

Winning But Not Winning: Sharing Lottery Winnings In The Event of a Divorce

(*BOI v BOJ* [2019] 2 SLR 114)*

I. Introduction

1. Striking the lottery usually calls for celebration. However, for lottery winners who have not had quite the same fortune in their marriage and are contemplating a divorce, perhaps the celebrations should not start just yet.
2. In the recent decision of *BOI v BOJ* (“*BOJ*”),¹ the apex court clarified that lottery winnings received during a marriage constitute matrimonial assets to be divided between parties, should they divorce. The court also set out the approach to attributing contributions from lottery winnings. Instead of examining who purchased the winning ticket, the court will focus on the intention with which the ticket was purchased. For parties seeking a divorce, this approach creates a greater responsibility to clearly show their intention that the winnings be fully attributed to them.

II. Facts

3. The present case involved the division of matrimonial assets following the parties’ divorce. One central point of the dispute was the attribution of a whopping \$1.25 million lottery win, which was mainly used to repay the mortgage loans for the parties’ matrimonial home.
4. The High Court judge found that the husband had purchased the winning lottery ticket, and thus the contributions of the lottery winnings towards the matrimonial home should be fully attributed to him. The wife appealed, claiming that the winnings should be attributed to her as she had purchased the winning ticket, not her husband. Alternatively, since lottery wins were a matter of chance, the wife submitted that the contributions from the winnings should be attributed equally between them.

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¹ *BOI v BOJ* [2019] 2 SLR 114 (CA) (“*BOJ*”).

5. Two key issues were raised – whether lottery winnings constitute matrimonial assets, and if so, how should the court attribute such winnings when dividing the pool of matrimonial assets.

III. Matrimonial assets

6. The court divides the pool of matrimonial assets between parties upon divorce.² Matrimonial assets, as defined in section 112(10) of the Women’s Charter (“Charter”), include:
 - (a) Any asset acquired before the marriage, but used by both parties or their children during the marriage;³
 - (b) Any asset acquired before the marriage, but substantially improved during the marriage;⁴ and
 - (c) Any asset acquired during the marriage.⁵
7. It is important to note that matrimonial assets exclude assets that one party had received as a gift or inheritance.⁶

IV. Grounds of decision

A. Lottery winnings as matrimonial assets

8. In *BOI*, the court held that lottery winnings received during the marriage are considered matrimonial assets, based on the wording of section 112(10) of the Charter.⁷ The court also clarified that although lottery winnings appear to be a windfall, they are not treated as gifts or inheritance, which are not matrimonial assets.⁸ Unlike gifts or inheritance which are received gratuitously, lottery winnings may only be received if a lottery ticket was first purchased.⁹ Hence, unlike gifts or inheritance, lottery winnings form part of the pool of matrimonial assets.

² Women’s Charter (Cap 353, 2009 Rev Ed), at s 112(1).

³ *Id.*, at s 112(10)(a)(i).

⁴ *Id.*, at s 112(10)(a)(ii).

⁵ *Id.*, at s 112(10)(b).

⁶ *Id.*, at s 112(10).

⁷ *BOI*, *supra* n 1, at [9].

⁸ Women’s Charter, *supra* n 2, at s 112(10).

⁹ *BOI*, *supra* n 1, at [10].

9. Furthermore, case law and legal literature support this view. In past cases such as *Ng Sylvia v Oon Choon Huat Peter*¹⁰ and *LV v LW*,¹¹ the lottery winnings of one spouse were deemed to be matrimonial assets.¹² Professor Leong Wai Kum, a leading scholar in local family law, has also expressed that parties should share their good fortune, if marriage is truly viewed as an “equal co-operative partnership of different efforts for the spouses’ mutual benefit”.¹³

B. *Attributing lottery winnings between parties*

10. Since lottery winnings are matrimonial assets, the inevitable question follows – how would the court attribute the winnings when dividing the assets?
11. The court held that regardless of who purchased the winning ticket, it is presumed that both spouses contributed equally from the lottery winnings to the pool of matrimonial assets. However, this presumption may be rebutted if the spouse who purchased the winning ticket proves that the ticket was intended for personal benefit rather than the family’s benefit.¹⁴ In other words, the critical consideration is the intention with which the ticket was purchased.¹⁵
12. Some may wonder if using lottery winnings from a ticket purchased by one spouse is similar to using one spouse’s personal Central Provident Fund (“CPF”) savings for the family’s benefit. The court in *BOI* clarified that these situations are *not* equivalent.¹⁶ As CPF savings are earned through labour, while lottery winnings are received through luck, lottery winnings cannot be attributed to one party’s skill.¹⁷ Moreover, since the amount paid for a winning lottery ticket is radically disproportionate to the amount of winnings, the source of funds for the ticket is not legally significant.¹⁸ Hence, unlike the CPF savings of one spouse, which clearly belong to that spouse alone, intention is relevant in attributing lottery winnings for the division of matrimonial assets.¹⁹

¹⁰ *Ng Sylvia v Oon Choon Huat Peter* [2002] 1 SLR(R) 246 (HC).

¹¹ *LV v LW (divorce: ancillary matters)* [2006] SGHC 50.

¹² *BOI*, *supra* n 1, at [15]–[16].

¹³ Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) at para 16.063.

¹⁴ *BOI*, *supra* n 1, at [29].

¹⁵ *Id.*, at [20].

¹⁶ *Id.*, at [23].

¹⁷ *Id.*, at [25].

¹⁸ *Ibid.*

¹⁹ *Id.*, at [24].

13. The assessment of intention depends on the facts at hand. For instance, if the parties kept their finances strictly separate throughout their marriage,²⁰ the purchaser's intention might be said to be for personal benefit.²¹ In contrast, if both parties regularly pooled resources to buy lottery tickets, that would indicate an intention that any lottery winnings are contributed equally towards the family.²²
14. Here, the court found that the husband's acts of depositing the \$1.25 million lottery winnings into the parties' joint account and using the winnings to repay the mortgage loans strongly indicated that he had purchased the ticket with the intention of benefitting the family.²³ Thus, these winnings were attributed equally between the parties.
15. However, the court held that the husband's later lottery winnings need not be attributed equally. Since the tickets which gave rise to these later winnings were purchased after the parties had separated, and the winnings were deposited into the husband's personal bank account rather than the parties' joint account, it could be inferred that he had no intention for these later winnings to benefit the family.²⁴

V. Discussion

16. *BOI* clears any ambiguity by expressly pronouncing that lottery winnings received during the marriage are matrimonial assets to be divided in the event of divorce.
17. This case also illustrates that the division of matrimonial assets, especially where lottery winnings are concerned, is not as straightforward as it seems. One may have thought that the most direct manner to divide the assets would be to simply attribute the winnings to the person who purchased the winning ticket, or alternatively, attribute based on the source of funds for the ticket (as the court in *UFI v UFJ* had previously

²⁰ See, eg, *Elford v Elford* [2016] FamCAFC 45.

²¹ *BOI*, *supra* n 1, at [29].

²² *Id.*, at [26].

²³ *Id.*, at [22] and [34].

²⁴ *Id.*, at [37].

done).²⁵ However, the apex court in *BOI* departed from these methods, preferring a more nuanced approach of considering the purchaser's intention instead.

18. It is posited that this nuanced approach is a sensible one. The presumption that lottery winnings are attributed equally reflects the underlying ideology of marriage as an equal partnership.²⁶ Just as committed partners share burdens, they also share good fortune.²⁷ Indeed, this approach has been cited in the subsequent case of *UXZ v UYA*,²⁸ where the judge noted that even if the down-payment for the matrimonial home came from the wife's lottery winnings, the contributions cannot be solely attributed to her, because regardless of who won, "that money would have gone to the entire family".²⁹
19. By shifting the inquiry to the ticket purchaser's intention, judges are also better enabled to reach a fair distribution based on the facts of each case. After all, as recognised by the court, matrimonial disputes are fact-sensitive in nature and every case is unique.³⁰ However, this shift in inquiry entails a greater responsibility for parties to make their intentions clear when dealing with lottery winnings in the context of a divorce, especially if they are seeking to assert that the lottery winnings be fully attributed to them. As highlighted in *BOI*, the court examines factors such as the account into which the winnings were deposited, the purposes for which the winnings were used, and any prior arrangements pertaining to lottery tickets or winnings.³¹ Thus, lottery winners contemplating a divorce are urged to make prudent choices in dealing with their winnings, since the onus is on them to prove that the lottery ticket was intended for personal benefit.

²⁵ *UFI v UFJ* [2017] SGFC 102 at [53]–[59].

²⁶ *NK v NL* [2007] 3 SLR(R) 743 (CA) at [20]. See also *UBM v UBN* [2017] 4 SLR 921 (HCF) at [60].

²⁷ See *UMU v UMT* [2019] 3 SLR 504 (HC) at [11], and *Elements of Family Law in Singapore*, *supra* n 15, at para 16.063.

²⁸ *UXZ v UYA* [2019] SGFC 71 at [26].

²⁹ *Id.*, at [24].

³⁰ *ANJ v ANK* [2015] 4 SLR 1043 (CA) at [30].

³¹ See *BOI*, *supra* n 1, at [22], [26] and [34].

VI. Conclusion

20. Overall, *BOI* highlights that the pool of matrimonial assets includes lottery winnings received during the marriage. When determining how to attribute contributions from lottery winnings, the court presumes an equal attribution between parties, unless the ticket purchaser proves that the lottery ticket was intended for personal benefit only.

21. Moving forward, if one does not wish to have one's winnings attributed equally with a former spouse, there are several possible steps one could take to demonstrate such an intention. One may consider depositing the winnings into one's personal account rather than a joint account, or using the winnings strictly for personal expenses instead of family-related expenses such as paying for the family car or funding the matrimonial home. Proof of any existing arrangements between parties regarding lottery winnings, such as agreements on who pays for the tickets or who gets to keep the winnings, would be helpful in establishing intention as well.

22. Of course, many hope to have similar fortune in marriage too. However, if fortune only knocks on one's door in the form of a lottery win, at least there are steps one could take to protect the winnings, and hopefully alleviate some of the bitterness of divorce.

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