

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2018] SGCA 75

Civil Appeal No 183 of 2017

Between

TIC

... Appellant

And

TID

... Respondent

In the matter of District Court Appeal No 153 of 2015

Between

TIC

... Appellant

And

TID

... Respondent

JUDGMENT

[Family law] — [Matrimonial home] — [Payment of ongoing liabilities pending transfer to one party]

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**TIC
v
TID**

[2018] SGCA 75

Court of Appeal — Civil Appeal No 183 of 2017
Andrew Phang Boon Leong JA, Steven Chong JA and Chao Hick Tin SJ
2 October 2018

8 November 2018

Judgment reserved.

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

Introduction

1 This appeal examines the situation of parties to divorce proceedings in which one party is given the option of taking over the other party's share of the matrimonial property upon the payment of a sum of money to him or her. The primary question before us is whether the party who is to take over the matrimonial property should bear its ongoing liabilities during the interim period between the date of the order and the date of completion of the transfer.

2 The parties before the court are parties to divorce proceedings. The District Judge in the family court had determined the ancillary matters, including the division of matrimonial assets, on 10 September 2015. The District Judge apportioned the net equity in the property in a 59:41 ratio in favour of the Wife and gave the Wife the option of taking over the Husband's

share of the property upon payment of a fixed sum of \$381,000. This sum was the value of the Husband's share of the property based on the value of \$1.8m after deducting the outstanding mortgage of the property. The transfer was to be completed within three months from the date of the certificate making interim judgment final, failing which the property was to be sold within nine months of the date of final judgment and the proceeds divided between the parties in accordance with their net equity in the property.

3 The Wife appealed to the High Court. The High Court judge ("the Judge"), in an order dated 19 December 2016, made the following variations to the District Judge's order of 10 September 2015.

(a) The net equity of the property was to be calculated using a valuation of \$1.78m, which was the valuation of an independent valuer that the parties had later agreed to use, rather than \$1.8m.

(b) The ratio of 59:41 of the net equity of the property in favour of the Wife was varied to a ratio of 58:42 in favour of the Wife, meaning that if she wanted to take over the Husband's share of the property, she now had to pay the Husband a fixed sum of \$377,684.

In so far as the option to take over the property was concerned, the timelines set by the District Judge were affirmed.

4 Subsequently, both parties applied to the High Court to determine the issue as to which party should bear the ongoing liabilities of the property in the interim period between the date of the order and the eventual date of the transfer. The Judge heard the parties on 21 June 2017 and ordered that they bear the ongoing liabilities in their respective proportions of the net equity of the property. However, after hearing further arguments from the Husband on

27 June and 31 August 2017, during which the Wife confirmed that she wanted to take over the Husband's share of the property, the Judge revised her initial order. The new order was that the Wife was to be solely liable for these ongoing liabilities, which the parties agreed was a sum of \$30,246.48 (see *TIC v TID* [2017] SGHCF 30 ("the GD") at [16]). The Judge reasoned that since the Wife would be the eventual owner of the property, she would bear the risk of any rise or fall in the value of the property during the interim period between the date of the order and the date of completion; further, any mortgage payments made during this period would also benefit her alone. Thus, it was only "fair and logical" that the Wife should bear the ongoing liabilities (see the GD at [18]).

5 The Judge emphasised that this reasoning only applied where there was no specific court order and that it was open to a court to tailor an order based on the particular circumstances of the case. In this case, however, there were no special circumstances that warranted a departure from the norm (see the GD at [20]).

6 In this appeal, the Wife appeals against the Judge's order that she should bear the ongoing liabilities solely and seeks an order that the parties bear the liabilities in their respective proportions of their net equity of the property. She also argues that the date from which the parties should bear the said liabilities should not be 10 September 2015, which was the date of the District Judge's order that was subsequently varied by the Judge. In her submission, the use of this date unduly penalises her, given that the Judge had taken a long time to resolve the appeals, which included asking the parties for further information that was not initially provided to the court.

7 After considering the parties' written and oral submissions, we now give our decision. We shall first deal with the issue of whether the Wife should bear

the ongoing liabilities during the interim period before turning to the issue of the date from which these liabilities should be borne.

Whether the Wife should bear the ongoing liabilities solely

8 We agree with the Judge that the Wife, who had confirmed that she wanted to take over the Husband's share of the property, should bear its ongoing liabilities solely during the interim period between the date of the court order and the date of completion. In our judgment, however, there is a need to distinguish between mortgage payments and other payments, such as the payment of property taxes, because they attract different considerations. In the present case, since the sum of \$30,246.48 comprises mortgage payments and property tax payments (see the GD at [16]), we consider each in turn.

Mortgage payments

9 In our judgment, the key factor in relation to mortgage payments is that the eventual owner of the property (here, the Wife) is the sole beneficiary of any payments made towards the outstanding mortgage during the period between the date of the court order and the date of completion. It is thus fair that the eventual owner bears the payments during the interim period.

10 To illustrate the point, we refer to the net equity of the property in the present case. At the date of the court order, which was 10 September 2015, the net equity of the property was \$909,336, which was derived by taking the market value of the property (\$1.78m) less the outstanding mortgage of the property (\$870,664) (see the GD at [8]). By the date of completion, the outstanding mortgage would have been *less* than \$870,664 because the parties would have been servicing the mortgage payments during this period. This means, all other things being equal, that the net equity of the property would be

more than \$909,336. This increase in the net equity of the property, however, benefits only the Wife and not the Husband. This is because the fixed sum to be paid to the Husband, which was calculated based on the net equity of \$909,336, was not adjusted to correspond to the new, higher net equity of the property. Thus, it is only fair that the mortgage payments, which resulted in the increase in the net equity of the property, be borne by the Wife.

11 Against this, the Wife submits that she has not *actually* obtained any benefit in the present case because the value of the property has fallen from \$1.78m to \$1.73m (based on a valuation report obtained by the Wife dated 11 May 2017). We do not accept this argument. Even if the value of the property had fallen by the date of completion, this was a risk that the Wife had agreed to assume by taking up the option to purchase the Husband's share of the property. She would have known, or should be taken to have known, that there was no guarantee that the property would remain the same or rise; indeed, there was a real chance that the value of the property would fall. Furthermore, even if the absolute amount of profit eventually received by Wife is less than that anticipated at the date of the order due to the fluctuating value of the property in the market, this does not change the fact that the Wife is the only party who would benefit from the mortgage payments during the interim period in the manner described above. Thus, in our judgment, it is not relevant whether the Wife has actually made a profit or a loss upon completion of the transfer.

12 In this connection, we note that the Wife refers to several cases in support of the proposition that the ongoing liabilities should be borne by the parties in their respective proportions of the net equity of the property. In our view, however, these cases do not assist the Wife. Most of these cases pertained to the situation in which one party was ordered to bear the mortgage payments *after* completion; they were silent as to how the mortgage payments were being

made prior to completion (see, eg, *BHL v BHM* [2013] SGHC 92; *TRS v TRT* [2016] SGFC 108; *TZC v TZD* [2017] SGFC 32; and *UJH v UJI* [2018] SGHCF 4). We do not agree with the Wife that it can be inferred from the silence in these cases that the parties had been making mortgage payments jointly during the period leading up to completion.

13 The only other relevant case that the Wife cites is the High Court decision of *TZG v TZH* [2017] SGHCF 9, in which the court apportioned the matrimonial property in a 50.8:49.2 ratio in the husband's favour and gave the wife an option to take over ownership of the property, failing which the property would be sold in the open market. The court ordered (at [53]) the parties to bear the ongoing liabilities during the interim period in the ratio of 50.8:49.2:

... I had informed counsel when I gave my decision on 28 November 2016, that as the division of the assets, including the matrimonial home, had been effected upon my decision that day, that thereafter (unless changed on appeal), the remaining mortgage instalments as well as other outgoings should rightly be borne in proportion to the ratio of 50.8:49.2 (H:W). The actual sorting out of accounts on this score could be effected upon completion of the transfer of the Husband's estate title and interest in the matrimonial home at KL Road to the Wife or upon completion of the sale of the property, if such was the case. My view was that it was not necessary for a specific order to be made in that regard.

14 In the court below, the Judge distinguished *TZG v TZH* on the basis that the order made in that case was qualified. In the Judge's view, since the wife in *TZG v TZH* had not yet elected to purchase the husband's share in the property, the court must have ordered both parties to bear the ongoing liabilities until the wife exercised her option, and if she did so, then the husband could later apply to court to recover the payments that he made during the interim period (see the GD at [26]–[27]).

15 With respect, the Judge’s interpretation of *TZG v TZH* is not apparent from the language used at [53] of that decision. It could be argued that the court had ordered that regardless of whether the wife chose to exercise the option, the ongoing liabilities were to be borne in the ratio of 50.8:49.2, unless this order was later “changed on appeal”. Looked at in this light, the reference at [53] of that decision to the “actual sorting out of accounts on this score” would refer to how, as a practical matter, the parties could later apply to court to determine the actual quantum to be paid by each, and not to an open-ended order that, depending on whether the wife chose to exercise the option, she could potentially be ordered to bear the ongoing liabilities solely.

16 However, *even if* the court in *TZG v TZH* had ordered the parties to bear the ongoing liabilities jointly in certain proportions, we consider that this case does not provide strong support for the position argued for by the Wife. The court in that case appeared to have assumed that it followed from the fact that the property had been apportioned between the parties in certain proportions that the ongoing liabilities should be borne in the same proportions, even though, as we have explained above, this is not necessarily the case. *Nor did the parties make submissions on this particular point.* In these circumstances, it would be difficult to draw a general proposition from *TZG v TZH*; and in any event, to the extent that this case does stand for that proposition, we respectfully decline to follow it.

17 Finally, we note that the Husband, in contending that the Wife should bear the ongoing liabilities solely, suggests that the Wife’s occupation of the property is a relevant factor to consider, in the sense that it would be unfair if he had to “pay his share for the [Wife] to stay there”. For this proposition the Husband cites the following two cases.

(a) First, in *Tan Su Fern v Lui Hai San alias Lei Haishan* [2006] SGDC 159 (“*Tan Su Fern*”), the District Court apportioned the matrimonial property in a 70:30 ratio in the wife’s favour, with the property to be sold in the open market and the proceeds to be distributed in that proportion (at [2]). The husband sought an order that the housing loan instalments and ongoing liabilities of the property during the period between the court order and the actual sale be borne by the parties equally. This application was dismissed on the basis that “the husband and his family were going to continue staying in the home, and should bear such liabilities” (at [16]).

(b) Secondly, in *TJB v TJC* [2015] SGFC 158, the District Court apportioned the matrimonial property in a ratio of 70:30 in favour of the husband, who was to take over the property after paying the wife for her 30% share. The District Judge ordered the husband to pay the wife an additional \$28,400, which was calculated by reference to the husband’s previous rent-free occupation of the property (at [9]).

18 In our judgment, the occupation of the property during the interim period is not relevant in determining which party should bear the mortgage payments. As we have explained, the significance of servicing the outstanding mortgage lies in the fact that it increases the net equity of the property during the interim period, even though the sum to be paid from one party to another is calculated based on the net equity of the property as at the date of the court order. The payment of the outstanding mortgage thus benefits the eventual owner at the expense of the other party to the divorce proceedings, which is why it is fair that the eventual owner should bear the payments. The same reasoning does not, however, apply to the occupant of the property, who neither benefits nor suffers a detriment from the payment of the outstanding mortgage.

19 It will be apparent from the above discussion that the cases cited by the Husband concerned circumstances which differ greatly from the present facts. *Tan Su Fern* was a case where the court ordered the property to be sold in the open market and there was thus no eventual owner to speak of. *TJB v TJC* concerned the payment of monies *before* the date of the court order and not during the interim period between the date of the court order and the date of completion. Both these cases thus pertained to very different situations and do not assist us in the present case.

20 For the foregoing reasons, we affirm the Judge's decision in relation to the mortgage payments. We hold that mortgage payments during the interim period between the date of the court order and the date of completion should *prima facie* be borne by the eventual owner of the property given that any payment of the outstanding mortgage would solely benefit the said party. Nevertheless, we emphasise, as did the Judge, that this is only a *prima facie* position that can be displaced in the appropriate circumstances (see the GD at [20]). Such situations include, but are not limited to, instances where it would be unjust to order the eventual owner to bear the ongoing liabilities, having regard to the distribution of the other matrimonial assets or the ability of the eventual owner to bear such liabilities. No such circumstances were raised in the present case and thus the *prima facie* position that the Wife should bear the ongoing liabilities is not displaced.

Property tax payments

21 Property tax payments do not stand on the same footing as mortgage payments. Mortgage payments affect the net equity of the property and thus should be paid by the party which would benefit from any changes in such net equity. In contrast, property tax payments do not affect the net equity of the

property and are instead tariffs levied on the ownership of the property, independent of its occupation or beneficial use (see, *eg*, the Singapore High Court decision of *BFC Development LLP v Comptroller of Property Tax* [2013] 1 SLR 1053 at [7]). Thus, in our judgment, the *prima facie* position is that such payments should be borne by the party who should be taken to be the owner of the property, subject to the power of the court to make a contrary order if the circumstances so require (see [20] above).

22 In the context of the division of matrimonial property, the question of ownership as at the date of the court order depends on what would happen to the matrimonial property after the court order. In *Sivakolunthu Kumarasamy v Shanmugam Nagaiah* [1987] SLR 182 (“*Sivakolunthu*”), the matrimonial property was ordered to be sold in the open market and the proceeds to be divided equally between the husband and wife. Before the sale could take place, the husband passed away. The wife claimed that the entire property vested in her solely, by virtue of the rule of survivorship. This Court held that the rule of survivorship did not apply because, from the date of the court order, the parties’ joint tenancy over the property was severed and they held the property as tenants in common, with the result that the husband’s estate could claim his share of the proceeds once the property was sold (at [38]–[39]). Thus, where the division of matrimonial assets is concerned, the court has been prepared to recognise that the ownership of the property as at the date of the court order would reflect the terms of the order even if the actual outcome (in the case of *Sivakolunthu*, the sale of the property) has not been legally effected.

23 In the present case, the District Judge’s order of 10 September 2015 gave the Wife the option of taking over the property and she confirmed at the hearings of 27 June and 31 August 2017 that she would be doing so (see the GD at [16]). She was thus the notional owner of the property as at the date of the court order

and, in fact, also occupied the property during the relevant period. She should therefore *prima facie* bear the property tax payments during the interim period. And as we noted at [20] above, there were no special circumstances that called for the *prima facie* position to be displaced. Accordingly, as with the mortgage payments, we affirm the Judge's finding that the Wife should bear the property tax payments during the interim period.

Summary of our findings

24 On the question of which party should bear the ongoing liabilities in the period between the date of the court order and the date of completion in a situation where one party to a divorce has been given the option of buying over the other party's share of the matrimonial property, our findings can be summarised as follows.

- (a) It is necessary to distinguish between the different types of payments, for instance mortgage and property tax payments, because they attract different considerations.
- (b) In relation to mortgage payments, the *prima facie* position is that the eventual owner of the property should bear such payments because it is the eventual owner who will benefit solely from any mortgage payments made. Whether the value of the property *actually* rises or falls and which party occupies the property in the interim are not relevant considerations.
- (c) In relation to property tax or other similar payments which do not affect the net equity of the property, the *prima facie* position is that the notional owner of the property as at the date of the court order should bear such payments because these payments are levied upon ownership.

The notional owner as at the date of the court order depends on the terms of the order.

(d) The court can fashion an order to displace these *prima facie* positions if the circumstances so require.

(e) On the present facts, given that the Wife had confirmed during the two hearings before the Judge that she would be taking up the option to purchase the Husband's share of the property, she is both the eventual owner and the notional owner of the property as at the date of the court order and should *prima facie* bear the mortgage and property tax payments. There were no circumstances on the present facts that required this *prima facie* position to be displaced.

25 From the foregoing discussion, it will be evident that in cases where one party to a divorce is given the option of buying over the other party's share of the matrimonial property, it is important for the court to identify the different types of payments involved and then to state whether it is applying the *prima facie* position or whether there are special circumstances on the facts which justify the imposition of a specific, tailored order. As a practical matter, this would make clear to the parties who should bear the payments and would also assist the appellate court, in the case of an appeal, in determining whether the court making the order had taken into account the relevant considerations. Given that most cases would fall within the *prima facie* positions that we have set out above, we do not think that this will be overly onerous for the court concerned and would in fact comport with principle whilst simultaneously maintaining practicality.

26 In this connection, we note that unlike the facts of the present case, there may be instances in which the party being afforded the option to take over the property does not immediately indicate whether he or she wishes to do so. In such situations, it would be open to the court to make an order on the basis that the option would be taken up, but with liberty to the other party to apply to the court to reapportion the payment of the liabilities should it turn out that the option was not taken up and the property was sold in the open market.

The date from which the ongoing liabilities should be borne

27 Finally, we turn to the Wife's contention that the order should not take effect from 10 September 2015 because it would unduly prejudice her. We do not accept this argument. The initial court order that divided the matrimonial property was the District Judge's order dated 10 September 2015. On 19 December 2016, the Judge varied but did not set aside the District Judge's order, with the result that the effective date of the order remains 10 September 2015. Thus, the order pertaining to the question of the ongoing liabilities, which is contingent on the order dividing the matrimonial property, is also effective as at 10 September 2015.

28 We also do not accept the argument that the Wife was prejudiced by the length of the interim period because the appeals before the Judge had taken longer to resolve than the Wife had expected. The Judge was entitled to ask for all the information that she considered potentially relevant to the resolution of the dispute even if not all the information featured in the eventual decision, and even if this necessitated a longer period of time to resolve the appeals. Thus, we affirm the Judge's decision that the date from which the payments are to be borne by the Wife is 10 September 2015.

Conclusion

29 For the foregoing reasons, we dismiss the appeal. We fix costs of the appeal at \$2,000 (all-in) to the respondent. There will be the usual consequential orders.

Andrew Phang Boon Leong
Judge of Appeal

Steven Chong
Judge of Appeal

Chao Hick Tin
Senior Judge

Appellant in person;
Walter Ferix Silvester and Sara Binte Abdul Aziz (Silvester
Legal LLC) for the respondent.
