

SLW COMMENTARY

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The beginning of the end of the broad-brush approach? – a case comment of *UQP v UQQ* [2019] SGHCF 7

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The High Court in *UQP v UQQ* [2019] SGHCF 7 has created another exception to the broad-brush approach from *ANJ v ANK* [2015] 4 SLR 1043 for the division of matrimonial assets by resisting its application to this short dual-income marriage. This case comment argues that the broad-brush approach ought to have been applied to division of the matrimonial home (that is held in the Wife's sole name) despite it being wholly financed by the wife and her father before and during the marriage. The author proposes that it is perhaps time to reconsider equality as the starting point to have a single test for the division of matrimonial assets.

FACTS

1. This case involved a highly acrimonious divorce between the Appellant Wife (“**Wife**”) and Respondent Husband (“**Husband**”) who were married in August 2012 in Singapore. During their short marriage of about 4 years, they had a son, who was born in August 2013.
2. The Wife worked as an administrative officer and made about \$6,800 a month while the Husband worked as an insurance salesman and made about \$3,000 a month.
3. At the Ancillary Matters hearing, the Family Court dealt with issues relating to the child, maintenance for the child and the Wife, the division of matrimonial assets, the division of the Matrimonial Home (“**MH**”) and costs. The Family Court ordered that the care and control of the child be given to the Wife, that parties were to retain all assets that are in their respective names, and that the MH be divided in the following way: 82% to the Wife and 18% to the Husband.

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4. The MH was purchased in January 2006 in the sole name of the Wife at \$834,550. At the time of the marriage in August 2012, \$440,000 of the MH's purchase price had already been paid (more than 50%). It was undisputed that, prior and during the marriage, the property was fully financed by the Wife and her father. As at August 2018, the MH was fully paid, and the value of the property was at \$2,050,000.
5. The Wife appealed against the Family Court's decision solely on the division of the MH, which led to the current case of *UQP v UQQ* [2019] SGHCF 7 ("*UQP v UQQ*").
6. On appeal in the High Court, the Wife argued that, on the broad-brush approach from *ANJ v ANK*,¹ she should be attributed 100% for direct contributions and 80% for indirect contributions. The Wife further argued that the weightage of direct to indirect contributions should be 75:25 respectively. On the other hand, the Husband contended that he should be attributed 20% for direct contributions and 50% for indirect contributions. The Husband further contended that the weightage of direct to indirect contributions should be 30:70 respectively.

DECISION

7. Justice Choo Han Teck ("**Choo J**") allowed the appeal and held that the Wife should be awarded 100% of the value of the MH. Choo J relied on the Court of Appeal case of *TNL v TNK* at [44]-[46] to justify that the *ANJ v ANK* approach did not apply to the case at hand.² Choo J further held that the *ANJ v ANK* approach only applied when "it can be seen that the non-financial or indirect contribution of one spouse, even in equal proportion, enabled the other to pay for the purchase of the matrimonial assets".
8. Choo J's second basis for rejecting the use of the *ANJ v ANK* approach on the facts is that the Husband had not shown how his efforts, whether directly or indirectly, assisted or enabled the Wife to earn money to acquire the MH.³ He reasoned that since all matrimonial assets are to be treated as community property, it must be shown that the property was "acquired by the co-operative efforts of the spouses, financial or otherwise during the course of their marriage".⁴

COMMENT

A. The current state of the law on division of matrimonial assets

¹ *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ v ANK*") at [22].

² *TNL v TNK* [2017] 1 SLR 609 ("*TNL v TNK*") at [46].

³ *UQP v UQQ* at [12].

⁴ *UQP v UQQ* at [12].

9. The Court of Appeal has consistently adopted the principle that marriage is an **equal co-operative** partnership of **different efforts** for mutual benefit [emphasis added].⁵ The current case of *UQP v UQQ* cannot be further from this. *UQP v UQQ* seeks to create yet another exception from the broad-brush approach that was first expounded by the Court of Appeal in *ANJ v ANK*. Under the *ANJ v ANK* approach, the courts will first ascribe a ratio to represent each party's direct contributions and another ratio to represent the parties' respective indirect contributions, second derive an average percentage from the two ratios, and third, the Court may adjust the weightage given to the direct and indirect contributions.⁶
10. Since the inception of the broad-brush approach of *ANJ v ANK* in 2015, the Court of Appeal has carved out an exception for single-income marriages in *TNL v TNK* in 2017.⁷ The Court of Appeal held, that, in long single-income marriages, the division of matrimonial assets will follow precedents that have equalised division, unless there are exceptional facts. This is because the *ANJ v ANK* approach will leave the homemaker spouse "doubly (and severely)" penalised.⁸ The Court of Appeal further proposed leaving how the division of matrimonial assets for short single-income marriages to an appropriate case before it because "different considerations may attach".⁹ Even then, the Family Justice Court has had difficulty applying the Court of Appeal's decisions.¹⁰

B. The creation of a new exception by UQP v UQQ

11. *UQP v UQQ* creates yet another exception to the *ANJ v ANK* approach by requiring the party claiming a share in the MH to show "how [his] efforts directly or indirectly assisted or enabled the appellant to earn the money to acquire the [MH]", otherwise the MH will not be divided.¹¹ This suggests that there is now a requirement for a nexus to show between a party's specific indirect contributions and the other party's acquisition of the MH.
12. It would seem that Choo J is suggesting that applying the *ANJ v ANK* approach would be inequitable because, assuming that all direct contributions were wholly attributed to the Wife and there were no "special non-financial or indirect contribution" by either parties, the Husband would have obtained 25% of the MH.¹² This new position adopted in *UQP v UQQ* is despite the Court of Appeal's

⁵ *ANJ v ANK* at [17]; *TNL v TNK* at [45]

⁶ *ANJ v ANK* at [22]

⁷ *TNL v TNK* at [41]-[46].

⁸ *TNL v TNK* at [44].

⁹ *TNL v TNK* at [48].

¹⁰ Leon Vincent Chan, *The Unfounded Fear towards Equal Division of Matrimonial Assets* (2018) 30 SAclJ 797 ("LVC's Towards Equal Division") at [48]-[49].

¹¹ *UQP v UQQ* at [12].

¹² Assuming that equal weightage is given to both direct and indirect contributions. *UQP v UQQ* at [13].

“affirm[ation of] the continued applicability of the [*ANJ v ANK*] approach to Dual-Income Marriages”.¹³

C. *The ANJ v ANK approach should apply*

13. Looking first at the requirements for the *ANJ v ANK* approach to apply, the *ANJ v ANK* approach should apply as *UQP v UQQ* is clearly a dual-income marriage, since both parties worked, albeit the Wife earns more than double of the Husband's income. By choosing not to divide the MH, Choo J directly contradicts Professor Leong Wai Kum's argument that there should be “fairly overpowering arguments before a court concludes that no sufficient connections had formed between the matrimonial home and the marital partnership” before the MH is not subject to division.¹⁴
14. The High Court in *UQP v UQQ* ought to have applied the *ANJ v ANK* approach to the division of the MH and attributed the Wife's father's contribution to her contribution towards the acquisition of the MH. In *Ang Teng Siong v Lee Su Min*, the High Court held that if it can be shown that there is a clear intention of a parent to gift an asset to the child, the sale proceeds of the asset will count towards the child's direct contribution to the acquisition of the MH.¹⁵ Since it was undisputed that only the Wife and her father contributed to the acquisition of the MH, following *Ang Teng Siong v Lee Su Min*, the High Court ought to have uphold the Family Court's decision to attribute 100% of the direct contributions to the Wife.¹⁶
15. The High Court should have corrected the Family Court's decision to not adjust the weightage given to the direct and indirect contributions in favour of the direct contributions.¹⁷ In *ATE v ATD*, it involved a short dual-income marriage of about 5 years before the parties obtained a divorce, shortly after the child of the marriage turned two. The Court of Appeal held that since the short dual-income marriage had “not inconsiderable amount of assistance on the domestic scene, the appropriate ratio between direct and indirect contributions ought to be 75% and 25%, respectively”.¹⁸ The facts of *ATE v ATD* were similar to *UQP v UQQ* since both involved short dual-income marriages where parties had help in caring for their young children. As such, the weightage in *UQP v UQQ* should be adjusted in favour of the direct contributions by the parties.
16. Even when Choo J attempts to apply the *ANJ v ANK* approach to the facts at [12], he sets the requirement for the indirect contribution of the Husband – caregiving of the child and being the family's chauffeur – to “show how such [indirect] efforts directly

¹³ *TNL v TNK* at [42].

¹⁴ Leong Wai Kum, *Elements of Family Law in Singapore*, 3rd Ed (Singapore: LexisNexis, 2018) at [16.079] and [16.081].

¹⁵ *Ang Teng Siong v Lee Su Min* [2000] 1 SLR(R) 908 at [22]-[29].

¹⁶ The author notes that the Husband did not dispute the attribution of the Wife's father's contribution to the property to her.

¹⁷ *UQP v UQQ (SGFC)* at [16] and [31].

¹⁸ *ATE v ATD* [2016] SGCA 2 at [21].

or indirectly assisted or enabled the [Wife] to earn the money to acquire the [MH]”. This cannot be right. The Wife’s income was double the Husband’s as a result of him taking on flexible working hours to care for the child. This in turn allowed her to apply her additional income to acquire the MH.¹⁹ The Court of Appeal in ***Lock Yeng Fun v Chua Hock Chye*** has also endorsed this idea that one party’s greater financial success is a result of the other party bearing greater burden in respect of homemaking.²⁰ It is only implicit that the increase in income allowed the Wife to acquire the MH. Therefore, there is no additional burden for the Husband to show **how** his indirect contributions led to the acquisition of the property.

17. While Choo J correctly identified that there is some form of inequity to award the Husband a share in the MH despite not contributing to it, as the Court of Appeal noted in ***TND v TNC and another***, the payment by a party (or lack thereof) during the marriage will count towards how the Court decides to exercise its discretion to divide the property.²¹ The lack of contribution to the asset should not act as a bar towards excluding the property from the division of the pool of matrimonial assets.

D. Conclusion – wither the broad-brush approach entirely?

18. The author acknowledges that there is great discomfort in dividing an asset that has been wholly funded by one party. However, since marriage has been recognised to be an equal co-operative partnership of different efforts, the division should reflect this principle. *UQP v UQQ* demonstrates the inherent difficulty in applying the *ANJ v ANK* approach to the division of matrimonial assets. If the threshold is set so high as to require the homemaker or primarily homemaker spouse to show **how** his efforts led to the other spouse’s ability to acquire the matrimonial asset, it would “doubly (and severely)”²² penalise the homemaker spouse. Perhaps to remedy the unsatisfactory situation of applying different tests for different types of marriages, more thought should be given to the author’s proposition for an inclination towards equality as a starting point.²³

¹⁹ LVC’s Towards Equal Division at [46].

²⁰ *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 at [39].

²¹ *TNC v TND and another* [2017] SGCA 34 at [35].

²² *TNL v TNK* at [44].

²³ See generally LVC’s Towards Equal Division, in particular [80]-[82] for a summary.

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