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Clement Yong
District Judge
25 October 2021

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2021] SGFC 108

Family Court / Divorce No 5774 of 2018
HCF/DCA 92 of 2021 & HCF/DCA 95 of 2021

Between

VWO

... Plaintiff

And

VWP

... Defendant

JUDGMENT / GROUNDS OF DECISION

[Family law] – [Ancillary matters] – [Care and control] – [Maintenance of children] – [Division of matrimonial assets]

TABLE OF CONTENTS

INTRODUCTION.....	3
FACTS	4
BACKGROUND OF THE PARTIES	4
THE PARTIES CASE	4
THE WIFE’S CASE.....	5
THE HUSBAND’S CASE	7
IDENTIFICATION AND VALUATION OF MATRIMONIAL ASSETS	9
<i>Disputed assets</i>	10
ADVERSE INFERENCE.....	17
<i>Conclusion on the pool of matrimonial assets</i>	23
DIVISION OF THE POOL OF MATRIMONIAL ASSETS	23
DIRECT CONTRIBUTIONS	24
INDIRECT CONTRIBUTIONS	24
AVERAGE RATIO AND ADJUSTMENTS	27
APPORTIONMENT.....	28
MAINTENANCE FOR THE WIFE	31
COSTS	33
POST-HEARING APPLICATION IN SUM 2922/2021	35
CONCLUSION	36

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**VWO
v
VWP**

[2021] SGFC 108

Family Court / Divorce No 5774 of 2018
HCF/DCA 92 of 2021 & HCF/DCA 95 of 2021

District Judge Clement Yong

05 March 2021, 13 April 2021, 14 May 2021, 28 May 2021, 04 June 2021, 30 June 2021, 16 July 2021

25 October 2021

District Judge Clement Yong:

Introduction

1 In hearing the ancillary matters following the parties' divorce after a marriage of 27 years, the issues before me concerned the division of matrimonial assets, maintenance for the wife, and that of costs. To achieve a just and equitable distribution, I eventually divided the matrimonial assets in the ratio of 50.5:49.5 in favour of the wife and declined to order any maintenance for the wife. On the issue of costs, I ordered the wife to pay \$3,500 to the husband, having considered all the circumstances of the case.

2 Both parties being dissatisfied, have respectively appealed against my decision. DCA 92/2021 was filed by the Plaintiff-Wife (the “**Wife**”) against the whole of my orders. DCA 95/2021 was filed by the Defendant-Husband (the “**Husband**”) against my decision in respect of the division of the matrimonial assets and the award of costs of \$3,500 in his favour.

Facts

3 The Husband and Wife were married on 25 November 1991. There are two children to the marriage, both of whom were above 21 years old at the time of the hearing.

4 The Wife filed a writ of divorce on 18 December 2018 and the Husband filed a defence and counterclaim on 11 January 2019. Interim Judgment (the “**IJ**”) was granted on 22 May 2019. The marriage lasted for approximately 27 years

Background of the parties

5 Both parties are Singaporeans. At the time of the hearing, the Husband was 57 years old and was employed as a Grab Driver. Meanwhile, the Wife was 53 years old and employed as a clinic assistant. Save for a four-year period in the early stages of the marriage where the Wife stayed home to look after their first-born child, both parties were gainfully employed for the duration of the marriage.

The parties’ case

6 Both parties agreed that in arriving at a just and equitable division of the matrimonial assets, the structured approach as set out by the Court of Appeal in *ANJ v ANK* [2015] 4 SLR 1043 (“**ANJ**”) should be followed in the present case.

This approach would have involved the court first arriving at “a ratio that represents each party’s direct contributions relative to that of the other party, having regard to the amount of financial contribution each party has made towards the acquisition or improvement of the matrimonial assets”: *ANJ* at [22]. Second, the court would consider the parties’ indirect contributions and ascribe a second ratio which represents the contributions of each party to the family’s well-being relative to the other. Thirdly, the court derives an average percentage contribution for each party, at which point further adjustments may be made to account for other considerations: see *ANJ* at [27].

7 The parties also agreed¹ that the matrimonial assets and liabilities should be identified at the time of the IJ, *i.e.*, 22 May 2019 and valued at the time of the first ancillary matters (“AM”) hearing, *i.e.*, 15 March 2021, or closest to that date.

The Wife’s case

8 In accordance with the *ANJ* approach, the Wife submitted the following ratios for the division of the pool of matrimonial assets:

	Husband	Wife
Direct contribution ²	64.1%	35.9%
Indirect contribution ³	10%	90%
Average ratio	37.05%	62.95%
Average ratio (with adjustments) ⁴	<u>35%</u>	<u>65%</u>

¹ NE, Day 1, Page 14, Lines 9-12

² Plaintiff’s skeletal submissions dated 15 January 2021 at [55]

³ Plaintiff’s skeletal submissions dated 15 January 2021 at [56]

⁴ Plaintiff’s skeletal submissions dated 15 January 2021 at [59]

9 The Wife computed the net value of the total pool of matrimonial assets to be \$920,962.27⁵. This computation included a sum of \$261,416⁶, which the Wife claims was the amount the Husband had won in the casinos during the marriage. On this basis, the Wife asked that the court draw an adverse inference against the Husband for non-disclosure (and other reasons) and include this sum into the pool by way of the quantification method. This was how the Wife had arrived at the direct contribution ratio set out above.

10 In relation to the indirect contributions, the Wife justified the figure of 90% in her favour because she had contributed more towards the household expenses and the medical bills and children's education. She also claimed to have performed the role of a homemaker and being more involved in the children's lives, whilst also holding a job in the meantime. The latter was necessary as the Wife claimed that there was a lack of financial assistance from the Defendant. And since *ANJ* stated that there would be "weighty consideration to homemakers who have painstakingly raised children to adulthood", the Wife sought a further adjustment to the final ratio to 65% in her favour.

11 As regards wife maintenance, the Wife disclosed that she was currently earning \$1,500 per month. Her reasonable monthly expenses came up to \$1,115⁷. In view that the matrimonial flat will be sold, the Wife sought a monthly maintenance sum of \$600 for three years so that her income can be supplemented to purchase or rent a HDB flat. In making this claim, she relies

⁵ Plaintiff's skeletal submissions dated 15 January 2021 at [26]

⁶ It was correctly pointed out by the Husband that this figure contained a calculation error. The correct figure should be \$211,916. See Defendant's submissions dated 4 March 2021 at [2]

⁷ Plaintiff's skeletal submissions dated 15 January 2021 at [66]

on the principle of financial preservation as she acknowledged that the Husband had contributed to providing her with expenses during the marriage.

12 Finally, on the issue of costs, the Wife initially sought costs of \$10,000 against the Husband because of his delay in providing evidence on a substantial portion of his assets⁸. However, in her final arguments on costs as the matter drew to a close, the Wife submitted that the appropriate order is for each party to bear their own costs.

The Husband's case

13 In accordance with the *ANJ* approach, the Husband submitted the following ratios for the division of the pool of matrimonial assets:

	<u>Husband</u>	<u>Wife</u>
Direct contribution ⁹	68.91%	31.09%
Indirect contribution ¹⁰	60%	40%
Average ratio	64.46%	35.54%
Average ratio (with adjustments) ¹¹	<u>65%</u>	<u>35%</u>

14 The Husband calculated the pool of matrimonial assets at \$600,879¹². This excluded the sum of \$261,416, which the Wife claims was his casino winnings. The Husband stated that he had no gambling winnings and contrary to the Wife's assertions, he had in fact lost money at the casinos in the sum of

⁸ Plaintiff's skeletal submissions dated 15 January 2021 at [76]

⁹ Defendant's submissions dated 27 January 2021 at [71]

¹⁰ *Ibid*

¹¹ *Ibid*

¹² Defendant's submissions dated 27 January 2021 at [20], read with NE Day 1, Page 10, Line 2

\$100,000¹³. He also submits that he had made full and frank disclosure of his assets and no adverse inference should be drawn against him. On the other hand, the Husband submits that an adverse inference should be drawn against the Wife because she had been dissipating monies from her bank accounts¹⁴.

15 In relation to maintenance for the Wife, the Husband submitted that she could maintain herself on her own income, and further, is likely to receive at least \$209,370 from the sale of the matrimonial flat, an amount which is sufficient for her maintenance¹⁵.

16 Lastly, on the issue of costs, the Husband sought costs on an indemnity basis of \$79,287¹⁶ as the Wife had previously rejected his Calderbank offer on 23 March 2020 yet did not achieve a better result after the ancillary matters hearings.

Issues to be determined

17 The matters that arise for determination before me are the division of matrimonial assets, maintenance for the wife and costs. I will now deal with each of these in turn.

Division of matrimonial assets

18 I first consider the division of the parties' matrimonial assets under section 112(1) of the Women's Charter (Cap 353, 2009 Rev Ed) (the "WC").

¹³ Defendant's submissions dated 27 January 2021 at [17]

¹⁴ Defendant's submissions dated 4 March 2021 at [18]

¹⁵ Defendant's submissions dated 27 January 2021 at [75] and [80]

¹⁶ Defendant's submissions dated 8 July 2021 at [2], [6], [24], and [27]

In the present case, I adopt the global assessment methodology for dividing matrimonial assets, as set out in *NK v NL* [2007] 3 SLR(R) 743 at [31]. This comprises four distinct steps: identification, valuation, division, and apportionment of the matrimonial assets. This also appeared to be the approach adopted by the Husband¹⁷ and Wife¹⁸ respectively, as neither parties had submitted for the direct and indirect contributions towards each class of assets to be considered separately.

Identification and valuation of matrimonial assets

Agreed assets

19 There are several assets whose inclusion into the pool of matrimonial assets and whose values were largely not disputed. Accordingly, I set out the value of these assets (rounded to the nearest dollar) in the table below:

S/N	Description	Value (in \$)
Joint Assets		
1	Matrimonial Flat	385,000 ¹⁹
Husband's Assets		
2	POSB Account number ending 424	3,244 ²⁰
3	Motor car	10,500
4	CPF account balance	142,329

¹⁷ Defendant's submissions dated 27 January 2021 at [72]

¹⁸ Plaintiff's skeletal submissions dated 15 January 2021 at [56]

¹⁹ NE, Day 1, Page 8, Line 3

²⁰ NE, Day 1, Page 13, Line 26

5	Rolex watch	5,900 ²¹
Husband's Liabilities		
6	Total liabilities	(16,453)
Wife's Net Assets		
7	Net assets	76,260 ²²

Disputed assets

20 I turn to the remaining assets. Aside from arguments pertaining to adverse inferences and dissipations, parties disagreed over the size of certain matrimonial assets which should be included into the matrimonial pool.

(1) \$40,000 withdrawn by the Husband

21 On 28 December 2018, just two days after the Writ for Divorce was served, the Husband withdrew \$40,000 from his bank account. The Wife submits that this is cause for reasonable suspicion that the Defendant had done so to reduce the pool of matrimonial assets.

22 The Husband explained that the sum of \$40,000 had already been spent in the following manner:

- (a) \$22,900 as loan repayment to his brother for a car loan,
- (b) \$5,210 as loan repayment to his brother for the children's driving lessons,

²¹ NE, Day 1, Page 16, Lines 14-15

²² NE, Day 1, Page 12, Line 4, and NE, Day 4, Line 20

- (c) \$6,000 for legal fees, and
- (d) The remaining amount on insurance, road tax, and personal expenses.

23 After scrutinizing the manner in which the monies were spent, I found that the monies were reasonably spent for the benefit of the family and the Husband, save for the \$6,000 in legal fees which I added back into the pool because this expenditure was unsubstantiated by evidence.

24 As regards the other amounts spent by the Husband, I am mindful of the Court of Appeal's comments in *UZN v UZM* [2021] 1 SLR 426 ("*UZN*") at [68] where it was explained that where "there are indeed sums expended or given away especially nearer to the time when divorce is imminent it may be possible to view such acts as wrongful dissipation carried out with the intention of depleting the matrimonial pool" and whether there is such wrongful dissipation of assets "depends on the evidence and facts of the particular case".

25 On the facts, I did not think that the other amounts were wrongfully dissipated by the Husband. On the contrary, I accepted that the loans (supported by evidence²³) made by the Husband's brother to him were used for the benefit of the family. The car was used by the Husband for use as a Grab driver to generate income for the family, and it can arguably be said that driving lessons for the children were also for their benefit. These personal loans were made to the Husband in 2017 with a promised repayment of the sums by end-December. Conceptually, this means that even if I had disallowed the repayment of the loans, I would in the alternative have recognised the same sum, i.e., of \$28,110 as a personal liability of the Husband which would have been included into the

²³ Defendant's submissions dated 4 March 2021 at [10]

matrimonial asset pool. The practical outcome would have been the same either way.

26 As for the remaining sum of \$5,890, I accept the Husband's explanation that since its withdrawal in 2018, he has spent it on his personal living expenses and vehicle expenses. Such an amount spent over a period of more than two years is reasonable and does not amount to wrongful dissipation.

(2) The Husband's alleged casino winnings of \$211,916

27 The determination of this issue will have a material impact on the outcome of the division of the matrimonial assets, affecting both the quantum and final ratio. Having considered the arguments presented by both parties, I declined to include this sum into the matrimonial pool, but notwithstanding this I eventually took into consideration the arguments raised here and gave a 5% uplift of the material assets to the Wife to achieve a just and equitable division.

28 I now address the issue of these alleged winnings. Key to this dispute are two documents tendered by the Wife which is set out below:

(a) Casino records²⁴ generated by Resorts World Sentosa on 2 March 2020 (the "**RWS Records**"); and

(b) Casino records²⁵ generated by Marina Bay Sands with a cover letter dated 28 February 2020 (the "**MBS Records**").

(collectively, the "**Records**")

²⁴ See Tab C of the Plaintiff's Affidavit dated 27 October 2020

²⁵ *Ibid*

29 There was also a further letter from MBS dated 8 April 2021 which the Husband sought to admit into evidence, albeit improperly. Instead of tendering the said letter through an affidavit, the Husband's counsel had merely appended the said letter (forming part of a chain of correspondence with the Wife's counsel) to her letter to court dated 14 April 2021. Admitting the said letter in such an inappropriate manner would have caused more prejudice than provide probative value to the proceedings. In the circumstances, I declined to admit the said letter.

30 On the strength of the two Records, the Wife ran the case that the Husband won a total of \$500 from RWS over the period of January 2018 to February 2020, and a total of \$211,416 from MBS from the period of 3 May 2013 to 6 February 2020. I shall address these assertions in greater detail below.

31 In response, the Husband claimed that he had no winnings at all, and where his RWS gambling activities are concerned, he in fact suffered a net loss of \$309,371. As regards his MBS gambling activities, the Husband explained that he had 'rolled' his cumulative winnings of \$211,416 and lost them all. The Husband highlighted that despite having disclosed his bank statements to the Wife, the latter was unable to produce evidence from his bank statements to demonstrate any net winnings from his casino activities. In further support of his assertion that he had lost monies overall at the casinos, the Husband brought to my attention that he had placed himself on an exclusion order from both casinos on 6 January 2019.

32 Before I begin a detailed analysis of the RWS and MBS Records, I pause to make a preliminary point. That is, whilst it will make for easier reading if I were to extract and paste the relevant portions from the Records into this judgment, doing so might compromise the confidentiality and security

measures of the casinos, given the way in which the raw data is presented. On a balance, justice is better served if these portions are not reproduced in this judgment. Where necessary, I will make reference to the relevant date in the Records.

33 Turning now to the RWS Records²⁶, these show that the Husband had an estimated cumulative net win of \$500 for table games between January to October 2018. Additionally, it shows that the estimated cumulative amount wagered by the Husband for the same period totalled \$309,371. On this basis, the Husband submitted that he had lost this amount of \$309,371 over the period, the logic being that he wagered \$309,371 in total and only ended up with winnings of \$500. I was not the least bit persuaded by this argument. Cumulative amounts wagered suggests that from these bets made by the Husband at the RWS casino tables, he had won some and lost some. This merely reflects the total amount he had wagered and is not, in a true sense, an absolute loss for him. If anything, it shows that his wins and losses had almost averaged out, netting him estimated winnings of \$500 over the period.

34 Moving on to the MBS Records²⁷, I note that these records are presented in a slightly different manner from the RWS Records. No estimates of total wagers were presented. Instead, the MBS Records show an annual estimated win/loss figure for electronic gaming machines and table games respectively. For the period of May 2013 to 6 February 2020, the MBS Records show that the Husband had a total estimated win amount of \$211,416. On this basis, the Wife submits that the same amount, together with the estimated win of \$500 from RWS, should be added back into the matrimonial asset pool. This

²⁶ Specifically, at page 176 of Tab C of the Plaintiff's Affidavit dated 27 October 2020

²⁷ Specifically, at page 128 of Tab C of the Plaintiff's Affidavit dated 27 October 2020

submission is premised on an adverse inference being drawn against the Husband for failing to provide full and frank disclosure of his true earnings from gambling²⁸.

35 I declined to do so, and I now give my reasons. First, I do not agree that an adverse inference should be drawn against the Husband for non-disclosure of his casino earnings. It was precisely because he had done so, which enabled the Wife herself to tender the RWS Records and MBS Records into evidence through her affidavit. There was therefore no concealment by the Husband in the manner envisaged by the Court of Appeal in *UZN* at [19] and [20].

36 Second, from an evidential perspective, I do not think that the Wife had even discharged her burden of proof on a balance of probabilities to demonstrate on a balance that the Husband had absolute casino winnings of \$211,916. Under section 103 of the Evidence Act (Cap. 97), it is trite that the person seeking to rely on certain facts has the burden of proving those facts. The Wife seeks to prove this by relying on the RWS Records and MBS Records. Unfortunately, these Records are not conclusive evidence of the Husband's casino winnings. Both Records had made clear that the figures therein were only estimates, and in any event contained the respective disclaimers as follows.

(a) The RWS Records²⁹ stated, *inter alia*, that:

(i) The information provided (the "Information") relates solely to the patron's gaming activities conducted with the use of membership card. Any gaming activity conducted *without the*

²⁸ Plaintiff's skeletal submissions dated 15 January 2021 at [18]

²⁹ See Tab C of the Plaintiff's Affidavit dated 27 October 2020 at page 176

use of the patron's membership card is not reflected in the information.

(ii) The Information is *an estimate only* and does not constitute a definitive account of the patron's gaming activities. RWS *makes no representations*, warrants or guarantees (express or implied), and *the patron* (including his proxies, nominees, agents or other representatives) *must not assume or rely on the premise that the information is, or will be, accurate, complete, comprehensive, adequate or verified*.

[emphasis added]

(b) The MBS Records³⁰ stated, *inter alia*, that:

(i) Any gaming activity conducted without the use of the Patron's Membership Card *is not reflected* in the information.

(ii) Information in relation to gambling activities on Table Games is compiled through observation by MBS Table Games personnel.

(iii) The Estimated Win/Loss Data *is an approximation* and *does not constitute a definitive account* of a Patron's gaming activity.

(iv) Marina Bay Sands *makes no representations, warranties or guarantees, whether express or implied, as to the accuracy or completeness of the Information*.

[emphasis added]

³⁰ See Tab C of the Plaintiff's Affidavit dated 27 October 2020 at page 125

37 Given the comprehensiveness of the disclaimers given by both MBS and RWS, it is unsafe to treat the estimated numbers provided as the actual figures in fact, as it was unclear whether the Husband could have played certain games in the casino without his membership card (and therefore additional wins/losses are not reflected in the records), or where MBS is concerned, whether the MBS Table Games personnel had accurately recorded the wins or losses of the Husband. Both Records had also expressly made clear that the information provided are not a definitive account of the Husband's gaming activities, and its accuracy cannot be guaranteed. Given the inherent uncertainties contained within these Records, the Wife could have applied to call the maker of these Records to give evidence, but she failed to do so. Therefore, even taking these Records at their highest, I do not think that the Wife had discharged her burden of proof on a balance of probabilities to demonstrate that the Husband had absolute casino winnings of \$211,916.

Adverse Inference

38 In the present case, both parties had submitted for an adverse inference to be drawn against the other. I therefore begin by setting out the legal principles relevant to the drawing of adverse inferences in matrimonial proceedings. The test of whether a court should draw an adverse inference against a party is set out in *UZN*, where the Court of Appeal made clear that an adverse inference may be drawn where:

- (a) there is a substratum of evidence that establishes a *prima facie* case against the person against whom the inference is to be drawn; and
- (b) that person must have had some particular access to the information he is said to be hiding.

39 In practice, the Court of Appeal cautioned that an adverse inference ought not to be easily drawn against a party unless both the criteria referred to above are satisfied. Specifically, not every shortfall in the account provided by a party would present a suitable occasion for an adverse inference to be drawn.

40 In my view, the issue of whether there is non-disclosure (possibly necessitating an adverse inference to be drawn) is distinct from a situation where even though there is disclosure by a party, he had acted to put assets (of a known value) outside of the matrimonial asset pool whilst undergoing divorce proceedings. Such a scenario was considered by the Court of Appeal in *CHT v CHU* [2021] SGCA 38 (“*CHT*”) at [9], where a husband had disposed of assets during divorce proceedings. Even though the court found that the wife had a putative interest in the said assets, it declined to draw an adverse inference against the husband since the assets had been disclosed and were capable of being valued. Thus, the said assets were added into the matrimonial pool without any need to draw an adverse inference against the husband.

41 I now move to consider the Wife’s application. Specifically, she had submitted that an adverse inference be drawn against the Husband for the following non-disclosures relating to:

- (a) Gambling winnings from the casinos;
- (b) Withdrawal of \$40,000 from bank account on 28 December 2018;
- (c) A bank account number ending 971-4³¹;

³¹ Plaintiff’s skeletal submissions dated 15 January 2021 at page 10

- (d) Children's education policies³²;
- (e) The Defendant's surgery³³; and
- (f) Payment for household utilities³⁴.

42 In respect of the gambling winnings, I note that the Husband had disclosed his gambling records from the MBS Records and the RWS Records, which was why they were tendered in evidence through the Wife's affidavit. Notwithstanding that I did not give much weight to the estimated figures in the Records, the *CHT* principle applies because disclosure had been made by the Husband, and there is therefore no need to draw an adverse inference against him.

43 As regards the \$40,000 withdrawn by the Husband, I have given my reasons above why I am adding only \$6,000 (sums allegedly spent on legal fees) back into the matrimonial pool. To recap, I had accepted that the remaining sum of \$36,000 had been legitimately spent on repaying loans and for the Husband's personal expenses. As such, the Wife had no putative interest in this sum. The \$40,000 was also disclosed by the Husband so there is no need for an adverse inference to be drawn against him.

44 In relation to the Husband's bank account number ending 971-4, the Wife submitted that the Husband had deliberately omitted to disclose this account, and it led her to doubt whether the Husband had indeed complied with his strict obligation to provide full and frank disclosure of his assets. Based on

³² Plaintiff's skeletal submissions dated 15 January 2021 at page 11

³³ Plaintiff's skeletal submissions dated 15 January 2021 at page 12

³⁴ *Ibid*

the evidence³⁵, I accepted the Husband's explanation that the said bank account was closed on 27 November 2015, more than three years before the divorce writ was filed. Therefore, this bank account did not form part of the matrimonial asset pool as at the date of interim judgment and the Husband cannot be faulted for its non-disclosure.

45 On the issue of the children's insurance, the Wife claimed that the Husband had provided contrasting accounts on how the proceeds of the maturity or surrender of insurance policies belonging to their children were distributed. The evidence shows that the Husband had disclosed the maturity or surrender amounts of these policies. They were surrendered or matured before the divorce writ was filed on 18 December 2021. Therefore, it cannot be said that the Husband had disposed of the insurance monies with a view to keeping the sums out of the matrimonial asset pool. Moreover, it could also be argued that the insurance monies belong beneficially to their children and is not in any event matrimonial assets. On this ground, no adverse inference ought to be drawn against the Husband.

46 Next, the Wife claims that the Husband would go so far as to distort facts to put himself at an advantage. This arises from a dispute as to whether the Husband had gone for surgery for sleep apnoea because a doctor had recommended it, or whether it was done because the Wife had complained that the Defendant snored too much. In my view, this argument has nothing to do with non-disclosure and I fail to see any legal grounds for an adverse inference to be drawn in this regard.

³⁵ Husband's supplementary submissions dated 4 March 2021 at [11]

47 Finally, the Wife claims that her account of which party had paid more for the utility bills is the more accurate one. On this basis, she claimed that the inconsistencies in the Husband's account show him to be capable of distorting facts if doing so would benefit himself. This argument carries no weight in my mind as a difference in recollecting who paid more for household utilities is not non-disclosure. To this end, I am guided by the Court of Appeal's remarks in *UZN* at [21], where it noted that in reality, parties in a functioning marriage may not always keep fastidious records, and it is understandable that they may genuinely be unable to recount past transactions in the AM proceedings.

48 Turning now to the Husband, he submitted that an adverse inference should also be drawn against the Wife for the following instances:

- (a) Wife's CPF investment of \$2,677³⁶;
- (b) Dissipation of cash in her bank accounts³⁷; and
- (c) \$100,000 from sales proceeds of a previous matrimonial property³⁸.

49 As regards the Wife's CPF investment, parties had come to an agreement that the amount of \$2,677 should be added into the matrimonial asset pool as this formed part of the Wife's assets. Parties had also agreed³⁹ on the value of the Wife's net assets for the purposes of this hearing, which includes

³⁶ Husband's supplementary submissions dated 4 March 2021 at page 7

³⁷ *Ibid*

³⁸ NE, Day 4, Page 41, Line 25

³⁹ NE, Day 4, Page 30, Line 12

her CPF investment. This was also a case where disclosure was made, so no adverse inference needs to be drawn.

50 In relation to the alleged dissipation of cash in the Wife's bank accounts, it bears repeating that the parties had already agreed⁴⁰ that the pool of matrimonial assets should be determined as at the date of the interim judgment. On a careful perusal of the Husband's submissions, I note that the allegations of the Wife's withdrawals related to periods from 2017 to April 2018, which were before the divorce writ was filed. Even taking the allegations at the highest, I do not think the sums allegedly withdrawn by the Wife in this period could be said to form part of the matrimonial assets, nor was there evidence to suggest that the withdrawals were made in contemplation of divorce. As such, no adverse inference will be drawn.

51 Finally, the Husband submitted that the Wife had during the marriage received at least \$100,000 from the sale of a previous matrimonial property. I note that this had taken place many years before the divorce was even imminent and bearing in mind the Court of Appeal's comments in *UZN*, it is likely that the amount received by the Wife had been spent, and this appears more to be a case where the Wife was genuinely unable to recount her past spending, rather than a case of non-disclosure. So, whilst I declined to draw an adverse inference in respect of these sales proceeds, I did take this into account as part of the Husband's indirect financial contribution to the marriage.

⁴⁰ NE, Day 1, Page 14, Lines 9-12

Conclusion on the pool of matrimonial assets

52 In view of the above, I now summarise the pool of matrimonial assets in the following table:

S/N	Description	Value (in \$)
Joint Assets		
1	Matrimonial Flat	<u>385,000</u>
Husband's Assets		
2	POSB Account number ending 424	3,244
3	Motor car	10,500
4	CPF account balance	142,329
5	Rolex watch	5,900
6	\$6,000 (added back into the pool)	6,000
Husband's Liabilities		
7	Total liabilities	(16,453)
Husband's Net Assets		<u>151,520</u>
Wife's Net Assets		
8	Net assets	<u>76,260</u>
Total		<u>612,720</u>

Division of the pool of matrimonial assets

53 Having determined and valued the pool of matrimonial assets, I turn now to address the issue of how the pool should be divided between the parties.

54 In applying the *ANJ* structured approach, I will first consider each party's direct and indirect contributions.

Direct contributions

55 Regarding the matrimonial flat which has been fully paid for, the Husband had contributed 70% towards its purchase price. That means that his contribution towards the net value of the matrimonial flat (70% x \$385,000) is \$269,500. Adding this to the Husband's net assets, his direct contribution to the matrimonial asset pool is therefore \$421,020, out of a total matrimonial asset pool of \$612,720. This works out to a direct contribution ratio of 69%.

56 The Wife contributed 30% towards the purchase of the matrimonial flat. Her contribution towards the net value of the matrimonial flat (30% x \$385,000) is \$115,500. Adding this to the Wife's net assets, her direct contribution to the matrimonial asset pool is therefore \$191,760, out of a total matrimonial asset pool of \$612,720. This works out to a direct contribution ratio of 31%.

Indirect contributions

57 In relation to indirect contributions, the Husband had submitted for 60% in his favour whilst the Wife submitted for 90% in her favour. In this regard, the court must consider both indirect financial and non-financial contributions. In *USB v USA and another appeal* [2020] 2 SLR 588 ("**USB**") at [43], the Court of Appeal noted:

In our judgment, the broad-brush approach should be applied with particular vigour in assessing the parties' *indirect* contributions. This would serve the purpose of discouraging needless acrimony during the ancillary proceedings. Practically, this means that, in ascertaining the ratio of indirect contributions, the court should not focus unduly on the minutiae of family life. Instead, the court should direct its

attention to broad factual indicators when determining the ratio of parties' indirect contributions. These would include factors such as the length of the marriage, the number of children, and which party was the children's primary caregiver.

58 In my decision, I think it is fair to award the 60% of the indirect contributions to the Wife, and the remaining 40% to the Husband.

59 Dealing first with the indirect financial contributions, I find that the parties had contributed more or less equally in this regard. I accept that both the Husband and Wife had contributed to the household expenses, as they were both working. As this was a long marriage of 27 years, I did not see the need to scrutinize with surgical precision each party's actual contribution to the household expenses. In respect of the parties' previous matrimonial homes, of which one of them was rented out, I attribute the rental income equally to both parties. The Husband pointed out that even though he had contributed more towards the purchase of these previous matrimonial homes, he had allowed the Wife an equal share of the sales proceeds, which she could apply towards the household and children's expenses.

60 As regards the parties' indirect non-financial contributions, I note that the Wife had contributed more by virtue of her caregiving role for the children in addition to her ad-hoc employments during the marriage when the family needed money. Whilst she might have had some help from other family members in the earlier part of the marriage, she ultimately bore the greater burden as a homemaker and caregiver to the children, being involved in their education, health, and developmental needs, from the time they were born until they turned 21 years old and beyond.

61 I also note from the Wife's submission⁴¹ that the Defendant had spent a lot of this time and money on gambling activities, and instead of channelling his gambling funds towards contributions for the family, the Husband instead funnelled them away to the casino. Whilst not expressly stated by the Wife, it appears that the Wife might be making a point that a negative value ought to be ascribed to the Husband's indirect contributions. For completeness, I shall deal with this point. To this end, the Wife has not met the high threshold required for such a finding. For such a finding to be made, there must be evidence that the Husband's conduct was undisputed and extreme: *per* the Court of Appeal in *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 at [25]. In that case, the wife was found to have "embarked on a premeditated course of action to inflict harm on the Husband by poisoning him over a period of time" (at [54]). The Court of Appeal held that her conduct was undisputed and extreme, and that a negative value ought to be ascribed to it, which the court gave effect to by applying a 7% discount to the 35% which the wife had been awarded of the matrimonial assets (at [57]–[58]). In the present case, the factors highlighted by the Wife fall far short of what is required before a court is prepared to ascribe a negative value to the Husband's conduct as the Wife had not adduced any evidence on whether the Husband's activities in the casinos was a premeditated course of action to inflict harm on her or the family.

62 Ultimately, in taking a broad brush approach towards the parties' financial and non-financial indirect contributions over the 27 years of marriage, and considering the factors as set out in *USB* above, I was of the impression and judgment that the final indirect contribution ratios should reflect a difference of

⁴¹ Plaintiff's skeletal submissions dated 15 January 2021 at [38] – [39]

20% between the parties. As such, I awarded 60% of the indirect contributions to the Wife and 40% to the Husband.

Average ratio and adjustments

63 Applying the *ANJ* approach, which is a broad brush approach, I summarise the ratios identified above into the table below. For the avoidance of doubt, I gave equal weightage to each of the two ratios, as was the position taken by both parties.

Contributions	Husband	Wife
Direct Contribution Ratio	69%	31%
Indirect Contribution Ratio	40%	60%
Average Ratio	54.5%	45.5%

64 At this juncture, I was of the view that a small adjustment should be made to the average ratio to take into account the casino records I referenced earlier, especially the MBS Records, which reflected an estimated win of \$211,416 for the Husband from 2013 to 2018. Whilst I had found that an adverse inference was not warranted against the Husband (as there was no non-disclosure), it did not sit right with me that he was estimated to have won such an amount from the MBS casino, yet none of the amount could be taken into account towards direct contribution for lack of numerical certainty. Therefore, whilst I recognise the limitations in such an approach, I gave an uplift of 5% of the matrimonial assets in favour of the Wife to reflect the likelihood on a balance of probabilities that the Husband had won some monies from the casinos which did not feature in my calculation of the pool of matrimonial assets above. Given that the total pool of matrimonial assets is worth \$612,720, the uplift of 5% amounts to only \$30,636. This must be seen in the context of the total amount

of \$309,371 wagered by the Husband at RWS, and his estimated winnings of \$211,416 at RWS. In my view, such an uplift balances the likelihood of the Husband's casino winnings with the evidential difficulty of proving the exact amount of winnings to achieve a fair outcome.

65 Having regard to all the circumstances, I conclude that a just and equitable division is 50.5:49.5 in favour of the Wife. This amounts to \$309,423 (being $0.505 \times \$612,720$) for the Wife and \$303,296 (being $0.495 \times \$612,720$) for the Husband.

Apportionment

66 I turn now to the apportionment of the matrimonial assets. A large portion of the matrimonial assets consists of the matrimonial home (valued at \$385,000). As both the Husband⁴² and the Wife⁴³ are desirous that the matrimonial home be sold, the issue of a negative sale came into play. The Husband had utilized approximately \$337,701⁴⁴ from his CPF account towards the acquisition of the matrimonial home whilst the Wife had utilized approximately \$127,930⁴⁵ for the same. In total, the parties had utilized \$465,631 from their CPF accounts. These CPF utilisation figures were as of October 2019, almost two years ago.

67 In all likelihood, if the parties are unable to fetch a minimum sale price of \$465,631 (or more, accounting for the CPF usage since Oct 2019) for the matrimonial home, it will likely be a negative sale situation. However, it is

⁴² NE, Day 4, Page 43, Line 30

⁴³ NE, Day 4, Page 43, Line 23

⁴⁴ Husband's AOM dated 10 October 2019 at page 9

⁴⁵ Wife's AOM dated 8 October 2019 at [21]

unclear to me what are the amounts that will actually be refunded into each of the parties' CPF accounts as that is ultimately dependant on the actual sale price of the matrimonial flat. The uncertainty snowballs into how the other matrimonial assets will be divided, and if a just and equitable division requires one party to transfer monies from his/her CPF account to the other party, I am not currently able to calculate with any precision the amount to be transferred.

68 Therefore, I elected to make no order on the matrimonial assets at the conclusion of the Ancillary Matters hearing, save for an order that the matrimonial flat be sold within six months of the Final Judgment, and the sales proceeds shall be utilised and subjected to the following:

- (a) To pay the HDB resale levy (if any);
- (b) To refund both Parties' Central Provident Fund ("CPF") accounts of monies withdrawn for the purchase of the Flat with accrued interest in accordance with CPF rules;
- (c) This order is made subject to the Central Provident Fund Act (Cap.36) ("CPF Act") and the subsidiary legislation made thereunder. The CPF Board shall give effect to the terms of this order in accordance with the provisions of the CPF Act and the subsidiary legislation made thereunder;
- (d) Parties shall have joint conduct of sale;
- (e) Parties shall bear the costs of the sale equally;
- (f) The Registrar or Assistant Registrar of the Family Justice Courts under section 31 of the Family Justice Act (No. 27 of 2014) is empowered to execute, sign, or indorse all necessary documents relating

to matters contained in this order on behalf of either Party should either Party fail to do so within seven (7) days of written request being made to the other Party. In such event, the defaulting Party shall be liable for all costs and incidentals incurred on an indemnity basis;

(g) Unless expressly provided for in the CPF Act, nothing in the orders herein shall be taken to affect the CPF Board's charge on the Flat or any other immovable property owned by one or both of the Parties and which is the subject of this Order of Court. The CPF Board shall determine the requisite refunds to be made to the respective Parties' CPF accounts upon the sale, transfer, assignment or otherwise disposal of such immovable property in accordance with the CPF Act and the subsidiary legislation made thereunder; and

(h) The Parties, including the CPF Board, shall be at liberty to apply for further directions or orders generally.

69 The rationale for first ordering the matrimonial flat to be sold before I make final orders on how the net sale proceeds or other matrimonial assets are to be divided lies in my reluctance to make an order which effectively apportions into quantifiable sums the net amount of matrimonial assets that each party ought to get before even knowing how much is really on the table for division. Such a method is akin to putting the cart before the horse and is inappropriate. In fairness to the parties, I took the view that they should first endeavour to sell the matrimonial flat, and only after the sale is crystalised should they apply for further orders relating to the division of matrimonial assets, to which they were given the liberty.

70 For the avoidance of doubt, and for future guidance to the parties, once the sale of the matrimonial home is complete, I will make orders on how the net

sales proceeds, if any, are to be divided, and where necessary, orders may be made on the other matrimonial assets. Meaning, I will adjust the size of the matrimonial pool based on the actual set selling price of the matrimonial home and ensure that the final division a ratio of 50.5:49.5 in favour of the Wife, whatever the selling price of the matrimonial flat might be. Whilst I recognise that such an approach is generally not taken by the courts, I was of the view that the justice of this case requires a more delicate touch given the uncertainties at play.

Maintenance for the wife

71 The Wife submitted⁴⁶ that she should be awarded maintenance in a sum of \$21,600 (at \$600 per month for 36 months) in either a lump sum or from the division of the matrimonial assets.

72 Under section 114(2) of the WC, the overarching principle of financial preservation of an ex-wife must be placed at the forefront, and this effectively means that she should be maintained at a standard that is, to a reasonable extent, commensurate with the standard of living she had enjoyed during the marriage. Ultimately, it is the reasonableness of the maintenance claim vis-à-vis the husband's ability to pay which guides the court's application of the principle of financial preservation.

73 On a perusal of the Wife's expenses, I note that her current monthly reasonable expenses amount to \$1,115⁴⁷, whilst her gross monthly income as a clinic assistant is \$1,525⁴⁸. Both figures are not disputed by the Husband. On

⁴⁶ Plaintiff's skeletal submissions dated 15 January 2021 at [63]

⁴⁷ Plaintiff's skeletal submissions dated 15 January 2021 at [66]

⁴⁸ Plaintiff's skeletal submissions dated 15 January 2021 at [65]

the face of things, I conclude that the Wife can support herself on her income alone. Given her earning capacity, it also appears she is living well within the standards which she enjoyed during marriage. There was therefore no necessity for me to exercise my discretion to order the Husband to pay maintenance for the Wife going forward.

74 On this point, I am guided by the findings in High Court case of *VPU v VPT* [2021] SGHCF 11 (“*VPU*”), where it was held at [17] that the wife in that case was self-sufficient and does not require maintenance for herself. On the present facts, I find that the Wife is self-sufficient and will continue to be self-sufficient in future.

75 Additionally, the Wife makes argument point that after the divorce, she would require additional sums to rent or purchase a new place to live in. In my view, she can choose to work overtime for more income, or she could cut down on her expenses like giving allowance to her parents (\$200), eating out (\$150), or on other expenditure (\$150). If she wishes to rent a place with her adult children, they can contribute to the rental as well. As regards the possibility of buying a new flat, she will be left with approximately \$150,000⁴⁹ in her CPF Ordinary Account to make a purchase. Whilst adequate but not substantial, one must bear in mind the remarks made in *VPU* at [17], where it was observed that the reality of divorce is that both parties will have less money than they had during the marriage. Unfortunately, this is the case here.

⁴⁹ Comprising a refund of \$127,930 (inclusive of accrued interest) from the sale of the current matrimonial flat and \$23,394 from her CPF Ordinary Account standing to her credit as at the time of the Ancillary Matters hearing.

76 As I have found that the Wife is self-sufficient and will continue to be self-sufficient in future, it accordingly follows that she does not require maintenance for herself.

Costs

77 At the conclusion of the hearing, the Wife submitted that there should be no order as to costs⁵⁰ as any cost order would eventually come from the same pool of resources. On the other hand, the Husband asked for disbursements for obtaining bank records and letters from the casino, being the MBS Records and the RWS Records. After hearing the parties' arguments, I made no order as to costs and ordered the Wife to pay disbursements of \$620 to the Husband.

78 Subsequently, the Husband's counsel wrote in⁵¹ to request for further arguments, wherein she brought to my attention that prior to the hearing, the parties were involved in Without Prejudice Save as to Costs ("WPSC") discussions for more than six months. Crucially, counsel highlighted that my orders made were not more favourable than the Calderbank offer which the Husband had offered during negotiations, and he should be entitled to costs from the time the first WPSC offer was made on 9 March 2020 until the time the hearing concluded in June 2021.

79 The Husband's counsel highlighted that on 13 March 2020, the Wife's solicitors had sent a WPSC letter stating that the Wife was agreeable to:

- (a) Sale proceeds of the flat being divided 60:40 in favour of the Wife;

⁵⁰ NE, Day 5, Page 27, Line 4

⁵¹ See letter from Alan Shankar & Lim LLC dated 8 June 2021

- (b) The Wife being paid a lump-sum maintenance of \$30,000; and
- (c) A further payment of \$20,000 to the Wife for her share of the other matrimonial assets.

80 After a counteroffer, the Wife's solicitors replied on 23 March 2020 that the Wife was agreeable to a payment of \$35,000 for her share of the other matrimonial assets. The Husband's solicitors replied on 26 March 2020 that he agrees to the amount, save that the \$35,000 be paid out of the sales proceeds of the matrimonial flat.

81 For some perspective, I compared my eventual orders with the substantive offer that the Husband had made on 26 March 2020. On the division of the matrimonial flat, the Wife is likely to get little or no net sales proceeds since the flat is likely to be sold at a negative sale. Further, the final ratio I ordered awarded only 50.5% to the wife, instead of the 60% she seeks from the flat. Whilst the Husband had originally offered the Wife \$30,000 in lump-sum maintenance, the Wife eventually did not succeed in this claim. Further, the Husband's later offer of \$35,000 to the wife by way of a deduction against the flat's sale proceeds did not materialise in a similar outcome in my orders.

82 Going back to basics, the award of costs lies at the discretion of the court. To this end, I considered the conduct of the parties. I noted that the offer made by the Husband to the Wife in March 2020 was a Calderbank offer, and it never had an expiry date. Meaning, the Wife was at liberty to accept the offer right until the AM hearing stated, but she never did so. All in, I found that the Wife would have been better off had she accepted the Husband's Calderbank offer in March 2020 instead of taking the matter for hearing and ending up worse off. As such, I awarded costs of the hearing (which was part heard over seven days)

on a standard basis to the Husband in the sum of \$3,500 and disbursements of \$620 to the Husband.

83 For completeness, I was not persuaded by the Husband that costs should have been awarded on an indemnity basis, for which the Husband's counsel sought \$60,990. Considering that the value of the matrimonial asset pool was valued at just over \$600,000, awarding \$69,990 in costs to one party would be disproportionate and the Wife's conduct of the matter, even though could have been less risk-adverse, was not so unreasonable or vexatious to warrant an award of indemnity costs against her.

Post-hearing application in SUM 2922/2021

84 After I had made the above orders relating to the sale of the matrimonial flat (on 4 June 2021) and costs (on 16 July 2021), the Wife applied on 19 August 2021 for a stay of execution of these orders pending the outcome of the appeal.

85 I heard parties on 15 October 2021 and the Husband agreed that the cost order can be stayed. As regards the stay application for the sale of the flat, the Wife had submitted⁵² that she was objecting to the sale because she did not know what her rightful share was and as such was unable to plan her finances in purchasing her next flat.

86 At the hearing, I explained to parties again that the reason I had not made an order on how the sales proceeds of the matrimonial flat are to be divided, if any, is because there is unlikely to be any. Further, I can only arrive at a just and equitable division outcome only after the sale price of the matrimonial flat

⁵² See Wife's affidavit dated 23 August 2021 at [8] – [12]

is known. Therefore, I reminded the parties that it is in their respective interests to complete the sale as soon as possible for the best price they can fetch.

87 Through the course of the parties' subsequent oral arguments, I distilled that the Wife genuinely held the belief that the matrimonial flat can be sold at a much higher price than the sum of \$385,000 which the parties had agreed to during the Ancillary Matters hearing. The Wife, in anticipation of a positive sale, therefore expects there to be net sales proceeds leftover after refunds are made into the parties' respective CPF accounts and accounting for the costs of sale.

88 On the suggestion by The Husband's counsel that the net sales proceeds, if any, be held by the conveyancing solicitors as stakeholders, the Wife agreed that such a course of action would protect her interests until such time that the appeal is heard. I therefore made the following orders in respect of SUM 2922/2021:

- (a) The order made on 16 July 2021 in relation to costs is stayed pending the outcome of the appeal in DCA 92/2021 and DCA 95/2021.
- (b) It is further ordered that the net sale proceeds of the matrimonial flat, if any, shall be held by the conveyancing solicitors as stakeholders pending the orders to be made by the High Court in DCA 92/2021 and DCA 95/2021.
- (c) The Wife shall pay costs of \$750 to the Husband for this hearing.

Conclusion

89 For the reasons stated above, the gist of my decision is as follows:

- (a) The division of matrimonial assets shall be divided 50.5:49.5 in favour of the Wife.
- (b) There shall be no maintenance for the Wife.
- (c) The Wife shall pay costs of \$3,500 and disbursements of \$620 to the Husband in D 5774/2018.
- (d) The matrimonial flat shall be sold within six months of Final Judgment and the net sales proceeds, if any, shall be held by the conveyancing solicitors as stakeholders pending the orders to be made by the High Court in DCA 92/2021 and DCA 95/2021.
- (e) The Wife shall pay costs of \$750 to the Husband in SUM 2922/2921.

90 Subject to the outcome of the appeals in DCA 92/2021 and DCA 95/2021, parties have liberty to apply before me for further orders relating to the division of matrimonial assets after the matrimonial flat is sold.



Clement Yong
District Judge



Mundo Alyssa Galvan (Tembusu Law LLC) for the Plaintiff;
Lim Poh Choo and Lee Wan Sim (Alan Shankar & Lim LLC) for the
Defendant.