IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2025] SGHCF 31

District Court Appeal No 108 of 2024

Between

XIM

… *Appellant*

And

XIN

… *Respondent*

JUDGMENT

[Family Law — Matrimonial assets — Division]

XIM
v
XIN

[2025] SGHCF 31

General Division of the High Court (Family Division) — District Court Appeal No 108 of 2024
Choo Han Teck J
8 May 2025

22 May 2025 Judgment reserved.

Choo Han Teck J:

1 The parties were former Chinese nationals. The appellant wife, aged 54, is now a Singapore Permanent Resident. The respondent husband, aged 64, is now a Singapore citizen. They married in Singapore on 2 October 2011. It was the second marriage for both of them. They have no children together, but the appellant has a son from her previous marriage and the respondent has two sons from his previous marriage. I shall refer to the respondent's older son as "C1". The appellant filed for divorce on 16 January 2023 and interim judgment was granted on 12 April 2023. The District Judge ("DJ") delivered his decision on the parties' ancillary matters on 25 October 2024. The appellant now appeals against part of the DJ's decision.

2 The respondent incorporated a building and construction company ("Company X") with his friend sometime in 2009. They each contributed

$10,000 towards the start-up capital and were the only directors and shareholders of Company X. On 19 May 2015, the respondent transferred all 250,000 of his shares in Company X to C1 in consideration for $150,000. C1 was a 23-year-old university student at that time. The transfer was approved by the respondent and his friend as directors of Company X. On the same day, the respondent tendered a letter of resignation to relinquish his position as a director of Company X. But for reasons that are disputed, the respondent remained as a director until 21 August 2018, when he was replaced as the director by C1, who, though 26 years old by that time, was still in the university.

3 The DJ found that the respondent had wrongfully dissipated his assets in May 2015 when he transferred his shares to C1 at an undervalue and without compelling reasons. The DJ decided that the operative date for determining the value of the dissipated shares was May 2015 (instead of 31 January 2023) because it was not the shares that were being added back into the pool of matrimonial assets, but the notional value of those shares to account for the respondent's dissipation. By the time of the ancillary matters hearing, C1 was the legal and beneficial owner of the shares. The DJ found it "artificial and unduly prejudicial" to the respondent to adopt the latest value of the shares as it would have been speculative to guess how Company X would have grown over the years had the respondent remained a 50% shareholder. The respondent was also not entitled to any gain in the value of the Company X shares from 2015 to 2023. The DJ therefore decided to adopt the value of the shares as at the time of dissipation instead of the ancillary matters hearing date. Next, the evidence showed that 75,000 of the 250,000 shares originally owned by the respondent were acquired before the marriage. The net asset value of the remaining 175,000 shares was $251,874.70. Of this sum, the DJ deducted $150,000, being the consideration paid by C1 to the respondent.

4 The appellant's case is that the DJ's valuation "punishes" her by depriving her of the increase in the value of the respondent's marital shareholding from May 2015 to 31 January 2023 and "rewards" the respondent for dissipating his assets. Her valuation of the shares as at 31 January 2023 is $1,351,000, whereas the valuation as at May 2015 is $251,874.70. The appellant says that there are no cogent reasons warranting a departure from the default position that the date of valuation is the date closest to the ancillary matters hearing. Her counsel, Mr Darren Chan, compares her case to *Shih Ching Chia James v Swee Tuan Kay* [2002] SGCA 2 ("*Shih Ching Chia*") and my decision in *WJG v WJH* [2022] SGHCF 28 ("*WJG v WJH*"). Mr Chan claims that the court in both cases applied the date closest to the ancillary matters hearing, instead of the date of dissipation, to value the company shares which were dissipated.

5 Counsel also distinguishes the appellant's case from *Wan Lai Cheng v Quek Seow Kee and another appeal and another matter* [2012] 4 SLR 405 ("*Wan Lai Cheng*") and *TDT v TDS and another appeal and another matter* [2016] 4 SLR 145 ("*TDT v TDS*"). In both cases, the court adopted an earlier valuation date to account for one party's conduct in diminishing the value of matrimonial assets to the other party's detriment. She claims that in both cases, the court did so because the "victim" (*ie*, the individual subject to the other party's act of dissipation) would have been shortchanged had the ancillary matters hearing date been used for valuation. The appellant says that she is the victim here and she would be prejudiced if the ancillary matters hearing date is not the applicable date.

6 Furthermore, Mr Chan says that "dissipation is a matter that goes towards identification and not valuation" of the matrimonial assets (citing *VDT v VDU* [2020] SGHCF 15 at [13]) and therefore, the respondent's dissipation of

the shares in Company X should have no bearing on the date of valuation. The appellant also claims that at the hearing below, the respondent wanted to adopt the IJ date (*ie*, 12 April 2023) as opposed to the date of dissipation (in 2015) as the valuation date and that there is no reason to depart from the parties' agreement. Lastly, Mr Chan argues that using the ancillary matters hearing date to calculate the value of the respondent's shares will not be speculative because the only concern is whether there will be prejudice to the respondent if the ancillary matters hearing date is used.

7 Counsel for the respondent, Ms Amelia Lim, says that *Wan Lai Cheng* and *TDT v TDS* involve actions taken by a party to intentionally manage their assets to the detriment of their spouse after divorce proceedings have commenced. She says that the sale of the respondent's shares in Company X took place eight years before divorce proceedings commenced and even the DJ had found that divorce proceedings were not imminent at that time. The DJ added the notional value of the shares back only because he found that the respondent sold his shares to C1 at an undervalue. Had the shares been sold closer to its net asset value, the DJ may not have found the transaction to amount to a dissipation but a mere liquidation of assets. Ms Lim submits that the court has the power to exercise its discretion to depart from the general position and that this discretion is not limited to the facts of *Wan Lai Cheng* and *TDT v TDS*.

8 I am of the view that the present case is different from *Shih Ching Chia* and *WJG v WJH*. In those cases, the dissipation occurred during or shortly before the parties' divorce proceedings and when divorce was imminent. This is in stark contrast to the present case, where the transfer of shares occurred eight years before divorce proceedings commenced. Although there is evidence that the parties' relationship had begun to deteriorate by 2015, they continued to function as a married couple for several years thereafter, even going on

various overseas trips together in 2017 and 2019. Moreover, in determining whether to depart from the default position and adopt an earlier valuation date, the court's discretion is not confined to the sole consideration of prejudice to the wife. The court must take a holistic view of all relevant circumstances.

9 In the present case, the substantial time lapse between the transfer and the divorce proceedings means that the increase in Company X's value between 2015 and 2023 is more likely the result of business decisions and market conditions that occurred well after the respondent had relinquished his ownership. Even if we were to consider that the respondent had control over Company X until 2018 when C1 took over as the director, that was still five years before divorce proceedings begun. The undervalue of the alleged transaction does not entitle the appellant to benefit from Company X's subsequent growth, particularly when the respondent himself had no control over or benefit from such growth. There is no evidence that the respondent continued to exercise control over Company X, nor benefit from the growth of Company X. I am of the view that adopting the valuation as at 2023 would effectively treat the respondent as though he had remained a shareholder throughout this period, creating a fiction that ignores the commercial reality of his disengagement from the company. The DJ was therefore correct in concluding that it would be artificial and unduly prejudicial to the respondent to adopt the latest value of the shares.

10 The appellant's second ground of appeal is that the DJ had wrongly deducted the consideration of $150,000 from the notional value of the respondent's marital shareholding. She says that the DJ failed to place sufficient weight on C1's inability to raise $150,000 as he was a university student with no fixed income. She also claims that in any event, the DJ failed to pro-rate the $150,000 (which accounts for the respondent's full shareholding of 250,000

shares) to $105,000 to account for the respondent's marital shareholding of 175,000 shares. Conversely, the respondent says that the entire $150,000 was received by the respondent in 2015 and added into his pool of matrimonial assets. As such, the same amount should be deducted to avoid double counting the $150,000.

11 A crucial point of contention is how C1 managed to raise $150,000 to purchase his father's shares as a 23-year-old full-time student pursuing an engineering degree. The respondent explains that C1 had a few sources of funds — primarily, a sole proprietorship which C1 had incorporated on 15 May 2014 ("Company Y"), about one year before the transfer of shares on 19 May 2015. Company Y dealt with second-hand mobile phones, including their resale and export and the repair of spare parts of mobile phones. Additionally, C1 earned money from providing private tuition and received allowance from his biological mother. The respondent says that these sources collectively provided C1 with sufficient means to purchase the shares at a young age. The DJ accepted the evidence, finding it unlikely that C1 would have registered a business solely for the purpose of executing this dissipation with his father.

12 However, I draw a different conclusion on those facts. The respondent's explanation regarding C1's ability to pay $150,000 for the shares in Company X is unsatisfactory. The only documentary evidence supporting the alleged payment is an image of a cheque dated 28 May 2015 (nine days after the transfer of shares) issued to the respondent by Company Y. There is no proof that this cheque was ever presented to the bank. The respondent explained that he could not retrieve the relevant bank account statements as the bank did not retain any records beyond seven years, but he was unable to adduce a letter stating the bank's policy nor reasons for refusal. Furthermore, there are no financial statements evidencing Company Y's profits, and notably, that business

suspended its operations on 15 May 2018. The fact that the respondent remained a director until 2018, despite transferring the shares to his son, raises further questions regarding the true nature of the transaction. The respondent emphasises that the appellant did not pursue this matter in her application for discovery nor dispute the respondent's receipt of $150,000, but he must now be reminded that the burden remains on him to prove the receipt of consideration. I find that the purported $150,000 should not be deducted as there is insufficient proof of actual payment, and the notional sum to be added back to the pool of matrimonial assets should be $251,874.70. Based on the parties' assets and the division ratio of 75:25 in favour of the respondent, the respondent should have no issues satisfying the division order.

13 For the reasons above, the appeal is allowed in part. I make no order as to costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Chan Eng Jin Darren and Zhang Shaohua David (Legal Aid Bureau) for the appellant;
Low Seow Ling and Lim Hong Wen Amelia (Emre Legal LLC) for the respondent.