50

Court of Appeal — Civil Appeals Nos 135 and 136 of 2011 and Summons No 266 of 2012
Chao Hick Tin JA, Andrew Phang Boon Leong JA and V K Rajah JA
19 March; 30 August 2012

Civil Procedure *— Appeals — Application to adduce fresh evidence on appeal — Wife's counsel seeking to adduce further evidence on appeal — Whether further evidence could be obtained with reasonable diligence earlier — Order 57 r 13(2) Rules of Court (Cap 322, R 5, 2006 Rev Ed)*

Family Law *— Maintenance — Wife — Wife claiming multiplicand of maintenance order too low — Husband claiming lump sum maintenance should be discounted — Whether maintenance order was appropriate in the circumstances — Sections 114(2) and 115(1) Women's Charter (Cap 353, 2009 Rev Ed)*

Family Law *— Matrimonial assets — Division — Husband claiming that loan liability of property not properly taken into consideration — Husband claiming that past Central Provident Fund contributions towards property should be included when valuing property — Husband claiming that outstanding loan of property which no longer belonged to him need not be serviced by him — Whether property was correctly valued for purposes of division — Whether Husband should serve outstanding loan of property that no longer belonged to him*

Family Law *— Matrimonial assets — Division — Husband claiming that Wife should not receive half of overall matrimonial assets — Whether division of matrimonial assets on a 50:50 basis was just and equitable — Section 112(1) Women's Charter (Cap 353, 2009 Rev Ed)*

Family Law *— Matrimonial assets — Gifts — Wife claiming that property gifted to her by Husband prior to divorce not matrimonial asset — Whether inter-spousal gifts were matrimonial assets — Section 112(10) Women's Charter (Cap 353, 2009 Rev Ed)*

Statutory Interpretation *— Definitions — Whether word "gift" in s 112(10) Women's Charter (Cap 353, 2009 Rev Ed) referred to inter-spousal gifts or only third-party gifts — Section 112(10) Women's Charter (Cap 353, 2009 Rev Ed)*

Words and Phrases *— Wife claiming that allowing gifted property to be included for division as matrimonial asset inequitable — Meaning of "inequity" when dealing with inter-spousal gifts — Sections 112(1) and 112(2)(e) Women's Charter (Cap 353, 2009 Rev Ed)*

Facts

Tan Cheng Guan ("the Husband") and Tan Hwee Lee ("the Wife") were married on 9 October 1982 and have two daughters, respectively aged 23 and 21 years (collectively referred to as "the Children"). During the 28-year marriage, the Husband was the sole breadwinner while the Wife looked after the household and the Children. Throughout their marriage, the Husband and the Wife ("the parties") owned three properties: (a) 32 Seletar Hills Drive Singapore 807047 ("32 SHD"); (b) 34 Seletar Hills Drive Singapore 807049 ("34 SHD") and (c) 36E La Salle Street Singapore 454936 ("the La Salle Property"). The parties' relationship deteriorated through the years and, in 1999, they entered into a deed of separation. Between late 2006 and early 2007, the Husband agreed to sever the joint tenancy in 32 SHD and gave 40% of 32 SHD from his share to the Wife with the result that she held 90% of that property. In May 2007, the Husband also executed a formal deed ("the 2007 Deed") to provide financially for the Wife and the Children.

In April 2008, the Husband commenced divorce proceedings and a decree *nisi* was granted on 6 May 2010. Before the High Court judge ("the Judge"), the parties' claims on the share of the matrimonial assets each spouse should receive upon divorce were widely divergent.

The Judge first laid out a three-stage methodological framework for dividing matrimonial assets: first, the pooling of the assets and the ascertainment of the value of the pool ("the first stage"); second, deciding the "fair and equitable" division between the parties ("the second stage"); and, finally, making the actual division ("the third stage"). The Judge held that 32 SHD, being an inter-spousal gift, should be included in the pool of matrimonial assets, expressly disagreeing with the High Court decision in *Wan Lai Cheng v Quek Seow Kee* [2011] 2 SLR 814. The Judge then held that the law on matrimonial assets could be reconciled with the law of property on gifts by ordering that the gift form part of the percentage share awarded to the donee spouse at the third stage. Having pooled and valued the respective assets (including 32 SHD) at an amount totalling $6,794,973.09, the Judge awarded a 50:50 division of the matrimonial assets. The Judge then ordered the Husband to pay the Wife maintenance of a lump sum of $288,000. At a subsequent hearing in chambers, the Judge also ordered that the outstanding loan on 32 SHD to be served by both parties on a 50:50 basis.

Both parties appealed against the Judge's decision. Civil Appeal No 135 of 2011 ("CA 135/2011") was filed by the Wife and Civil Appeal No 136 of 2011 ("CA 136/2011") was filed by the Husband. Summons No 266 of 2012 ("SUM 266/2012") was an application taken out by the Wife to adduce further evidence ("the Further Evidence") in CA 135/2011.

Held, allowing both CA 135/2011 and CA 136/2011 in part and dismissing SUM 266/2012:

(1) The Wife could not be granted leave to adduce the Further Evidence. The first condition of the test laid down in *Ladd v Marshall* [1954] 1 WLR 1489, *viz*, that the evidence could not have been obtained with reasonable diligence for use during the hearings on the ancillary matters, was not satisfied. That the Wife was only "alerted" to the Further Evidence by her new solicitors was insufficient to

establish that the evidence could not have been obtained with reasonable diligence earlier: at [22] and [23].

(2) Following the decision in *Wan Lai Cheng v Quek Seow Kee* [2012] 4 SLR 405, inter-spousal gifts of assets which did not originate from a third-party gift or inheritance (*ie*, "pure" inter-spousal gifts) were *not* "gifts" for the purposes of s 112(10) of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Act"), and therefore *constituted matrimonial assets* for division ("the general rule"). 32 SHD, being a "pure" inter-spousal gift, therefore constituted a matrimonial asset for division: at [30].

(3) The only exception to the general rule was where *de minimis* inter-spousal gifts were concerned. In dealing with *de minimis* inter-spousal gifts, the court would have the discretion to exclude such gifts from the pool of matrimonial assets. The concepts of "proprietary interests" and "inequity" should, however, no longer constitute exceptions to the general rule: at [48], [51] and [56].

(4) A court which was not dealing with an issue of maintenance could still consider the factors listed in s 114(1) of the Act in dividing matrimonial assets pursuant to s 112(2)(*h*) of the Act: at [38].

(5) It was not possible to reconcile the law on matrimonial assets and the law of property on gifts simply by giving effect to the inter-spousal gift at the third stage. A better solution would be to take the nature and context of the inter-spousal gift into consideration at the second stage via s 112(1) of the Act to achieve a just and equitable division of the matrimonial assets. In situations where it would be clearly inequitable for a donor spouse to be awarded a substantial share in the asset constituting the inter-spousal gift (or in the form of other assets), the court could take such a situation into consideration under s 112(1) and award the donee spouse a greater percentage of the overall matrimonial assets ("the s 112(1) approach"): at [35] and [41] to [43].

(6) However, based on the s 112(1) approach, the inter-spousal gift would only be relevant under the second stage if it was evidentially certain that the gift was made in contemplation of divorce, such that allowing the donor spouse to benefit from the asset constituting the inter-spousal gift would be clearly inequitable: at [61].

(7) In the present case, the intentions of both the Husband and the Wife with regard to the purpose behind and the circumstances surrounding the gift of the Husband's share in 32 SHD were objectively unclear. Given the ambiguity of the evidence, the Wife could not succeed in showing that it would be clearly inequitable for the Husband to benefit from 32 SHD being in the pool of matrimonial assets: at [66] and [68].

(8) Notwithstanding that certain payments had yet to be disbursed by the mortgagee bank to the developers of the La Salle Property, this amount of money did nonetheless constitute the outstanding liability of the La Salle Property as at February 2011. Therefore, the correct net value of the La Salle Property as at February 2011 stood at $480,000 instead of the $800,000 accepted by the Judge: at [71] to [73].

(9) The Husband's past CPF contributions towards the purchase of 32 SHD should not be included in the pool of matrimonial assets for that would have

been double-counting. However, given that 32 SHD had been awarded to the Wife upon the division of matrimonial assets, the Husband should no longer have to service the outstanding loan of 32 SHD. The Judge's order that both parties service the outstanding loan on 32 SHD on a 50:50 basis was accordingly reversed, and the Wife ordered to serve the outstanding loan on her own: at [74], [75], [77] and [78].

(10) The apportionment of the matrimonial assets on a 50:50 basis by the Judge was not erroneous. The Husband's approach was fundamentally flawed because he treated direct financial contributions as a *prima facie* starting point, an approach which had been categorically disapproved of in earlier cases. The following reasons could also be offered in support of why the Wife deserved at least half of the matrimonial assets: (a) this was a long marriage (of 28 years); (b) the Wife's non-financial contributions to the household were significant; (c) the Husband's alleged non-financial contributions were unsubstantiated and unreliable; and (d) the Husband's failure to account for the disappearance of different sums of money in his possession which warranted an adverse inference being drawn against him: at [84], [88], [89], [91] to [93], [101] and [102].

(11) The multiplicand of $2,000 in the lump sum maintenance order was correctly ordered. The $6,000 in the 2007 Deed promised by the Husband to the Wife was not solely for the Wife but for the two daughters as well. Applying s 114 of the Act, the multiplicand of $2,000 was also sound because the Wife could not expect a full subsidy of her lifestyle by her former husband, especially when she could still take up gainful employment. The Wife had also been awarded substantial assets and cash from the division of matrimonial assets, a relevant consideration when determining the reasonableness of a maintenance order: at [106], [110] and [111].

(12) The decision to award a lump sum maintenance order without discount was a matter of discretion and should not be easily disturbed. Moreover, the Husband did not manage to convince the court that he had insufficient liquid assets to pay cash sums to the Wife upfront. In the result, the lump-sum maintenance order of $288,000 should not be varied: at [112] and [113].

(13) Given the re-adjustment of the net value of the La Salle Property, the overall value of the parties' matrimonial assets was to be correspondingly decreased by $320,000 to a figure of $6,474,973.09. For reasons of practicality, the Judge's actual division of the matrimonial assets was to be retained save that the lump sum cash payment in favour of the Wife was to be decreased from $608,246.325 to $448,246.325: at [115].

[Observation: It could be argued that a more direct route in dealing with inter-spousal gifts in the division of matrimonial assets would be to rely on s 112(2)(*e*) of the Act ("s 112(2)(*e*)"). However, such an approach would be premised upon an unusually broad meaning being attached to the phrase "agreement between the parties" in s 112(2)(*e*) as covering even an unilateral gift. This would appear to go against a plain and straightforward reading of s 112(2)(*e*): at [57] to [60].]

Case(s) referred to

AXW v AXX [2012] 3 SLR 900 (refd)

Chan Fook Kee v Chan Siew Fong [2001] 2 SLR(R) 143; [2001] 3 SLR 176 (refd)

Chan Siew Fong v Chan Fook Kee [2002] 1 SLR(R) 93; [2002] 1 SLR 169 (refd)

Chan Teck Hock David v Leong Mei Chuan [2002] 1 SLR(R) 76; [2002] 1 SLR 177 (folld)

Chan Yuen Boey v Sia Hee Soon [2012] 3 SLR 402 (refd)

Foo Ah Yan v Chiam Heng Chow [2012] 2 SLR 506 (folld)

Koh Bee Choo v Choo Chai Huah [2007] SGCA 21 (refd)

Ladd v Marshall [1954] 1 WLR 1489 (folld)

Lee Leh Hua v Yip Kok Leong [1999] 1 SLR(R) 554; [1999] 3 SLR 506 (refd)

Lock Yeng Fun v Chua Hock Chye [2007] 3 SLR(R) 520; [2007] 3 SLR 520 (refd)

MZ v NA [2006] SGHC 95 (refd)

NI v NJ [2007] 1 SLR(R) 75; [2007] 1 SLR 75 (refd)

NK v NL [2007] 3 SLR(R) 743; [2007] 3 SLR 743 (folld)

Pang Rosaline v Chan Kong Chin [2009] 4 SLR(R) 935; [2009] 4 SLR 935 (folld)

Sim Cheng Soon v BT Engineering Pte Ltd [2006] 3 SLR(R) 551; [2006] 3 SLR 551 (refd)

Sigrid Else Roger Marthe Wauters v Lieven Corneel Leo Raymond Van Den Brande [2011] SGHC 237 (refd)

Soon Geok Hong v Ong Yeow Tiong [1995] SGHC 78 (refd)

Tay Ang Choo Nancy v Yeo Chong Lin [2010] SGHC 126 (refd)

Tham Khai Meng v Nam Wen Jet Bernadette [1997] 1 SLR(R) 336; [1997] 2 SLR 27 (folld)

Wan Lai Cheng v Quek Seow Kee [2011] 2 SLR 814 (overd)

Wan Lai Cheng v Quek Seow Kee [2012] 4 SLR 405 (folld)

Wong Amy v Chua Seng Chuan [1992] 2 SLR(R) 143; [1992] 2 SLR 360 (refd)

Wong Ser Wan v Ng Cheong Ling [2006] 1 SLR(R) 416; [2006] 1 SLR 416 (refd)

Yeo Chong Lin v Tay Ang Choo Nancy [2011] 2 SLR 1157 (refd)

Yeo Gim Tong Michael v Tianzon Lolita [1996] 1 SLR(R) 633; [1996] 2 SLR 1 (folld)

Yow Mee Lan v Chen Kai Buan [2000] 2 SLR(R) 659; [2000] 4 SLR 466 (refd)

Legislation referred to

Rules of Court (Cap 322, R 5, 2006 Rev Ed) O 57 r 13(2)

Women's Charter (Cap 353, 2009 Rev Ed) ss 112(1), 112(2)(*e*), 112(2)(*h*), 112(10), 114(1)(*a*), 114(2), 115(1) (consd); ss 112(2)(*a*)–(*h*), 114(1)

Lim Puay Chong Vincent and Sim Chong (JLC Advisors LLP) for the appellant in Civil Appeal No 135 of 2011 and the respondent in Civil Appeal No 136 of 2011; Bernice Loo and Magdelene Sim (Allen & Gledhill LLP) for the respondent in Civil Appeal No 135 of 2011 and the appellant in Civil Appeal No 136 of 2011.

[Editorial note: The decision from which this appeal arose is reported at [2011] 4 SLR 1148.]

30 August 2012 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

Introduction

1 These are two related appeals filed by the husband, Tan Cheng Guan ("the Husband") and the wife, Tan Hwee Lee ("the Wife") against the decision of the High Court judge ("the Judge") in *Tan Cheng Guan v Tan Hwee Lee* [2011] 4 SLR 1148 ("the Judgment") with regard to the division of matrimonial assets and the order of maintenance. Civil Appeal No 135 of 2011 ("CA 135/2011") is filed by the Wife, and Civil Appeal No 136 of 2011 ("CA 136/2011") is filed by the Husband. Summons No 266 of 2012 ("SUM 266/2012") is an application taken out by the Wife in relation to CA 135/2011.

2 The main issue which arises in this appeal is whether an inter-spousal gift is a matrimonial asset for the purposes of s 112(10) of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Act"). Notably, the Judge held that an inter-spousal gift is a matrimonial asset for the purposes of s 112(10) of the Act ("s 112(10)"), expressly disagreeing with the views of the High Court in *Wan Lai Cheng v Quek Seok Kee* [2011] 2 SLR 814 ("*Wan Lai Cheng (HC)*").

Facts

3 The Husband is an executive vice-president at Sembcorp Industries Ltd ("Sembcorp") while the Wife is a homemaker. Both parties are in their mid-50s. The parties married on 9 October 1982 and have two daughters, respectively aged 23 and 21 years (collectively referred to as "the Children"), who are both pursuing their tertiary education in the United States of America ("USA"). During the 28-year marriage, the Husband was the sole breadwinner while the Wife looked after the household and the Children.

4 The parties owned three properties: (a) 32 Seletar Hills Drive Singapore 807047 ("32 SHD"); (b) 34 Seletar Hills Drive Singapore 807049 ("34 SHD") and (c) 36E La Salle Street Singapore 454936 ("the La Salle Property").

5 From 1988 to 1999, the parties lived in 32 SHD. From 1999 onwards, the parties resided in 34 SHD. The parties' relationship deteriorated through the years and, in 1999, they entered into a deed of separation ("the 1999 Deed"). The Wife claimed that it was the result of the Husband having committed adultery, while the Husband blamed it on the Wife behaving intolerably. The parties nonetheless remained under the same roof for the sake of the Children but effectively lived separate lives.

6 From about 1990 to 2004, the Husband worked at Sembcorp. In 2004, he accepted a job in Shanghai with Vopak China and the family uprooted themselves and followed him there. In April 2006, the Husband moved out of the family home in Shanghai, but the Wife and the Children continued living there because of the Children's education. On 24 August 2006, the parties executed a deed ("the 2006 Deed") although neither party acted on it.

7 Between late 2006 and early 2007, the Husband agreed to sever the joint tenancy in 32 SHD and gave 40% of 32 SHD from his share to the Wife with the result that she held 90% of that property. This was first given effect to by a sale and purchase agreement dated 29 January 2007, followed by a title deed transfer dated 10 April 2007. The *purported effect* of the Husband's act is *hotly disputed* between the parties, and forms the subject matter of the inter-spousal gift issue. It is the Wife's case that the Husband had given her 32 SHD (with the balance 10% kept by him merely to continue servicing the mortgage) after he committed adultery, in order to persuade her not to end the marriage and as compensation. The Husband, however, argued that he had *not* made a gift of his share in 32 SHD to the Wife, but that he had severed his share without the intention of giving any part of 32 SHD to the Wife, only to make her feel more secure as she had continually harassed him when he told her that he wanted to set up his own business.

8 In April 2007, the Husband decided to rejoin Sembcorp in Singapore. The Wife and the younger daughter, however, remained in Shanghai until June 2009 because of the latter's studies in Shanghai, while the elder daughter was due to go to the USA for undergraduate studies.

9 On 7 May 2007, the Husband wrote, by hand, a letter which set out certain financial provisions on maintenance for the Wife and the Children whilst they remained in Shanghai. On 23 May 2007, a formal deed was executed which echoed the terms in the letter but which also made further financial provisions for the Wife and the Children upon their return to Singapore ("the 2007 Deed").

10 In April 2008, the Husband commenced divorce proceedings in Singapore. On 17 March 2010, the District Judge ("the DJ") made an interim maintenance order requiring the Husband to pay maintenance of $6,000 a month for the Wife and the Children as well as requiring that he continue to pay for the Children's school fees and all education related expenses ("the DJ's Maintenance Order"). A decree *nisi* was subsequently granted on 6 May 2010.

11 Before the Judge, the parties' claims were widely divergent. The Husband sought 80% of 32 SHD, 90% of all other assets and reimbursement for various items of expenditure. The Wife, on the other hand, asked for the

whole of 32 SHD (on the basis that it should not be part of the pool of matrimonial assets), 80% of 34 SHD, 35% of the Husband's other assets and for her to retain the assets in her name (see the Judgment ([1] *supra*) at [2]).

Decision below

12 The Judge first laid out (at [3] of the Judgment) a three-stage methodological framework for dividing matrimonial assets: first, the pooling of the assets and the ascertainment of the value of the pool ("the first stage"); second, deciding the "fair and equitable" division between the parties ("the second stage"); and, finally, making the actual division ("the third stage").

13 The Judge then justified the inclusion of an inter-spousal gift in the pool of matrimonial assets on the ground that such a gift was "purchased with a pre-existing matrimonial asset" and therefore "does not lose its nature as a matrimonial asset". The Judge attempted to reconcile the law on matrimonial assets and the law of property on gifts by holding that "the concept of gift remains valid … only at the third stage", where a court can "order that the gift forms part of the percentage share awarded to the party" (see the Judgment at [3]).

14 The Judge offered three reasons why he disagreed with *Wan Lai Cheng (HC)* ([2] *supra*), a High Court decision which had earlier established that an inter-spousal gift fell within the proviso to s 112(10) (referred to as the "Exclusion Clause" in the decision of this court in *Wan Lai Cheng v Quek Seow Kee* [2012] 4 SLR 405 ("*Wan Lai Cheng (CA)*")) and was therefore not a matrimonial asset, as follows:

(a) Firstly, the Judge repeated his earlier justification that an inter-spousal gift does not change its nature as a matrimonial asset, and that holding otherwise runs contrary to the concept of joint property in marriage (see the Judgment at [4]).

(b) Secondly, the Judge held that Parliament's intention in not *explicitly distinguishing* between third-party and inter-spousal gifts in s 112(10) (even though recommendations were made to that effect to the predecessor to s 112(10)) could simply be that the amendments were unnecessary because the distinction was clear (see the Judgment at [5]).

(c) Thirdly, the Judge reasoned that regarding an inter-spousal gift as a matrimonial asset provides better justification as to why the courts take it into consideration at the second stage, as opposed to relying on ss 112(2)(*h*) and 114(1) of the Act instead (see the Judgment at [6]).

15 Having pooled and valued the respective assets (including 32 SHD) at an amount totalling $6,794,973.09, the Judge awarded a 50:50 division of

the matrimonial assets. Consistent with his earlier view that "the concept of gift remains valid … at the third stage", the Judge awarded 32 SHD to the Wife (as part of her 50% share), together with various other assets (see the Judgment ([1] *supra*) at [8]).

16 In so far as the maintenance of the Wife was concerned, the Judge took cognisance of the DJ's Maintenance Order (that the Husband pay the Wife $6,000 a month for herself and the Children) but varied it to discount the older daughter's share since the latter was above 21 years of age. The Judge accepted the Husband's submission that the Wife should be given $2,000 a month for maintenance, but ordered that the Husband pay the Wife a lump sum of $288,000 ($2,000 x 12 months x 12 years). He also ordered that the Husband pay the younger daughter $2,000 a month directly, as well as her education expenses and fees, until she has graduated from university (see the Judgment at [9]).

Issues

17 The following issues arise in the present appeals:

(a) Should the Wife be granted leave to adduce fresh evidence for her appeal (in CA 135/2011) ("Issue 1")?

(b) Should the purported inter-spousal gift, *viz*, 32 SHD, be excluded from the pool of matrimonial assets ("Issue 2")?

(c) Did the Judge err in the process of pooling and valuing the respective matrimonial assets ("Issue 3")?

(d) Did the Judge err in apportioning the matrimonial assets on a 50:50 basis between the parties ("Issue 4")?

(e) Did the Judge err in ordering the Husband to pay the Wife a lump sum of $288,000 ($2,000 x 12 months x 12 years) as maintenance ("Issue 5")?

Our decision

Issue 1

The Wife's application to adduce further evidence

18 On 18 January 2012, the Wife applied via SUM 266/2012 (see [1] above) to seek this court's approval to adduce further evidence for her appeal ("the Further Evidence"), which consists of:

(a) a valuation report of the La Salle Property dated 22 December 2011 ("the Valuation Report");

(b) a print-out from the website of the Urban Redevelopment Authority showing the sale price of a similar property in May 2011 ("the URA Print-out"); and

(c) three excerpts from the Annual Reports of the Husband's employer for the years 2008, 2009 and 2010 ("the Annual Reports").

19 The Wife sought leave to adduce the Valuation Report and the URA Print-out to demonstrate that the value of the La Salle Property (retained by the Husband after the division of matrimonial assets) had been erroneously determined by the Judge. The Judge had adopted the originally undisputed market value of the property as at July 2009, instead of February 2011, the latter of which the Wife submitted before us should be the case. The Annual Reports, on the other hand, were adduced to demonstrate that the Husband may have earned more than what he had disclosed to the court and that the Wife therefore deserves a higher amount of maintenance.

Our decision to dismiss the Wife's application

20 Upon hearing the parties' oral submissions on this matter, we decided during the hearing to dismiss the Wife's application to adduce the Further Evidence.

21 In order to be granted leave to adduce the Further Evidence, the Wife had to fulfil the three conditions set out in the oft-cited English Court of Appeal decision of *Ladd v Marshall* [1954] 1 WLR 1489 ("the *Ladd v Marshall* test") pursuant to O 57 r 13(2) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), that:

(a) the evidence could not have been obtained with reasonable diligence for use during the hearings on the ancillary matters;

(b) the evidence must be such that, if given, would probably have an important influence on the result of the case, though it need not be decisive; and

(c) the evidence must be such as is presumably to be believed or apparently credible.

22 In our view, the Wife could not be granted leave to adduce the Further Evidence because she did not satisfy the first condition of the *Ladd v Marshall* test. In her affidavit seeking leave to adduce the Further Evidence, the Wife appeared to suggest that the Further Evidence was obtained at such a late stage because she was only "alerted" to the Further Evidence subsequently by her new solicitors. This was reiterated by the Wife's counsel, Mr Sim Chong, during oral submissions.

23 However, the fact that a party was represented by different solicitors earlier is, in and of itself, insufficient to establish that the piece of evidence "could not have been obtained with reasonable diligence" (see the decision

of this court in *Sim Cheng Soon v BT Engineering Pte Ltd* [2006] 3 SLR(R) 551 ("*Sim Cheng Soon*")). It was for this reason that this court in *Sim Cheng Soon* had to be convinced that the plaintiff's then solicitor had exercised reasonable diligence and could not be faulted for not having adduced the evidence concerned for use, before it could hold that the plaintiff had indeed satisfied the first condition of the *Ladd v Marshall* test (see *Sim Cheng Soon* at [11]–[13]).

24 In the present case, the Husband accurately pointed out that the Further Evidence could all have been easily obtained prior to the hearings before the Judge had the Wife been minded to do so. The Wife's only excuse – that her previous solicitors did not draw her attention to them – did not suffice to demonstrate that the Further Evidence could not have been obtained with reasonable diligence. If anything, such a concession would go towards showing that the Wife (as represented by her previous solicitors) did not act with reasonable diligence.

25 In her skeletal submissions, the Wife cited the Singapore High Court decision of *Chan Fook Kee v Chan Siew Fong* [2001] 2 SLR(R) 143 ("*Chan Fook Kee*") (reversed in *Chan Siew Fong v Chan Fook Kee* [2002] 1 SLR(R) 93, but not on the particular point to be discussed) to buttress her arguments to adduce the Further Evidence. In *Chan Fook Kee*, the wife had appealed against, *inter alia*, the District Judge's finding that both spouses had contributed slightly more than $100,000 in initial instalments for the purchase of their matrimonial flat. Before the High Court, the wife sought to adduce fresh evidence (*ie*, banking documents) to demonstrate that she was the party who had paid *all* the initial instalments. Although these banking documents could have been produced before the District Judge, the judge granted the wife leave for the following reasons (at [9]–[10]):

> 9 … In the end, I felt compelled to follow the guidance of Lord Wilberforce in *Mulholland v Mitchell* [1971] AC 666 at 680A; [1971] 1 All ER 307 at 313 which was expressed in these terms: 'Positively … it may be expected that courts will allow fresh evidence when to refuse it would affront common sense, or a sense of justice.' The other factors were these. First, the further evidence might ultimately affect the outcome of the appeal before me. Second, the wife's failure to obtain the banking documents in time hampered the preparation of her case earlier. The documents came into existence 16 years ago and it was not unexpected that her memory too might have lapsed here and there. The husband on the other hand is a meticulous person, seeing the prolific number of letters he wrote to her and the vendors. *Third, I was also happy that the wife was better served in her cause after another solicitor had taken a look into her case.*
>
> 10 In the circumstances, I was satisfied that there were 'special grounds' and I allowed the application and admitted the affidavit evidence and exhibits of the wife.
>
> [emphasis added]

26 A possible interpretation of the holding in *Chan Fook Kee* is that awareness of fresh evidence resulting from a change of solicitors, coupled with an unjust result should the fresh evidence be counted inadmissible, could be a sufficient reason for the court to grant leave. Unfortunately, the court did not refer to the *Ladd v Marshall* test ([21] *supra*) so it is uncertain whether the holding in *Chan Fook Kee* is consistent with, or an exception to, the *Ladd v Marshall* test. Subsequently, *Chan Fook Kee* has been interpreted as an exceptional case where the three conditions in the *Ladd v Marshall* test "do not apply, or apply in a modified form" where to refuse the admission of fresh evidence would affront common sense or a sense of justice (see *Singapore Civil Procedure 2007* (G P Selvam gen ed) (Sweet & Maxwell Asia, 2007) at para 57/3/16).

27 In our view, *Chan Fook Kee* is an exceptional case justifying the "inapplicability or modification" of the *Ladd v Marshall* test, *not so much because the plaintiff had changed her solicitors*, but because "the documents [at issue] came into existence 16 years ago and it was not unexpected that her memory too might have lapsed here and there" (see *Chan Fook Kee* at [9]). In the present case, the La Salle Property was purchased as recently as July 2009. Hence, there could be no excuse on the part of the Wife for her memory to have lapsed as to what should have been the true market value of the La Salle Property.

28 Therefore, we were of the view that a change of solicitors *per se* does not suffice to establish that the new evidence "could not have been obtained with reasonable diligence". In the result, the Wife failed to satisfy the first condition of the *Ladd v Marshall* test and her application to adduce the Further Evidence was therefore dismissed accordingly. We turn now to consider Issue 2, *viz*, whether an inter-spousal gift should be excluded from the pool of matrimonial assets.

Issue 2

29 In CA 135/2011, the Wife's main argument is that 32 SHD, an inter-spousal gift that she claims was given to her by the Husband, should be excluded from the pool of matrimonial assets and vested in her solely. Admittedly, the law regarding the status of an inter-spousal gift in the division of matrimonial assets in Singapore has been in a state of flux. In some cases, courts have held that an inter-spousal gift ought to remain a matrimonial asset (see, *eg*, the decision of this court in *Yeo Gim Tong Michael v Tianzon Lolita* [1996] 1 SLR(R) 633 ("*Yeo Gim Tong Michael*"), as well as the Singapore High Court decisions of *Yow Mee Lan v Chen Kai Buan* [2000] 2 SLR(R) 659, the Judgment ([1] *supra*), and *Sigrid Else Roger Marthe Wauters v Lieven Corneel Leo Raymond Van Den Brande* [2011] SGHC 237), whilst in others a different position appears to have been taken (see, *eg*, the Singapore High Court decisions of *Soon Geok Hong v Ong Yeow Tiong* [1995] SGHC 78 ("*Soon Geok Hong*"), *Lee Leh Hua v Yip*

Kok Leong [1999] 1 SLR(R) 554 ("*Lee Leh Hua*"), *Wong Ser Wan v Ng Cheong Ling* [2006] 1 SLR(R) 416 ("*Wong Ser Wan*"), and *Wan Lai Cheng (HC)* ([2] *supra*)).

30 However, in the recent decision of *Wan Lai Cheng (CA)* ([14] *supra*), this court clarified (at [46] and [115]) that inter-spousal gifts of assets which do not originate from a third-party gift or inheritance (*ie*, "pure" inter-spousal gifts, as referred to in *Wan Lai Cheng (CA)* at [41]) are *not* "gifts" for the purposes of s 112(10) of the Act, and therefore *constitute matrimonial assets* for division ("the general rule"). For the avoidance of doubt, all references to "inter-spousal gift(s)" in this judgment refer to "pure" inter-spousal gift(s).

31 The decision in *Wan Lai Cheng (CA)* effectively disposes of the main bulk of the Wife's appeal on this matter, save for her submission that even if there is a general rule that inter-spousal gifts constitute matrimonial assets, it would be inequitable or unconscionable for 32 SHD to be included for division (citing *Lee Leh Hua* and *Wong Ser Wan* as authority). The Wife's submission on this point raises an important question which was not raised (and thus not discussed *in extenso*) in *Wan Lai Cheng (CA)*: are there *exceptions* to the general rule? Before addressing this substantive question proper, we first pause to highlight two points of disagreement we have with the Judge's reasoning below.

Problematic aspects of the Judge's reasoning

32 Although we are in agreement with the Judge's *conclusion* that an inter-spousal gift should be included in the pool of matrimonial assets, there are some elements in his *reasoning* which we respectfully disagree with. None of these errors, however, affects the *correct conclusion* the Judge arrived at in recognising that an inter-spousal gift constitutes a matrimonial asset for the purposes of division. However, we see the need to address these problems in the *reasoning* in order to avoid their perpetuation in future cases.

33 Firstly, the Judge's reasoning that "considering the gift at the third stage enables the Court to give effect to the irrevocability of the inter-spousal gift" (see the Judgment at [3]) is, in our view, mistaken. While the Judge's desire to "reconcile the law on matrimonial assets and the law of property on gifts" (see the Judgment at [3]) is clear and understandable, his reasoning reveals an equivocation on the meaning of an "irrevocable gift". On our understanding, an "irrevocable gift" refers to an act of transfer of an asset which cannot be subsequently changed or undone by the donor. To "give effect to the irrevocability of [a] gift" is, by definition, to ensure that the donee retains the *full value* of the gift, with no share of the gift or any benefit in return accruing to the donor.

34 However, what has been mentioned at the end of the preceding paragraph is precisely what *does not happen* (both conceptually and practically) when the court considers the gift *only* at the *third stage*. By including the asset in the *shared* pool of matrimonial assets, apportioning to each spouse a certain share of the total assets, and *only then* considering the gift at the stage of the actual division, the donee spouse would necessarily be made to *forgo* some assets (to the benefit of the donor spouse) in order to retain the gift as part of the percentage share of the pool of matrimonial assets he or she would, *in any case*, have been *entitled to*. At best, one could claim that considering the gift at the *third* stage *preserves the form and appearance* of an irrevocable gift, but this is substantially very different from the Judge's claim that the irrevocability of the gift can be *given effect to*.

35 Not surprisingly, the equivocation on the meaning of an "irrevocable gift" can lead to *practical* difficulties in application, as reflected in the very example the Judge has chosen to illustrate his point (see the Judgment ([1] *supra*) at [3]):

> At the first stage, the court assesses the matrimonial assets to be worth $10m. There is a house worth $6m. Not the matrimonial home, the husband gives it to the wife. The court decides at the second stage to divide the matrimonial assets 60:40 between the husband and wife. At the third stage, the court may order the house be given to the wife but that she will have to pay $2m to the husband.

As the Wife rightfully questions in her written submissions before this court, "how would [the wife] be able to pay S$2 million to [the husband] since she would have no other assets?" In our view, this hypothetical demonstrates exactly why it is not possible to "reconcile the law on matrimonial assets and the law of property on gifts" simply by "giving effect" to the gift at the *third stage*. A better solution would be to rely on *the second stage* to do justice to the donee spouse, as we will elaborate upon below (see below at [41]–[43]).

36 Secondly, we disagree with the Judge's reasoning which underlies his critique of the approach suggested in *Wan Lai Cheng (HC)* ([2] *supra*) as to how an inter-spousal gift should be taken into account. In *Wan Lai Cheng (HC)*, the court, having decided (wrongly, in our respectful view) that an inter-spousal gift is not a matrimonial asset, relied on s 112(2)(*h*) of the Act to consider "other financial resources which each of the parties … has or is likely to have" (under s 114(1)(*a*) of the Act) and thereby took the inter-spousal gift into account after all whilst apportioning each party's share of the pool of matrimonial assets under the second stage ("the s 112(2)(*h*) approach").

37 Section 112(2)(*h*) of the Act reads as follows:

> (2) It shall be the duty of the court in deciding whether to exercise its powers under subsection (1) and, if so, in what manner, to have regard to all the circumstances of the case, including the following matters:
>
> …
>
> (*h*) the matters referred to in section 114(1) so far as they are relevant.

Section 114(1)(*a*) of the Act provides that one such factor 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.

38 In our view, the Judge's suggested justification that the s 112(2)(*h*) approach is inferior because it is "not possible in a case where the parties are litigating only on the division of matrimonial assets, without maintenance being an issue" (see the Judgment at [6]) is, with respect, incorrect. Section 112(2)(*h*) of the Act is, in the context of the division of matrimonial assets, operative independently of whether maintenance is at issue, since the provision simply gives the court the discretion to consider the factors listed in s 114(1) of the Act. We wish only to clarify, therefore, that a court which is not dealing with an issue of maintenance can still consider the factors listed in s 114(1) of the Act in dividing matrimonial assets pursuant to s 112(2)(*h*) of the Act.

The relevance of an inter-spousal gift at the second stage in determining a "just and equitable" division

39 We now turn our attention to the substantive question mentioned earlier: are there exceptions to the general rule (see above at [31])? Our answer to this question will depend, as will be made clear, on how an inter-spousal gift might be *relevant* in the division of matrimonial assets. In our view, whilst an inter-spousal gift should not be excluded from the pool of matrimonial assets at the first stage, the *nature and context* of the gift could be taken into consideration at the *second stage* (*ie*, when the court decides on a "just and equitable" division between the parties).

40 Sections 112(1) and 112(2) of the Act read:

> (1) 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*.
>
> (2) It shall be the duty of the court in deciding whether to exercise its powers under subsection (1) and, if so, in what manner, *to have regard to all the circumstances of the case*, including the following matters:

…

[emphasis added]

41 It has previously been held by this court that while the Act provides a helpful list of matters (*viz*, in s 112(2)(*a*)–(*h*)) that the court should consider, the list is *not exhaustive* as the court is entitled to have regard to all the circumstances of the case in order to achieve a just and equitable division of the matrimonial assets (see the decision of this court in *NK v NL* [2007] 3 SLR(R) 743 ("*NK v NL*") at [20] and the recent Singapore High Court decision in *AXW v AXX* [2012] 3 SLR 900 at [12]–[13]). In our view, this applies to the division of matrimonial assets constituting inter-spousal gifts as well. In situations when it would be *clearly inequitable* for a donor spouse to be awarded a substantial share in the asset constituting the inter-spousal gift (or in the form of other assets), the court can take such a situation into consideration under s 112(1) and *award the donee spouse a greater percentage of the overall matrimonial assets* ("the s 112(1) approach"). This is consistent with the view expressed in *Wan Lai Cheng (CA)* ([14] *supra*) at [115] that:

> … where the donor spouse clearly intends to permanently renounce his or her beneficial interest in the asset transferred (that is to say, when a 'pure' inter-spousal gift is intended to be a true gift), the donor spouse may be estopped from claiming any share in that asset when the court exercises its discretion in equitably distributing the pool of matrimonial assets.

42 The s 112(1) approach may be contrasted with the Judge's view below, which is to consider inter-spousal gifts *at the third stage*. To reiterate, the Judge's approach (in ordering that the gifted asset forms part of the percentage share awarded to the donee spouse) will not result in justice for the donee spouse since such an approach is tantamount to the law giving the donee spouse with one hand (*ie*, the asset constituting the inter-spousal gift) what it then takes away with the other (*ie*, a smaller share of the *other* matrimonial assets).

43 Treating an inter-spousal gift as relevant only at the second stage also avoids the potential injustice that could result if inter-spousal gifts are excluded from the pool of matrimonial assets (*ie*, the Wife's position). Should the Wife's position be adopted, an injustice could easily result "if a spouse had, during the course of the marriage, presented all of his/her property as gifts to the other spouse [and thus be] left with nothing if the marriage is terminated" (see Chen Siyuan, "Inter-spousal gifts as matrimonial assets" in *Singapore Law Watch Commentary Issue 1/October 2011* at p 3). In contrast, by including an inter-spousal gift in the pool of matrimonial assets and then factoring it (among other factors listed in s 112(2)) *upon the objective standard of what is "just and equitable"*, the court need not have its hands tied by the possibly irrational or inequitable

decision made by one spouse to alienate the bulk of his or her assets to the other party prior to the divorce.

Whether an exception to the general rule is required

44 Having established that any possible inequity resulting from an inter-spousal gift being recognised as a matrimonial asset can be addressed via the s 112(1) approach, we thereby *reject* any argument proposing that an inter-spousal gift should *not be included in the pool of matrimonial assets* on the basis that it could be inequitable to do so. To reiterate, an inter-spousal gift should *always* be included in the pool of matrimonial assets (subject to the one exception which we will elaborate on below at [45]–[49]), and it is only at the point of the apportionment of each spouse's share that the court can exercise its discretion to address any inequity. We have come to the view that there should only be one exception to the general rule, *viz*, *de minimis* inter-spousal gifts, while all other "exceptions" (as established in *Lee Leh Hua* ([29] *supra*) and *Wong Ser Wan* ([29] *supra*)) should no longer be followed.

(1) *De minimis* gifts constitute an exception to the general rule

45 The Singapore High Court decision of *Soon Geok Hong* ([29] *supra*) – as *interpreted and understood* in *Yeo Gim Tong Michael* ([29] *supra*) – constitutes the only true (and justifiable) exception to the general rule. In *Soon Geok Hong*, an issue arose as to how some watches, jewellery and cash alleged to have been given by the husband to the wife should be treated. The court held as follows:

> With regard to the alleged gifts of the watches, jewellery and money, I will make two points. First, I doubted that those gifts were made. Second, if they were made, I am of the view that *when gifts of this nature are made between spouses, it must be implied that the donor will not seek or be entitled to any share in them if the marriage is dissolved.* [emphasis added]

46 However, the opinion just referred to was subsequently questioned by this court in *Yeo Gim Tong Michael*, where L P Thean JA opined (at [11]) that "the learned judge [in *Soon Geok Hong*] … did not discuss the principles underlying his conclusion". Thean JA then established the general rule which we have agreed with (see *Yeo Gim Tong Michael* at [12]).

47 Importantly, Thean JA then observed thus (at [13]):

> For practical purposes, minor items of gift such as dresses and even jewellery of no substantial value, are normally considered as *de minimis* and are not taken into account. There is no reason why gifts of substantial value, such as a motor car, landed property and investments, which were acquired by one spouse during the marriage and given to the other should not be taken into account in the division, as they fall within s 106. In such case, it would be

> necessary to investigate whether such gifts were acquired by the sole effort of one spouse or by the joint efforts of both.

48 Strictly speaking, it is unclear whether the observations made by Thean JA above could be understood as a *re-interpretation* of *Soon Geok Hong* that the gifts in the latter case were "considered as *de minimis*" in the first place. Even so, subsequent case law (see the Singapore High Court decision of *Tay Ang Choo Nancy v Yeo Chong Lin* [2010] SGHC 126 ("*Tay Ang Choo Nancy*") at [48]) and academic commentary (see Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2007) ("*Leong*") at p 602) have understood Thean JA to be establishing the following *practical* exception: the court, in determining the pool of matrimonial assets, can exercise its discretion to exclude *de minimis* inter-spousal gifts from that pool. In the nature of things, such gifts would tend to be highly personal in nature (*eg*, jewellery).

49 In our view, this exception is desirable and should be retained as it prevents the lower courts from being overly burdened by petty arguments over gifts of this nature. We would, however, add that whether or not a gift is considered to be *de minimis* for the purpose of the present exception would depend very much on the precise factual matrix before the court. For example, the monetary value of a gift, whilst ostensibly high, might still be considered to be *de minimis* when viewed in the context of the overall pool of matrimonial assets (*cf Tay Ang Choo Nancy* at [48] and (on appeal) the decision of this court in *Yeo Chong Lin v Tay Ang Choo Nancy* [2011] 2 SLR 1157 at [52]).

(2) "Proprietary interests" do *not* constitute an exception to the general rule

50 In *Lee Leh Hua* ([29] *supra*), the husband was found to have given the sales proceeds of the matrimonial flat to the wife as compensation for his commission of adultery. On that basis, the High Court excluded the sales proceeds from the pool of matrimonial assets and stated the following proposition (at [27]):

> Accordingly, in a case where the events before the divorce petition clearly establish that one party was entitled to an asset *as of right* the court ought not allow the other party to ask the court to exercise its power under s 112 of the Women's Charter. So in this case the court cannot vary the vested interest of the wife by invoking s 112(1) of the Women's Charter. [emphasis added]

51 In our view, the proposition stated in the preceding paragraph is inconsistent with the s 112(1) approach and should no longer be followed. We also note that *Lee Leh Hua* was – at the time of its release – already inconsistent with the earlier holding of this court in *Yeo Gim Tong Michael* ([29] *supra*) which had disapproved of the approach to exclude inter-spousal gifts at the first stage. On the academic front, *Lee Leh Hua* has been

criticised on the ground that "if read literally, [it] could mean a very restrictive approach [to the division of matrimonial assets]" (see Koh Juat Jong, "Family Justice – Developments since 1996" in *Developments in Singapore Law between 1996 and 2000* (Kenneth Tan Wee Kheng gen ed) (Sweet & Maxwell Asia, 2001) pp 535–572 at p 555). Subsequently, Prof Leong Wai Kum ("Prof Leong") has also raised concerns about a possible consequence of *Lee Leh Hua*, *ie*, that "the power to divide [matrimonial assets] may no longer be available where the respective spouses' proprietary interests are clear" (see *Leong* at p 557). She then argued (at pp 557–558) that:

> [t]he power to divide matrimonial assets [should remain] available to both spouses even if both spouses' entitlement to an asset is clear … The purpose of the exercise of that power is to ensure that both spouses receive due credit for their contributions to the acquisition of the property that is a matrimonial asset. Ensuring due credit will often require the court to order division in proportions that do not mirror the parties' entitlement under property law that generally only credits financial contributions. The purpose of the exercise of the power to divide matrimonial assets, therefore, is not fulfilled just because the parties' proprietary interests are clear. The purpose is fulfilled, given that the power should be exercised in broad strokes, only where the parties have already made reasonable division between themselves by private agreement. In this case, it could be said that their oral agreement under which the wife should have the entire proceeds of sale was such a privately arranged reasonable division. It would have been preferred if this were offered as the reason for declining to exercise the power to divide.

52 We broadly agree with the learned analysis of Prof Leong, save for her apparent agreement with the decision in *Lee Leh Hua* not to include the asset in the pool of matrimonial assets. As mentioned earlier, an inter-spousal gift of a matrimonial asset always remains a matrimonial asset (subject to the *de minimis* gift exception). The fact that the parties have "already made reasonable division between themselves by private agreement" should only come into play – if appropriate – at the second stage via s 112(1). While the *eventual result* reached by the High Court in *Lee Leh Hua* might have been "just and equitable", the same result could easily have been arrived at if the court had given full (or close to full) effect to the inter-spousal gift via s 112(1) *by awarding the wife a much larger share of the pool of matrimonial assets*.

(3) The "inequity of a situation" does not constitute an exception to the general rule

53 Finally, we consider the Singapore High Court decision in *Wong Ser Wan* ([29] *supra*), which the Wife also cites as authority to support her view that 32 SHD should not be included as a matrimonial asset because doing so would be inequitable or unconscionable.

54 In *Wong Ser Wan*, the parties drafted a financial agreement ("the FA") dealing with the ownership and division of certain matrimonial assets years prior to their divorce. Finding that the FA was a document entered into on the husband's part to *prevent a divorce* from taking place (by providing financial security to the wife and thus inducing her to withdraw the former divorce petition), the High Court came to the conclusion that some of the FA assets *should not* be brought into the pool of matrimonial assets for division because (at [76]):

> … [the] gifts made to the wife under the [FA] were made for the specific purpose of inducing the wife to act in a certain way, She did so. I think that it would be inequitable to allow the husband to retract these gifts now even though his financial circumstances may have changed for the worse. In fact, one of the purposes of the gifts must have been to insulate the wife from reverses in the husband's finances since she wanted a certain level of security and he was prepared to give her the same in the circumstances that then existed.

55 This decision of the High Court to carve out an exception when it would be "inequitable to allow [a spouse] to retract the gifts" has, unlike the decision in *Lee Leh Hua* ([29] *supra*), found academic support. Prof Leong has justified the decision in *Wong Ser Wan* in the following manner (see *Leong* ([48] *supra*) at p 622):

> [I]n fairness to the wife [in *Wong Ser Wan*], she was given these properties by the husband in compensation for her putting off the planned termination of the marriage. If she were to return these properties, the husband would gain by having had the extra time he obtained to make his arrangements regarding his other properties and the wife would be doubly penalized by the change in the Husband's fortunes during this time. *The facts were therefore unusual. In more usual circumstances, it would generally be expected that gifts between spouses can return to the fold as matrimonial assets* and thus available for division. [emphasis added]

56 With respect, *in the light of the s 112(1) approach*, we are of the view that the "inequity" exception as set out in *Wong Ser Wan* should, as was the case with the "proprietary interests" exception in *Lee Leh Hua*, no longer be followed. The "inequity" exception in *Wong Ser Wan* is *unnecessary* because s 112(1) itself already permits the court to consider the equity of allowing a donor spouse to benefit from an inter-spousal gift when apportioning the matrimonial assets between the parties. To illustrate the point, adding the assets in the FA back into the pool of matrimonial assets will not lead to an injustice to the wife in *Wong Ser Wan* so long as the court is prepared to give her a larger share of the pool of matrimonial assets at the second stage via s 112(1). Indeed, in addition to the result arrived at being in effect the same, it might be argued that the s 112(1) approach and the exception set out in *Wong Ser Wan* might well have been, in the final analysis, the same in substance. Be that as it may, it seems to us that the s 112(1) approach is more principled in so far as it derives its authority

from the (key) provision (*viz*, s 112(1)). It bears noting that the entire *raison d'être* underlying s 112 in general and s 112(1) in particular is to ensure *a just and equitable division* of matrimonial assets utilising a *broad-brush* approach (see, *eg*, the decision of this court in *NK v NL* ([41] *supra*) at [68]).

*The possible utilisation of s 112(2)(*e*) of the Act ("s 112(2)(*e*)")*

57 While we are of the view that s 112(1) gives the court a discretion to address any possible inequity arising from the recognition of inter-spousal gifts as matrimonial assets, it is arguable that a more direct route in dealing with inter-spousal gifts in the division of matrimonial assets would be to rely on s 112(2)(*e*) ("the s 112(2)(*e*) approach"). Under the s 112(2)(*e*) approach, *an inter-spousal gift is relevant in the division of matrimonial assets if it also constitutes an agreement made in contemplation of divorce between the parties with respect to the ownership and division of the asset(s) in question.*

58 Section 112(2)(*e*) reads as follows:

> (2) It shall be the duty of the court in deciding whether to exercise its powers under subsection (1) and, if so, in what manner, to have regard to all the circumstances of the case, including the following matters:
>
> …
>
> (*e*) any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce.

59 The s 112(2)(*e*) approach is premised upon an unusually broad meaning being attached to the phrase "agreement between the parties". We note that this interpretation and utilisation of s 112(2)(*e*) (to cover inter-spousal gifts) was first mooted by Debbie Ong and Valerie Thean in "Family Law" (2000) 1 SAL Ann Rev 180 at 194 (see also Debbie Ong "When a Spouse Gives the Other a Gift: How the Law Treats Inter-Spousal Gifts When Dividing Matrimonial Assets" *Singapore Law Gazette* (April 2012) p 12 and Debbie Ong in "Family Law" (2011) 12 SAL Ann Rev 298 at 310); and it is arguably in sync with the *raison d'être* of s 112(2)(*e*) – which exists to allow the court to "take into account the parties' intention" when dividing matrimonial assets (see Lim Hui Min, "Matrimonial Asset Division: The Art of Achieving a Just and Equitable Result" in *SAL Conference 2011: Developments in Singapore Law between 2006 and 2010* (Yeo Tiong Min, Hans Tjio & Tang Hang Wu gen eds) (Singapore Academy of Law, 2011) ("*Lim*") pp 191–243 at p 215).

60 However, it remains unclear to us whether the Legislature had intended the phrase "agreement between the parties" in s 112(2)(*e*) to be interpreted so widely as to cover even an unilateral gift. Such an interpretation seems to go against a plain and straightforward reading of

s 112(2)(*e*), a provision more likely to have been drafted with the scenario of *both* spouses entering into a formal, written financial agreement (as in *Wong Ser Wan* ([29] *supra*)) or deed of separation in mind. Be that as it may, since this issue was not argued before us by the parties in the present case, we are inclined to leave it open to be decided in a more appropriate case when the issue does in fact arise squarely for decision before this court.

61 Nevertheless, the reference to s 112(2)(*e*) by the learned authors above (at [59]) has provided a helpful insight into when it could be said that allowing a donor spouse to benefit from an inter-spousal gift is *inequitable* under the *s 112(1) approach*. It is important to highlight that, under s 112(2)(*e*), only agreements which are drafted "*in contemplation of divorce*" should be considered by the court. Even though we have some doubts as to whether unilateral, inter-spousal gifts can be included under s 112(2)(*e*) (see above at [60]), the crucial condition that the transfer of property must have been made *in contemplation of divorce* should, in our view, analytically refine the otherwise amorphous meaning of "inequity" in dealing with inter-spousal gifts under the s 112(1) approach. This will ensure coherence throughout the Act towards the pre-divorce disposition of properties (such dispositions would include inter-spousal gifts and financial agreements) between the spouses, for whether the transfer of property to the other spouse was effected via a unilateral gift or a mutually binding agreement, it would only be relevant *under the second stage* if the property was transferred *in contemplation of divorce*. Thus, we are of the view that an inter-spousal gift should be relevant under the s 112(1) approach *only if it was evidentially certain* that the gift was made *in contemplation of divorce*, such that allowing the donor spouse to benefit from it would be *clearly inequitable*. Crucially, it should not frequently be held that allowing the donor spouse to benefit from an inter-spousal gift is inequitable, for that would effectively contradict the very principle behind the general rule as stated in *Yeo Gim Tong Michael* ([29] *supra* at [12]), as follows:

> The spouse who made the gift would have no doubt expended moneys in acquiring it. The fact that the gift was contemporaneously or immediately thereafter or later transferred to the other spouse does not affect the original acquisition of the gift. Such a gift was nonetheless acquired by the donor and not the recipient, and if it was acquired during the marriage it would fall within the class of assets covered by [s 112].

The same approach has also been mentioned in *Wan Lai Cheng (CA)* ([14] *supra* at [40]):

> An *inter-spousal* gift embodies, by *its very nature*, the *initial* effort expended by the donor spouse in, as this court put it in *Yeo Gim Tong Michael* (at [12]), 'the original acquisition of [the] gift'. If, therefore, such a gift were excluded from the pool of matrimonial assets, this initial effort expended by the donor spouse would simultaneously be denied recognition – a result which prompted this court in *Yeo Gim Tong Michael* to arrive at the decision that an

inter-spousal gift ought to remain as part of the pool of matrimonial assets. This decision is, in our view, just and equitable inasmuch as the result is that whilst the ownership of an inter-spousal gift now resides in the donee spouse as a result of the transfer of that gift by the donor spouse, the initial effort of the donor spouse is nevertheless acknowledged and recognised – thus achieving a *balance*. [emphasis in original]

62 Therefore, given the donor spouse's initial effort in acquiring the asset, it is *prima facie equitable* for the donor spouse to be subsequently entitled to a share of it in the division of matrimonial assets. Save in exceptional situations – *ie*, a gift made with the *clear intention* that the donee spouse will retain the beneficial interest of the asset upon divorce – the fact that a matrimonial asset constitutes an inter-spousal gift should not be given disproportionate weightage in the division of matrimonial assets where other important factors (*viz*, financial and non-financial contributions of both spouses) are to be considered as well.

63 With the foregoing in mind, we turn now to the facts of the present appeals. Following the s 112(1) approach, we have to consider whether it can be said that it would be clearly inequitable for the Husband to benefit from the division of 32 SHD such that the Wife should be entitled to a larger share in the division of matrimonial assets between the parties.

Application of the law to the facts

64 As a preliminary matter, we agree with the Judge's finding of fact that the Husband had made a gift of his share in 32 SHD to the Wife. The Husband did not dispute that there was a sale and purchase agreement (dated 29 January 2007), followed by a title deed transfer (dated 10 April 2007) evidencing the transfer of the Husband's 40% share of 32 SHD to the Wife. The documentary evidence therefore supports the Wife's case to the extent that a gift of the Husband's 40% share of 32 SHD had been made in her favour, as the Husband has not explained what his act of signing the sale and purchase agreement and the title deed transfer could *otherwise* mean legally if it was not to be characterised as a gift. We therefore dismiss the Husband's claim that there was no gift at all.

65 However, we note that the parties are in serious dispute as to *the purpose behind and the circumstances surrounding the Husband's transfer of his share in 32 SHD to the Wife*. As mentioned in [7] above, it is the Wife's case that the Husband had committed adultery and had given her 32 SHD to persuade her not to end the marriage and also to compensate her for his wrongdoing. The Husband, however, argues that he had severed his share in 32 SHD only to make the Wife feel more secure as she had continually harassed him when he told her that he wanted to set up his own business.

66 Having examined the totality of the evidence, we are of the view that the intentions of the parties with regard to *the purpose behind and the*

circumstances surrounding the gift of the Husband's share in 32 SHD are objectively unclear. Since it is the Wife who seeks to exclude the Husband from benefitting from 32 SHD in the division of matrimonial assets, the burden is on her to convince this court that allowing the Husband to benefit from 32 SHD would be clearly inequitable. However, the Wife's account strikes us as being unreliable, given that her claim was that 32 SHD was given to her by the Husband "to persuade her not to end the marriage". The transfer of the Husband's share of 32 SHD took place months after the Husband had moved out of the family home in Shanghai, and there is no supporting evidence that, upon the Husband moving out of the family home, both parties had attempted to reconcile and preserve the marriage. In fact, the 2006 Deed and the 2007 Deed were entered into after the Husband had moved out of the family home, acts which certainly do not suggest that the parties had any reconciliatory intentions. More importantly, the Wife's account that the gift was made "to persuade her not to end the marriage" also stands in contradiction to the scenario in *Lee Leh Hua* ([29] *supra*). In the circumstances, *given the ambiguity (and unreliability) of the Wife's evidence*, we are not persuaded that it will be clearly inequitable for the Husband to be given a share of 32 SHD in the division of matrimonial assets.

Conclusion on the inter-spousal gift issue

67 In the result, we uphold the Judge's decision to include 32 SHD as a matrimonial asset for the purposes of division. The Wife's arguments that an inter-spousal gift does not constitute a matrimonial asset and/or that an exception to the general rule that an inter-spousal gift constitutes a matrimonial asset applies in the present case are accordingly rejected.

68 As explained above, whilst we affirm the general rule, we also recognise that the presence of an inter-spousal gift in the pool of matrimonial assets *might* enlarge the donee spouse's share of the overall matrimonial assets via s 112(1) given the right circumstances – *ie*, strong evidence suggesting that the gift was intended by the donor spouse to vest beneficially with the donee spouse *upon divorce*, so much so that it would be clearly inequitable for the donor spouse to benefit from it. However, in the present case, there is ambiguity in the Wife's evidence in relation to *the purpose behind and the circumstances surrounding* the inter-spousal gift of 32 SHD. Her evidence therefore fails to convince us that it would be clearly inequitable for the Husband to benefit from receiving a share of 32 SHD in the division of matrimonial assets. The Wife's appeal against the Judge's treatment of 32 SHD is therefore dismissed.

Issue 3

The value of the La Salle Property

69 At [7(c)] of the Judgment ([1] *supra*), the Judge calculated the net value of the La Salle Property as $800,000 (*ie*, $2,400,000 (market value) less $1,600,000 (outstanding housing loan)). Although these were the very figures submitted by the Husband in his written submissions dated 6 May 2011 before the Judge, the Husband sought a hearing for "clarification of some of the orders made in the Judgment" almost immediately after the Judgment was released to point out the "error on the outstanding loan for the La Salle property". The Judge heard both parties in chambers on 11 October 2011 but made no orders in relation to whether the value of the La Salle Property was indeed accurately calculated.

70 The Husband submits that the $1,600,000 figure accepted by the Judge is incorrect as the total housing loan granted was actually $1,920,000. The La Salle Property is under a progress payment scheme where different percentages of the purchase price (*ie*, $2,400,000) are to be paid according to a payment schedule under a sale and purchase agreement with the developer. The Husband has only paid the down-payment of $480,000. Each time a progress payment was due, the Husband's solicitors would write in to the mortgagee bank requesting for a corresponding loan amount to be disbursed to the developer. The Husband thus clarified in his submissions before the Judge in chambers that only $1,560,000 of the housing loan had actually been disbursed, but *another $360,000 was due to be disbursed – $312,000 by 24 October 2011 and $48,000 upon completion of the purchase of the La Salle Property*. In fact, on 10 October 2011, the developers called for the $312,000 payment, and the Husband drew down this sum from the mortgagee bank to settle this payment.

71 In our view, the *outstanding liability* of the La Salle Property *as at February 2011* was indeed $1,920,000 (whether or not *the loan amount disbursed* is $1,560,000, $1,600,000 or $1,920,000). We therefore agree with the Husband to the extent that the additional $360,000 was part of the *total outstanding liability* all along, but it simply had not been drawn down yet because the final progress payment had not been called by the developer. Practically speaking, had the Husband sold the La Salle Property in February 2011, *he would still have had to deduct from his sale proceeds the outstanding $360,000 to pay the developer*. This goes to show that the disputed $360,000 cannot be considered *an asset* of the parties as at February 2011.

72 While it might be inaccurate to have characterised the disputed $360,000 as an "outstanding *mortgage loan*" as at February 2011, the fact remains that the *net value* of the La Salle Property (*ie*, the amount the Husband had already paid for) as at February 2011 stood at $480,000

instead of the $800,000 accepted by the Judge. Interestingly, we observe that $480,000 was also the figure the Wife was prepared to accept as the valuation of the La Salle Property in her various written submissions in the courts below.

73 For the foregoing reasons, we allow the Husband's appeal against the Judge's valuation of the La Salle Property and order that the net value of the property be decreased from $800,000 to $480,000. The decrease in $320,000 of the valuation of the La Salle Property will thus proportionately lower the lump sum cash payment due to the Wife from the Husband as ordered by the Judge in the division of matrimonial assets (see [115] below).

Past Central Provident Fund ("CPF") contributions towards 32 SHD

74 The Husband also submits that his past CPF contributions towards the purchase of 32 SHD ($589,646.95) should be included in the pool of matrimonial assets, on the basis that this amount was "effectively awarded [to] the Wife" if it was not added into the pool of matrimonial assets under the first stage.

75 In our view, the Husband's argument on this point is without merit. As the Wife rightly argues in response, "a *net value* of a property has *already* taken into account all previous payments for this property (including CPF contributions)" [emphasis in original]. The Husband's past CPF contributions constitute the reason why the outstanding loan of 32 SHD stood *only* at $111,377.53 before the Judge below. To add back into the pool of matrimonial assets his past CPF contributions would certainly constitute double-counting. We therefore dismiss the Husband's attempt to include the sum of $589,646.95 in the pool of matrimonial assets.

Outstanding loan on 32 SHD

76 At a subsequent hearing in chambers after the Judge had released the Judgment ([1] *supra*), the Judge ordered the outstanding loan on 32 SHD to be serviced by both parties on a 50:50 basis. The Husband appeals against this order, while the Wife seeks to raise the same responses as the ones she employed above to prevent the Husband from double-counting his past CPF contributions towards 32 SHD.

77 Contrary to the Wife's arguments, there is, in our view, a crucial difference between the *retrospective* CPF contributions towards a property and the *prospective* servicing of the loan of a property. We agree with the Husband's basic point that requesting the Husband to continue to service the loan of a property he will no longer own or benefit from is essentially to shift his share of the matrimonial assets to the benefit of the Wife. Subsequent to the divorce, when the outstanding loan is decreased by both parties' payments, it will be the Wife *solely* who will stand to benefit from the increase in the value of the property. Save in exceptional circumstances,

there is no reason why the Husband should continue to service the outstanding loan, in whatever percentages, for a property he would no longer own or benefit from.

78 Given that the Wife will be awarded a reasonable amount of maintenance, and also a lump sum cash payment of $448,246.325 from the division of matrimonial assets (see below at [115]), we are of the view that it will be comfortably within the Wife's means to service the *full* outstanding loan of $111,377.53 for 32 SHD alone. Therefore, we reverse the Judge's decision in chambers that both parties service the outstanding loan on 32 SHD on a 50:50 basis, and order that the Wife service the outstanding loan on her own.

Issue 4

79 The Husband's main argument on appeal is directed against the Judge's apportionment of the matrimonial assets on a 50:50 basis. He submits that a 50:50 division of the matrimonial assets was not a just and equitable decision in accordance with s 112(1).

80 It is trite law that an appellate court will generally be reluctant to interfere in the order made by the lower court on the apportionment and division of matrimonial assets unless it can be demonstrated that the lower court has committed an error of law or principle, or has failed to appreciate certain crucial facts (see, *eg*, the decision of this court in *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 at [46]). To succeed in his appeal, the Husband must be able to demonstrate that the Judge "misapplied a principle of law, or had clearly made an error of fact that was not only obvious, but also significant, and, thereby, rendered the consequence unfair to the parties" (see the Singapore High Court decision of *MZ v NA* [2006] SGHC 95 at [5]).

81 Having considered the relevant authorities and the Husband's submissions, we are of the view that the Judge has not made any serious error such that his apportionment should be varied. On the contrary, the Judge's decision to apportion the matrimonial assets on a 50:50 basis can be *further anchored* by reasons not mentioned in the Judgment ([1] *supra*).

The current trend: Approximating equality for the homemaker for long marriages with children

82 The Husband's argument in this appeal to the effect that the Wife should be awarded *merely 14.3%* of the overall total assets is wholly against the current trend of giving proper recognition to the contributions of the homemaker in a family. In 2007, Prof Leong wrote about the "established guide that a homemaker wife can expect to receive no less than 35% of the surplus wealth of the marital partnership" as evidence of "the courts … coming close to according non-financial contribution equal value as

financial contribution" (see *Leong* at p 668). The learned author also observed that "homemaker wives who served their roles for 20 years or longer have received 50% or even more" (see *Leong* ([48] *supra*) at p 696).

83 In 2011, Ms Lim Hui Min was also led to observe that, *for marriages ten years or longer*, "even an 'ordinary' homemaker [with children] can receive up to 50% of the matrimonial assets without having contributed financially to their acquisition" (see *Lim* at p 227). She therefore hypothesised that the current trend appears to be to award a stay-at-home wife with children "about 40–50% of the matrimonial asset pool, [even] if [the wife] did not have direct financial contributions" (see *Lim* at p 238).

84 In our view, the Husband could arrive at such an unreasonably low figure to be awarded to the Wife – and even cite cases that appear to support his view – because his suggested approach to the division of matrimonial assets is fundamentally flawed. The Husband's approach (which has also filtered into his interpretation of the cases he cites) is one where the direct financial contributions of a spouse are first calculated, before the value of non-financial contributions is added as a form of "uplift" to the former figure. This translates into the Wife – who did not work and therefore did not provide any direct financial contribution – being awarded, as a starting point, 0% of the matrimonial assets. However, such an approach has already been categorically disapproved of by this court in *NK v NL* ([41] *supra*), as the division of matrimonial assets in s 112 "does not simply entail a mathematical process of returning to the parties their respective direct financial contributions *plus a percentage of indirect contributions*" (at [47]) [emphasis added]. It also militates against this court's holding that "direct financial contributions are not to be considered as a *prima facie* starting point" (see *Pang Rosaline v Chan Kong Chin* [2009] 4 SLR(R) 935 ("*Pang Rosaline*") at [23]).

85 Although it has been stated by this court that equality in division is *not* the starting point or the norm in the division of matrimonial assets between spouses (see *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 ("*Lock Yeng Fun*") at [57]), it also remains true that the "courts would nevertheless not hesitate to award half (or even more than half) of the matrimonial assets if such a decision is justified on the facts" (*Lock Yeng Fun* at [58]). This is especially so in *long marriages* where "the law acknowledges the equally important contributions of the homemaker to the partnership of marriage" (see *NK v NL* at [41]), as the academic commentators above (at [82]–[83]) have helpfully observed.

86 It has also been established that the courts are entitled to adopt a broad-brush approach to arrive at a just and equitable division between the parties (*NK v NL* at [68] as well as above at [55]), and this gels with the general reluctance of the appellate courts to interfere in the order made by lower courts on the apportionment and division of matrimonial assets. In

the context of these principles cited and the trend observed, we are of the view that the following reasons below will sufficiently justify the Judge's decision to award the Wife a 50% share of the matrimonial assets.

The Wife's non-financial contributions

(1) Length of marriage

87 As there is a trend in awarding the homemaker wife a greater proportion of the matrimonial assets in longer marriages (see the Singapore High Court decision of *Chan Yuen Boey v Sia Hee Soon* [2012] 3 SLR 402 at [33]), the Husband attempts to persuade us that the effective length of marriage lasted only 17 years instead of the 28 years which the Judge had considered. He claims that their marriage had already broken down in or around 1999 (after 17 years of marriage) – which was when the parties signed the 1999 Deed. In the circumstances, he argues that the Wife's non-financial contributions had effectively lasted only for 17 years.

88 We reject the Husband's argument as it is inconsistent with this court's decisions in *Yeo Gim Tong Michael* ([29] *supra*) at [7] and *Chan Teck Hock David v Leong Mei Chuan* [2002] 1 SLR(R) 76 at [31]–[33]. Both cases have established that the non-financial contributions of a wife should not be taken to have ceased prior to the interim judgment date even if the relationship had broken down much earlier, especially if the wife's contributions to the family remained largely the same and/or her contributions allowed the husband to focus on his career, as was clearly so in the present case.

(2) The domestic helper

89 The Husband then submits that the Wife did not take care of the household chores because these were left to the domestic helper. Once again, this argument ignores established authorities which have held that ensuring the smooth running of the household by training, managing and supervising the execution of duties assigned to domestic helpers is at least as essential and important as the direct performance of the chores itself (see, *eg*, the decision of this court in *Pang Rosaline* ([84] *supra*) at [20]). Unsurprisingly, this is not only a principle recognised in Singapore but can be found in Australian case law as well (see, *eg*, Dorothy Kovacs, *Family Property Proceedings in Australia* (Butterworths, 1992) at p 205).

(3) The Wife's allegedly intolerable behaviour

90 The Husband also seeks to persuade us that the Wife was not a supportive and good wife during the marriage as her behaviour had caused him great distress. According to the Husband, this means that it cannot be

said that the Wife made substantial non-financial contributions to the family during the marriage.

91 We reject, once again, the Husband's feeble attempt to downplay the Wife's non-financial contributions. Firstly, the Husband's claim is completely unsubstantiated by any *objective* evidence. Secondly, *even if* the Husband's allegations are true, they are irrelevant in determining the Wife's non-financial contributions *to the household*. The fact of the matter remains that the Wife had, for more than two decades, managed the household and taken care of the Children (especially when the Husband was at work or away) – efforts which are corroborated by the older daughter's affidavit in this case, and which the Husband did (and could) *not* reasonably deny.

The Husband's alleged non-financial contributions

92 Besides attempting to downplay the Wife's non-financial contributions, the Husband also argues that he had made "significant non-financial contributions to the marriage" which, in his view, were not properly taken into account by the Judge in the court below. However, besides the Husband's unsubstantiated claim that he had helped with the household chores and planned the family holidays, there is little to demonstrate that he had made *significant non-financial contributions* at all. In fact, the Husband's claim is rendered very unreliable considering how his older daughter has described him as an absent father in her affidavit.

The unaccounted three sums

93 Even if all the reasons mentioned above (at [82]–[92]) do not entitle the Wife to 50% of the matrimonial assets, we are of the view that an adverse inference to be drawn against the Husband for his failure to explain the disappearance of three different sums of money ("the unaccounted three sums") would more than justify the 50:50 division ordered by the Judge. This is in accordance with the earlier decision of this court that when no explanation has been provided as to the whereabouts of a significant sum of assets, "it might be more just and equitable (not to mention, practical) to order a higher proportion of the *known* assets to be given to the [other party]" (see *NK v NL* ([41] *supra*) at [62]).

94 In her appeal, the Wife brought to this court's attention the unaccounted three sums (totalling a significant amount of $840,925.79) which are as follows:

(a) the Husband's 2010 bonus worth $555,695;

(b) a sum of $185,341.23 which the Wife claims to have unaccountably disappeared from one of the Husband's bank accounts in the period between 31 May 2010 and 1 November 2010; and

(c) a sum of $99,889.56 which the Wife claims to have unaccountably disappeared from both of the Husband's bank accounts in the period between 25 November 2010 and 15 February 2011.

95 It is the Wife's case that the Husband had failed to make full and frank disclosure of the aforementioned assets. She therefore requested that an adverse inference be drawn against him by including the *full value* of the unaccounted three sums (*ie*, $840,925.79) into the pool of matrimonial assets.

96 In response, the Husband submits that:

(a) For the 2010 bonus, it "would have also been credited into the same bank account"; and that the Wife cannot claim a share of the bonus in the division of matrimonial assets because her claim for maintenance already includes consideration of the bonus.

(b) Generally, he had expended the said amount for legitimate purposes, which, according to the Husband, consists of "substantial legitimate monthly outgoings" and also his "substantial payments towards the children's educational and other expenses".

97 In our view, the Husband has failed to provide a satisfactory explanation as to the whereabouts of the unaccounted three sums, and an adverse inference should therefore be drawn against the Husband for his failure to disclose these assets.

98 Firstly, the fact that the Husband's bonus was considered *for the purposes of maintenance* is a completely separate matter from the issue of the whereabouts of his bonus for the *purposes of pooling together and valuing the matrimonial assets*. By admitting that the 2010 bonus "would have also been credited into the same bank account", the Husband owes the Wife and this court an explanation as to where it had gone to. The Husband, after all, is not arguing that the 2010 Bonus had not been credited into his accounts by 14 February 2011. The whereabouts of the massive $555,695 bonus therefore remains unaccounted for.

99 Secondly, while listing out his "legitimate monthly outgoings" as an explanation for the unaccounted three sums, the Husband has failed to consider that his *net basic monthly income* (which he claims to be $31,500 per month, a figure disputed by the Wife as being severely understated) would have more or less covered his alleged monthly outgoings – which, *based on his own figures*, adds up to $34,743. It is important to note that the unaccounted three sums were basically calculated from a sudden deduction of the Husband's *savings*. Thus, unless his "legitimate monthly outgoings" far surpassed his net basic monthly income, the unaccounted three sums still remain unaccounted for.

100 Finally, the Husband also claims that his contributions towards the "children's educational and other expenses" (a list of items totalling $255,005.03) can account for the unaccounted three sums. However, having looked closely at the references cited by the Husband for each alleged item, we are of the view that the submitted figure of $255,005.03 is largely unsubstantiated by the evidence. Some of the items which the Husband has cited relate to payments made before the relevant period (*ie*, before 31 May 2010) or are simply inaccurately referenced, whilst others contain references which do not substantiate the items claimed or involve double-counting. In the result, a large proportion of the unaccounted three sums still remains mathematically unaccounted for by the Husband.

101 While we are sympathetic to the Husband's counter-argument that a mere deduction in the balance of a spouse's bank accounts should not necessarily lead to the inference that the spouse must be hiding his or her assets, we are equally troubled by the failure of the Husband to provide *any credible explanation* as to the whereabouts of the unaccounted three sums. We are therefore persuaded that the Husband has not made full and frank disclosure of his assets, and that a higher proportion of the disclosed assets *could be* ordered in favour of the Wife.

The just and equitable division on the present facts

102 In light of all the circumstances mentioned above, *viz*, (a) the 28-year long marriage, (b) the Wife's significant non-financial contributions to the household, (c) the Husband's alleged non-financial contributions being unsubstantiated and unreliable, and (d) the adverse inference to be drawn against the Husband due to his failure to account for the unaccounted three sums – we are of the view that the Judge did not err, let alone seriously so, in awarding the Wife 50% of the matrimonial assets. Therefore, the 50:50 division of matrimonial assets ordered by the Judge is in our view a just and equitable division in accordance with s 112(1).

Issue 5

103 The Judge also ordered that the Husband pay the Wife a lump sum maintenance of $288,000 ($2,000 x 12 months x 12 years). Additionally, the Husband was to pay the younger daughter $2,000 a month directly, as well as her education expenses and fees, until she has graduated from university. Both the Husband and the Wife appeal against the maintenance order.

The multiplicand of $2,000

104 The Wife appeals against the multiplicand of the maintenance order, arguing that the multiplicand should be $4,000 – which will increase the lump sum maintenance to $576,000 ($4,000 x 12 months x 12 years) instead.

105 The Wife's primary argument appears to be that the $2,000 multiplicand is significantly less than what the Husband had promised her in the 2007 Deed. In the 2007 Deed (see above at [9]), the Husband agreed that "… a total of S$6,000 (Six Thousand) per month shall be credited to [the Wife's] bank account at the beginning of each month". Although the Judge below did not explicitly mention the 2007 Deed, the Judge had referred to the DJ's Maintenance Order (see above at [10]), which was substantially similar to the 2007 Deed as the DJ had ordered that "the Husband pay the Wife S$6,000 a month for herself and the two children" (see the Judgment ([1] *supra*) at [9]). To this, the Wife argues that the $6,000 sum in the 2007 Deed was "meant solely for [herself]", since the Husband had also promised in the 2007 Deed $400 for each child monthly.

106 The Wife's argument is, in our view, clearly misconceived. As the Husband reasonably argues in response, "[i]t cannot be said that the sum of S$6,000 [in the 2007 Deed] was entirely for the Wife's maintenance". As the Children were living with the Wife back in 2007, a reasonable construction of the 2007 Deed must be that the $6,000 maintenance was *also meant to cover the children's living expenses*, given that the sum of $400 per child was only for the Children's pocket money. This was clearly the understanding of the DJ as well when he ordered that "the Husband pay the Wife $6,000 a month *for herself and the two children*" [emphasis added]. Since the older daughter is no longer entitled to maintenance, and the younger daughter is "old enough to manage her own expenses" such that her monthly maintenance can go directly to her (see the Judgment at [9]), the Judge was entitled, in our view, to deduct *the maintenance which was due to both daughters from the $6,000 figure* to reach a reasonable amount of $2,000 for the Wife.

107 In addition to the submission above, the Wife also cites a host of other reasons (*ie*, her being a housewife with no earning capacity, her contributions to the family, her standard of living prior to the breakdown of marriage) to support her claim that she should be entitled to a multiplicand higher than $2,000 a month. However, we are unable to agree with her, given the principles recently laid down by this court in *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506 ("*Foo Ah Yan*"). The relevant paragraphs of *Foo Ah Yan* are reproduced here as follows:

> 13 Generally, assessment of the appropriate monthly multiplicand begins with the wife's financial needs as derived from her particulars of expenditure, scaled down for reasonableness: see the Singapore High Court decision of *Quek Lee Tiam v Ho Kim Swee (alia Ho Kian Guan)* [1995] SGHC 23 ('*Quek Lee Tiam*') at [16]. The overarching principle embodied in s 114(2) of the Act is that of financial preservation, which requires the wife to be maintained at a standard, which is, to a reasonable extent, commensurate with the standard of living she had enjoyed during the marriage.
>
> ….

> 16 The *purposive* approach to the s 114(2) directive recognises that there could be an infinite number of reasons why the applicant should not get all she asks for, and requires s 114(2) to be applied in *a commonsense holistic manner* that takes into account the new realities that flow from the breakdown of a marriage: see the Singapore High Court decision of *NI v NJ* [2007] 1 SLR(R) 75 ('*NI v NJ*') at [15]–[16]…. Our courts have held, *inter alia*, that a former wife must, where possible, exert reasonable efforts to secure gainful employment and contribute to preserve her pre-breakdown lifestyle: see, for example, *Quek Lee Tiam* at [22] and *NI v NJ* at [14]–[16].
>
> 17 The court must also consider the husband's financial ability to meet the maintenance order. Thus, although the husband is *prima facie* obliged to maintain his former wife beyond his retirement and up to the former wife's remarriage or the death of either party, the former wife who has assets of her own should not expect a full subsidy for her lifestyle: see, for example, the Singapore High Court decision of *Yow Mee Lan v Chen Kai Buan* [2000] 2 SLR(R) 659 ('*Yow Mee Lan*') at [93].
>
> [emphasis in original]

108 Applying s 114(2) of the Act in *a commonsense holistic manner* in the present case, we are of the view that the Judge's decision to fix the multiplicand at $2,000 monthly for the Wife is a sound one for the following reasons.

109 Firstly, it is not disputed that when the Husband was paying the Wife *and the two children* $6,000 a month, the Wife was able to live comfortably and did not appear to have suffered a decline in the standard of living she had enjoyed during the marriage.

110 Secondly, *even if* it was true that the Wife did spend more than $2,000 a month *for her personal expenses* during the marriage, we are minded to point out once again that a wife does not have a *carte blanche* right to expect a full subsidy for her lifestyle by her former husband (see *Foo Ah Yan* at [17]). In this regard, the Wife in the present case is only 54 years old and still has the qualifications to take up gainful employment. She should do so if she intends to preserve, or even enhance, the lifestyle she enjoyed prior to the breakdown of the marriage (see *Foo Ah Yan* at [16]).

111 Thirdly, it is trite law that consideration of the reasonableness of a maintenance order can include the amount of assets a wife has received by the order of division of matrimonial assets (see the decision of this court in *Tham Khai Meng v Nam Wen Jet Bernadette* [1997] 1 SLR(R) 336 as well as s 114(1)(*a*) of the Act). In this regard, we observe that the Wife has been awarded 32 SHD, together with *assets and cash* worth approximately $750,000 (see below at [115]). The significant overall value of these assets militates against her claim of having insufficient maintenance to support herself. We therefore see no reason why the $2,000 multiplicand determined by the Judge should be reversed.

The lump sum maintenance order

112 In his appeal, the Husband requests a *10% discount* on the lump sum maintenance order ordered against him and cites several cases for the proposition that "typically, a discount would be applied for lump sum payment [of maintenance]". However, the word "typically" evidences the well-established point that whether or not there ought to be a discount is a matter of discretion of the trial judge (see s 115(1) of the Act), akin to how the *quantum* of maintenance depends "at the end of the day [on] the court's sense of justice" (see the Singapore High Court decisions of *Wong Amy v Chua Seng Chuan* [1992] 2 SLR(R) 143 at [40] and *NI v NJ* [2007] 1 SLR(R) 75 at [16]). Unless grave injustice is demonstrated (which is not the case here), the Judge's discretion to award a lump sum maintenance order *without discount* should not, in our view, be disturbed.

113 Moreover, we are also not persuaded that the Husband does not have enough liquid assets to pay cash sums to the Wife upfront, especially when there are grounds for suspecting that he might be in possession of significant undisclosed assets (see above at [101]). A lump sum order also has "the advantage of allowing for a clean break between the parties" which will help avoid further litigation and acrimony between them (see *Wan Lai Cheng (CA)* ([14] *supra*) at [88]). In the circumstances, we uphold the Judge's decision to grant a lump sum maintenance order of $288,000 in favour of the Wife.

Conclusion

114 For the reasons set out above, CA 135/2011 is allowed only to the extent that an adverse inference can be drawn against the Husband for his failure to account for the unaccounted three sums (although this does not substantively impact the decision arrived at in the court below in so far as the division of matrimonial assets is concerned). CA 136/2011, on the other hand, is allowed to the extent that the net value of the La Salle property is to be lowered to a figure of $480,000, and the Wife is to service the outstanding loan of 32 SHD fully.

115 In decreasing the net value of the La Salle property by $320,000 (see above at [73]), the overall value of the parties' matrimonial assets is thus correspondingly decreased to a figure of $6,474,973.09. Each party is therefore entitled to $3,237,486.55 worth of the matrimonial assets (*ie*, 50% of $6,474,973.09). For reasons of practicality, we order that the Judge's *actual division* of the matrimonial assets be retained *save that* the lump sum cash payment in favour of the Wife (see the Judgment ([1] *supra*) at [8(c)]) be decreased from $608,246.325 to $448,246.325. The Wife is therefore to be awarded:

(a) 32 SHD;

(b) the assets in her name, valued at $279,217.75;

(c) the Husband's Seletar Club membership, valued at $21,400; and

(d) cash of $448,246.325.

The transfer of assets from the Husband to the Wife (*ie*, items (a), (c) and (d)) are to be effected within six months from the date of this judgment.

116 Each party is to bear his or her own costs both here and below. The usual consequential orders will apply.

Reported by Koo Zhi Xuan and Sarah Shi.