

Castello Ana Paula Costa Fusillier v Lobo Carlos Manuel Rosado (No 2)
[2004] SGHC 114

Case Number : Div P 601422/2002, RAS 720114/2003, 720115/2003
Decision Date : 28 May 2004
Tribunal/Court : High Court
Coram : Lai Kew Chai J
Counsel Name(s) : Luna Yap (Luna Yap and Co) for petitioner; Chandra Mohan K Nair (Tan Rajah and Cheah) for respondent
Parties : Castello Ana Paula Costa Fusillier — Lobo Carlos Manuel Rosado (No 2)

Family Law – Matrimonial assets – Division – Whether wife entitled to half of assets

Injunctions – Dissolution – Existing injunction ordered to continue – Whether injunction should have been dissolved

28 May 2004

Lai Kew Chai J:

1 At the conclusion of the hearing in respect of ancillary matters, the district judge made a number of orders. By consent, both parties were granted joint custody, care and control of the younger son, Ricardo Lobo ("Ricardo"), 19 years old. The only other child of the marriage is the elder son, Goncalo Lobo ("Goncalo"), 21 years of age, who is schooling in Australia. The respondent, whom I will refer to as "the husband", was ordered to continue to maintain the two sons but this issue was scheduled to be reviewed, as a separate matter, upon the retirement of the husband in December 2003 from Singapore International Airlines ("SIA"), where he had been working as a captain pilot.

2 It was ordered that the appellant, whom I shall refer to as "the wife", be entitled to 30% of the matrimonial assets, less the income tax payable upon retirement. The list of assets has not been in dispute. These assets were three real properties in Portugal, namely the Algarve bungalow and the two flats in Cascais, the Central Provident Fund moneys, cash balance in the Standard Chartered Bank accounts (as at the date of the order), stocks in the DBS Bank accounts, the Singapore Airlines Provident Fund and the \$12,000 rental deposit, less the husband's personal income tax payable upon retirement.

3 The husband was also ordered to pay the wife lump sum maintenance of a sum of \$288,000. An injunction had been issued earlier against the husband, freezing his assets. It was varied by the district judge to enable him to pay the lump sum maintenance out of his accounts with the Standard Chartered Bank. The injunction was continued over the rest of his assets and he, by the order of the district judge, remained restrained from withdrawing his moneys in the CPF account, the Singapore Airlines Provident Fund, the Standard Chartered Bank accounts and the stocks in the DBS Bank accounts, until the division of the real properties in Portugal was dealt with. It was envisaged that, possibly, values of the real properties in Portugal could be agreed and there would be the transfer, by consent, of a property to the wife to account of her share of the matrimonial assets. Apart from the injunctioned assets, it should be borne in mind that the husband still had \$86,000 available to him in a bank account which was not covered by the injunction.

The parties' appeals

4 In the appeal before me, counsel for the wife submitted that she should be awarded 50% of

the matrimonial assets. The husband's cross appeal is against the continuation of the injunction. After hearing the submissions in both appeals, I dismissed them with no order as to costs.

The facts

5 The relevant facts may be shortly stated. The parties are both Portuguese nationals. They have been residing in Singapore since early 1978. They were married at the Singapore Marriage Registry on 4 April 1978. Their two sons, Goncalo and Ricardo, are 21 and 19 years of age. After a 25-year marriage, decree *nisi* was granted to both parties separately, on the ground of the other's unreasonable behaviour.

6 The husband had been a captain pilot with SIA since 1978. He worked for 25 years. Not unexpectedly, he had to be away from home because his work took him to other countries for regular intervals of time. Until June 2003 his last basic salary was \$19,500 per month. He was also paid other allowances which varied from month to month. By 7 December last year, he attained the age of 60 years and was compulsorily retired as an airline pilot.

7 The wife has never worked. She brought up the two sons, who admittedly are closer to her than to their father, who perforce was not at home most of the time. His unavoidable absence from the two boys did not help to bond him to them. She had the help of a maid and a part-time gardener at all material times.

8 The family usually went to Portugal twice a year for their holidays. On these trips, SIA provided one free round trip a year starting from Singapore to London. For the second trip, the husband had to pay 10% of the fare for the round trip. Detours to Portugal were paid for by him. His contributions to bond the family in these ways must be appreciated.

9 It is noteworthy and it was common ground that the wife, on her own admission, had refused him his conjugal rights since February 1994. Accordingly, for nine out of the 25 years of marriage, such *consortium vitae* he enjoyed from his wife excluded the element of the warmth of intimacy. I agreed with the finding of the district judge that the wife "did not take care of the husband". In my view, she failed to keep the hearth warm, at least for the period of about nine years before the decree *nisi* was made. I also concurred with the district judge who was not impressed by the wife's criticism that the husband suffered from jet lag and was asleep for quite a lot of the time he was at home. Given the demands of his job, I must say that the impression I formed after reading the affidavits was that the husband was quite disciplined and had doggedly soldiered on to provide for his family, including, not least, the two boys.

10 Goncalo was schooling in Australia. Since 2002, the husband forked out A\$12,000 per year to maintain the son's education. He spent some A\$8,000 to settle Goncalo down in school and provided essentials such as a bed, mattress, writing desk, Internet service and a computer. He also provided the son with a mobile phone. He even paid A\$800 per year for his gymnasium membership.

11 Ricardo used to study at the United World College of South East Asia in Singapore. His school fees was \$21,475.50 per year. Since 2003 he has been studying in Durham, England. His fees and accommodation cost about \$8,250 per year. These expenses were also borne by the husband.

12 After his retirement the husband will not have any salary. He will be paid a pension of around \$1,000 per month from Portugal. He will have to fall back on his assets. His tax liability has to be cleared. His wife will also be paid a pension from Portugal of \$329.96 per month.

The assets

13 Over the last 25 years of the marriage, the husband acquired the following assets from his earnings as a pilot:

| | |
|---|----------------|
| (a) Two accounts in Standard Chartered Bank: | |
| Current | \$ 113,263.3 |
| Savings (not affected by the injunction) | \$ 86,006.67 |
| (b) Standard Chartered Bank foreign currency (Euro148,270.75) equivalent to | \$ 291,559.60 |
| (c) Standard Chartered Investment Fund | \$ 97,597.23 |
| (d) CPF (plus all other accounts) | \$1,179,757.50 |
| (e) SIA Provident Fund | \$ 701,435.19 |
| (f) Motorcycle (Honda Valkerie) | \$ 12,000.00 |
| (g) Motor car (Spacewagon) | \$ 19,500.00 |
| (h) SingTel shares (30,000 shares) | \$ 36,000.00 |
| (i) Household items | \$ 100,000.00 |
| (j) Volkswagen Beetle, Golf (1995) and Harley Davidson | \$ 20,500.00 |

Properties in Portugal:

| | |
|--|---------------|
| (a) Algarve bungalow, Almancil, Portugal | \$ 788,000.00 |
| (b) Wuinta Da Bicuda, Cascais, Portugal | \$ 620,550.00 |
| (c) Torre Branca, Cascais, Portugal | \$ 346,720.00 |

14 All told, the assets were estimated by the husband to be about \$4,437,189.70. There is no agreement on this estimation. Parties will divide the net proceeds of each asset, except for the three real properties in respect of which parties may agree on the valuation of each property, and the wife takes a transfer of a property subject to the agreement of the husband.

Decision

15 In the division of matrimonial assets, courts have to arrive at a just and equitable division in the light of all the circumstances of the case, including the matters listed in s 112(2) of the Women's Charter (Cap 353, 1997 Rev Ed). A broad brush approach has been approved and followed in several

similar cases. I agreed with the division ordered by the district judge which, taken in the round, are in line with divisions in the past. The husband played a more contributory role in the acquisition of assets. 70% was, in my view, a fair and just division for his efforts and contributions. The award of 30% to the wife is just and fair in all the circumstances recited above.

The husband's appeal

16 I now turn to the husband's appeal which may be dealt with shortly. The district judge enjoined him from withdrawing his moneys held in the Standard Chartered accounts, the CPF accounts, the SIA Provident Fund and the DBS Bank accounts.

17 The injunction was continued in the light of the following facts. The first injunction was granted on 22 April 2002, after the wife discovered that the husband had removed moneys from the joint HSBC account in London to open a new account at another branch in his sole name without her consent or knowledge. The explanation was that the new branch was nearer to him and it was more convenient for him to effect banking transactions at the new branch.

18 Further, the husband withdrew moneys from an injuncted Standard Chartered Bank account to pay his lawyers and the wife's first maintenance payment. There was a dispute whether he had told the wife about the withdrawal, as he claimed, or not, as the wife claimed.

19 In September 2002 the husband instructed the Standard Chartered Bank to remove moneys from the injuncted accounts and deposit them in new accounts, in breach of the first injunction. By an order of court of 16 October 2002 he was ordered not to deal with the accounts, pending further order.

20 The husband had indicated that he intended to return to Portugal upon his retirement from SIA. The wife was concerned that if the injunction was lifted, the husband could return to Portugal with the money. She asked the court to assist her by ensuring compliance with the court's orders for division of the matrimonial assets.

21 The district judge continued the injunction. She did so in the light of the husband's previous conduct in relation to the injuncted accounts. She pointed out that he could continue with the free use of the sum of \$86,000 in the Standard Chartered Bank savings account, which was not subject to the injunction. I saw no reason to take a different view of the matter.

Both appeals dismissed with no order as to costs.

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