

Pang Rosaline v Chan Kong Chin
[2009] SGCA 43

Case Number : CA 168/2008
Decision Date : 11 September 2009
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s) : Randolph Khoo and Johnson Loo (Drew & Napier LLC) for the appellant; Goh Siok Leng (Christina Goh & Co) for the respondent
Parties : Pang Rosaline — Chan Kong Chin

Family Law – Matrimonial assets – Division – Parties operating financial system whereby both income and liabilities treated as aggregate and integrated whole – Husband paying mortgage instalments and conservancy charges for property directly from salary – Whether wife making direct financial contributions to purchase price of property

Family Law – Matrimonial assets – Division – Wife being full time civil servant – Wife leaving performance of household chores to domestic help – Wife training, managing and supervising domestic help – Whether wife making indirect contributions to purchase price of property

11 September 2009

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

Introduction

1 This was an appeal by the wife against orders made by the trial judge (“the Judge”) in respect of the division of matrimonial assets, maintenance as well as costs (see *Pang Rosaline v Chan Kong Chin* [2009] SGHC 39 (“the GD”)).

2 We found the reasoning and decision of the Judge to be – for the most part – persuasive and correct, and affirmed all the orders made in the court below, with the exception of only one order in relation to one of the properties concerned. We now give the grounds for our decision with respect to this particular variation.

The factual background

3 The salient facts in relation to this particular issue were straightforward. The wife (who was the petitioner) and the husband were married on 23 August 1974. The wife petitioned for divorce on the ground of unreasonable behaviour on 23 November 2005; a *decree nisi* was granted in favour of the wife on 2 June 2006. Put simply, this was a long marriage which had lasted some 32 years. Indeed, the marriage broke down only some time in 2004.

4 There were two children, born in 1978 and 1985, respectively. However, the more relevant fact in the context of the present appeal was that there were also two properties – the first situated at 2, Marine Vista #18-73, Neptune Court, Singapore 449026 (“the Neptune Court property”) and the second situated at 17A, Sennett Road, Singapore 466797 (“the Sennett Road property”). The Neptune Court property was purchased in November 1980, in the parties’ joint names, for \$55,450. The monthly mortgage instalment and conservancy charges were deducted solely from the husband’s salary between 1980 and 1992. The parties moved into the Neptune Court property in 1983. Prior to

moving into the Neptune Court property in 1983, the parties stayed with the husband's parents and other family members. In August 1992, the parties purchased the Sennett Road property for \$775,000. The husband and wife contributed \$253,000 and \$164,000, respectively, towards the purchase price. The stamp and legal fees were paid for by the husband. To part-finance the rest of the purchase price, the husband obtained a loan of \$308,000 under the Government Officers' Housing Loan scheme and also borrowed a further \$60,000 from his mother. The monthly mortgage instalment of \$2,849 was serviced by \$1,289 and \$828 from the husband's and the wife's CPF contributions, respectively. The balance of \$732 was deducted directly from the husband's salary.

5 It is also apposite to note that, during the course of their marriage, the parties had managed their family finances by way of a joint account, opened with United Overseas Bank Ltd ("the joint account"). Both the husband and wife deposited their respective monthly incomes into this joint account before withdrawals were made, whenever appropriate and as agreed, for personal and household expenses. After the purchase of the Sennett Road property, the Neptune Court property was rented out and the rent received was also, in the main, deposited into the joint account.

6 The Judge ordered that the Neptune Court property be sold within 180 days of her order and that the sale proceeds (less sale and incidental expenses) be apportioned in the ratio of 20% in favour of the wife and 80% in favour of the husband. In respect of the Sennett Road property, the Judge ordered that it be sold within 12 months of the date of her order and that the sale proceeds (less sale and incidental expenses) be apportioned in the ratio of 40% in favour of the wife and 60% in favour of the husband.

7 We varied the order in respect of the Neptune Court property and ordered that the sale proceeds (less sale and incidental expenses) be apportioned in the ratio of 40% in favour of the wife and 60% in favour of the husband instead. In the circumstances (and as already mentioned above), we will only deal with the reasons for this variation. Before proceeding to do so, it would be appropriate to set out the Judge's reasons as to why she arrived at her respective decisions with regard to the division of both the Neptune Court property as well as the Sennett Road property.

8 Turning, first, to *the Neptune Court property*, this particular property was apportioned in the ratio of 20% in favour of the wife and 80% in favour of the husband; in this context, the following paragraphs in the GD are apposite (see the GD at [61]– [62]):

61 The wife had admitted that the husband paid from his salary a monthly sum of \$366 to service the mortgage of [the Neptune Court property] since 1980. That being the case, it meant the husband had paid, by July 1992, a total sum of \$55,266 towards the purchase price of \$55,450. In addition, the monthly conservancy charges of the flat were also deducted from his salary until his retirement. Consequently, *the wife's claim that she contributed towards the purchase price was not only unsubstantiated but contradicted the documentary evidence before the court. If she was working as a social welfare officer for 5½ days a week, the wife could not possibly have contributed indirectly towards the purchase of the flat by being a homemaker and caregiver of the children, more so, when by her own admission, she did no housework when she lived with the husband's parents and when she moved to the flat later, as maids were employed.*

62 Even so, I awarded the wife a 20% share in the flat taking into consideration that the husband had sometimes not deposited the rental of [the Neptune Court property] into the joint account and he had used some monies in the joint account to pay the property tax of the mother's flat.

[emphasis added]

9 There appear to have been two main reasons why the Judge allocated the shares in the Neptune Court property in the ratio she did. The first – hinging on *direct* contributions – is based on the fact that it was the *husband* who had contributed *wholly* to the purchase price of that property. The second reason, in contrast, focused on *indirect* contributions by the wife – or, more accurately, the seeming lack or absence thereof. Indeed, a close perusal of the GD at [61] (reproduced in the preceding paragraph) reveals clearly that the Judge thought that the wife had *not* made *any* indirect contributions whatsoever. With respect, we did not find both of these reasons persuasive for the reasons elaborated upon below.

10 Turning, next, to *the Sennett Road property*, the following paragraph in the GD contains the reasons as to why the Judge allocated the shares in that property in the ratio she did (see the GD at [65]):

In relation to [the Sennett Road property], the husband's direct monetary contribution was almost twice that of the wife due to his higher salary and correspondingly higher CPF savings and monthly contributions utilised in the purchase. To recapitulate, the husband's initial payment using his CPF withdrawals was \$253,000 as against the wife's \$164,000 (61% to her 39%) while the husband paid on the monthly mortgage instalments in cash and CPF deductions \$2,117 as against the wife's \$828 from her CPF contribution. Her percentage was again 39% of his contributions. Consequently, the unequal monetary contributions of the parties (even when the mortgage was redeemed) had to be and was reflected in the 60:40 division I made in favour of the husband and the wife. *As with [the Neptune Court property], the wife's alleged indirect contribution was more fiction than real; she was working as a full time civil servant since the time the property was acquired and could not have made any significant indirect contributions as a result.* [emphasis added]

11 There appeared – from the quotation in the preceding paragraph – to be one main reason which had two mirror images, so to speak. To elaborate, consistent with her finding with regard to the Neptune Court property, the Judge was of the view that the wife had made *no indirect* contributions to the marriage whatsoever and that, in the circumstances, the Sennett Road property ought to be divided having regard *solely* to the parties' *direct financial* contributions. With respect, and consistent with our decision on what was basically the same issue in respect of the Neptune Court property, we were unable to agree that the wife had made no indirect contributions to the marriage for reasons which we will elaborate upon below.

Our decision

12 Addressing the *first* reason given by the Judge in respect of the Neptune Court property, counsel for the wife, Mr Randolph Khoo ("Mr Khoo"), submitted that there had in fact been some direct financial contributions by the wife towards the purchase price of the Neptune Court property. In particular, he pointed to at least two cheques drawn on the joint account on the date that the Neptune Court property was redeemed. Indeed, the documentary evidence did show that, as at 19 October 1992, a redemption amount of \$28,502.79 was still due and payable. Hence, the Judge was, with respect, mistaken in assuming that the husband had been regularly and faithfully paying a monthly sum of \$366 since 1980 to service the entire mortgage. Nevertheless, nothing turns on this point as the relevant documentary evidence also revealed that the redemption moneys were not drawn from the joint account, as asserted by Mr Khoo, but from the husband's private bank account.

13 Even so, Mr Khoo was not wrong in submitting that there had in fact been direct financial contributions by the wife, albeit for reasons other than the one he had argued. Generally, we note that, throughout the marriage, both parties' salaries were deposited into the joint account. Bills were

then paid from moneys withdrawn from the joint account. That this was true was not disputed by either party. In fact, the payment of mortgage instalments and conservancy charges for the Neptune Court property was an anomaly in that such payment was first deducted from the husband's salary before the rest of his salary was credited into the joint account. This specific departure from the usual financial system devised by the parties does not, however, detract from the fact that, in essence, both income and liabilities were treated as an aggregate (and, more importantly, integrated) whole by both parties, without distinction or regard as to who earned what and who was to pay for what items. It was merely a matter of practicality and convenience that the husband, and not the wife, was to pay the above-mentioned mortgage instalments as well as conservancy charges. That being the case, it cannot be gainsaid that the wife *had* made *direct* financial contributions to the payment of all property and services purchased by the parties, including the Neptune Court property, by contributing to the joint account.

14 More specifically, the husband himself inadvertently admitted, in his Second Affidavit of Assets and Means filed on 15 November 2007, [\[note: 1\]](#) that moneys in the joint account were used to pay for, *inter alia*, the property tax due on the Neptune Court property. Hence, on this count alone and (indeed) on the strength of the husband's own testimony, there had been *some* direct financial contribution by the wife to the purchase of the Neptune Court property, *viz*, the payment of property tax.

15 We summarise. Both husband and wife had, for the better part of their marriage conceived a system in which it mattered not how or how much each party contributed to the family's finances. In the circumstances, it was disingenuous for the husband to claim, post-marriage, that he had paid wholly for the Neptune Court property. Such a claim is not borne out by the general financial ethos which the parties had accepted (as well as implemented) for the greater duration of the marriage. In any case, as we have just noted, the husband's own testimony that moneys in the joint account were used to pay for property tax in relation to the Neptune Court property renders his claim unsustainable.

16 Turning to the *second* reason given by the Judge in respect of the Neptune Court property (*viz*, that the wife had *not* made *any indirect* contributions at all), we were of the view that this was *not* in fact the case. The evidence before us did not suggest that the wife had been derelict in her duties towards the family. Counsel for the husband, Ms Goh Siok Leng ("Ms Goh"), argued that the husband's indirect contributions nevertheless "cancelled out" the wife's indirect contributions. However, even assuming that that was the case, this did not address directly this second reason, the underlying premise of which was that the wife had *not* made *any indirect* contributions to the marriage *at all*. In this regard, Ms Goh argued, further, that this was not, in fact, the finding of the Judge; in particular, she argued that the Judge had in fact held that the wife had made some indirect contributions, but that these were not "significant". Ms Goh was, in fact, referring to that part of the GD in which the Judge dealt with the Sennett Road property (see the GD at [65], which has been reproduced above at [\[10\]](#)).

17 Whilst it is true that the Judge did utilise the word "significant", this must be balanced against the reference in that very same sentence to the fact that the wife's indirect contributions were not only "alleged" but were (and more importantly) "more fiction than real". And, as we have already noted with regard to her observations *vis-à-vis* the Neptune Court property, the clear language of the Judge's decision pointed towards a finding of *no indirect contributions whatsoever*. It should, in this regard, also be borne in mind that the Judge's observations with regard to *both* the Neptune Court property and the Sennett Road property *must necessarily be read together*.

18 The issue that then arises is whether or not there was indeed any evidence which

demonstrated that the wife had made no indirect contributions whatsoever to the marriage. As is evident from the Judge's observations reproduced above (at [8] and [10]), her principal reason for arriving at such a conclusion was that the wife had been a full-time civil servant who had left the running of the household to domestic help. With respect, we are unable to accept this reason. Many married couples are in precisely such a situation. However, it does not necessarily follow that the husband and/or the wife would thereby be unable to contribute indirectly towards the marriage in general and the family in particular. In this regard, we endorse the following observations by Tay Yong Kwang JC in the Singapore High Court decision of *Lee Chung Meng Joseph v Krygsman* [2001] 1 SLR 579 at [22] and [41]:

22 Insofar as indirect contributions were concerned, the wife claimed that she had looked after the husband, their son and the home and performed various household chores. The husband retorted that they had a maid since the birth of their son who was looking after the household needs. He claimed that the wife only brought their son out or spent her time with friends. He allowed the wife's mother, who was suffering from mental illness, to live with them for four to five years before she passed away. He also brought the mother and the wife's sister to hospital frequently.

...

41 Whether the wife was the main care-giver was an inference that the judge could rightly draw from the evidence before her. *Having a maid in the household, or a number of maids for that matter, does not mean abdication of parental responsibility towards the child.* Further, as accepted by the husband's counsel, housing agents like the wife do have rather greater flexibility in their working hours. They could also have a choice in where they work, even from home.

[emphasis added]

Although Ms Goh sought to argue that the wife in that case had a job with greater flexibility in working hours, this was a further (and fact-specific) reason and does not detract from the *general principle* enunciated by the learned judge.

19 Indeed, the acceptance of a contrary proposition must presuppose that spouses who work full-time cannot, *ipso facto*, spare any time to contribute towards the marriage or the family at all and would necessarily have to sacrifice their all (and, consequently, their marriage as well as family) at the altar of work. Whilst obviously undesirable, this is not to state that such a situation is impossible. However, this would have to be established by cogent evidence. It was clear that such evidence was *not* forthcoming in the present appeal. Put simply, there was nothing in the evidence before us which suggested that the wife had, in fact, sacrificed herself as well as her family and marriage at the altar of work.

20 Indeed, for all intents and purposes, this was a long marriage which only broke down towards the end. In fact, for the better part of 32 years, this marriage could be described as a successful one. This point alone militates against a finding that either party did not contribute towards the well-being of the family. Although there can, of course, be exceptional cases, for a couple to successfully raise and establish a family (as the parties did in the instant case), both husband and wife must contribute, albeit often in unequal proportions, towards the non-financial needs and requirements of the marriage and the family. The evidence in the present case bears testimony to the correctness of this proposition. Whilst it might have been true that the wife might have contributed relatively less towards the welfare of the family for the period from 1974 to 1983 (when the family resided with the husband's parents), we are of the view that the situation was quite different following the family's

move to the Neptune Court apartment. From then onwards, the wife had to, *inter alia*, train, manage and supervise the execution of duties assigned to the maids. The wife, in other words, took on a managerial role in ensuring the smooth running of the household (with all the accompanying logistical requirements). This role is at least as essential and important as the direct performance of the chores itself. Further, it is clear, in our view, that the wife also, when required, personally looked after the needs of the two children. Considering that she managed to do all these while holding down a regular full-time job, the wife should be accorded the credit that is due to her. It is ironic, therefore, that the husband endeavoured to use this last-mentioned fact to assert that the wife had made no indirect contributions to the purchase of the two properties.

21 It should also be pointed out that *indirect* contributions are, by their very nature, not given to easy ascertainment as well as valuation; they contain an inherent as well as irreducible *qualitative* factor which stands in stark contrast to the *quantitative or mathematical* nature of *direct* financial contributions. However, what *is* clear is that such (indirect) contributions cannot be either gainsaid or undervalued. As this court emphasised in *NK v NL* [2007] 3 SLR 743 at [34], it is important “to ensure that indirect contributions are *not undervalued*” [emphasis in original]; indeed, the court reiterated the following proposition laid down in its previous decision of *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR 520 at [39] (“*Lock Yeng Fun*”), as follows:

In this regard, we also endorse the following views expressed by Debbie Ong Siew Ling & Valerie Thean, “Family Law”, (2005) 6 SAL Ann Rev 259 at para 13.31:

It could be contended that in most cases where one party experiences great financial success, the other often bears a heavy burden in respect of the children and home; in some cases this entails the sacrifice of any potential for career development. Non-financial contributions are impossible to measure, and success on that front, intangible and difficult to define. It is hoped that this would not stand in the way of courts according due regard to the fact that the financial aspect is but one facet of the many demands that husband and wife must have weathered if a family has had many years together.

Our examination of the case law shows that the courts might not have given sufficient recognition to the value of factors like homemaking, parenting and husbandry when attributing to them a financial value in the division of matrimonial assets. This ought *not* to be the case. It is true that, by their very nature, such kinds of contributions to the marriage are, as pointed out in the quotation above, difficult to measure because they are, intrinsically, incapable of being measured in precise financial terms (we assume that this is what the authors meant when they said that such contributions were impossible to measure). Difficulty in measuring the financial value of such contributions has never been – and ought never to be – an obstacle to giving the spouse concerned his or her just and equitable share of the matrimonial assets that is commensurate with his or her contributions, taking into account (of course) the other relevant contributions and factors.

[emphasis in original]

22 In the circumstances, it followed that we were also unable to accept the Judge’s finding that the wife had made no indirect contributions to the marriage *vis-à-vis* the Sennett Road property, which finding was (as we have seen above at [\[10\]](#)) the main reason for the division arrived at by the Judge in respect of that particular property. We pause to observe that it is essential in appropriate cases (such as this) to give effect to the spirit behind the amendments, made in 1996, to provisions in the Act relating to the division of matrimonial assets and which are presently embodied in s 112 of the Act; in particular, the following observations by the Minister for Community Development,

Mr Abdullah Tarmugi, during the Second Reading of the Women's Charter (Amendment) Bill, are particularly apposite (see *Singapore Parliamentary Debates, Official Report* (2 May 1996) vol 66 at col 91):

[T]he new provisions will in fact benefit rather than put women at a disadvantage. The proposed provisions will not put a woman, who is a full-time home-maker or a working and contributing party, in a worse off position. It will not. *In fact, a working and contributing woman will be better off under the proposed amendments, as the courts can now also take into consideration her home-making efforts, regardless of the extent of her contribution to the assets.* This would provide for a *fairer* distribution of assets than the current provisions. [emphasis added]

23 In arriving at our decision as to what was a "just and equitable" division of both the Neptune Court property as well as the Sennett Road property pursuant to s 112(1) of the Women's Charter (Cap 353, 1997 Rev Ed) ("the Act"), we bore in mind, in particular, the following principles. The first centred on the fact that the division of matrimonial assets under s 112 of the Act is not – and cannot be – a precise mathematical exercise and that the court's discretion is to be exercised in broad strokes instead (see, for example, the decision of this court in *Lock Yeng Fun* ([21] *supra*) at [33]–[35]); indeed, as this court pointed out, in *NK v NL* ([21] *supra*) at [28], "it is essential that courts resist the temptation to lapse into a minute scrutiny of the conduct and efforts of both spouses, which may be objectionable in disadvantaging the spouse whose efforts are difficult to evaluate in financial terms". In this regard, it was also pointed out in *NK v NL* (at [22]– [27]), that *direct* financial contributions are *not* to be considered as a *prima facie* starting point although they nevertheless constitute a factor which should be considered by the court pursuant to the exercise of its discretion under s 112 of the Act (which involves what is essentially a multi-factorial approach). We have also referred to the need to ensure that *indirect* contributions are also accorded due recognition (see [21] above).

24 Mr Khoo had also argued that both properties be divided equally between the parties. However, he did not seek to premise his argument on the proposition that an equal division of matrimonial assets should be the starting point or presumption or norm; in any event, such a proposition has been rejected by this court for the reasons set out in *Lock Yeng Fun* ([21] *supra*) at [50]– [57].

25 Bearing the above principles in mind, we were of the view that a "just and equitable" division of both the Neptune Court property as well as the Sennett Road property pursuant to s 112(1) of the Act would (having regard to all the circumstances) be in the ratio of 40% to the wife and 60% to the husband. In the circumstances, we varied the order of the court below to reflect this decision (*viz*, that the Neptune Court property also be apportioned in the ratio of 40% to the wife and 60% to the husband, instead of 20% to the wife and 80% to the husband as the Judge had originally ordered in the court below). In this regard, and by way of recapitulation, we bore in mind, in particular, the fact that the wife *had* in fact made *indirect* contributions to the marriage as well as the fact that she had in fact contributed (albeit in a much smaller proportion) towards the *direct* financing of the Neptune Court property (we pause to observe, parenthetically, that, if these additional reasons were not taken into account, the Judge's decision with respect to the Neptune Court property would, in fact, have been rather generous). In arriving at our decision, we also bore in mind the *husband's indirect* contributions (see also *NK v NL* ([21] *supra*) at [37]) as well as the fact that he had contributed significantly more towards the direct financing of the Sennett Road property.

Conclusion

26 In addition to varying the order of the court below in the manner set out above, we were also of the view (pursuant to the exercise of our power under O 22A r 12 of the Rules of Court (Cap 322,

R 5, 2006 Rev Ed)) that, having regard to the fact that the wife had not accepted an offer to settle from the husband which would have resulted (at the very least) in no less favourable a decision for her than that arrived at in the present appeal as well as the fact that she had succeeded only partially in her appeal, each party should bear their own costs of this appeal, with the usual consequential orders to follow.

[\[note: 1\]](#) Respondent's Supplemental Core Bundle at p 30.

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