

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 282

Suit No 910 of 2020 (Summons No 4454 of 2020)

Between

Toh Wei-Jack

... Plaintiff

And

- (1) Yong Ling Ling Jasmine
- (2) Sugared Asia Pte Ltd
- (3) Sugared Academy Pte Ltd
- (4) Sugared Downtown Pte Ltd
- (5) Sugared Thomson Pte Ltd

... Defendants

GROUND OF DECISION

[Civil Procedure] — [Stay of proceedings]

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Toh Wei-Jack
v
Yong Ling Ling Jasmine and others

[2020] SGHC 282

High Court — Suit No 910 of 2020 (Summons No 4454 of 2020)
Tan Siong Thye J
20 November 2020

29 December 2020

Tan Siong Thye J:

Introduction

1 The plaintiff, Toh Wei-Jack, and the first defendant, Yong Ling Ling Jasmine, were formerly married. They were granted interim judgment for divorce on 23 March 2020 in FC/D 205/2020 (“the Divorce Proceedings”). Presently, they are waiting for the hearing of ancillary matters in the Divorce Proceedings to deal with the division of their matrimonial assets. The second to fifth defendants (“the Companies”) are companies incorporated in Singapore by the plaintiff and the first defendant between 2016 and 2019, prior to their divorce.

2 On 24 September 2020, the plaintiff commenced HC/S 910/2020 (“the Suit”) in respect of a claim in minority oppression against the first defendant in relation to the Companies. On 13 October 2020, the defendants applied by way

of HC/SUM 4454/2020 (“SUM 4454”) for a stay of the proceedings in the Suit pending the outcome of the hearing of ancillary matters in the Divorce Proceedings.

3 On 20 November 2020, I granted the defendants’ application for a stay of proceedings. On 14 December 2020, the plaintiff filed a notice of appeal against my decision. I now set out the reasons for my decision.

The facts

4 The plaintiff and the first defendant were married on 31 July 2008. Between 2016 and 2019, the plaintiff and the first defendant incorporated the Companies in Singapore. At the time of the hearing of SUM 4454, the shareholding in each of the Companies was divided amongst the plaintiff, the first defendant and Ms Rita Iskandar w/o de Braux Peter (*alias* Rita Iskandar) (“Rita”), in the following manner:¹

Company	Percentage of shareholding		
	Plaintiff	First defendant	Rita
Sugared Asia Pte Ltd (the second defendant)	24%	56%	20%
Sugared Academy Pte Ltd (the third defendant)	20%	60%	20%
Sugared Downtown Pte Ltd (the fourth defendant)	20%	60%	20%

¹ First affidavit of Yong Ling Ling Jasmine filed on 13 October 2020 (“YLLJ1”) at paras 7–9.

Sugared Thomson Pte Ltd (the fifth defendant)	20%	60%	20%
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5 On 15 January 2020, the plaintiff filed a writ for divorce in the Divorce Proceedings. Interim judgment for divorce was granted by the Family Justice Court (“FJC”) on 23 March 2020. However, certain ancillary matters pertaining to the division of the matrimonial assets remained outstanding. The plaintiff and the first defendant did not dispute that their respective shares in each of the Companies were matrimonial assets liable for division and allocation in the Divorce Proceedings.² As at the time of the hearing of SUM 4454, the Divorce Proceedings were at the discovery stage for the ancillary matters.³

6 On 24 September 2020, the plaintiff commenced the Suit against the defendants. The plaintiff’s case in the Suit centred on the alleged acts of oppression committed by the first defendant in relation to the Companies. The reliefs sought for by the plaintiff included a buyout by the first defendant of all the plaintiff’s shares in each of the Companies (“the Share Buyout”).⁴ On 13 October 2020, the defendants applied in SUM 4454 for the proceedings in the Suit to be stayed pending the determination of the ancillary matters in the Divorce Proceedings.

The parties’ submissions

7 The defendants made two alternative submissions in support of their application for a stay of proceedings. First, the defendants submitted that the

² YLLJ1 at paras 10–12; Plaintiff’s Written Submissions (“PWS”) at para 50.

³ Defendants’ Written Submissions (“DWS”) at para 37; PWS at para 9.

⁴ Statement of Claim at prayer (1).

court should exercise its discretion to stay the proceedings in the Suit pursuant to s 18 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) (“SCJA”), read with para 9 of the First Schedule to the same.⁵ This was because (a) the outcome of the Divorce Proceedings would have a material effect on the Suit; (b) there was substantial overlap in the issues, arguments and evidence in the Divorce Proceedings and the Suit; (c) the Divorce Proceedings were in a more advanced stage than the Suit; and (d) it was burdensome and oppressive to the parties and their witnesses for both the Divorce Proceedings and the Suit to progress concurrently.⁶

8 Second, in the alternative, the defendants submitted that the court should exercise its inherent jurisdiction under O 92 r 4 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“Rules of Court”) to stay the proceedings in the Suit. This was because, in all the circumstances of the case, the stay was necessary to prevent injustice and/or an abuse of the court’s processes.⁷

9 In response to the defendants’ first submission regarding the court’s power to grant a stay pursuant to s 18 read with para 9 of the First Schedule to the SCJA, the plaintiff submitted that there was no multiplicity of proceedings warranting the court’s exercise of its discretion. This was because (a) the FJC was not the forum to adjudicate the issue of minority oppression and consequential remedies; and (b) the issues arising for the court’s determination

⁵ DWS at paras 12–14.

⁶ DWS at paras 18, 28, 34 and 38.

⁷ DWS at para 46.

in the Suit were entirely different from those arising in the Divorce Proceedings.⁸

10 In response to the defendants’ second submission regarding the court’s power to grant a stay pursuant to its inherent jurisdiction under O 92 r 4 of the Rules of Court, the plaintiff submitted that the defendants had failed to show “exceptional circumstances” demonstrating the necessity of imposing a stay.⁹

My decision

The applicable principles

11 Pursuant to s 18 read with para 9 of the First Schedule to the SCJA, the court has the discretion to order a stay of proceedings. Sections 18(1) and 18(2) of the SJCA read as follows:

18.—(1) The High Court shall have such powers as are vested in it by any written law for the time being in force in Singapore.

(2) Without prejudice to the generality of subsection (1), the High Court shall have the powers set out in the First Schedule.

12 Paragraph 9 of the First Schedule reads as follows:

Stay of proceedings

9. Power to dismiss or stay proceedings where the matter in question is res judicata between the parties, or where by reason of multiplicity of proceedings in any court or courts or by reason of a court in Singapore not being the appropriate forum the proceedings ought not to be continued.

13 The principles underlying the court’s exercise of its discretion under the SCJA are well-settled. These principles were summarised by the Singapore

⁸ PWS at para 17.

⁹ PWS at paras 46 and 47.

International Commercial Court in *BNP Paribas Wealth Management v Jacob Agam and another* [2017] 3 SLR 27 at [34] and [35] as follows:

34 The principles laid down in [*Chan Chin Cheung v Chan Fatt Cheung and others* [2010] 1 SLR 1192 (*'Chan Chin Cheung'*)] have been considered in subsequent cases such as *RBS Coutts Bank Ltd v Brunner Hans-Peter* [2010] SGHC 342 (*'RBS Coutts'*) and *Ram Parshotam Mittal v Portcullis Trustnet (Singapore) Pte Ltd* [2014] 2 SLR 1337 (*'Ram Mittal'*). These cases have expanded on *Chan Chin Cheung* by approving the following factors, identified by the Federal Court of Australia in *Sterling Pharmaceuticals Pty Limited v The Boots Company (Australia) Pty Limited* (1992) 34 FCR 287 [*'Sterling'*] at [16], as relevant (*RBS Coutts* at [26]; *Ram Mittal* at [53]):

- (a) which proceeding was commenced first;
- (b) whether the termination of one proceeding is likely to have a material effect on the other;
- (c) the public interest;
- (d) the undesirability of two courts competing to see which of them determines common facts first;
- (e) consideration of circumstances relating to witnesses;
- (f) whether work done on pleadings, particulars, discovery, interrogatories and preparation might be wasted;
- (g) the undesirability of substantial waste of time and effort if it becomes a common practice to bring actions in two courts involving substantially the same issues;
- (h) how far advanced the proceedings are in each court;
- (i) the law should strive against permitting multiplicity of proceedings in relation to similar issues; and
- (j) generally balancing the advantages and disadvantages to each party.

35 The above list of factors is not exhaustive. Ultimately, the grant of a limited stay of proceedings is a discretionary exercise of the court's case management powers. This discretion is triggered when there is a multiplicity of proceedings; and in exercising these powers, the court is entitled to consider all the

circumstances of the case. The underlying concern is the need to ensure the efficient and fair resolution of the dispute as a whole.

14 In *Ram Mittal*, the High Court observed at [52] and [53] that:

52 ... The case law has instead suggested that the discretion to grant a limited stay entails the court taking a commonsensical and practical approach, bearing in mind considerations such as multiplicity in proceedings, the risk of conflicting judgments, international comity and fairness to the parties ...

53 ... I found the factors in *Sterling* to be a useful guide in deciding whether to grant a limited stay. I was, however, also mindful that these factors were not to be applied mechanically. The case did not turn on how many of the factors in *Sterling* are present in a ‘tick the boxes’ approach. Rather, keeping with the commonsensical and practical approach suggested at [52] above, the weight to be attached to each factor, and therefore the ultimate exercise of the court’s discretion to grant a limited stay, will depend on the facts and nuances of each case.

Whether the court should exercise its discretion to grant a stay under the SCJA

15 Applying these principles to the facts, I was of the view that it was in the best interest for the efficient and fair resolution of the dispute as a whole to grant a stay of the proceedings in the Suit pending the determination of the ancillary matters in the Divorce Proceedings. This was for the following reasons.

Substantial overlap between the Divorce Proceedings and the Suit

16 I was aware that the issues pertaining to the division of matrimonial assets and the minority oppression claim were different. The FJC would consider the direct and indirect contributions of the plaintiff and the first defendant during their marriage in order to ascertain an equitable division of the matrimonial assets. As for the Suit, the plaintiff had to prove that there were

oppressive acts by the first defendant in relation to the plaintiff, the minority shareholder, before the court will grant an order directing the first defendant to purchase the plaintiff's shares in the Companies.

17 However, the central focus in the Suit and the hearing of the ancillary matters in the Divorce Proceedings would be the plaintiff's shares in the Companies. In the Suit the plaintiff sought, *inter alia*, an order for the first defendant to purchase all of the plaintiff's shares in the Companies. In the hearing of ancillary matters in the Divorce Proceedings, the FJC would have to divide the parties' matrimonial assets which include their shares in the Companies. Hence, there would be substantial overlap between the issues relating to the shares in the Companies arising from the Divorce Proceedings and those arising in the present Suit. Thus, there was a risk of there being a multiplicity of proceedings and conflicting findings arising therefrom.

18 One such overlap pertained to the circumstances surrounding the Companies' respective incorporations, the plaintiff's and the first defendant's respective roles and contributions to the Companies and to their marriage, as well as the alleged acts of oppression committed by the first defendant.¹⁰ These were disputed factual issues raised in both the Divorce Proceedings and the Suit. They would be pertinent to the FJC's determination of the appropriate division of matrimonial assets, including the plaintiff's and the first defendant's shares in the Companies. They would also be critical to this court's consideration of the plaintiff's oppression claim as they laid the factual foundation for the elements making up the oppression claim.¹¹

¹⁰ DWS at para 31.

¹¹ Statement of Claim at para 18.

19 Another instance of overlap between the Divorce Proceedings and the Suit was in relation to the plaintiff's shares in each of the Companies. There was a possibility in the Divorce Proceedings that the plaintiff might be ordered to transfer his shares in all the Companies or selected Companies to the first defendant or *vice versa*. This would be a function of the court's power to divide the matrimonial assets (see s 112 of the Women's Charter (Cap 353, 2009 Rev Ed)). Furthermore, at the time of the hearing of SUM 4454, the valuation of the shares was a heavily disputed issue in the Divorce Proceedings,¹² and would also be heavily disputed in the Suit. The valuation of the shares in the Companies would be required for the Suit and the Divorce Proceedings. If a stay were not granted, the courts in both proceedings would likely undertake a valuation of the *same* set of shares and make certain orders in respect of the disposal of such shares. This overlap in relation to the plaintiff's shares had further implications in terms of the effect that the Divorce Proceedings might have on the Suit and *vice versa*, which I shall elaborate on below.

20 For these reasons, I was of the view that there was substantial overlap between the Divorce Proceedings and the Suit, resulting in a risk of there being a multiplicity of proceedings and conflicting findings. Not only would it be undesirable for the FJC and this court to "compete" to see which court first determined the overlapping issues of facts, it would also result in a duplication of work, thereby wasting the courts' and the parties' time and resources.¹³ Indeed, as the defendants pointed out, the witnesses likely to be involved in the Suit had already filed affidavits in the Divorce Proceedings.¹⁴

¹² DWS at para 32; PWS at para 62.

¹³ DWS at para 33.

¹⁴ DWs at para 39.

21 I shall briefly address the plaintiff’s arguments in response to these points. The plaintiff submitted that there was no overlap between the Divorce Proceedings and the Suit because the FJC and this court would not be determining the same issue.¹⁵ However, it is trite that there need not be “complete identity” between the issues and causes of action in both proceedings (see *Ram Mittal* ([14] *supra*) at [54]). Instead, it suffices that “the basic premises upon which the two actions are founded are to all practical intents and purposes very much the same”, such that there is a “considerable overlap in the issues to be determined” (see *Chan Chin Cheung* at [44]).

22 The plaintiff also raised several arguments relating to jurisdiction, the nature of the remedies sought in each proceeding, and the inability of the procedural rules in the Divorce Proceedings to address the disputes raised in the Suit.¹⁶ However, the grant of a stay did not mean that the FJC would thereby have to determine the cause of action raised in this Suit (*ie*, the plaintiff’s oppression claim). It only meant that the hearing of the oppression claim in the Suit would be temporarily held in abeyance pending the determination of the ancillary matters in the Divorce Proceedings. Thus, the plaintiff’s arguments in this regard had no merit.

Effect of the Divorce Proceedings on the Suit

23 The outcome of the Divorce Proceedings could potentially have a material effect on the Suit, and *vice versa*. This arose in part from the substantial overlap between the two proceedings.

¹⁵ PWS at paras 18, 30–32; 68–70.

¹⁶ PWS at paras 19, 27–28, 34.

24 The primary remedy sought for by the plaintiff in the Suit was the Share Buyout – a buyout of the plaintiff’s shares in each of the Companies by the first defendant. However, as observed at [19] above, the FJC might, in the exercise of its power to divide the matrimonial assets, order the plaintiff to transfer some or all of his shares in each of the Companies to the first defendant. Conversely, the FJC might order the first defendant to transfer to the plaintiff some or all of her shares in each of the Companies. Either of these orders would significantly affect any share buyout which this court could potentially order in the Suit.

25 If the plaintiff were ordered by the FJC to transfer all of his shares in each of the Companies to the first defendant, the Share Buyout would be rendered otiose. The argument could even be made that the plaintiff would have thereby lost his *locus standi* to continue with his Share Buyout claim in the Suit.¹⁷ However, I raise this only as a *possible* argument, and express no views on the correctness or otherwise of this argument as it was not crucial to the determination of SUM 4454. Conversely, if the first defendant were ordered by the FJC to transfer all of her shares in each of the Companies to the plaintiff, then the plaintiff’s claim in the Suit might not proceed as the plaintiff would have become the majority shareholder and would have control of the Companies. Hence, the plaintiff’s current action in minority oppression might not be necessary.

26 On the other hand, if the oppression claim in the Suit were determined prior to the FJC’s determination of the division of assets, this would also have significant implications on the Divorce Proceedings. If the Share Buyout were ordered, it may disturb the state of the parties’ matrimonial assets and

¹⁷ DWS at para 27.

consequently, the entire premise of the FJC's ongoing determination of the division of assets. The FJC may have to adjust its determination of the division of assets to take into account the effects of the Share Buyout.

27 In these circumstances, the plaintiff's submission that the FJC's orders regarding the plaintiff's and the first defendant's shareholdings would have "no impact" on the Suit was untenable.¹⁸ In my view, it was much more just and efficient to stay the proceedings in the Suit pending the determination of the ancillary matters in the Divorce Proceedings.

28 The logical and sensible approach was to allow the hearing of ancillary matters in the Divorce Proceedings to run its course so that the FJC could make its decision on the apportionment of the parties' matrimonial assets. The parties would then know precisely the quantum of the shares that each party holds. Thereafter, the Suit, if necessary, would be able to proceed with certainty on the shareholdings of the parties.

Valuation of the shares

29 The value of the shares in the Companies owned by the parties was important to the hearing of ancillary matters in the Divorce Proceedings and the Suit. The shares had already been valued by an independent valuer, KordaMentha, appointed by the FJC with the mutual agreement of the parties. However, the plaintiff rejected this valuation report on the ground that the shares were valued at the current market value without taking into account the oppressive acts of the first defendant. In this light, the Suit appeared to be the

¹⁸ PWS at para 57.

plaintiff's attempt to seek another valuation of the shares. This should not be allowed.

Divorce Proceedings were at a more advanced stage

30 Finally, I also took into consideration the fact that the Divorce Proceedings were at a more advanced stage than the Suit. At the time of the hearing of SUM 4454, the plaintiff and the first defendant were in the discovery stage in relation to the ancillary matters. They had filed their respective Requests for Discovery and Requests for Interrogatories, and were due to provide their Notices in Response as well as disclose the documents and information they were willing to produce. In contrast, the Suit was only at the close of pleadings stage.¹⁹ Therefore, it was more just and efficient to stay the proceedings in the Suit pending the determination of the ancillary matters in the Divorce Proceedings.

¹⁹ DWS at para 37.

Conclusion

31 In conclusion, I found that the circumstances suggested that it was just and efficient for the court to exercise its discretion to grant a stay of proceedings under s 18 read with para 9 of the First Schedule to the SCJA. In light of this finding, it was not necessary for me to determine whether the court should exercise its inherent jurisdiction to grant a stay under O 92 r 4 of the Rules of Court.

32 For the above reasons, I granted the defendants' application to stay the proceedings in the Suit pending the outcome of the hearing of ancillary matters in the Divorce Proceedings and any appeals arising therefrom. I also ordered costs to be paid by the plaintiff to the first defendant fixed at \$5,000 all-in.

Tan Siong Thye
Judge

Chiok Beng Piow and Margaret Lee Hui Zhen (JHT Law
Corporation) for the plaintiff;
Goh Siong Pheck Francis, Natasha Goh Leshuang and Selina Yap
Sher Lin (Harry Elias Partnership LLP) for the defendants.
