IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 43

District Court Appeal No 21 of 2023

Between

WNR

… *Appellant*

And

WNQ

… *Respondent*

JUDGMENT

[Family Law – Matrimonial assets – Division – Liabilities of parties as of date of interim judgement ought to be considered in determining net matrimonial assets]

WNR
v
WNQ and another matter

[2023] SGHCF 43

General Division of the High Court (Family Division) — District Court Appeal No 21 of 2023 and Summons No 228 of 2023
Choo Han Teck J
18 October 2023

19 October 2023 Judgment reserved.

Choo Han Teck J:

1 The appellant (the "Husband") is self-employed and runs several businesses, with the main one being M Ltd. The respondent (the "Wife") is unemployed and is a homemaker. This was a marriage of almost 40 years. Parties married in February 1984. The Wife filed for divorce on 22 September 2021, and interim judgement ("IJ") was granted on 24 March 2022. Both are now in their 60s and have three adult children. The district judge ("DJ") made orders on the ancillary matters ("AM") on 2 March 2023. The Husband filed an appeal in March this year (HCF/DCA 21/2023), and filed the appellant's case on 13 July 2023. After the Wife filed her case on 11 August 2023, the Husband applied by summons dated 25 August 2023 (HCF/SUM 228/2023), for leave to adduce further evidence in this appeal.

2 He wants to adduce further statements from his bank accounts for the period of April 2021 to July 2021. These statements relate primarily to his credit card and credit line liabilities. He is appealing against the DJ's exclusion of those debts from the matrimonial assets. The DJ found insufficient evidence to support the Husband's claims. The Husband says that the bank statements could not have been obtained with reasonable diligence by him for the AM hearing below because the banks would not release the documents unless he has paid his debts. He says that the banks allowed him access only after he had entered into a repayment plan with the banks through Credit Counselling Singapore and started repaying them. Counsel for the Husband, Mr Sankar s/o Kailasa Thevar Saminathan ("Mr Sankar") submits that the bank statements would probably have an important influence on the results of the appeal and urges me to allow the application. Mr Sankar further argues that the bank statements are credible, and that the Wife has not disputed the credibility of the statements.

3 In response, counsel for the Wife, Ms Madeleine Poh ("Ms Poh") objects to the application because the bank statements are not fresh evidence and could have been obtained with reasonable diligence for use during the AM hearings. Ms Poh argues that the Husband had entered into the Credit Counselling Singapore repayment plan with the various banks on 5 December 2022, but filed his application to adduce further evidence on 25 August 2023, after an inordinate delay of nine months. Additionally, Ms Poh submits that the Husband has not shown any proof of reasonable attempts on his end to obtain the bank statements prior to the AM hearing below, and that the banks had refused to allow him access to the various bank statements he now seeks to adduce before he arranged for payment of his outstanding debts. Ms Poh further submits that the Husband was legally represented throughout the divorce proceedings.

4 I am not satisfied that the Husband was unable to obtain the bank statements with reasonable diligence for the AM hearing below. First, by his own explanation, the banks would only give him access to his bank statements if he had arranged payment of his outstanding debts. This is materially inconsistent with the objective evidence he seeks to adduce. Based on the repayment schedule (via Credit Counselling Singapore), he had already negotiated a repayment schedule with the banks by 5 December 2022, with the first monthly instalment to be paid by 8 January 2023. Mr Shankar confirmed this at the hearing as well. This means that he should have been able to obtain these bank statements in time for the AM hearing before the DJ. In this connection, the DJ heard parties on 5 January and 9 February 2023. The Husband had ample time to sort out the issues relating to these bank statements before the DJ.

5 Secondly, the Husband has not provided any evidence in support of the claim that the banks were unwilling to allow him access to his bank statements until he had arranged payment of his outstanding debt. The want of that evidence diminishes his basis for adducing further evidence now. If his request had been rejected by the bank, there should be some evidence showing his request and the bank's response.

6 Thirdly, it was incumbent for the Husband to adduce all the relevant, material evidence supporting his case, whether he was assisted by counsel or not (he was, in this case). This was especially since the Wife had asked for discovery of "the full and unredacted monthly statements (showing full details of the transactions made) for all his bank accounts in Singapore or overseas" as part of the discovery process. What he is hoping to show now are bits of statements and that will not give a full and complete account of all his earnings

and expenses over the relevant years. There is no evidence of what he was earning before M Ltd was incorporated.

7 For the above reasons, I am of the view that there are no special grounds to allow the Husband to adduce the further evidence of the bank statements on appeal and dismiss his application.

8 As to the appeal against the DJ's decision below, the Husband is appealing against the DJ's determination of the matrimonial assets available for division. His appeal is based on three grounds. First, that the DJ erred in finding that the Husband's Central Provident Fund ("CPF") withdrawals of $44,760 were to be returned to the matrimonial assets. Second, that the DJ erred in finding that the sale proceeds of $107,000 from the Husband's sale of his Mercedes Benz E 300 ("Mercedes") were to be returned to the matrimonial assets. Third, that the DJ erred in finding that the Husband had not satisfied his burden of proving that his liabilities should be returned to the matrimonial assets.

9 In relation to the first ground, the Husband says that the $44,760 he withdrew from the CPF account should not be returned to the matrimonial pool because he had used the money as rolling capital for M Ltd. According to the Husband, M Ltd was the main way through which he supported the family financially, and thus, the Wife had impliedly agreed to the expenditure before it was incurred. The Husband says it is unreasonable for the Wife to object to the expenditure as this was how the Husband had provided for her and the children throughout the marriage, blithely forgetting that he incorporated M Ltd in 2012 when their eldest child was already 26 years old. Mr Sankar submits that consent is not needed if the monies expended were applied for the parties' joint benefit, that is, if it was used to pay off an existing liability which would otherwise have

been deductible against the matrimonial assets. Mr Sankar argues that any such sums expended ought not be required to be returned to the matrimonial assets. Counsel also submits that returning the $44,760 which went to M Ltd's bank account would lead to double counting as those monies have already been accounted for as part of M Ltd's value (M Ltd is part of the matrimonial assets).

10 The Wife denies that she had impliedly agreed to the Husband's expenditure of the $44,760 before it was incurred. Ms Poh submits that the principle of consent is unassailable in the context of when divorce proceedings are imminent and substantial sums were expended by one party during this period. Without the other party's consent, this sum must be returned to the matrimonial assets. In any case, Ms Poh argues that on the facts, there is no evidence showing that the $44,760 withdrawn was deposited into M Ltd, and no explanation was given by the Husband as to why he paid this money into M Ltd. Ms Poh further submits that the Wife had no knowledge of the Husband's practice of putting money into M Ltd's bank accounts for the purposes of rolling capital, and thus without such knowledge, she cannot be said to have impliedly consented to his methods.

11 If, during the period in which divorce proceedings were imminent or after divorce proceedings had commenced but before the AM were concluded, one spouse expended a substantial sum of money in which the other had a putative interest, that expenditure must be counted as part of the matrimonial assets. That being so, consent from the other spouse must be obtained before the money is spent, regardless of the reason for the expenditure.

12 I affirm the DJ's decision that the $44,760 was substantial and had to be returned to the matrimonial assets because "the Wife has a putative interest in those funds and there is no evidence that the Wife either expressly or impliedly

agreed to the expenditure before it was incurred or at any subsequent time". I do not accept the Husband's contention that the Wife had impliedly consented to the expenditure of the $44,760 for M Ltd simply on the basis of his assertion that M Ltd was how he had financially supported the family. The fact that M Ltd was the source of the Husband's income did not necessarily lead to a finding that the Wife had impliedly consented to matrimonial assets being expended on M Ltd after divorce proceedings had been commenced. The Husband may not have needed to consult the Wife about such payments towards M Ltd in the past during their marriage, but circumstances change once divorce proceedings have been commenced, or become imminent. In my view, the Husband has neither evidence nor reason to show why the Wife had consented impliedly to this expenditure. I affirm the DJ's decision in relation to the $44,760.

13 I do not accept Mr Shankar's submission that the Husband spent the $44,760 for the joint benefit of the Husband and the Wife. The objection of double counting this $44,760 with M Ltd's value is also rejected. I do not accept counsel's submissions because they are simply not supported by evidence. The Husband has no proof that the $44,760 was deposited into M Ltd's bank account. In his affidavit responding to the Wife's interrogatories (dated 7 June 2022), the Husband claimed that he deposited the $44,760 into M Ltd's two bank accounts in seven tranches over the period of 25 November 2021 to 26 January 2022, after withdrawing a total of $78,000 in CPF monies on 25 November 2021 ($60,000) and 9-10 December 2021 ($18,000). The rest of the remaining $30,000 was used to repay a personal loan to his friend, and $3,240 was spent on his personal expenses. In support of his claims, the Husband adduced M Ltd's bank account statements reflecting these deposits. In my view, this was not sufficient to prove the Husband's assertion that the $44,760 CPF monies were deposited into M Ltd's bank accounts. Materially,

the deposits highlighted by the Husband were all cash deposits of different amounts, and do not go towards supporting the Husband's version of events. I add that it is strange for the Husband to withdraw his CPF monies into his personal bank account, thereafter, withdrawing said CPF monies in cash, before subsequently depositing them in M Ltd's bank accounts as cash deposits.

14 Moreover, the Husband has not provided any cogent explanation as to why he had to pay the $44,760 to M Ltd, nor why that had to be done in the roundabout manner. Without proof that the $44,760 CPF monies were paid to M Ltd, Mr Sankar's submissions that the $44,760 was applied for the joint benefit of both parties, and that the $44,760 would be double counted with M Ltd's valuation in the matrimonial assets is unsustainable.

15 In relation to the second aspect of the Husband's appeal, the Husband says that although he had sold his Mercedes to M Ltd on 8 November 2021 for $267,000, $107,000 of the $267,000 was just a notional figure and was not paid. The Husband says that he only received $77,535.12 from M Ltd, after paying off the remaining loan of $82,464.88 on the Mercedes. The inflation of the Mercedes's value was allegedly done to secure financing of $160,000. Mr Sankar argues that the DJ had erred by treating the notional $107,000 as a subsequent transaction where the Husband had preferred to benefit M Ltd at the expense of the Wife, and that the DJ erred in counting it as part of the matrimonial assets. Mr Sankar submits that because the Husband never received the $107,000, and that it was never due to the Husband from M Ltd, it should not be returned to the matrimonial pool.

16 The Wife maintains that the whole sale proceeds of the Mercedes of $184,535.12 ($77,535.12 received by the Husband and the alleged inflated notional sum of $107,000) should be added back as matrimonial assets because

she had not consented to the sale of the Mercedes, and the sale proceeds would be governed by the principles relating to the expenditure of matrimonial assets after divorce proceedings had commenced. Ms Poh submits that $184,535.12 was due to the Husband pursuant to the documented sales agreement and thus should be added back to the matrimonial assets. Counsel further argues that regardless of whether the Husband's claim is true, he retains the right to recover the sum of $107,000 from M Ltd, and thus the sum remains an asset liable for division and is a matrimonial asset. She submits that the price of the Mercedes was not inflated, and she refers to a hire purchase agreement between the Husband and the bank for the Mercedes (dated 30 August 2019), where the bank pegged the cash price of the Mercedes at $284,988. According to Ms Poh, allowing for reasonable depreciation, this supports a finding that the price of the Mercedes of $267,000 in 2021 was not inflated.

17 I affirm the DJ's decision to return the entirety of the remaining sale proceeds of the Mercedes (of $184,535.12) to the matrimonial assets. Importantly, in the light of the documentary evidence that shows the cash value of the Mercedes being $284,988 as of 30 August 2019, the Husband's claims of having inflated the Mercedes by a large value of $107,000 for the purposes of securing financing cannot be believed. It appears to me that the sale price of the Mercedes to M Ltd of $267,000 would be an accurate reflection of its value. The DJ is also correct in finding that the alleged notional $107,000 ought to be treated as a subsequent transaction where the Husband chose to benefit M Ltd. The Husband can claim that sum from M Ltd if he had so wished, and the Wife should not be prejudiced by his decision not to do so. In any event, having sold the Mercedes on 8 November 2021 after divorce proceedings had been commenced on 22 September 2021, the Wife should not be penalised and should not be compelled to subsidise the Husband were he to sell the Mercedes at a

discount without her consent. Any shortfall from market value stemming from the Husband's choice to sell the Mercedes at an undervalue should be borne by him alone.

18 Regarding the third ground of appeal, the Husband says that the DJ erred in finding that the Husband's liabilities were not to be considered in determining the matrimonial assets because the Husband had failed to discharge the burden of proving that his liabilities fell under s 122(2)(*b*) of the Women's Charter 1961 (2009 Rev Ed) ("Women's Charter"). The Husband says that it was impossible for him to have kept records of how he kept his companies afloat to pay for the family's expenses in a long marriage. He claims that he had incurred debts for the joint benefit of the parties and the children, including their living and educational expenses. Mr Sankar submits that the lack of proper records of the Husband's expenditure should not be taken against him. The Wife claims that the Husband had not proven that his debts were incurred for the parties' joint benefit or for the benefit of the children under s 112 of the Women's Charter. She says that debts for the benefit of the family must be proven to be incurred if they are to be excluded from the matrimonial assets.

19 In my view, the focus on whether the Husband's debts were incurred for the parties' joint benefit or for the benefit of the children, is not important. Although s 112(2)(*b*) Women's Charter provides for debts of a party to be taken into account in the division of matrimonial assets if they are incurred "by either party for their joint benefit or for the benefit of any child of the marriage", it is not an exhaustive account of when a party's liabilities can be taken into account for the purposes of determining the matrimonial assets available for division. As the court in *WAS v WAT* [2022] SGHCF 7 observed (at [46]):

> …liabilities should be taken into account as s 112 of the Women's Charter (Cap 353, 2009 Rev Ed) ("Women's Charter")

> involves a division of the parties' net matrimonial assets. Hence, debts proven to exist at the time of divorce should be deducted from the pool of matrimonial assets (which will result in a reduction of the total value of the pool of assets) …

20 The key issue is whether the Husband's debts are proven to have existed as at IJ date. If so, the Husband's liabilities should rightly be accounted with the Husband's assets in calculating the net matrimonial assets available. It is unfair for only the Husband's assets and not his liabilities (as at IJ date) to be considered in determining the net matrimonial assets available. It is another issue altogether if the Wife is claiming that the Husband had intentionally racked up inappropriate debts after divorce proceedings had commenced up till IJ date, but that is not the case before me.

21 On the facts, I am satisfied that the Husband managed to prove debts he owed from five cards or accounts amounting to $89,543.17 (as at IJ date), as the DJ had found. I agree with the DJ that the Husband had adduced insufficient evidence to prove the debts he owed from three other accounts.

22 Finally, I do not accept Ms Poh's submissions that recognising the Husband's liabilities and reducing the matrimonial assets to reflect them would be double counting the Husband's contribution to the marriage and lead to an unjustified division. It is undisputed by parties that the Husband had been the main breadwinner providing for the family, while the Wife had been the homemaker. Taking into account the Husband's liabilities for the purposes of determining the matrimonial assets does not change this material fact. The DJ's division of the matrimonial assets equally between parties remains fair in the circumstances.

23 Accordingly, I allow the Husband's appeal in part and add back the Husband's liabilities of $89,543.17 to the matrimonial assets. This reduces the

total value of the matrimonial assets available for division down to $1,271,400.81, from $1,360,943.98. Each party's share of the matrimonial assets is thus $635,700.41, down from $680,471.99.

24 As for the arrangements regarding the matrimonial assets, the only change should be that the Husband is now to make a cash payment of $87,422.53 (in monthly instalments) to the Wife, down from the initial $132,194.11 (in monthly instalments) ordered by the DJ.

25 No order as to costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Sankar s/o Kailasa Thevar Saminathan and Tessa Low Wen Xin (Sterling Law Corporation) for the appellant;
Madeleine Poh, Kalvinder Kaur and Alvina Logan (Yeo & Associates LLC) for the respondent.