# Ho Kiang Fah *v* Eileen Toh Buan
# [2010] SGHC 337

**Case Number** : Divorce Suit No 3914 of 2006 (Registrar's Appeal No 110 of 2010)
**Decision Date** : 23 November 2010
**Tribunal/Court** : High Court
**Coram** : Quentin Loh J
**Counsel Name(s)** : Appellant in person; Yap Teong Liang (T L Yap & Associates) for the respondent.
**Parties** : Ho Kiang Fah — Eileen Toh Buan

*Family Law*

23 November 2010

**Quentin Loh J:**

1 The parties obtained an interim judgment for the dissolution of their marriage on 29 January 2008. The clearly protracted ancillary matters are ongoing before the family court. Mr Yap, counsel for the wife, informs me that those matters are on hold, pending resolution of this appeal. This appeal involves the property known as 51 Jurong East Avenue 1, #18-03, Parc Oasis ("the property"). It is part of the matrimonial estate. The property is owned by the parties as tenants in common, in equal shares. There is a mortgage over the property ("the mortgage") in favour of DBS Bank Ltd ("the bank").

2 This is an appeal against the decision of the learned district judge in chambers in two applications regarding the property:

(a) The wife applied via Summons No 21581 of 2009 for, *inter alia*, the property to be sold on the open market, the proceeds to be used towards repaying the mortgage loan, and the husband to be made liable for any shortfall.

(b) The husband then applied via Summons No 1964 of 2010 for, *inter alia*, the *wife's half share* in the property to be sold in the open market, the proceeds to be used towards repaying the mortgage loan, and the wife to be made liable for any shortfall. The husband also applied for the wife to pay him $203,155.35, which he claimed was "excess payment" by him towards the mortgage loan.

3 After hearing the parties, the learned district judge ordered the sale of the *whole* of the property and for the proceeds to be used to repay the mortgage loan. She also stipulated that the parties were free to submit on their entitlement to the surplus, if any, in the ancillary proceedings. If there was a shortfall, it was to be borne by the parties equally, although in all probability there would be a small surplus of some $55,000. The husband's application was dismissed. Costs were awarded to the wife.

4 The relevant facts are as follows. The mortgage loan was not being serviced. At the end of 2009, the outstanding part of the mortgage loan stood at $251,097.68. [note: 1] As of 14 May 2010 there were arrears in payment of $31,484.79. [note: 2] When I heard the appeal, Mr Yap informed me

that $263,022.20 was owing to the bank. Against this state of affairs, there was clearly a need to prevent the value of the property from wasting away because of the continued failure to service the mortgage. Both parties recognised this in praying for the sale of the property or part thereof. If the loan was not being serviced, the bank would foreclose and proceed with a mortgagee's sale. The proceeds would in all probability be significantly lower than a sale in the open market by either or both parties.

5 There were various allegations on both sides as to the extent of the matrimonial estate, who contributed to the purchase of the property and whether the husband failed to rent out the property and/or account for the rental. It was not disputed that the property was under the husband's control and management.

6 Mr Yap also informed me that this was not the only real property in the matrimonial estate: there was an apartment at Simei (which was the matrimonial home and currently occupied by the husband rent-free), another apartment at Aspen Heights and yet one more in Sofia Court, all of which were purchased during the marriage. The apartment at Sofia Court had been disposed of in an en bloc sale and the husband had kept the entire proceeds. These allegations were also before the learned district judge and the husband did not deny this below or before me.

7 The husband explained that he wanted to sell the wife's half share and keep his half share as a hedge against inflation in his old age. He was reticent in explaining how it was commercially viable to sell a half-share in the open market, and it was only when I pressed him on the point that he informed me, with some degree of abashment, that the buyer would be his brother.

8 The husband also insisted that the wife redeem the property from the bank from her own resources, alleging in this regard that she was still working at OCBC Bank and could therefore well afford to take these steps, while he was a retiree and had no funds. I gave the husband the option to do so without imposing such conditions, after which both parties could go back to the ancillary hearings on the division of matrimonial property. The husband refused. He still wanted his wife to discharge the entire bank loan and to sell her half share to his brother.

9 This is not the proper forum to raise these arguments and allegations insofar as they pertain to the parties' contributions and entitlement to the property. They should be raised together in the ancillary hearings. My only concern was the preservation of the property. In this regard, I was ultimately not convinced that selling a half share to the husband's brother was the best way of realising the value of the property, as opposed to the sale of the whole of the property on the open market and on the terms ordered by the learned district judge. I therefore saw no reason to disturb the order of the learned district judge in this regard.

10 I pause to observe, with regret, that the parties in making this application seemed to have been obsessed with their own notions of who paid for whose share. This was misguided. Proprietary notions of *meum et tuum* are irrelevant in the division of the matrimonial estate. More importantly, the more pressing need was to preserve the property for division, and the obviously sensible solution would have been for the parties to work out between themselves a way to redeem the property or at least to keep up with the mortgage payments, while deferring the question of entitlement to be resolved in the ancillary proceedings. However, since both the parties proceeded, in effect, on the basis of selling the property, there was nothing the learned district judge could have done in this regard except to make the very sensible orders that she did. I am not making any findings on the rival contentions – they fall to be dealt with by the family court.

11 Having ordered the sale of the whole of the property in order to preserve its value for division,

the learned district judge was, in my view, plainly right to decline to make any order on the parties' entitlement to the proceeds from the sale of the property. As a matter of substantive law, the division of the matrimonial estate must be done holistically. As a matter of procedure, therefore, attempts to deal with individual matrimonial assets separately from the whole estate will not, as a rule, be countenanced. Divide and conquer is not an available tactic in matrimonial proceedings. I note the husband tried to do this earlier in respect to this property and failed (see Suit 45 of 2008 which was dismissed by Belinda Ang J and the husband's appeal which was dismissed by the Court of Appeal).

12 Since I saw no reason to disturb the learned district judge's orders, I therefore dismissed the appeal with costs to the wife. I fixed the costs of the appeal, including disbursements, at $3,500.

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[note: 1] Record of Appeal ("RA") at p 122.

[note: 2] RA at p 157.