IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 30

Divorce Transferred No 4401 of 2021

Between

WLL

… *Plaintiff*

And

WLM

… *Defendant*

JUDGMENT

[Family Law — Procedure — Costs]

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WLL
v
WLM

[2023] SGHCF 30

General Division of the High Court (Family Division) — Divorce Transferred No 4401 of 2021
Choo Han Teck J
8 June 2023

23 June 2023

Choo Han Teck J:

1 The plaintiff (the "Husband") and the defendant (the "Wife") obtained an interim judgment of divorce on 16 February 2022. I heard parties on the ancillary matters, namely, the division of matrimonial assets and maintenance for the Wife, and handed down my judgment on 3 April 2023: see *WLL v WLM* [2023] SGHCF 19. I made no order as to the maintenance for the Wife, but ordered that the Husband pay the Wife $1,467,516.56 for the division of matrimonial assets. The question of costs was reserved, and the parties' counsel have now made their submissions in writing.

2 Counsel for the Husband submits that the Husband had made an offer to settle ("the OTS") dated 29 August 2022, duly served on the Wife, pursuant to r 446 of the Family Justice Rules 2014 ("FJR"). The OTS had no deadline for

acceptance, and remained open for acceptance up to the time when the judgment was delivered on 3 April 2023. The Wife did not accept the OTS.

3 By the OTS the Husband offered to pay the Wife $1,840,000.00 in settlement of the issue of the division of matrimonial assets, within three months from the date of the certificate of the final judgment of divorce. I ordered the Husband to pay the Wife $1,467,516.56, being her share of the matrimonial assets, and made no order for maintenance for the Wife. The Husband says that that he had obtained a judgment not less favourable than the terms of the OTS since the Wife received $372,483.44 less that what the Husband's OTS offered. The Husband is thus asking for costs, on an indemnity basis, from the time which the OTS was made, pursuant to r 454(2) of the FJR.

4 He is also asking for costs of the action to be fixed at $41,001.21 as follows:

(a) Costs on a standard basis for work done from 16 September 2021 to 29 August 2022 (being the date on which the OTS was served), amounting to $10,197.34;

(b) Costs on an indemnity basis for work done from 29 August 2022 to 3 April 2023, amounting to $21,200;

(c) Disbursements of proceedings amounting to $9,090.27;

(d) Disbursements in FC/SUM 2515/2022, amounting to $513.60. This was the Wife's application for specific discovery, where the DJ reserved the issue of disbursements to the trial judge.

5 Counsel for the Wife, Ms Tee Lee Lian, submits that no order should be made as to costs. She submits that although the OTS offered a more favourable

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settlement amount, the Husband did not obtain a judgment not less favourable within the meaning of r 454(1)(*c*) of the FJR when the other terms of the OTS are taken into account. Ms Tee says that, in fact, the OTS was less favourable in terms of the time afforded to the Wife to move out of the matrimonial home, where the parties are still residing. Counsel says that since there are no consequential orders as to the time for the division of assets to be carried into effect, the judgment cannot be said to be less favourable than the OTS. To buttress her argument, Ms Tee refers to the Wife's counter proposal to the Husband's OTS, under which the Husband would pay her a settlement amount of $2,042,000 within three months from the date of the final judgment of divorce, and a further three months from the date of receipt of the settlement amount to move out of the matrimonial home.

6 I do not accept Ms Tee's submission. The issue of timelines for carrying out the order for division was not an issue that was argued before me at the hearing previously. The Wife did not raise this issue as a point of dispute between the parties. Thus, the only issue I had to decide then, was the question of the ratio for the division of assets. I do not think that this omission is crucial in itself, but the facts must be stated for the record. In any case, what is more important is that the difference between the settlement quantum and the judgment sum of over $300,000 adequately covers the Wife for additional rental and costs of moving out according to the timelines prescribed under the OTS. Thus, I am satisfied that the judgment obtained by the Husband is not less favourable than the terms of the OTS.

7 Although r 457(2) entitles the Husband to costs on the standard basis to the date the OTS was served, and costs on the indemnity basis from that date onwards, r 457(1) expressly provides that this entitlement is subject to the court's discretion. Furthermore, r 457(1)(7) accords the court full power to

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determine by whom and to what extent any costs are to be paid, notwithstanding the OTS. Debbie Ong JC (as she then was) held in *JBB v JBA* [2015] 5 SLR 0153 (at [27] to [34]) that the general principles of costs must be applied with more sensitivity in matrimonial proceedings where, unlike general civil proceedings, family courts prefer not to find "winners" and "losers" — especially when the case is heard at first instance and the judgment is merely a declaration of a result, as opposed to a declaration of who prevails over the other. Costs may be more acutely relevant where one party had made a genuine attempt to settle the matrimonial proceedings under the prescribed procedure in the FJR. In such a situation, had the parties chosen the non-litigious approach, costs would have been saved, or, the party making the reasonable offer would not have to incur legal costs beyond the point of offer. In such situations, an award of costs would be justified.

8 However, it does not follow that every offer to settle would warrant a favourable cost order. An offer to settle must be genuine and not made merely to obtain an adverse costs order against the counterparty: *Resorts World at Sentosa Pte Ltd v Goel Adesh Kumar and another appeal* [2018] 2 SLR 1070 at [20] to [22]. I am satisfied that in the present case, the Husband's OTS was a genuine one. The intentions of the Husband to resolve the dispute amicably is evidenced in the correspondence between the parties from the time at which divorce proceedings were commenced. The Husband had, on multiple occasions, sought to resolve the proceedings without the need for a contested application. Furthermore, although the OTS proposed a shorter timeline for the Wife to move out of the matrimonial home, a period of six weeks cannot be said to be so unreasonable such as to render the OTS an illusory or coercive one — one which is not aimed at resolving the dispute. For these reasons, I accept that the OTS was a genuine one. As I am also satisfied that the judgment obtained

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by the Husband was not less favourable than the OTS, I am of the view that the Husband should be entitled to costs of the proceedings.

9 As for whether the costs should be awarded on an indemnity basis, the factors enumerated under r 457 of the FJR (which apply to the making of costs orders generally) are relevant: the court may consider the existence of an offer to settle, the date on which the offer was made, the terms of the offer and the extent to which the judgment is more favourable than the terms of the offer.

10 The OTS was served on 29 August 2022. Since then, two exchanges of affidavits of assets and means were made before the matter came before me, and a further application for specific discovery was made by the Wife. These interlocutory proceedings resulted in an additional seven months before the ancillary matters were resolved (I delivered judgment on 3 April 2023). The judgment sum was also more favourable for the Husband than the terms of the offer, by $372,483.44. Ms Tee says that the Wife should not be penalised by this difference because it is attributable to the valuation of the matrimonial home, which was subject to price fluctuations of the property market. However, another significant contributing factor to the difference in judgment sum was my rejection of the Wife's argument that an adverse inference should be drawn against the Husband, with a consequent 10% uplift given to the Wife's share of the agreed matrimonial assets. This represented a difference of approximately $900,000 (as the total value of matrimonial assets was above $9 million).

11 The Wife further says that the Husband should not be entitled to costs because of his "uncooperative conduct in the proceedings". She says that the Husband failed to make a full and frank disclosure of his assets. Moreover, the Wife highlights the Husband's attempt to use an affidavit that was sworn but

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not filed, which was procedurally incorrect. Finally, she says that the Husband had rejected the Wife's proposal for mediation.

12 Although the Husband's conduct at some point in the proceedings was wrong — namely, failing to disclose a portion of his assets, I am of the view that they should not deprive him of costs. His failure to disclose assets is wrong, but that was limited to his trading accounts. The Husband's rejection of mediation is insufficient to justify a finding that he had unnecessarily delayed proceedings, especially in the light of the Husband's continual effort to resolve the dispute amicably by way of a private settlement, but that may count in the amount of costs to be awarded. Finally, although the Husband's omission leading to the non-disclosure was an error of judgment of counsel, it did not have any material bearing on the outcome as I had, in any case, not drawn an adverse inference against the Husband.

13 For the foregoing reasons, I am of the view that the assessment of costs on a standard basis for the entirety of work done would be fair in the circumstances. Costs of the action are thus fixed at $25,000, inclusive of disbursements, to be paid by the Wife to the Husband.

- Sgd -
Choo Han Teck
Judge of the High Court

Trent Ng Yong En and Cheryl Tan Wee Tim (Kalco Law LLC) for the plaintiff;
Tee Lee Lian and Julian Koh Zhen Yang (Bih Li & Lee LLP) for the defendant.

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