

<p><b>TOE v TOF [2020] SGHCF 18</b>  Decision Date: 26 October 2020  Judge: Choo Han Teck J  Family Law – Custody – Care and Control  Family Law – Custody – Access  Family Law – Maintenance  Family Law – Matrimonial assets – Division</p>
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Parties	53 year old homemaker (W) and 54 year old former fund manager (H)
Length of marriage	19 years
Children	1 (10 year old son)
AM Hearing Orders	<ul style="list-style-type: none"> <li>• Joint custody</li> <li>• Care and control to W</li> <li>• Fixed overnight access to H</li> <li>• H to pay monthly maintenance of \$5k to wife and \$4.1k to child. <ul style="list-style-type: none"> <li>◦ In addition, H to pay for child’s education, insurance and medical/dental directly.</li> </ul> </li> <li>• H to pay lump sum of \$4 million in full and final settlement of division of assets.</li> <li>• H to return W’s personal belongings</li> <li>• H to return half of furniture and kitchenware</li> </ul>

#### **Care and control [2] – [3]**

- Interim arrangement of shared care and control was disruptive for child and had resulted in more conflict between parties. Child had expressed dislike for interim arrangement.
- H intended to return to UK while Korean mother intended to remain in Singapore and set up a small business.
- Child had been in Singapore since 2 months old.
- In circumstances, W granted sole care and control.

#### **Access [4]**

- H to have overnight access from 2pm on Saturday to 2pm on Sunday and mid-week access from 6pm to 9pm on a day to be agreed between parties.
- Access during the school holidays shall be half to each parent.
- Child was also free to use his email and mobile to contact H.

#### **Maintenance [5] – [7]**

- W had a higher education qualification and had worked as a cabin crew for over 10 years but had not worked and was financially dependent on H throughout marriage.
- Required financial assistance – had recently begun temporary low-paying jobs but had not yet found a stable, permanent one.
- H claimed that he was in debt and had not earned an income since 2016.
- Before that, H’s monthly salary was \$49.5k in 2011 and \$10k from 2011 to 2015.
- Noted that H rented property for \$20k a month, paid \$2.5k for car and \$2.6 for son’s school fees monthly. Also brought son on numerous overseas trips on business class.
- H’s spending inconsistent with one that had no income, much less debt.
- Court satisfied that H was capable of supporting himself, wife and son.
- Maintained interim order of maintenance of \$5k for wife and \$4.1k for son, with H paying the following directly:-
  - child’s school fees and other school-related activities;
  - child’s enrichment classes and tuition where necessary;
  - all of the child’s existing insurance policies; and
  - child’s medical and dental expenses.

#### **Division of matrimonial assets [8] – [25]**

*Duty to make full and frank disclosure [9] – [10]*

- H claimed to have no assets whatsoever while W claimed that H had assets amounting to \$39million.
- Parties are duty-bound to make full and frank disclosure of assets and a failure to do so would leave the court with the only option of drawing an adverse inference. Effect of adverse inference would be that court may give a higher percentage of disclosed assets to the other party (*Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 at [66]).
- H had sought to make his assets seem insignificant since breakdown of marriage in 2012.

*Matrimonial assets for division [11] – [26]*

- W's assets valued at \$390k [11] – [12].

*Audi car [14]*

- H claimed that he no longer owned a car but was renting.
- H ordered to produce documentary evidence of sale of Audi car and rental charges of current car.
- Documents were not provided.
- Adverse inference drawn.

*Monies in bank accounts of Jagger Singapore [15]*

- W had bank statements showing that USD750k had been deposited into bank account from 2012 to 2013.
- H ordered to produce bank statements from date of account opening to date in affidavit to be filed and served.
- H did not comply with directions.
- Adverse inference drawn.

*Monies in bank accounts of Jagger Cayman Ltd [16]*

- H admitted to being director and manager but denied being shareholder.
- W had bank statements showing numerous transactions between Jagger Cayman bank account and parties' joint accounts, as well as between Jagger Cayman and Jagger Singapore bank accounts.
- Jagger Cayman's bank accounts were addressed to matrimonial home for many years.
- Court found that H was more than a mere director/manager.
- Adverse inference drawn against H for refusing to disclose true extent of his interest.

*Matrimonial home [17]*

- W claimed that parties had received \$5.5 million for sale of matrimonial home which H then transferred from their joint account to Jagger Cayman's account.
- H claimed that transfer had been made to pay off his debts to Jagger Cayman.
- Court found that H's claim was a bare assertion and drew adverse inference against H for failure to fully account for sale proceeds.

*Phuket property [18]*

- W claimed that H had told her that he was setting up company with friend to invest in land.
- W produced documents showing H had transferred sums to various parties in Thailand with details stating 'purchase of land'. W also produced letter from Thai law firm including invoice for land. Letter was addressed to matrimonial home.
- Court satisfied that H had made a property investment and failed to make full and frank disclosure.
- Adverse inference drawn.

*UK property [19]*

- W claimed that H owned property which was registered in name of H's mother. H claimed that mother had paid purchase price.
- W argued that H periodically sent large sums of money to his mother which must have been used to acquire the property.

- As there was insufficient evidence to suggest H had a legal or beneficial interest in property, no adverse inference drawn.

Bali property [20]

- W claimed that she and H had gone to Bali to choose land and H had then purchased land together with one Neil Franks.
- W adduced bank statement showing transfer from joint account to Neil with description "Pmt for Property Investment".
- During MSS hearing, H stated he did not own property but had made investment.
- In present AM hearing, H stated that he had never made such an investment.
- Adverse inference drawn against H for failure to make full and frank disclosure of investment.

Shares in KKCP [21]

- At MSS hearing, H had produced agreement to show that he had agreed to sell 25 shares in KKCP with right to repurchase. Later admitted that this represented 25% of total shareholding.
- W claimed that in absence of incontrovertible evidence to the contrary, court should assume H is sole shareholder.
- Found that there was nothing to suggest that H owns/owned any shares beyond 25 shares which were already disposed of.
- No adverse inference drawn.

Shares in Barclays PLC [22]

- W relied on Barclays tax voucher addressed to H showing that he had 35,588 shares as of 7 December 2012.
- H claimed that he had since sold share but did not provide any evidence.
- Found that H had failed to make full and frank disclosure, adverse inference drawn.

H's cash assets [23]

- H refused to give details of any bank account he holds whether in Thailand, Singapore, the UK, Hong Kong or elsewhere.
- Lack of cash assets inherently unbelievable based on H's employment history, financial status during marriage and current spending patterns.
- Adverse inference drawn.

Parties' contributions to marriage [24]

- Direct contributions 97:3 in favour of H
- Indirect contributions 30:70 in favour of W
  - Although W had assistance of domestic helpers, her indirect contributions should not be diminished on that basis.
  - Before breakdown of marriage, H had been preoccupied with career and W had devoted full time and attention to managing parties' properties and caring for H and son.
- Average ratio of 36.5:63.5 in favour of H

Mechanics of division [25]

- Lump sum favourable in view of H's plans to relocate and severe acrimony.
- Due to adverse inferences, figure arrived at by court was established not by proof, but in finding a fair sum on that basis the court should not give a discount that might result in unfairness to the ex-spouse.
- Between competing claims of nil assets (H's case) and almost S\$40m (W's case), the little evidence court had inclined it towards the latter.
- \$4m seen as a reasonable figure.

De minimis [26]

- W requested for return of her jewellery and watches and to have half the furniture, kitchenware, Christmas decorations and bedclothes. H did not object.

- Although some items were gifts from H, court has the discretion to exclude *de minimis* inter-spousal gifts from pool of matrimonial assets. (*Tan Hwee Lee v Tan Cheng Guan and another appeal and another matter* [2012] 4 SLR 785 at [48]–[49])
- As value of items requested was *de minimis* compared to pool of matrimonial assets, request granted.

**Summary of Orders [27]**