Tan Teck Koon
v
Tong Guat Hwa

[2016] SGHCF 2

High Court — District Court of Appeal from the Family Court No 158 and 159 of 2015
Choo Han Teck J
29 February 2016

Family law — Matrimonial assets — Division

Family law — Maintenance — Wife

18 March 2016 Judgment reserved.

Choo Han Teck J:

Introduction

1 Tan Teck Koon ("the Husband") and Tong Guat Hwa ("the Wife") married in Singapore in 1988. They have two daughters, now aged 23 and 25 respectively. On 24 April 2014, the Wife commenced divorce proceedings against the Husband on the ground that the Husband had behaved in such a way that she cannot reasonably be expected to live with him. The 26-year marriage was dissolved on 16 June 2014. The ancillary matters pertaining to division of matrimonial assets and provision of maintenance for the Wife were heard by the district judge below ("the DJ") on 22 September 2015: see *Tong Guat Hwa v*

Tan Teck Koon [2015] SGFC 154 ("the GD"). The present proceedings concern appeals from both parties against the DJ's decision.

Background Facts

2 The Husband, who is now 59 years old, was the sole proprietor of En-routing Marine Service Pte Ltd ("EMS"), before EMS became converted into a private limited company in 2014. The Wife, now aged 57, worked as a Human Resource/Finance Executive earning about $2,000 a month, but gave up the job in June 2000 when her two daughters were in primary school. She has been a homemaker since, although prior to January 2014, she, together with her sister, was also responsible for the preparation and recording of EMS' financial statements. The Wife was paid $2,000 a month for her work at EMS as a bookkeeper.

3 The parties have two matrimonial properties. Together with their daughters, they lived at a private apartment at The Aberdeen until January 2014, when the Husband locked the Wife and the daughters from the apartment by changing the padlock. The other property is a HDB flat at Potong Pasir.

The Decision Below

4 Following the three-step, structured approach set out by the Court of Appeal in *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ*"), the DJ first determined that the parties had made direct financial contributions towards the acquisition or improvement of the matrimonial assets in the following proportions:

	Wife's Contributions	**Husband's Contributions**
Apartment at The Aberdeen	0%	100%

HDB Flat at Potong Pasir	54.95%	45.05%
Other Assets (CPF monies, shares, insurance, savings and car)	69.6%	30.4%

5 The DJ then determined the parties' indirect financial and non-financial contributions towards the welfare of the family to be in the ratio of 60:40 in favour of the Wife. In coming to this decision, the DJ considered that the marriage was a long one which lasted 26 years, and that the Wife who worked for some years has been a homemaker since June 2000 whereas the Husband travelled overseas extensively for his business. The DJ was of the view that the Husband's contributions towards the welfare of the family were mainly indirect financial contributions; he had provided a monthly maintenance of $2,300 to the Wife for her expenses throughout the marriage until her departure from the matrimonial home in January 2014, and had also paid for all of the household outgoings. The DJ further took into account the Wife's evidence that she had helped the Husband in his business by lending monies to him from sums that she had obtained from her own family.

6 The DJ explained how she considered the direct financial contributions and indirect contributions so that the overall ratio represents each party's overall contribution to the family. She concluded that this was a case in which more weight ought to be given to indirect contributions because the marriage lasted 26 years during which the couple had produced two children, raised to adulthood, and the Husband's contributions were largely financial and the Wife's contributions were largely non-financial. She thus accorded 60% weightage for indirect contributions and 40% weightage for direct contributions.

7 Based on the above, the DJ held that the wife is entitled to $677,118 from the division of matrimonial assets, after deducting the value of assets which she is already holding in her sole name. Further, the DJ also held that the Husband pays a further $483,840 as lump sum maintenance, bringing the total amount due to the Wife to $1,160,958. In full and final settlement of all the ancillaries, the DJ ordered that:

(a) The Husband's rights, title and interest in The Aberdeen shall be transferred to the Wife upon the Wife paying a partial refund to the Husband's CPF account of a sum equivalent to the valuation price of the said flat and deducting therefrom the sum of $1,160,958; and

(b) The Wife's rights, title and interest in the HDB Flat at Potong Pasir shall be transferred to the Husband with no refund to the Wife's CPF and no cash consideration.

8 Both parties are dissatisfied with various aspects of the DJ's decision and each has filed an appeal.

The Husband's Appeal (Appeal No 158 of 2015)

9 The main grounds of the Husband's appeal can be summarised as follows:

(a) The Wife did not provide satisfactory explanations for various transactions where sums of monies ranging from $9,500 to $100,000 were deposited into or withdrawn from her POSB account between February 2012 to January 2014, and the DJ erred in not drawing an adverse inference against the Wife for her failure to explain the transactions; and

(b) The DJ erred in awarding lump sum maintenance, or in fact any maintenance, to the Wife.

10 A court does not lightly draw an adverse inference against a party merely because evidence is sparse. Sometimes evidence is sparse because it is sparse. Inferences can be drawn, but they need not be adverse. To draw an adverse inference, there must be some evidence against the person against whom the inference is to be drawn. In addition, it must be shown that the person against whom the inference is to be drawn has some particular access to the information he/she is said to be hiding (*Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 ("*Koh Bee Choo*") at [28]) and he/she does not produce the evidence without good reasons for not doing so. A bare allegation that money in a bank account was used for some nefarious purpose is insufficient to convince the court to drawn an adverse inference against another party (see: *Koh Bee Choo* at [31]).

11 In the present case, the Husband alleged that the Wife had suspicious transactions to and from her POSB account which she had failed to account for. However, the Wife had provided her POSB account records before the DJ and to the Husband. Further, she had, on 12 June 2015, filed an affidavit to explain the deposits into and withdrawals from her POSB account. It is not disputed that the Wife paid for the education of her two daughters in Australia using monies given to her by her own family. She explained that several of the transactions to and from the POSB account were made in connection with the daughters' education. Other transactions to and from the account have also been accounted for; she received sums of monies when she sold shares that she had bought in her sister's name, when a savings policy that the parties had bought for their two daughters matured, and when a supplier for the Husband's business made certain repayments (the repayments were made to the Wife as she had earlier

issued a loan to the Husband to enable him to pay the supplier). As for a sum of $45,000 that was withdrawn from the account on 29 January 2014, the Wife explained that she and her daughters needed that to pay for alternative accommodation after they were locked out of the matrimonial home in January 2014 by the Husband, and produced as evidence a tenancy agreement for a period of 12 months at a monthly rent of $4,000. She said that her sister had helped her to pay the landlord via internet banking, and that she had in turn made the withdrawal of $45,000 from the POSB account to repay her sister. I accept the Wife's explanations and am of the view that this is not a case where the Wife did not make a full and frank disclosure of her assets. The DJ was correct in not drawing an adverse inference against her.

12 As for maintenance, the Husband submitted that the Wife should not be entitled to any maintenance at all. His sole basis for the assertion was that, in his view, the Wife had failed to substantiate her case for maintenance with any evidence. In particular, he disbelieved that the Wife had indeed expended $4,000 each month for rental, although he did not dispute that he had locked her out of the matrimonial home since January 2014 and even though she had produced the abovementioned tenancy agreement.

13 In determining the amount of any maintenance to be paid by a man to his former wife, one of the court's main consideration is financial preservation of the former wife to the standard of living that she enjoyed before the breakdown of the marriage, as far as this is practicable and reasonable in the circumstances. In this case, it is not disputed that the Husband had provided a monthly maintenance of $2,300 to the Wife for her expenses throughout the marriage until her departure from the matrimonial home in January 2014. He had also paid for all of the household outgoings such as utilities, telephone and

internet charges, which the Wife now has to shoulder, in addition to the additional expenses required for rental of accommodation. An interim maintenance order of $3,200 was made on 23 June 2014, just slightly more than a year before the DJ made the order on ancillary matters. In my view, the DJ was not wrong in using $3,200 as the multiplicand when she made the order for lump sum maintenance. I also agree that the order for lump sum maintenance was appropriate given that the Husband had previously defaulted in the monthly payments of interim maintenance, resulting in an enforcement order being made against him on 2 September 2014. The award of lump sum maintenance would help avoid future enforcement issues and has the advantage of allowing parties to have a clean break.

The Wife's Appeal (Appeal No 159 of 2015)

14 The Wife's grounds of appeal are:

(a) The DJ had erred in failing to include profits made by EMS (while EMS was a sole proprietorship) as part of the matrimonial assets to be divided between the parties;

(b) The DJ had erred in assessing the parties' indirect contributions towards the welfare of the family as being in the ratio of 60:40 in favour of the Wife.

(c) The DJ had erred, in law, in deciding that she was unable to deal with the matter of outstanding maintenance arrears which were owed to the Wife in her assessment of division of assets.

15 EMS was a sole proprietorship of the Husband, before it became converted into a private limited company in 2014. Based on financial accounts

submitted by the Husband to the tax authorities in 2012 and 2013, EMS made a profit of $97,087 in 2012 and the net profit increased to $213,453 for the period from January to September 2013. The Wife contended that the total profit made by the proprietorship in both years, ie $310,540, should be included in the pool of matrimonial assets for division. The Husband claimed, however, that the business of EMS has been suffering losses since the last quarter of 2013.

16 The parties have not furnished any audited report of EMS' profits. Furthermore, it is unclear whether the profits made by EMS in 2012 and 2013 were still in existence by the time the divorce was granted in June 2014 or when the ancillary matters were first heard before the DJ in April 2015; the profits may have been paid into the Husband's bank account (and should either be captured by the balances in the account and/or form part of assets that were acquired by the Husband thereafter), or they could have been put to other uses. In the absence of sufficient evidence, the DJ was not able to include the profits made by the EMS into the pool of matrimonial assets, and neither can I do so.

17 As for the DJ's assessment of the parties' indirect contributions as being in the ratio of 60:40 in favour of the Wife, the Wife argued that the correct ratio should be 70:30 in her favour. She was of the view that the DJ had formed an erroneous impression of her as being a mere housewife, when she had in fact assisted the Husband in his business by helping with book keeping at EMS, and had also used substantial funds from her family to finance the business.

18 The court's power to divide matrimonial assets must necessarily be exercised in broad strokes (*ANJ* at [17]). The division of matrimonial assets involves the sound application of judicial discretion by the judge of first instance, rather than any rigid mathematical formulae. Accordingly, an

appellate court will be slow to interfere with the orders made by a lower court unless it can be demonstrated that the lower court had misapplied a principle of law, or had clearly made an error of fact that was not only obvious, but also significant, thereby leading to consequences that are unfair to the parties (*Koh Bee Choo* at [46], quoting *MZ v NA* [2006] SGHC 95 at [5]). In the present case, it appears that the DJ had, in determining parties' indirect contributions, already taken into consideration the Wife's assertion that she had provided loans to finance the Husband's business: see [24] of the GD. The DJ also gave the Wife credit for the fact that she had stopped working in June 2000 and has been a homemaker since: see [23] of the GD. The Wife cannot have it both ways by taking credit for giving up her career to become a dedicated homemaker on one hand, and concurrently claiming on the other hand that she had in fact devoted significant efforts working at EMS and so was more than a homemaker. Furthermore, the Wife was remunerated for her work at EMS; EMS paid her a monthly salary of $2,000 and this is about the same amount that she was drawing as a Human Resource/Finance Executive just before she resigned from the job in June 2000. There is therefore no unfairness to the Wife and I cannot find any basis to disturb the ratio ascribed by the DJ with respect to the parties' indirect contributions. How could a court determine whether a spouse's non-financial contribution ought to be 50% or 60% or 70%, especially in a long marriage? The court at first instance will have to determine the extent on a rough basis, and unless there are clearly good grounds, the appellate court will not disturb that apportionment. There are none in the present case.

19 The Wife also said that the Husband owed her $52,800 in arrears for interim maintenance, and claimed that the DJ had erred, in law, in deciding that she was unable to take the outstanding maintenance arrears into account in her assessment of division of assets. Having reviewed the notes of evidence, I am

of the view that the DJ did not make any ruling that, as a matter of law, she did not have the jurisdiction to factor in maintenance arrears in her assessment of division of assets. Rather, she could not factor in the maintenance arrears as the arrears have not been proven as a matter of fact; the Wife had furnished no evidence of the arrears. An enforcement order was made against the Husband on 2 September 2014 for him to pay arrears owing then, but there is no evidence that there were still arrears outstanding at the time that the ancillary matters were heard before the DJ. Since the evidence is similarly not before me, the DJ's orders should stand.

20 I therefore dismiss both Appeal No 158 of 2015 and Appeal No 159 of 2015. Each party is to bear its own costs for the appeal.

- Sgd -
Choo Han Teck
Judge

Ang Sin Teck (Belinda Ang Tang & Partners) for the Appellant;
Wong Soo Chih and Warren Ho (Ho Wong Law Practice LLC) for the Respondent.