IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 45

Civil Appeal No 149 of 2018

Between

UEQ

… *Appellant*

And

UEP

… *Respondent*

GROUNDS OF DECISION

[Family Law] — [Matrimonial assets] — [Division]
[Family Law] — [Matrimonial assets] — [Gifts]

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UEQ
v
UEP

[2019] SGCA 45

Court of Appeal — Civil Appeal No 149 of 2018
Steven Chong JA, Belinda Ang Saw Ean J and Quentin Loh J
1 July 2019

1 August 2019

Steven Chong JA (delivering the grounds of decision of the court):

Introduction

1 Section 112(10)(*b*) of the Women's Charter (Cap 353, 2009 Rev Ed) provides that a gift or inheritance received by one party to the marriage must be "substantially improved during the marriage by the other party or by both parties to the marriage" for the asset to be considered a matrimonial asset. The question we faced in this appeal was whether contributions by the other spouse to the asset *before* it was gifted to the recipient spouse can be taken into account for the gift to be considered a matrimonial asset under s 112(10)(*b*) of the Women's Charter. After hearing the parties' respective submissions, we decided that *past* contribution by the other spouse to the gift *cannot* be taken into account for the purposes of s 112(10) of the Women's Charter. We allowed the appeal only on this particular issue, and dismissed the rest of the appeal.

2 As our decision concerns the proper interpretation of the scope of a spouse's contribution for the purposes of s 112(10) of the Women's Charter, we believe it will be useful to provide our detailed grounds only in respect of this point.

Brief Facts

3 The parties were married in May 2003 and their marriage lasted 12.5 years. The Husband was 40 years old, the Wife was 38 years old, and the three children of the marriage were 12 years old, 5 years old and 4 years old as at March 2017. The Wife filed for divorce in November 2015 based on the Husband's unreasonable behaviour. The Husband initially contested the divorce and filed a counterclaim based on the Wife's unreasonable behaviour. However, the divorce subsequently became uncontested as the Husband withdrew his counterclaim. The parties agreed that they were to have joint custody of the three children with care and control to the Wife. Interim judgment was granted on 27 January 2016.

4 The parties, however, disputed the division of matrimonial assets and maintenance in the Family Court. Dissatisfied with the decision of the District Judge, the Husband appealed to the High Court whose appeal was substantially dismissed leading to the present appeal by the Husband. The Husband raised a multitude of issues in relation to the division of matrimonial assets including, in particular, shares that were gifted by his father to him on two separate occasions.

The Supermarket shares

5 The Husband worked in his family business, a supermarket chain ("the Supermarket"), at the time of the proceedings in the Family Court. He holds 8% of the shares in the Supermarket, his father owns 85%, his mother owns 5%

while his sister owns the balance 2%. The Husband also has interests in other businesses.

6 The Wife previously worked as a senior bank officer before she resigned in February 2004, shortly after their marriage. Whether she then worked for the Supermarket and/or the Husband's other businesses was a matter of dispute between the parties. According to her, she worked until the birth of their third child in November 2012.[1] In this regard, it was not disputed that she remained on the payroll of the Supermarket until November 2015. The Husband's case was that she did not actually work for the Supermarket at all and the monies that she received as salary were given by his father to her as part of the arrangement he had in place for all his daughters-in-law, and the monies were actually part of the Husband's salary. This dispute over the Wife's actual employment status thus had an impact on two key issues in the appeal: (a) whether the Husband's 80,000 shares in the Supermarket which were gifted to him by his father should be included in the matrimonial pool for division pursuant to s 112(10) of the Women's Charter; (b) which in turn would have a bearing on the parties' direct financial contribution.

7 It was not disputed that the Husband's father gave him 20,000 shares in the Supermarket *before* the marriage in 1999 and 60,000 shares *during* the marriage in November 2012. The Husband's argument that these shares should not be considered matrimonial assets was rejected by the District Judge who found that the 80,000 shares received by the Husband from his father belonged to the matrimonial pool of assets because the Wife had played a fairly important

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[1] Wife's 1st Affidavit of Assets and Means at para 20 (Core Bundle ("CB") Vol II at p 140; JLC Bundle Tab 2).

role in the day-to-day administrative running of the Supermarket and had thus substantially improved the shares. The salary and CPF contributions received by the Wife from the Supermarket were hence correctly attributed to her, for there was no evidence supporting the Husband's claim that they were in fact part of his salary.

8 On appeal, the High Court Judge below agreed with the District Judge that the Wife had substantively worked for the Supermarket until November 2012, and that the 20,000 shares gifted to the Husband before the marriage should be included in the matrimonial pool because they had been substantially improved by the Wife, based on s 112(10) of the Women's Charter. As for the 60,000 shares gifted to the Husband in November 2012, the Judge held that they should be viewed as a form of remuneration or reward for the Husband's prior work in the Supermarket, and not as a gift *per se*. They were transferred to the Husband during the marriage, so they were included as matrimonial assets by the Judge.[2]

9 We saw no reason to disturb the findings in the courts below that the Wife had worked in the Supermarket and played a fairly important role in the day-to-day administrative running of the Supermarket. However, on the question whether the 80,000 shares should be classified as matrimonial assets, it suffices to say that different treatment of the 20,000 Supermarket shares and the 60,000 Supermarket shares was warranted because they were given to the Husband at two different times: the 20,000 shares were given before the Wife started working for the Supermarket whereas the 60,000 shares were only given at about the same time the Wife stopped working for the Supermarket.

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2 Notes of Proceedings on 27 April 2018 at p 9.

The 20,000 Supermarket shares

10 As a corollary of her finding that the Wife had worked substantively for the Supermarket until November 2012, the Judge included the 20,000 shares acquired by the Husband pre-marriage in the matrimonial pool pursuant to s 112(10) of the Women's Charter.[3] We agreed with this decision, given that the 20,000 shares were substantially improved by the Wife during the marriage, and there was a direct causal connection between her work in the Supermarket and the improvement of the shares. We accepted that the Wife started to learn about the accounting practices of the family business in end 2003 when the business only consisted of a convenience store. When the Husband's father opened the main branch of the Supermarket in early 2004, she started contributing to the business operations in both the convenience store and the main branch. By then, the family business operations had expanded. The 20,000 shares in the Supermarket were given to the Husband at about the same time of incorporation in 1999, and the par value of each share at incorporation was $1.00. By end 2012, the net tangible asset value of each share was $3.63, based on the evidence from the Husband's expert. Significantly, at the material time of the Wife's contributions to the Supermarket, this lot of 20,000 shares were already owned by the Husband. In that sense, it was correct to find that the Wife's contributions had substantially improved an asset belonging to the Husband which was acquired by way of a gift.

The 60,000 Supermarket shares

11 The Husband, on appeal, argued that the Judge mischaracterised the 60,000 Supermarket shares as part of the Husband's remuneration because the

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[3] Notes of Proceedings on 27 April 2018 at p 8 (line 28).

Wife never disputed that they were a gift to the Husband from his father. The Wife did not challenge the characterisation of the 60,000 shares as a gift in the appeal, despite counsel's unclear submission that the 60,000 shares were "not, strictly, third party gifts" because they "were not 'untouched' by the Wife's contributions" and thus had a connection to the non-recipient spouse.[4] We agreed with the Husband that the 60,000 shares were a gift from his father to him, and this evidence was not challenged by the Wife in the proceedings below. This then raised the question as to whether they were matrimonial assets pursuant to s 112(10) of the Women's Charter. The section states:

> **Power of court to order division of matrimonial assets**
>
> **112.**– (1) …
>
> (10) In this section, "matrimonial asset" means –
>
> (a) any asset acquired before the marriage by one party or both parties to the marriage –
>
> (i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or
>
> (ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and
>
> (b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,
>
> but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

12 Of significance is the fact that the Wife had stopped working for the Supermarket at about the same time the 60,000 shares were gifted to the

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4 Respondent's Case at para 58.

Husband. As a result, any contribution made by the Wife in relation to this lot of 60,000 shares was undoubtedly past contribution *vis-à-vis* the receipt of the shares by the Husband, and the question was whether past contribution to an asset can be considered for the purposes of fulfilling s 112(10) when that asset was not owned by the Husband at the material time.

13 Section 112(10) of the Women's Charter states that matrimonial assets do "not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage". The default position for gifts (not being matrimonial homes) is that they are *not* to be included in the matrimonial pool of assets *unless* the gifts were substantially improved by the other spouse during the marriage or by both parties to the marriage. There is, however, no stipulation that the substantial improvement must occur after the asset is gifted. Thus, a literal reading of this subsection might not necessarily preclude consideration of the Wife's substantial improvement prior to the Husband acquiring the gift, as long as the improvement was performed "during the marriage". On this reading, since the Wife had worked for the Supermarket during the marriage and improved the Supermarket's shares substantially during the marriage, they would be matrimonial assets. This reading appears to be in line with Professor Leong Wai Kum's view that a spouse who received a gift or inheritance should be prepared to share the windfall, for that is what marriage is – that spouses share their good fortune and console one another should ill fortune strike (Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) at para 16.229). It could simply be fortuitous that the 60,000 Supermarket shares to the Husband were only given after the Wife stopped working in the Supermarket –

the timing of the gift might be a matter of luck and chance, and the Husband should be prepared to share it.

14 However, this view does not pay sufficient attention to the plain wording of the proviso to the subsection and its underlying rationale. The issue is not simply whether a spouse who has received a gift during the marriage should share it with the other spouse. If that was the intention behind the proviso, there would be no requirement to examine whether the contributions of the non-recipient spouse have improved the value of the gift. Further, the focus of the proviso is clearly directed at the non-recipient spouse and the extent to which the contributions have improved the value of the gift. In *Chen Siew Hwee v Low Kee Guan (Wong Yong Yee, co-respondent)* [2006] 4 SLR(R) 605 ("*Chen Siew Hwee*"), Andrew Phang Boon Leong J (as he then was) explained that the rationale underlying the qualifying words in s 112(10) (as produced in the previous paragraph) "centres on *the recognition of the donor's intention as well as the concomitant need to prevent unwarranted windfalls accruing to the other party to the marriage*" (at [32]). On the donor's intention, the starting point is, as explained by Phang J, "if I give a gift to someone, I do not, *ex hypothesi*, intend his or her spouse to have a share in it". The inference of such an intention is *even stronger* where the donor, despite knowing that the other spouse had contributed to the asset, still specifically decided to give it only to the recipient spouse. This applies to the facts of the present case – there is a strong indication that the father did not intend the Wife to have a share in the gift of the 60,000 shares.

15 After setting out the starting point, Phang J then explained that the qualifying words provide circumstances under which a party to the marriage ought to have a share in the gift out of "fairness". One exception to the rule that gifts are not matrimonial assets is where the gift has been substantially improved

by the other spouse. Because the other spouse contributed to the substantial enhancement of the asset concerned, it is "at least arguably just and fair for that party to have a share in it even if the original intention of the donor of the asset was not to benefit that party" (at [34]). This aspect of fairness is linked to the second rationale: the need to prevent unwarranted windfalls. Where the other party has contributed to improving the gift, there is less of a windfall falling on that party. However, in the case of a donor giving a gift only to one spouse despite knowing that the other spouse has contributed to it, this aspect of fairness has to be considered with the stronger inference of the donor's intention not to benefit the other spouse in mind.

16 Another consideration is that the contribution of the other spouse to the asset in question was with the knowledge that the asset belonged to a third party without any expectation of either party to the marriage acquiring it, *ie*, the other spouse treated the asset as a third party's while contributing to it. Seen in this way, the gift, if included in the matrimonial pool, would be an unwarranted windfall because the contributions of the other spouse would by then be a *fait accompli*.

17 Phang J's explanation for the inclusion of a gift where both spouses contributed to it further supports the view that the improvement of the gift must come *after* the gift is acquired. Phang J expounded that there is a strong reason for such inclusion "because *both parties* were, by virtue of their *collaborative and combined contribution*, *actually demonstrating that they both regarded the asset concerned as being part of the communal (here, matrimonial) pool of assets*" (at [35]). This treatment or attitude of the spouses towards the asset is given paramount weight. As explained earlier, where the contributions to the asset were made before it was acquired by a party to the marriage, the treatment and attitude towards the asset when the contributions were effected would be

different: they would have been effected with the knowledge that such contribution would improve a third party's asset.

18 Thus, taking a purposive reading of s 112(10) of the Women's Charter by considering the rationale underpinning the rule for including gifts as matrimonial assets only in certain circumstances, substantive improvement by the other party to the asset *before* it was gifted to the recipient spouse should not be taken into account for the purposes of s 112(10). Given that the Wife's contributions only substantially improved the 60,000 shares *before* they were gifted to the Husband, we found that the shares were *not* matrimonial assets.

Conclusion

19 The appeal was thus allowed only on one ground: the 60,000 shares in the Supermarket received by the Husband as a gift from his father in November 2012 were not matrimonial assets and should be removed from the pool. The value of the 60,000 shares worked out to be $200,550. After deducting the value of the 60,000 shares, the revised total value of the matrimonial pool was $2,410,424.90. Taking into account the direct contributions of the parties in the ratio of 27.57% to 72.43% and the overall ratio of 41.285% to 58.715% in favour of the Husband and after deducting the assets in the Wife's name, the Wife was entitled to the revised sum of $775,491.90. The wife had since received the sum of $853,644 from the Husband based on the order below. We therefore ordered the Wife to refund the difference of $78,152.10 to the Husband.

20 As the Husband's appeal only succeeded on one limited point and the rest of the appeal was substantially dismissed, we ordered each party to bear his/her costs of the appeal.

Steven Chong	Belinda Ang Saw Ean	Quentin Loh
Judge of Appeal	Judge	Judge

Lim Chee San (TanLim Partnership) for the appellant;
Haridas Vasantha Devi and Lee Geck Hoon Ellen (Belinda Ang Tang & Partners) for the respondent.