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## Full and Frank Disclosure in a Matrimonial Context

Family and Matrimonial Practice Series

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## Game of Assets in a Divorce Context

# Concealment & Dissipation of Assets in Divorce Proceedings

S is in the midst of a divorce proceeding. Her husband, J is a man of substantial means. Prior to the divorce, parties lived in a huge bungalow and own several other investment properties locally and overseas. Parties led a luxurious lifestyle and indulged in many fine things in life.

J owned a large collection of luxury watches, fine wines and several sports cars during the course of the marriage. Prior to the divorce, J was previously employed as a managing director in a well-known company, whom he owns the bulk of the shareholding. However, shortly before the divorce was commenced, J resigned from his company and sold off his shares to his brother.

Recently, S discovered that several of J's luxury watches, wines and sports cars have also been "sold" or "gifted" to his family members or siblings as J claimed that he needed extra cash to repay debts incurred from his new business venture. S suspects that J has been deliberately dissipating and concealing his assets to escape his responsibilities in the divorce proceedings.

# Duty to Provide Full and Frank Disclosure in Divorce Proceedings

In a divorce, all matrimonial assets are liable for division between the parties.

There is a general duty for parties in divorce proceedings to provide a full and frank disclosure of all relevant information within his/her knowledge which is particularly relevant in the context of a division of matrimonial assets.

At the ancillary stage, parties are required to file an Affidavit of Assets and Means to list down

a full and detailed list of their assets and liabilities whether in their joint names or their respective sole names. This relates to not only assets acquired during the course of marriage, but also includes assets acquired prior to the course of marriage (whether or not it is considered a marital asset liable for division is a separate issue for the Court's consideration).

Parties are required to provide supporting documentary proof



to substantiate the assets and liabilities declared in the proceedings, eg. bank account statements / records, shares statements, income slips, property titles etc.

In the absence of full and frank disclosure, the court is entitled to draw inferences adverse to the party who failed to make the disclosure. See **Wee Ah Lian v Teo Siak Weng [1992] 1 SLR(R) 347** at [55] where the Court noted in **Au Kin Chung v Ho Kit Joo [2007] SGHC 150** at [32]:

*... The court's power to divide matrimonial assets embodied in s 112 [of the Women's Charter] is premised on the parties' duty to provide full and frank disclosure of the assets acquired throughout the course of the marriage. Without proper disclosure of all matters relevant to the*

assessment of the financial position of the parties, the court will have difficulty arriving at a just and equitable division of the matrimonial assets.

...

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# Some Examples of Failure to Provide Full and Frank Disclosure

As seen in case laws, one party (or in some cases both parties) usually refuses to provide full and frank disclosure of his / her assets as he / she would not want it to be attributed to the pool of matrimonial assets liable for division with the ex-spouse.

Some examples of it are:

- Under declaring one's income and assets, and dishonestly claiming liabilities / debt owed to a 3rd party without any basis (see TLQ v TLR [2016] SGFC 34)

*“[19] In my mind, the very first declaration of net worth if lacking, signals that one or both parties is not open with the information they ought to produce to court. It cannot be that discovery applications and interrogatories must be made before parties decide to tell the truth. In this case, the fact that there is a BMW car being driven by the husband at the time of the filing of the first affidavit is material. He chose only 2 years later to produce documents showing the trade-in of the Mercedes Benz for the BMW and then sought to rely on the fact that this was a company asset. The cheques*

*were made out to the husband. It is also a mockery of the court process to remain silent about other bank accounts at the inception and then to tailor answers along the way about the existence of others.*

*[20] I did not believe the husband's position that he was in severe debt. He by his own admission spent lavishly on the family. While claiming to earn at least \$17 000 per month, he claims he deals with everything in cash. Any loan he may have taken from individuals such as XXX and XXX do not suggest debt anymore than it suggests monies being invested in his businesses. The husband's position that he borrowed \$200 000 from XXX and had to pay her back is similarly without any basis. It makes little sense to have to take money out of XXX to pay XXX unless it was to remove monies away from the only company the wife had a 50% shareholding in.*

*[21] It must be emphasised that the husband started his career in his father's business. It was the fertile ground which allowed him to cultivate his own expertise in the trade. The husband's business is in the very lucrative arena of medical supplies. The customers are doctors and there is a never ending need for such supplies.*

[22] While I was not in doubt that an adverse inference must be drawn against the husband, the amount he had kept away from scrutiny was unclear. I chose then to bear this factor in mind when assessing the division of assets....”

- Failure to disclose other source of income apart from employment income (see **BG v BF [2007] 3 SLR(R) 233; [2007] SGCA 32**)

“[64] As can be seen, the deposit into the Husband's Citibank HK account remained close to the original level even after his salary from John Doe Southeast Asia Inc had stopped in June 2002. In fact, the August 2002 payment was higher than the deposits in April and May 2002, which was before his salary payments from John Doe Southeast Asia Inc stopped. An inference that could be drawn from this is that there was some other source of income into the Husband's Citibank HK account. On this point, the Husband contended that those deposits after June 2002 were all payments for “regional management work” from John Doe Asia Pacific Ltd. He even exhibited a letter from John Doe Asia Pacific Ltd which confirmed that those were in fact payments made to the Husband for “regional management work”. The preliminary objection to this submission, as the

judge noted in *BF v BG* at [108], is that the Husband has not elaborated on the reason why he was being paid for regional management work by John Doe Asia Pacific Ltd. It is noteworthy that the Husband has not produced any additional evidence other than the letter by John Doe Asia Pacific Ltd before this court.

[65] Moreover, this letter from John Doe Asia Pacific Ltd does not confirm that one of the two deposits made on 30 September 2002 was in fact payment for “regional management work” even though the Husband had marked it as such. It only confirms that one deposit was payment for “regional management work”. There were in fact two deposits on 30 September 2002 for the same amount of US\$6,416.67. That this is not a typographical error is shown by the fact that the Wife had listed two separate deposits on 30 September 2002 in her interrogatories, and the Husband had, in his answers, identified both deposits as being payments for “regional management work”. If there had been a typographical error by the Wife in the first place, the Husband would not have implicitly acknowledged in his answers that there were two deposits on 30 September 2002 by attributing a reason to each of them. Accordingly, notwithstanding the letter from John Doe Asia Pacific Ltd, one

deposit on 30 September 2002 may not, contrary to the Husband's answers, be payment for "regional management work".

[66] The implication from this is that there was at least one non-disclosure by the Husband with respect to one deposit into the Husband's Citibank HK account on 30 September 2002. It is unclear what the source of this deposit is. Notwithstanding the fact that regional management work payments are not taxable, the inference could be that there is an additional source of income into the Husband's Citibank HK account which the Husband has not disclosed: see further BF v BG at [214].

[67] In view of the conclusion reached above that there were other non-disclosures of his financial condition by the Husband, we are of the view that we should, as the judge and District Judge Khoo did below, draw an adverse inference against the Husband: see District Judge Khoo in BF v BG [2006] SGDC 22, in which he noted at [86] **that he was "left with doubt as to the size and value of [the Husband's] pool".**

- Failure by the Wife to account for a substantial amount of monies given by the Husband over the years (with no explanation as to what she did with the

monies) and also sale proceeds of the property which the Wife purchased with her sister. The Wife also appeared to be involved in several companies but details of the nature of the businesses, her participation and income from various enterprises were sketchy and incomplete. (see [16] of **AAE v AAF [2009] 3 SLR(R) 827**).

- Undisclosed balances in the husband's bank accounts, withdrawal of large amount of sums from the bank accounts by the Husband and no justification on how these monies withdrawn were used [see **AOB v AOC [2015] 2 SLR 307; [2015] SGHC 13**]
- Transfer of gifts to close family members (eg Fine Wine Collection to the Husband's mother) found to be not a "genuine" gift but an attempt to keep assets out of reach of the Wife (see [33] of **UAP v UAQ [2018] 3 SLR 319**]

- Transfer of shares in companies owned by one to prevent the Wife from laying a rightful claim to these shares in the matrimonial proceedings (also see **UAP v UAQ**)



# What happens when one party fails to provide full and frank disclosure?

As elaborated above, the Court is entitled to draw an adverse inference against that party who fails to provide full and frank disclosure in the course of divorce proceedings. In drawing an adverse inference, the Court is led to believe that that party actually owns more assets than he claimed in the proceedings and is entitled to treat that party as someone in a position to command a very substantial income. (see [31] of **Koh Kim Lan Angela v Choong Kian Haw and anor appeal [1993] 2 SLR(R) 491; [1003] SGCA 83**).

In general, two requirements must be met for adverse inference to be drawn:-

- (i) there must be a substratum of evidence that establishes a prima facie case against the person against whom the inference is to be drawn; and
- (ii) that person must have had some particular access to the information he is said to be hiding. (see **Koh Bee Choo v Choo Chai Huah [2007] SGCA 21** (at

[28]) and **Chan Tin Sun v Fong Quay Sim [2015] 2 SLR 195** (at [62]))

In the event an adverse inference is drawn, the Court may order a higher proportion of the disclosed assets to the other party in division; or where possible, proceed to determine the actual value of the undisclosed assets based on available information, and include such value in the pool of assets to be divided. (see [21] & [22] **Chan Yuen Boey v Sia Hee Soon [2012] 3 SLR 402; [2012] SGHC 92** citing **NK v NL [2007] 3 SLR(R) 743** at [57]–[62] and **O'Connor Rosamund Monica v Potter Derek John [2011] 3 SLR 294** at [38]).

In a recent case of **UZN v UZM [2020] SGCA 109**, the Court adjusted the ratio by increasing the percentage of division in favour of the other party under the structured approach of division in **ANJ v ANK [2015] 4 SLR 1**.

# What can be done when a party suspects the other party of concealing their assets and means?

Typically, parties can take up summons for discovery and/or summons for interrogatories to compel the other party to disclose documents and provide further answers relating to the Affidavit of Assets and Means.

In a recent case of **USB v USA and anor appeal [2020] SGCA 57**, the Court of Appeal highlighted that each party's discovery obligations must be strictly observed. If parties are unable to make the necessary disclosure, they must explain why; they cannot just ignore the obligation. The Court of Appeal further noted that:-

“[57] The duty of full and frank disclosure is particularly relevant in the context of ancillary proceedings. We do not think there is any reason to fault the Husband for failing to follow through on his summons for discovery. **The duty of full and frank disclosure exists independently of applications for discovery and, especially in the context of matrimonial disputes, parties do not need an added incentive to apply for orders against one another.** That having been said, the court will not draw an adverse inference against a party simply for non-disclosure of any asset. Parties must be reasonable in what they ask

for. **A party's failure to comply with a summons for discovery is one factor that may weigh in favour of the court's decision to draw an adverse inference against him or her.**

[58] In this case, initially the Wife was stubborn about providing disclosure. It is her own case that all the properties were used to fund one another. Upon the Husband's request for discovery, the Wife provided the financing documents used for the properties purchased during the marriage and the matrimonial home. She refused to provide the documents for the other properties because she did not recognise them as matrimonial assets. It is, however, not for the Wife to say what assets do or do not belong to the pool and accordingly tailor the extent of disclosure. **Ultimately, it is for the court, not the parties, to decide what belongs in the pool. Regardless of the parties' subjective views on whether a particular property is a matrimonial asset, parties must assist the court to arrive at the correct decision by making full and frank disclosure. Otherwise, they bear the risk of an adverse inference being drawn against them.** There was no good reason for the Wife not to have provided disclosure of the relevant documents for these assets. This was a short marriage so there was less time for memories to fade and for documents to go astray. Further, in all probability, she kept the necessary records, as evidenced by the fact that she subsequently produced the documents on the

*outstanding mortgage loan amounts for some of the pre-marriage properties."*

As seen from the case laws, it is clear that the Court takes a serious view when a party fails to comply with full and frank disclosure in the divorce proceedings. As noted above, it is ultimately for the court to decide what constitutes the pool of matrimonial assets (and not parties themselves), and it is important for parties to assist the Court in by making full and frank disclosure, failing which they bear the risk of an adverse inference being drawn against them.



For more information on the article, or if you wish to learn more about the topics discussed, please contact:-

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