

Tan Sew Wa v Tiyu Wat Sing
[2010] SGHC 261

Case Number : DT 3285 of 2008

Decision Date : 30 August 2010

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Wee Hong Lim (HL Wee & Co) for the plaintiff; Liaw Jin Poh (Tan Lee & Choo) for the defendant.

Parties : Tan Sew Wa — Tiyu Wat Sing

Family Law

30 August 2010

Lai Siu Chiu J:

Introduction

1 In these proceedings, Tan Sew Wa ("the wife") and Tiyu Wat Sing ("the husband") applied to the court for determination of ancillaries pursuant to the interim judgment ("decree nisi") that had been granted to the wife by the Family Court on 27 March 2009, based on the wife's statement of particulars. The ancillary matters for this court to decide were (i) division of the matrimonial home; (ii) division of the matrimonial assets; (iii) maintenance of the wife; and (iv) costs.

2 At the conclusion of the hearing, I made the following interim orders:

(a) the property situated at No. 86 Jalan Daud #10-90, Windy Heights, Singapore 419594 (the matrimonial home) was to be sold in the open market within 90 days of the order and the net sale proceeds less sales commission, legal fees, incidental expenses and outstanding arrears on outgoings such as property tax and maintenance charges was to be apportioned between the wife and the husband in the ratio of 30:70 subject to the following provisos:

(i) Should cross-examination of the parties (on a date to be fixed by the Registrar) reveal that the husband had deposited 8 gold bars of 1kg weight per bar in the parties' joint safe deposit box (with United Overseas Bank) and the wife had removed the same and was unwilling and or unable to account for the gold bars, then the wife's 30% share of the sale proceeds would be adjusted to take into account the sale proceeds of the matrimonial home and the current value of the aforesaid gold bars;

(ii) In the event the court finds that the 8 gold bars' value exceeds the 30% share of the wife in the matrimonial property when sold, the wife shall account to the husband for the excess.

(b) Pending the sale of the matrimonial home and pending the cross-examination of the parties and its outcome, the husband was to continue paying the wife the monthly sum of \$1,200 as maintenance provided that such maintenance was to be set off or adjusted if necessary, depending on the outcome of the cross-examination of the parties.

(c) The wife was to transfer to the husband without consideration the Malaysian property situated at No 29, Jalan Melawati, Batu Pahat, Johor, Malaysia.

(d) Costs were reserved.

3 As the wife, who is dissatisfied with the orders that I made, has filed a Notice of Appeal (in Civil Appeal No. 106 of 2010) against my decision, I now give my reasons therefor.

The facts

4 The parties were married in 1968 but the marriage was only registered in Batu Pahat later on 4 January 1970. The wife is now 63 years of age while the husband is 68 years old. The parties have four children aged between 32 and 41. The wife is a homemaker while the husband is a businessman.

5 After the marriage, the couple rented a place in Geylang, Singapore which served both as a residence as well as a place of business as the husband operated his business called "Bright Plastics Manufacturer" there ("the business"). In 1979, the parties moved into the matrimonial home where they still reside to-date.

The affidavits of means

6 According to the affidavits filed by the wife, the couple was very poor when they were first married. The wife claimed she helped the husband to start the business by pawning the jewellery that she had received as her dowry. The wife deposed that between 1970 and 1999, she was the receptionist for the business handling telephone calls, accepting orders, collecting payments from customers and attending to their inquiries. Besides handling the administrative matters, she also did manual work for making the plastic inside the factory. The wife deposed that she continued to help in the business when its operations moved to Block 5043, Ang Mo Kio Industrial Park 2 #01-521, Singapore 569546 at the end of 1983. The wife continued working for the business until 1999. In support of her claims, the wife produced delivery orders and invoices that she had signed between 1994 and 1999. The husband, however, kept all the profits of the business for himself.

7 The wife said she was also the main caregiver of the children who were born between 1969 and 1978. Save for a few years, the wife claimed the couple had no domestic help and the wife had to do all the housework besides cooking and attending to the husband's needs.

8 The wife claimed that since 1992, the husband had failed to maintain her adequately even though he himself led a lavish lifestyle. The wife applied for a maintenance summons in 1999 against the husband and obtained an order of court dated 15 October 1999 that he pays her a monthly sum of \$1,200 as maintenance. Even then, the husband defaulted in payment for several months which resulted in her application in April 2008 for enforcement proceedings against him. She relied on periodic remittances from her eldest son Teo Hong Giap (who resides in England) to supplement the husband's maintenance sums. The wife estimated her monthly expenses to be \$1,654.66. The wife requested \$500,000 as lump sum maintenance from the husband.

9 The wife listed the following as her assets:-

(a) The property situated at No. 29 Jalan Melawati, Taman Bandar 83000, Batu Pahat, Johor, held jointly with the husband ("the Malaysian property");

- (b) a bank account in Singapore with a balance of \$8,567.53;
- (c) a bank account in Malaysia with a balance of RM16,000.68;
- (d) the matrimonial home held jointly with the husband which was valued at \$1,200,000 as of 5 April 2010; and
- (e) a safe deposit box holding her jewellery, 2 gold bars weighing 50gms and 5 gold bars weighing 5gms.

10 The wife denied the husband's allegation (which formed the nub of their dispute) that he had placed in the couple's previous joint safe deposit box with United Overseas Bank, Geylang branch ("the UOB deposit box") 8 gold bars ("the gold bars") weighing 1 kg each, that she had removed the same therefrom and had refused to return the gold bars to him.

11 The wife requested that the husband transfer to her his interest in the matrimonial home and in return, she would transfer to him her interest in the Malaysian property.

12 The husband who said he was a retiree (since 1999) disputed the wife's claim that she helped him in the business. He pointed out that she was his dependent and did not hold a work permit. Consequently, she could not have worked for the business. He added that she had signed the delivery orders that she produced without his authority. He, on the other hand, had helped the wife to look after their four children by taking time off from his work to send the children to school and to other activities including tuition classes. In addition, the husband said he even coached the third daughter Teo Siew Fuang @ Nara Siew Fuang ("Nara") for four hours every night for 3-5 years to help her pass her primary school leaving certificate. He was very proud of his four children who are all bright and had pursued tertiary education.

13 The husband claimed he had high blood pressure and had undergone an angioplasty in 2007. He said he had been advised to undergo a bypass operation by his cardiologist.

14 The husband deposed his monthly expenses totalled \$3,025 and listed his assets as follows:

- (a) a Jaguar Sovereign vehicle valued at \$87,000 as of May 2009;
- (b) 37,500 shares in Sing Investment valued at \$40,8745 as of 8 May 2009;
- (c) the matrimonial home;
- (d) \$210,000 (in \$1,000 notes) and RM110,000 (in RM100 notes);

(e) 8 gold bars each weighing 1kg ("the gold bars"); and

(f) gold accessories weighing less than 1 kg.

The husband listed his liabilities as an overdraft facility with RHB Bank which was in debit to the tune of \$426,768.12 as at 31 March 2009 and a judgment debt of RM1.5m ("the judgment") obtained in Malaysia by one Yap Kwai Hiong ("Yap").

15 The husband accused the wife of taking away his assets listed in 14(d) to (f). He alleged that the gold bars were initially stored in the joint UOB deposit box. When the branch was closed down on 16 October 1992, the wife removed all the contents of the safe deposit box including the gold bars, without his knowledge and consent. He had asked but she refused to return the gold bars and cash to him. His solicitor estimated the husband's gold items in 14(e) to (f) to be worth \$470,000 at current gold prices. Added to the cash in 14(d), the husband contended that the wife was not entitled to any share of the matrimonial assets (apart from the matrimonial home) as she had taken away an estimated \$750,000 worth of his assets.

16 The husband revealed that he had paid for the matrimonial home solely and the property was fully paid for, with no mortgage. He added that he had joined the wife as a co-owner because she was his wife. He had also paid for the initial renovations of the matrimonial home as well as all the furniture.

17 The husband proposed that the matrimonial home be sold in the open market and the net sale proceeds (less the judgment debt owed to Yap) be apportioned 70:30 in his and the wife's favour respectively.

18 The wife denied she had taken away the husband's assets in 14(d) to (f). She asserted that the husband never kept any of the alleged items in the UOB deposit box which key she held; the husband had no access to the same. After the UOB deposit box was closed, the wife said she opened a safe deposit box with UOB Changi branch ("the Changi deposit box") into which she transferred all the items enumerated earlier at [9](e). Subsequently, she closed the Changi deposit box and opened another one with CISCO on 28 August 2002. The wife maintained that she was not aware that the husband's alleged assets even existed until the hearing of her summons for enforcement proceedings against him for maintenance and when she read his affidavit filed in those proceedings in April 2008. She added that the husband had also never asked her for the return of the alleged items.

19 The wife accused the husband of not disclosing he had a term deposit amounting to US\$889,570.51 with Deutsche Bank (in 2008) and 100,000 shares in Chentai Plastics Sdn Bhd ("Chentai"). He had also failed to disclose his two accounts with Citibank. She requested the court to draw an adverse inference against the husband for his non-disclosure.

20 The wife complained that while he led a lavish lifestyle and drove Mercedes and Jaguar cars, the husband refused to maintain her (which the husband denied). The wife further disputed the judgment pointing out that Yap had on 7 October 2008 lodged a caveat on the Malaysian property and in Yap's statutory declaration, she had declared that the husband owed her RM500,000 and not RM1.5m as stated in the judgment. In any event, the wife believed the judgment was a sham because in his affidavit filed on 2 April 2008 (in answer to the wife's summons for enforcement of her maintenance order see [8]), the husband did not declare the judgment which only surfaced after these divorce proceedings were commenced (on 2 July 2008). The husband had also not furnished

any details of how the judgment debt arose.

21 In response to the wife's allegations, the husband filed a second affidavit wherein he denied she had worked at all in his business, pointing out she had very little formal education as the wife's family background was very poor. He also denied her allegations that he led a lavish lifestyle pointing out that he drove Mercedes and Jaguar cars to inspire confidence in his customers. The Mercedes car was also available for the wife's use (which she denied). The husband explained that he did not disclose the two Citibank accounts or the Deutsche Bank account as they had already been closed. He claimed he only had one bank account, that with RHB Bank which was in overdraft. He explained that the overdraft was a result of his gambling at casinos and speculation in the 'black' market, which caused him to have to borrow money from Yap who then sued him when he could not repay her loan. As for his investment in Chentai, a company managed by his younger brother, the husband did not know the value of the shareholding. He indicated his willingness to transfer his shares in Chentai to the wife if she so desired, subject to Chentai's approval.

22 The husband revealed that he and the wife were each issued a key so that he too had access to the UOB deposit box. He claimed that the wife was aware of what he had deposited in the UOB deposit box as it was done during the couple's joint visits to UOB Geylang.

23 The husband's second affidavit drew a response from the wife in her fourth affidavit. She maintained she held both keys to the UOB deposit box so that the husband could not have had access to the same. In her third affidavit, the wife revealed that the husband had also failed to disclose two other Malaysian properties that he owned in Batu Pahat as well as 37,000 shares in a Malaysian company Kemajuan Titiwangsa Sdn Bhd; the said company also owned two properties in Batu Pahat.

24 Not surprisingly, the wife's third affidavit prompted the husband to file a reply affidavit. He rebutted her allegation that he had no capital to start the business pointing out he was the general manager of Singapore Polyethylene Products Pte Ltd before he started the business. Hence, it was not necessary for the wife to have pawned her dowry for the initial capital to fund the business.

25 I should mention that the wife's affidavits dredged up (unnecessarily) allegations that would have been pertinent to her earlier divorce petition but which were irrelevant to the determination of ancillaries between the parties. The wife did not seem to appreciate what was required to be set out in affidavits of means for ancillary matters. She had also engaged in the futile exercise, not to mention incurring the unnecessary expense thereto, of hiring a Singapore private investigation agency to carry out surveillance on the husband at Batu Pahat on 17 and 18 July 2009. Even though the investigation revealed that the husband was seeing another woman (Yap in fact), the court had pointed out to the wife's solicitor that the husband's private life was no longer the wife's concern as the wife had obtained a *decree nisi* five months earlier (on 27 March 2009; at [1]).

26 It was also wrong of the wife to procure the daughter Nara to file an affidavit on her behalf to corroborate the husband's alleged ill treatment of the wife. Nara had married a Japanese national and thereafter changed her surname, incurring the husband's wrath. In any case, the husband's answer to Nara's affidavit was that the latter went overseas in the 1990s to study and would not have known what transpired at home or, she was too young to know. The husband had in his affidavit labelled the wife as "cruel" in persuading their daughter to stab her own father in the back.

The decision

27 When counsel for the husband appeared before me, he produced information obtained from the

internet on gold bars, in his attempt to persuade the court to accept his client's position that the wife was not entitled to any share of the assets apart from the matrimonial home. Counsel provided the dimensions of a kilogram gold bar, to rebut the wife's contention that the UOB deposit box was too small to hold 8 such gold bars. As the wife had deposed in her affidavit that she held both keys to the UOB deposit box, I informed her counsel that meant that only the wife had access to the UOB deposit box.

28 I had pointed out to both counsel that the conflicting versions of the parties on the contents of the UOB deposit box made it difficult to determine who was telling the court the truth unless the parties were cross- examined on the dispute. I then inquired of counsel whether their clients were willing to be cross-examined.

29 After the matter was stood down to enable counsel to contact their clients for instructions on the issue of cross-examination, counsel for the wife returned to inform the court that she was willing to be cross-examined while counsel for the husband said he was unable to contact his client and hence, he would leave the decision to the court.

30 Counsel for the husband was unable to assist the court when I said it puzzled me why the husband would keep substantial cash (in Malaysian and Singapore currencies) in the UOB deposit box instead of depositing the monies in his bank account(s) to earn interest. I was also sceptical of the husband's claim that as a successful businessman, he only had one bank account with RHB Bank and that was an overdraft account.

31 I had entertained considerable doubt on why Yap would make a statutory declaration in support of her caveat against the Malaysian property, stating that the husband owed her RM500,000 while the judgment (obtained in default of the husband's appearance on 16 March 2009) was for RM1.5m. In the submissions tendered on the husband's behalf to this court, his counsel sought to explain the discrepancy by explaining that the husband actually owed Yap RM2m. The caveat was for RM500,000 while the judgment was for the balance of RM1.5m owed to Yap.

32 I should point out that the husband explained his association (captured in surveillance by the wife's private investigators) with Yap (he denied they had an intimate relationship) by claiming that Yap, his friend for nearly 20 years, worked as a casino agent/broker. She had lent the husband money to help him tide over his cash flow difficulties and they had orally agreed that Yap would not enforce the judgment so long as the husband paid the monthly interest of RM10,000 (calculated at 8% of RM1.5m amounting to RM120,000 per annum) and on the understanding that the husband would repay the judgment sum after the matrimonial property was sold. Even so, I felt that the husband should be questioned on when and how he came to incur such a massive debt as RM2m and how Yap even as a casino agent, had such substantial means as to be able to lend him RM2m cash. The husband should also furnish details of where and when he supposedly gambled away the RM2m.

33 Moreover, cross-examination of the husband would determine the veracity of his claim that he no longer had accounts with Deutsche Bank or Citibank and what he had done with the moneys the wife asserted he had in those accounts before their closure. The sums involved were not small. For Deutsche Bank (Hong Kong branch), the husband had a sum of US\$887,712.90 as of 14 February 2008. With regards to Citibank (Hong Kong), the husband had US\$642,364/94 as of 15 February 1999 and as of 16 January 2003, he had HK\$4,123,893.21. To say without more that all three accounts had been closed was no answer by the husband to the wife's allegation that he had failed to disclose all his assets. The husband was required to explain what he had done with the substantial sums withdrawn from the three bank accounts after he closed them. Cross examination would also determine whether the husband's shareholdings in various Malaysian companies were as worthless as

he claimed, or yielded him no dividends.

34 The gold bars would undoubtedly be a major asset of the husband if indeed they existed. The court could not decide the ancillary matters until after the cross-examination of the parties determined whether the husband did have the gold bars and if so, did he deposit them in the UOB deposit box as he asserted but which the wife denied.

35 As I entertained serious doubts, based on the affidavits filed by the parties, as to whether the husband had indeed disclosed all his assets (even though he maintained he had) or he had only disclosed some of his assets (as the wife contended), an order that he be cross-examined could only be to the wife's benefit. Granted, the process may delay resolving the ancillary matters between the parties. However, from the wife's standpoint, the delay would be more than compensated, should the cross-examination reveal that the husband's assets far exceeded what he had declared. In this regard, I was mindful of the fact that the wife was claiming \$500,000 as lump sum maintenance whereas the husband's contention was, that the wife was not entitled to any sum at all due to her having allegedly taken away his assets worth \$750,000.

36 Consequently, I could only make interim orders as a stop-gap measure pending the cross-examination of the parties. However, because the division of the matrimonial home was something that could be done in the interval before the parties were cross-examined, I made an order for its division. The husband's proposal to give the wife 30% share was not unreasonable save that I rejected his request that the 30% division in the wife's favour should be made after the deduction of the debt owed to Yap in the judgment. That would have been grossly unfair to the wife. At the same time I did not think the wife was entitled to have the husband's interest in the matrimonial home transferred to her without consideration as he had solely funded its purchase. The increasing acrimony between the parties as reflected in the accusations they traded against each other in their affidavits also prompted me to make the division now rather than later.

37 The matrimonial home had been valued at \$1,200,000 as of 5 April 2010 (by the wife). Selling it would enable the wife to purchase a property for her own occupation with her share of the sale proceeds which could well exceed \$360,000 in view of the current upturn in the property market.

38 Should cross examination of the parties prove that the wife had indeed put in 29 years of unpaid work in the business (as she contended but which the husband denied), the wife's indirect contributions under s 112 of the Women's Charter (Cap 353, 2009 Rev Ed), may even entitle her to a larger share of the husband's assets when determined, than her claim for \$500,000.

39 Mindful of the wife's complaint that the husband had in the past failed to maintain her, I directed that the husband should continue to pay the wife maintenance in accordance with the order made by the lower courts.

40 Finally, as the wife had indicated her willingness (in her first affidavit of means) to transfer the Malaysian property to the husband without consideration, I so ordered.

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