

Tan Bee Bee v Lim Kim Chin
[2004] SGHC 242

Case Number : Div P 1096/2000, RAS 720116/2003

Decision Date : 27 October 2004

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Petitioner in person; Joseph Ang (Tan Kok Quan Partnership) for respondent

Parties : Tan Bee Bee — Lim Kim Chin

Civil Procedure – Costs – Appropriate order for costs.

Family Law – Maintenance – Maintenance of former wife – Whether wife required maintenance from husband.

Family Law – Matrimonial assets – Division – Whether husband failed to make full disclosure of assets – Whether wife should be given more time to ascertain the other matrimonial assets allegedly held by husband.

Family Law – Matrimonial assets – Division – Whether trial judge gave sufficient weight to wife's greater indirect financial and non-financial contributions in dividing the assets – Section 112(2) Women's Charter (Cap 353, 1997 Rev Ed).

Family Law – Matrimonial assets – Whether husband's property that was inherited prior to marriage qualified as matrimonial asset – Whether wife's indirect contributions could constitute an improvement under s 112(10)(a)(ii) of the Women's Charter (Cap 353, 1997 Rev Ed).

27 October 2004

Woo Bih Li J:

1 Tan Bee Bee ("the wife") and Lim Kim Chin ("the husband") were married on 8 February 1965. On 14 April 2000, the wife petitioned for a divorce on the ground that the marriage had broken down irretrievably in that the husband had behaved in such a manner that she could not reasonably be expected to live with him. The petition was amended to change the ground for divorce to four years' separation.

2 The decree *nisi* was granted on 12 September 2000. There were two children from the marriage. The son who was born on 14 October 1965 was working as a medical researcher in England. He would have been almost 35 years of age as at the date of the decree *nisi*. The daughter who was born on 8 August 1972 was working as a practising lawyer in Singapore. She would have been 28 years of age as at the date of the decree *nisi*. The ancillary matters pertaining to the wife's maintenance and the division of the matrimonial assets were adjourned to be heard in chambers.

3 On 17 October 2003, a district judge ("DJ") made her order on the ancillary matters. The DJ awarded the wife the following in accordance with the proposal of the husband:

(a) 50% of the matrimonial flat at 10 Jalan Lempeng

#02-01, Parkwest Condominium, Singapore

128797, which the DJ considered to be worth

$$\$570,000 = \$285,000$$

(b) 35% of the other matrimonial assets held by

$$\text{the husband ie 35\% of \$913,000} = \underline{\$319,550}$$

$$\underline{\$604,550}$$

As no maintenance was provided for under the husband's proposal, the DJ made no order for maintenance of the wife. The DJ also made no order as to costs in respect of the ancillary matters.

4 The DJ adopted the husband's proposal because it gave the wife more than what the DJ would have given. The DJ said she would have given the following to the wife:

(a) 70% of the matrimonial flat ie 70% of

$$\$570,000 = \$399,000$$

(b) 35% of the combined matrimonial assets of

husband and wife, excluding the matrimonial

flat, ie 35% of \$1,121,000 = \$392,350. After

deducting \$208,000 being the matrimonial assets

held by the wife, excluding the matrimonial flat,

the difference is $\$184,350$

(c) Maintenance of \$250 per month for three years $\underline{\$ 9,000}$

$$\underline{\$592,350}$$

5 As can be seen, the DJ concluded that aside from the matrimonial flat, the matrimonial assets held by the husband amounted to \$913,000 and those held by the wife amounted to \$208,000, making a total of \$1,121,000. I will refer to the matrimonial assets other than the matrimonial flat as "the other combined matrimonial assets" or "the other matrimonial assets held by the husband" or "held by the wife" as the case may be.

6 The DJ's own computation was on the following basis:

(a) As regards the matrimonial flat, the DJ concluded that the wife's and husband's respective direct financial contributions were 36.4% and 63.6%. She then awarded 30% to 35% of the matrimonial flat to the wife for her indirect contributions and rounded the total to 70%.

(b) The DJ then used the same 35% figure to allow the wife 35% of the other combined matrimonial assets. The DJ said that she thought that was fair.

7 The wife appealed against the DJ's order. The appeal was heard by me and after hearing arguments, I allowed the appeal by varying the DJ's order although not to the extent that the wife had sought.

8 As regards the division of the matrimonial assets, the wife had sought 70% of the matrimonial flat and 50% of the other matrimonial assets held by the husband. In addition, she asserted that the husband had failed to disclose all such assets. As regards maintenance, the wife had sought a lump sum of \$200,000.

9 Both husband and wife were teachers, the husband being a graduate teacher and the wife a non-graduate teacher. The husband's monthly salary was more than the wife's but he had stopped working earlier. He retired in January 1993 at the age of 60. The wife continued working until she retired more than eight years later on 1 April 2001 at the age of 62.

10 It seemed to me that the 30% to 35% of the matrimonial flat which the DJ had computed to the wife for her indirect contributions was based on the wife's indirect financial and non-financial contributions. Likewise the DJ's computation of 35% to the wife for the other combined matrimonial assets appeared to be for the wife's indirect financial and non-financial contributions.

11 However, this was not a case where the husband was solely or mostly responsible for all the expenses and welfare of the family. Both had contributed financially to the expenses and welfare of the family and, on the evidence before me, I found that the wife had contributed more, although it was impossible for me to say how much more. The husband had saved more of his salary which allowed him to engage quite heavily in share transactions through various stockbrokers. The value of the other matrimonial assets held by him, *ie* \$913,000, was much more than the value of those held by her, *ie* \$208,000, even if I were to assume that he had disclosed all of such matrimonial assets. In my view, although the wife's financial contributions were not directly for the purpose of the husband's acquisition of such matrimonial assets, such financial contributions should be taken into consideration under s 112(2)(d) of the Women's Charter (Cap 353, 1997 Rev Ed) which provides that the court is to have regard to the extent of the contributions made by each party to the welfare of the family. In any event, even if her indirect financial contributions did not come within s 112(2)(d), s 112(2) requires the court to have regard to "all the circumstances of the case" and the sub-clauses thereunder are not exhaustive.

12 Had the husband been solely or mostly responsible for all the expenses and welfare of the family, the 35% figure which the DJ was inclined to award to the wife for her indirect contributions might have been fair. However, since I concluded that her indirect financial contributions were more than the husband's, I was of the view that if there were an equal distribution of the other combined matrimonial assets, that would make up for the wife's greater indirect financial contributions. However, I should still take into account indirect non-financial contributions. On this point, I was of the view that although the wife was working too, she was the primary care-giver and should be awarded 10% more of the other combined matrimonial assets. Her percentage of such assets was therefore 50% + 10% = 60%.

13 Unlike the other combined matrimonial assets, it was possible to deduce the direct financial contributions towards the acquisition of the matrimonial flat. The DJ found the wife's direct financial contributions to be 36.4%. The DJ said:

11. The wife claimed that while both parties contributed towards the monthly installments for the matrimonial flat, she had contributed more. However, this is not borne out by the documents. The documents as exhibited by the wife in her 1st affidavit (filed on 27th October 2000) at page 108 and by the husband in his 2nd affidavit (filed 29th October 2001) at page 19 shows that the wife paid \$116,986.84 and the husband paid \$181,807.30 from their respective CPF accounts.

12. On top of the CPF contributions, the husband also said he paid for the booking fee of \$14,750 and survey and maintenance fee of \$5,604.35 (total - \$20,354). The wife says this was paid from the sale proceeds of their previous matrimonial flat and thus, some portion ought to be attributed to her as well.

13. The present matrimonial flat is the parties' third matrimonial home. They had lived in their first matrimonial home from 1964 to 1971 and in their second matrimonial home from 1974 to 1986. The present matrimonial flat was bought in 1986. In the intervening period when they did not have their own matrimonial home, they lived in quarters provided by the husband's employers and later at the home of the wife's mother.

14. It was not denied that the first two matrimonial homes were in the husband's sole name and that he had paid for them through his CPF funds. Nonetheless, as the sum of \$20,354 was paid out of the sale proceeds of their previous matrimonial home, I thought it fair to attribute it to both parties equally (ie \$10,177 each). In addition, the husband paid another \$30,000 for furniture and fittings. This was not disputed by the wife (see her Schedule of Assets).

15. Hence, the direct financial contributions by the parties are as follows:

	<u>Petitioner (wife)</u>	<u>Respondent (husband)</u>
CPF	\$116,986.84	\$181,807.30
Booking fee etc.	\$10,177	\$10,177
Furniture and fittings		\$30,000
Total	\$127,163.84	\$221,984.30
Percentage	36.4%	63.6%

14 I saw no reason to disturb the DJ's finding on the direct financial contributions for the matrimonial flat. In my view, the wife's indirect financial contributions would not give her another 50% of the matrimonial flat. Taking into account her indirect financial and non-financial contributions, I was of the view that she should be given around 20% more. Accordingly, her entitlement to the matrimonial flat should be 36.4% + 20% = 56.4%. I rounded this up to 56.5%.

15 Therefore the wife's entitlement is:

(a)	56.5% of the matrimonial flat (valued at		
	\$570,000)	=	\$322,050
(b)	(i) 60% of \$1,121,000 being the other		
	combined matrimonial assets	=	\$672,600
	(ii) To deduct the other matrimonial assets held		
	by the wife	-	<u>\$208,000</u>

16 The total of 15(a) and (b) is \$786,650 on the assumption that the matrimonial flat is worth \$570,000.

17 The dispute on the list of matrimonial assets was as follows:

- (a) The wife asserted vigorously that the husband had not disclosed all the other matrimonial assets held by the husband;
- (b) There was an initial dispute that US\$68,000 should be included in the other matrimonial assets held by the husband;
- (c) The wife asserted that a property held by the husband in Muar, West Malaysia, should be included in the other matrimonial assets held by the husband; and
- (d) The wife asserted that a Nissan car which was registered in the daughter's name should not have been included as a matrimonial asset held by the wife.

18 On the question as to whether the husband had disclosed all the other matrimonial assets held by him, the wife had applied to vacate the hearing date of the appeal so that she could appoint an expert, one Dr Ho Ngiap Kum, to obtain information from banks, financial institutions and stockbrokers in Singapore and Malaysia to ascertain the other matrimonial assets held by the husband, as she did not accept that he had made full disclosure of the same. After hearing arguments, I dismissed that application because (a) the wife had initially appointed sh Ong Company, a firm of certified public accountants, to assist her for this demonstration and (b) the husband had given various letters of authority to the wife to enable her to obtain the information she was seeking and had forwarded numerous documents to her through her solicitors for perusal. True, sh Ong Company had written a letter to the wife's previous solicitors dated 16 April 2003 to say that as the documents they were furnished with were not complete, they were unable to ascertain the total assets (of the husband). However, it was for the wife and her solicitors to get together with sh Ong Company to ascertain specifically what other documents were needed and to make use of the letters of authority to obtain such documents, before arguments were made to the DJ. As it was, the documents before the DJ were already voluminous. In the circumstances, I was not prepared to allow the wife to trawl through this exercise all over again with another expert and I dismissed her application.

19 Even then, the wife raised a number of specific points about non-disclosure by the husband to which Mr Joseph Ang, counsel for the husband, responded in detail and managed to show that her points were not valid.

20 In the circumstances, there was insufficient evidence that the husband had hidden significant matrimonial assets away and I declined to increase the amount to be awarded to the wife based on hidden assets.

21 As for the sum of US\$68,000, this sum had been sent by the husband to the son as a gift but with a condition, ie that the husband might require the moneys back if the legal proceedings with the wife left him in need of money. The wife had initially wanted this sum to be included as part of the other matrimonial assets held by the husband. However, when the wife appeared before me, after having discharged her solicitors, she expressed concern that if she was successful on this issue, the husband would ask for the return of the US\$68,000 from the son. I stressed to the wife that that was

a matter between the husband, ie father, and son, but she maintained that she would not claim any part of the US\$68,000 which therefore became a non-issue.

22 As for the husband's property in Muar which the husband said he had inherited from his father in 1957, I agreed with the DJ that this did not qualify as a matrimonial asset. I would add that in the course of arguments for the wife's application to vacate the hearing date of the appeal, one of the reasons given to me for the application was that the wife wanted to have an inspection of the land done to refute the husband's allegation that the land had not been developed. If the land had been developed, the wife intended to argue that the land should be included as part of matrimonial assets because her indirect contributions had allowed the husband to develop the same. I doubted that the wife's indirect contributions could constitute an improvement by the wife under s 112(10)(a)(ii) of the Women's Charter. In any event, the land had been disclosed by the husband and the wife had had adequate time to give instructions for an inspection of the land before the hearing below. In the circumstances, this point did not persuade me to allow the wife's application.

23 As for a Nissan car that was registered in the daughter's name and had an estimated value of \$45,000, this was included as part of the other matrimonial assets held by the wife. While Mr Ang did say that the wife had not actually accepted this point, the DJ said in her grounds that the wife had not disputed it. In the circumstances, I was not minded to allow the wife to dispute it in the appeal. Besides, it was clear to me that the car could be sold and the sale proceeds given to the wife, but for the indulgence of the wife. The daughter was married and had the use of another car except that the wife's/mother's position was that the daughter's father-in-law might use the other car from time to time.

24 As for maintenance, the husband had stopped working for several years since January 1993. Also, in my view, the wife did not really require maintenance from the husband. From the extent to which the wife continued to express her concern over the welfare of the children, it was clear to me that she continued to be indulgent with them even though they were already working adults.

25 In the circumstances, I allowed the wife's appeal by varying the DJ's order as follows:

(a) The DJ had granted the wife an option to buy the husband's interest in the matrimonial flat, which option had lapsed. With the agreement of the husband, I allowed the wife an option to buy the husband's interest of 43.5% in the matrimonial flat. The option was to be exercised in writing to the husband's solicitors by 13 December 2004. The Law Society's Conditions were to apply. The sale price to the wife was to be based on \$570,000 for the entire interest in the flat and apportioned accordingly in respect of the husband's interest. In the event the wife did not exercise the option, the matrimonial flat was to be sold and 56.5% of the net sale proceeds was to be paid to the wife and 43.5% to the husband. Whether the 56.5% would yield \$322,050 would depend on the eventual sale price. The \$322,050 was only indicative based on the estimated value of \$570,000.

(b) The wife was entitled to \$464,600 of the other matrimonial assets held by the husband, after taking into account \$208,000 being the other matrimonial assets held by the wife which she was entitled to retain. The husband was to pay the \$464,600 to the wife in cash immediately with interest at the rate of 2% per annum from 17 October 2003 till the date when the wife exercised the option, if at all, or the option lapsed, whichever was earlier. Thereafter, the interest was to be at the rate of 4% per annum. The wife was allowed to set off whatever she was to pay to the husband for his interest in the matrimonial flat against whatever he was to pay her.

26 The husband was to bear the wife's costs of the appeal fixed at \$3,500 inclusive of disbursements. Although the hearing of the substantive appeal took about two and a half days, much of it was spent on the allegation that the husband had substantially more assets than he had disclosed. Also, the wife had represented herself in the second tranche of the hearing of the appeal. The costs order below remained.

Petitioner's appeal allowed.

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