

AQN v AQO
[2011] SGHC 127

Case Number : Divorce Suit No DT 448 of 2008 (Summonses No 5814 of 2010, 1455 of 2011, 1630 of 2011 and 1934 of 2011)
Decision Date : 20 May 2011
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Lew Chen Chen (Chambers Law LLP) for the plaintiff; Yeo Khee Chye Raymond (Raymond Yeo) for the defendant.
Parties : AQN — AQO

Family law – Matrimonial assets – Custody

20 May 2011

Tay Yong Kwang J:

Introduction

1 The parties were married on 24 June 1979. I shall refer to them individually as “the husband” and “the wife”. Some 29 years later, in 2008, divorce proceedings were commenced by the husband. The wife lodged a counterclaim. On 20 June 2008, an interim judgment dissolving the marriage was granted by the Family Court on the ground of unreasonable behaviour on the part of both parties. The interim judgment was made final on 2 December 2008. The ancillary matters were transferred to the High Court and were dealt with by me on 28 June 2010 (“the first hearing”).

2 The husband is now 57 years old while the wife is now 56 years old. Both are Hong Kong citizens with permanent resident status in Singapore. The husband is a medical professional working in a Singapore hospital and he resides here. The wife is the president of a technology institute in Hong Kong and a well known newspaper columnist and television and radio talk show host there. She resides in Hong Kong but travels frequently between Hong Kong and Singapore.

3 There were three children born during the marriage. The eldest son (first son”) was born in 1988 and was already an adult at the time of the first hearing. There was therefore no custody, care and control issue where he was concerned. He is studying abroad. The second son (“second son”) was born in 1993 and is now 17 years old. The youngest son (“third son”) born in 1997, now 13, was subsequently proved (during the course of the hearing of the ancillary matters) to be the offspring of the wife and another man living in Hong Kong, and the husband is therefore not his biological father. The second son and the third son reside with the husband in a private property in Singapore.

The first hearing on 28 June 2010

4 At the first hearing, I made the following orders pertaining to the sons and to the matrimonial properties (with “plaintiff” referring to the husband and “defendant” referring to the wife):

1. Custody, care and control of the second son and the third son to be given solely to the Plaintiff.

2. Access by the Defendant to the second son and the third son is suspended for 12 months with effect from today, i.e. 28 June 2010, until further order.
3. The Defendant is permitted to communicate with the second son and the third son by electronic and postal means.
4. The Plaintiff to maintain the second son and the third son.
5. On the immovable properties
 - (a) The Plaintiff shall have the three (3) Singapore properties, namely [addresses redacted]:
 - i. X Duchess Avenue Singapore 266335;
 - ii. Unit X International Plaza Singapore 079903; and
 - iii. Unit X Astrid Meadows Singapore 269258.
 - (b) The Plaintiff and the first son shall have the Penang property [address redacted].
 - (c) The Defendant shall have the five (5) Hong Kong properties, namely [addresses redacted]:
 - i. Flat X Nassau Street Mei Foo Sun Chuen, Hong Kong;
 - ii. Flat X Champion Building 301-309 Nathan Road Kowloon;
 - iii. Unit X Concordia Plaza, Observatory Road, Tsim Sha Tsui, Kowloon;
 - iv. Unit X Concordia Tower, Observatory Road, Tsim Sha Tsui, Kowloon; and
 - v. Flat No. X Apartment Tower on Western Side of Convention Plaza.
6. On the movable properties
 - (a) UBS account [xxx] (consisting of Fixed Deposit Account, Call Deposit Account and Strategy Funds Account) shall belong to the Plaintiff solely.
 - (b) RBC Dominion Securities [xxx] as at June 2008 shall be divided 50% each to the Plaintiff and the Defendant.
 - (c) UBS Account No. [xxx] shall belong to the Defendant.
 - (d) The Plaintiff shall retain the following accounts solely:-
 - CPF Account
 1. CPF Ordinary Account
 2. CPF Medisave Account
 3. CPF Special Account

Retirement account and insurance policy

4. Retirement Account

5. Insurance Policy

Bank accounts under Plaintiff's sole name

6. POSB Savings Account No. [xxx]

7. POSB Bank Cheque A/C No. [xxx]

8. Citibank Fixed Deposit Account No. [xxx]

9. DBS Bank Savings A/C No. [xxx]

(e) The Plaintiff and Defendant shall have 50% each of the following bank accounts in their joint names:-

1. HSBC Bank Australia Limited Savings Account A/C No. [xxx]

2. UOB Bank Fixed Deposit Account No. [xxx]

3. UOB Bank i-Account No. [xxx]

4. Maybank Current A/C No. [xxx]

5. Maybank Savings Account No. [xxx]

6. Bank of America Prima Interest Checking Account No. [xxx]

7. Bank of America Interest Maximizer Account No. [xxx]

(f) The United Overseas Bank Safe Deposit Box No. [xxx] shall belong to the Defendant solely.

(g) The shares with Li & Fung under joint names of the Plaintiff and the Defendant shall belong to the Defendant solely.

(h) The following bank accounts shall remain in the joint names of the Plaintiff and the sons, namely:-

1. UOB Bank Fixed Deposit Account no. [xxx] with the first son;

2. UOB Bank Fixed Deposit Account NO. [xxx] with the first son; and

3. POSB Bank Trust Account No. [xxx] with the third son.

(i) All the Plaintiff's shareholdings in the Hong Kong companies, namely Media Education & Management Services Pte Ltd and Gold Wheel Pte Ltd, shall be transferred to the Defendant.

- (j) The motor vehicle No. [xxx] Honda Odyssey shall be transferred to the Plaintiff. The motor vehicles No. [xxx] Mercedes Benz and motor vehicle No. [xxx] Mercedes Benz (Hong Kong) shall remain with the Defendant.
 - (k) OCBC Securities Client No. [xxx] under the Defendant's sole name shall belong to the Defendant solely.
 - (l) The following bank accounts under the Defendant's sole name shall belong to the Defendant solely:
 - 1. Hang Seng Bank Saving account [xxx]
 - 2. Hong Kong Bank Saving and current account [xxx]
 - 3. DBS Singapore Saving Account [xxx]
 - 4. UOB High Yield Account [xxx]
 - 5. Bank West Saving Account [xxx]
 - 6. City Bank (Taiwan) Saving Account [xxx]
 - 7. Royal Bank of Canada [xxx]
 - 8. Swiss Bank Corporation Account no. [xxx]
 - 9. UBS Zurich
 - (m) DBS Singapore Saving and Current Account [xxx] shall remain under the joint names of the Defendant and [B].
 - (n) The Defendant's Provident Fund account in Hong Kong shall belong to the Defendant solely.
- 7. No order on Summons 5026/09 and Summons 16953/08 as they are subsumed in the proceedings or overtaken by events.
 - 8. The passports of the second son and the third son to be handled over by the Defendant's solicitors to the Plaintiff's solicitors forthwith.
 - 9. The Plaintiff is to ensure that the third son's Hong Kong citizenship is renewed and to furnish the relevant documents to the Defendant's solicitors.
 - 10. Each party to bear his/her own costs of the proceedings.
 - 11. Liberty to apply where the implementation of the above orders is concerned.

5 As is evident from their occupations and the list of matrimonial properties, both parties are capable professionals and are financially secure. I granted custody of the third son to the husband despite the revelation that he is not the biological father as the third son was embraced by the husband and his half-brothers as part of the family and their relationship was good. The third son had also grown up for about a decade with the knowledge that this was his family and it would be unwise,

in my view, to split up the family now as a result of the wife's belated confession and revelation. Moreover, the third son appeared to harbour hostility and fear towards his mother for breaking up the family (as revealed in a Custody Evaluation Report). That is understandable in the circumstances. The same report dated 6 January 2010 in fact recommended that "the current access between (the wife) and (the second son and the third son) be suspended indefinitely" and that "it may resume when (the second son) and/or (the third son) wish(es) to resume face-to-face contact with (the wife)". The wife, who was represented by senior counsel during the first hearing, filed notice of appeal to the Court of Appeal against the orders made at the first hearing.

Events after the first hearing

6 On 30 July 2010, at the request of the wife's former solicitors, I heard further submissions relating to the implementation of order no. 9 set out above at [\[4\]](#) relating to the third son's Hong Kong citizenship. The wife had alleged that the husband could not return to Hong Kong as he would be subject to some investigations by the police there. He was therefore unable to bring the third son to Hong Kong to renew his citizenship upon the latter attaining 11 years of age. She wanted to be the parent to bring the third son to Hong Kong to do that. This allegation was denied by the husband.

7 Having perused the relevant documents from the Hong Kong Immigration Department, I was of the view that the third son's citizenship was intact and no renewal was needed. As the third son was not in Hong Kong on his 11th birthday, he only needed to apply for a new identity card within 30 days of his return to Hong Kong but there was no time limit under Hong Kong law for him to return there after turning 11. In any event, that did not affect his citizenship. When I made the said order no. 9 above, I was given to understand that some step had to be taken to renew the third son's citizenship but it became apparent from the Hong Kong Immigration Department's documents that there was no such requirement. The wife suggested that the law might change in time to come but the court proceeds on what Hong Kong law is at the relevant date, not what it might possibly be in the future.

8 Soon after the hearing of 30 July 2010, the wife's former solicitors filed notice of withdrawal of the appeal against the orders made at the first hearing. She then engaged her present solicitors.

9 On 29 October 2010, the wife's present solicitors wrote to the court to request that access to the third son "be arranged freely between (the third son) and herself, whenever and wherever it is comfortable for (the third son)". They also stated that the wife was prepared to bring the third son to Hong Kong for the renewal of his citizenship. The husband's solicitors objected to a further hearing to go over issues which had already been argued and determined. I did not accede to the wife's request for a further hearing.

Summons No 5814 of 2010

10 On 14 December 2010, the wife applied under Summons No 5814 of 2010 for the following orders:

- (1) that arrangements be put in place for the wife and the third son to undergo counselling by a counsellor to be appointed by this Honourable Court;
- (2) that the wife shall have access to the third son on such arrangements to be determined by this Honourable Court;

- (3) that the defendant shall have access to the second son on such arrangements to be determined by this Honourable Court;
- (4) that leave be granted to the wife to travel with the third son to Hong Kong to enable the third son to take the necessary steps to renew his Hong Kong ID;
- (5) that pursuant to paragraph 6(b) of the Order of Court dated 28 June 2010, leave be granted to the wife to pay into Court the husband's 50% share of the monies (as at June 2008) in the RBC Dominion Securities account and for the necessary consequential orders to be made for the said monies to be paid out to the husband accordingly;
- (6) that the wife's costs of and incidental to this application be provided for; and
- (7) that the wife be granted such further and/or other relief/s as this Honourable Court deems fit.

11 In support of her application, the wife filed an affidavit which, in essence, repeated much of what was said in her earlier affidavits filed for the first hearing. In addition, she claimed that the third son had posted on his Facebook page "that he is forming a club with the clear indication that he was beaten by his brothers" and that the husband had stopped him from joining the drama club, a popular activity of the school. She also claimed that a friend of the third son had posted on Facebook that the third son would not like to spend his birthday with his family. She also alleged that his academic results, particularly in mathematics, were declining, indicating the level of care that he was receiving. As the wife was trained as an engineer and is proficient in mathematics, she would be in a good position to help with his school work.

12 The wife also claimed that her work now enables her to remain in Singapore for longer periods and not just during the weekends as in the past and that the third son's natural father in Hong Kong adores him.

13 In relation to the RBC Dominion Securities account, the wife expressed her concerns again about paying the 50% share to the husband as ordered by the court at the first hearing because of the alleged ongoing investigations in Hong Kong concerning the husband. She said she had been advised by her Hong Kong solicitors that in order to protect herself from any indirect link with the commercial crime investigations, the husband's 50% share should be paid into court here or any relevant Singapore authority and that it be released to the husband only upon satisfactory written confirmation from the Hong Kong police that the investigations were completed and closed. Alternatively, she was prepared to furnish a bank guarantee pending the completion of the said investigations. In her solicitors' submissions, the wife wanted the husband to get a "Good Citizen Certificate" from the Hong Kong police to prove that he is not undergoing investigations and that there are no pending charges against him since he denied her allegations. Alternatively, she proposed that payment of the 50% share be made to the children.

14 About a week before the hearing of the wife's application, the court received a letter from [D], former principal of [E School], and his wife volunteering themselves as mediators for the wife and the

third son to meet and communicate with each other. It was subsequently confirmed by both parties' solicitors that a copy of the letter was also sent to them.

15 The husband objected to the wife's application on the grounds of *res judicata* and abuse of process. He claimed that she was merely rehashing the same events and attempting to re-argue matters which had already been determined by the court. He also alleged that her application was no more than a backdoor appeal against the orders made at the first hearing when she had already abandoned her appeal to the Court of Appeal and that her continuous correspondence with the court coupled with the present application amounted to unjust harassment.

16 On the merits of the wife's contentions, the husband said that the exhibits produced by her did not support what she was alleging concerning the third son. He claimed that her attempts to create discord in his family had caused a lot of distress to the third son. In relation to the orders concerning the matrimonial assets, the husband said that the wife "had demonstrated blatant disregard and contumacy against the orders of court" and that the RBC Dominion Securities account issue was another illustration of her inability and unwillingness to comply with the said orders.

17 It would be quite apparent from what has been set out earlier that the subject matters raised in the wife's application have been canvassed and decided by me at the first hearing. In my opinion, she was seeking every excuse to try to re-argue or to make further submissions in the hope that the court would eventually make an order acceptable to her. The third son had also written to rebuff her attempts to make him feel insecure and unwanted in his family. In his email of 31 December 2010 to the husband's solicitors, he complained that the wife (whom he referred to by name and not as "mother") had been sending him email that he found "very offensive" as she kept mentioning that he was an "orphan child" and a "tool for revenge" and that he was not loved by his family. He stated that he "would like her to understand that not everyone is as twisted as her". The wife alleged constantly that the third son was being pressured by the family to behave in a hostile manner towards her. However, her allegations were not borne out by the Custody Evaluation Report (referred to at [\[5\]](#) above). Her constant harping on the renewal of the third son's Hong Kong identity card could only strengthen the suspicion that all she wanted was to gain access to him despite his wishes and current feelings.

18 Where the RBC Dominion Securities account was concerned, the same issue was also repeated by her. She was effectively making an accusation against the husband and then asking him to prove his innocence. If the Hong Kong police wanted to contact the husband for any purpose or to place some form of injunction against his properties, they would surely know where he was and what properties he possessed. If they did not, I am quite certain the wife would have assisted them. There were also ample assets in Hong Kong for them to seize. Even if the husband is subsequently proved to have been involved in illegal activities in Hong Kong, I was of the view that the wife could not be faulted in any way for complying with a lawful order of a foreign court of competent jurisdiction.

19 In the circumstances, I was compelled to dismiss her application with costs fixed at \$1,500. I reiterated, as I did at the conclusion of the first hearing, that the order suspending access for one year was not to punish her for her past conduct but to allow everyone, especially the sons, some breathing space and not to be caught in constant conflict between the husband and the wife.

20 The wife has lodged an appeal to the Court of Appeal in Civil Appeal No. 23 of 2011 against the dismissal of her application.

Events subsequent to Summons No 5814 of 2010

21 On 9 May 2011, I heard three applications by the parties. The first was taken out by the wife for enforcement of the orders made at the first hearing concerning two of the Hong Kong immovable properties (Summons No. 1455 of 2011). The second was taken out by the husband for enforcement of the orders concerning the three Singapore immovable properties and the RBC Dominion Securities account (Summons No. 1630 of 2011). The final application was by the wife for a stay of execution of the orders relating to the RBC Dominion Securities account pending the outcome of the wife's appeal to the Court of Appeal mentioned in [\[20\]](#) above (Summons No. 1934 of 2011).

22 I made the following orders in respect of these three applications:

- (1) The wife is to proceed to transfer the two Hong Kong immovable properties to her sole name as the husband has done all that is necessary on his part.
- (2) The wife is to sign all relevant transfer documents for the three Singapore immovable properties and to instruct her Singapore conveyancing solicitors (who are not the solicitors in the current applications) to transfer all the documents to the husband's Singapore solicitors within two weeks.
- (3) The wife's Hong Kong solicitors are to furnish a bill regarding the transfer of the Hong Kong immovable properties to the wife's sole name.
- (4) The husband's Singapore solicitors are to furnish a bill regarding the transfer of the Singapore properties to the husband's sole name.
- (5) The conversion rate for Singapore and Hong Kong dollars is to be the rate as at 9 May 2011.
- (6) The parties will thereafter set off their respective bills and make the payment accordingly.
- (7) The wife is to pay the husband's 50% share in the RBC Dominion Securities account into court in Singapore within two weeks and to notify the husband's solicitors immediately of such payment in.
- (8) Thereafter, there be payment out of court of the husband's said 50% share to him upon the husband taking out an order for payment out of court.
- (9) The wife is to pay the husband \$1,500 costs for these three applications.

23 I finally decided to order payment into court of the husband's 50% share in the RBC Dominion Securities account so as to stop the wife from repeating the same story over and over again about her fears of being implicated in the alleged questionable past financial activities of the husband. In her

affidavit in support of this application, she said:

I had on 11 February 2011 written to the Commercial Crime Bureau of the Hong Kong Police informing them that I was required by an Order made by the Singapore Courts to pay to the Plaintiff a certain amount of monies. I had enquired if I could forward the money to the Plaintiff despite the ongoing investigations. Before the Hong Kong Police replied, the Inspector-in-Charge, Senior Inspector Lau Chi Chung (Telephone No. 28604828) called me and confirmed that the investigations were still ongoing and investigations have been forwarded to the Legal Department pending the return of the Plaintiff. I tried to ask the police to include this fact of the ongoing investigations in the reply but this was refused by the Hong Kong Police as this concern a criminal case investigation and I am not officially authorized by the Plaintiff to represent him in any aspect. As a gesture of goodwill, I had also asked the police whether the police would consider a settlement of the issue. The police indicated that since the case was in the hands of the Legal Department, this would be a decision to be made by the Legal Department. *The police also asked for a full set of the Divorce documents which I refused to provide. I was not sure whether the police would use the documents to force the Plaintiff to return to Hong Kong.* The Hong Kong Police replied on 1 March 2011 but they did not give instructions that I could forward the monies to the Plaintiff. I would assume if there were no ongoing investigations by the Hong Kong Police as to the Plaintiff's questionable activities, they would have given a clear answer for the payment to process as the government will not interfere in any citizen's private money transaction issues.

[emphasis added]

24 The wife exhibited her letter dated 11 February 2011 (wrongly stated as 11 February 2010) to the Hong Kong Police which reads as follows:

I am [name and identity number].

I was told by a Mr Kwok (Tel 28607803) of Hong Kong Police that my former husband, [name and identity number] was located by the Commercial Crime Bureau of Hong Kong Police, and for this purpose a written letter was forwarded to the Singapore Police for their reference.

Recently there is a Singapore court order providing that I should forward around HK\$7 million to [husband's name] from one of the Hong Kong account, under my sole name as settlement of the divorce case with [husband's name].

I indicated to the Singapore Government the situation of [husband's name]. As I am afraid that the release of money may constitute money laundry, I had suggested to the Singapore court:

1. To maintain the money in the Hong Kong account (with bank undertaking) upon the return of [husband's name] to Hong Kong and the settlement of the case with the Commercial Crime Bureau, Hong Kong Police.
2. To forward the money either to the Singapore or Hong Kong Government.

I was advised by the Singapore court that clarification should be made with the Commercial Crime Bureau.

If it is advised by the Hong Kong Police that I should forward the money to [husband's name] despite the unsettled case, I would follow the instruction accordingly.

Please do not hesitate to contact me if any further information is required.

[Address and telephone numbers]

Thank you for your attention.

25 The Hong Kong Police's reply dated 1 March 2011 to the wife reads:

Thank you for your letter dated 11th February 2011 and your further information provided on 21st February 2011.

Based upon the documents you provided, there is insufficient information for us to verify your assertion on the details of court order.

Please be informed that since the case is only a civil matter in a foreign jurisdiction, we are not in a position to provide you with any comment/advice in this respect.

Should you have any query, please contact the Officer-in-charge Senior Inspector LAU Chi-chung of FS 2D CCB 28604828.

26 It is not clear what documents the wife had given to the Hong Kong Police. It is also hard to understand why the wife said in [23]:

The police also asked for a full set of the Divorce documents which I refused to provide. I was not sure whether the police would use the documents to force the Plaintiff to return to Hong Kong.

Why was she concerned about any forced repatriation of the husband? Further, even if there were ongoing investigations, that did not mean that the husband had committed some crime. I repeat here my opinion stated in [\[18\]](#) above.

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