

Ng Irene v Tan Meng Heng Robin
[2011] SGHC 128

Case Number : DT No 2852 of 2008/X (SUM No. 4409 of 2010/P)
Decision Date : 23 May 2011
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Koh Tien Hua (Harry Elias Partnership LLP) for the plaintiff; Ang Choo Poh Belinda (Belinda Ang Tang & Partners) for the defendant.
Parties : Ng Irene — Tan Meng Heng Robin

Contract

23 May 2011

Kan Ting Chiu J:

1 The issue in this matter is whether the parties in these divorce proceedings had agreed between themselves to vary the orders on the division of two properties which were their matrimonial assets.

2 The plaintiff Ng Irene was the wife ("the wife"), and the defendant Tan Meng Heng Robin was the husband ("the husband").

3 In the course of the divorce proceedings, an order was made by Justice Woo Bih Li on 9 February 2010 that:

[5](e)The Plaintiff is to transfer her interest in 14 Stratton Walk, Singapore 806765 ["the Stratton Walk property"] to the Defendant provided that the Defendant is to refund the Plaintiff's CPF contribution with accrued interest towards the purchase of the said property.

[5](f)The Defendant is to transfer his interest in 511 Yio Chu Kang Road, #01-04, The Calrose, Singapore 787066 ["the Calrose property"] to the Plaintiff and the Defendant is to pay off the entire outstanding housing loan thereon as well as to refund the Plaintiff and his own CPF contributions with accrued interest towards the purchase of the said property.

...

[5](h)The transfers of the two properties are to be done simultaneously and within five (5) months from the date of this Order or such other extended date as the parties may agree to.

The effect of the order was that the husband was to have the Stratton Walk property and the wife was to have the Calrose property, and that the transfers were to take place within five months (by 9 July 2010).

4 The parties did not transfer the properties after the order was made. Instead, they engaged in an exchange of correspondence referred to in the next few paragraphs.

5 On 14 April 2010 the husband's solicitors wrote and informed the wife's solicitors that:

We have our client's latest instructions:

- 1) to propose to vary the Order of Court dated 9th February 2010 to provide for the sale and/or a transfer of No.14 Stratton Walk to your client's name wholly, whilst our client takes sole ownership of #01-04, The Calrose.

...

Please therefore revert to us within the next three (3) days from the date hereof *so that we can do the needful on the conveyance of the two matrimonial properties.*

[emphasis added]

6 On 19 April 2010 the husband's solicitors sent a reminder to the wife's solicitors requesting them to "revert as soon as possible on the 'swapping' of properties under the Order of Court".

7 On 20 April 2010 the wife's solicitors responded to the letter of 14 April 2010, stating:

2. We regret to inform you that after much consideration, our client is not agreeable to your client's proposal. We are instructed that she will abide by the Order as it stands.

8 The husband did not give up on his proposal. On 21 April 2010 his solicitors wrote to the wife's solicitors, stating:

[W]e would urge your client to re-consider seriously to 'swap' the 2 properties; failing which we will still proceed with our separate application to Court to vary the Order of Court dated 9th February 2010.

We shall seek an extension of time from the Courts to attend to the conveyancing matters.

There was no request for a reply in three days.

9 On 3 June 2010 the wife's solicitors replied that she agreed to and accepted the proposed swap. Quite inexplicably and regrettably, both counsel did not see it fit to exhibit this letter in the parties' affidavits. However, this letter was referred to in the wife's solicitors' letter of 25 August 2010 and also in the husband's written submissions, and its existence was not disputed.

10 On 25 August 2010 the wife's solicitors wrote to the husband's solicitors, stating:

2. You will recall that your client had requested for a swap of properties vide your letters to us dated 21 April 2010 and 14 April 2010 i.e. that our client was to take the Stratton Walk property in place of the Calrose property and your client would take the Calrose property in place of the Stratton Walk property. By our letter of 3 June 2010, we had on our client's instructions agreed to and accepted the requested swap.
3. As you know, the Order provided that the transfers of the properties were to be effected within 5 months from the date of the said order. It is now more than 5 months and we have as yet to receive the transfer documents from your client to enable our client to transfer all her share interest and estate in the Calrose apartment to your client and for your client to

transfer all his share interest and estate in the Stratton Walk property to our client.

11 The letter of 25 August 2010 did not bring any satisfaction to the wife, and on 16 September 2010, she filed the present application to vary the Order of Court of 9 February 2010 to give effect to the swap.

12 In her affidavit filed in support of the application the wife exhibited the letters referred to in [5] to [8] *supra*. She stated that after she had accepted the husband's swap offer by the letter of 3 June 2010 the husband 'did nothing', and her solicitors had to follow up with the letter of 25 August 2010. (The husband's inaction will be considered later.)

13 The husband opposed the application. In his affidavit filed on 28 September 2010, he gave the reasons for his objection. He deposed at [4] that:

The reason is that I am in the course of compliance with the said Order in respect of the transfer of the property known as No.14 Stratton Walk, Singapore 806765 (hereinafter referred to as 'The Stratton') to my sole name and transfer of the property known as 511 Yio Chu Kang Road, #01-04, The Calrose, Singapore 787066 (hereinafter referred to as 'The Calrose') to the Plaintiff solely.

and added at [8]:

However, by my solicitor's said letter dated 14th [April] 2010, it was clearly stated that I wanted a response from the Plaintiff in 3 day's time whether my proposal was agreeable to the Plaintiff. The Plaintiff's solicitor's replied on 20th April 2010 telling us that the Plaintiff is not in agreement to my proposal to swap properties. However, the Plaintiff changed her mind and chose to revert to us only on 3rd June 2010 that she would accept the 'swap' of the properties; that is to say that she would take over The Stratton whilst I would take over The Calrose. I say now that I am not obliged to let the Plaintiff have The Stratton.

In the written submissions dated 8 November 2010, the husband's solicitors argued that when the wife accepted the offer on 3 June 2010 it was 50 days after the offer of 14 April 2010 which was open for only three days. The principal, if not sole basis, of the defendant's case was that the offer to swap had lapsed by the time the wife accepted it.

14 The husband's solicitors should not rely on the letter of 14 April 2010 in isolation. That letter was followed by the letters of 19 April 2010 and 21 April 2010 where the husband persuaded the wife to agree to the swap proposal. It was wrong in law and in fact to argue that the offer had lapsed when it was not accepted within three days from 14 April 2010. Clearly the husband had extended his offer in the subsequent letters and abandoned the 17 April 2010 deadline.

15 I would add that the reference to the three days in the letter of 14 April 2010 is open to a different construction, which is more consistent with the contents of the letter, that the writers asked for a reply in three days to allow time to arrange the transfers, and not that the offer was to lapse after three days. It should be noted that the letter was written by lawyers. If they had wanted to inform the wife that the offer was open for three days, one would expect them to state that in clear terms.

16 The husband's conduct showed that he did not consider the offer to have lapsed by 17 April 2010. He did not dispute that when the wife's evidence that she accepted the offer on 3 June 2010, he did nothing. If he thought that that offer had lapsed, and was no longer open for acceptance, the most natural thing for him to do would be to tell her that the offer had lapsed, and that he no longer

wished to swap the properties, and to ask her to proceed with the transfers in accordance with the Order of Court. Instead, he did nothing, and the wife's solicitors had to send the reminder of 25 August 2010.

17 The husband only responded after the wife filed on 16 September 2010 the present application to amend the Order of Court. In his affidavit filed on 28 September 2010 he said in [8]:

I say **now** that I am not obliged to let the Plaintiff have The Stratton. [emphasis added]

It is significant that he did not say that the offer had lapsed, when it lapsed, or that he had informed the wife that that offer had lapsed.

18 The husband deposed a second affidavit on 4 November 2010 in which he exhibited a letter dated 27 October 2010 to the wife's solicitors. In this letter the husband's solicitors wrote:

In compliance with the Order of Court dated 9th February 2010, we now forward herewith the necessary conveyancing documents for your client to execute on the pages tagged.

Please sign and return the documents to us within seven (7) days from the date hereof so that we have sufficient time to let OCBC the mortgagee bank sign. Thereafter, the loan can be disbursed within (7) seven days of the Bank's execution.

Your client shall have The Calrose free of encumbrances and your client shall have a full refund of her CPF's monies with accrued interest utilised for No.14 Stratton Walk and The Calrose after the TRANSFER documents on the 2 said matrimonial properties are duly executed and registered.

Kindly advise your client to render her full co-operation on the conveyancing matter.

19 This was a curious letter. The writers were aware that there was a pending application to vary the Order of Court of 2 February 2010, nevertheless they sought the wife's "full co-operation on the conveyancing matter". It is inexplicable that even at this stage, the solicitors did not inform the wife's solicitors that the swap offer had lapsed before it was accepted if that was the husband's position at that time. (That position was only stated on 9 November 2010 in the written submissions.)

20 I find that the husband had not withdrawn his offer on or before 3 June 2010. The question is whether the husband's offer to swap the properties was open when the wife accepted it.

21 The rights of the parties can be ascertained from the following facts:

(a) under the Order of Court of 9 February 2010 the husband was to have the Stratton Walk property and the wife was to have the Carlose property;

(b) the husband made the initial offer to swap on 14 April 2010, which according to him was expressed to be open for three days;

(c) the offer was extended on 19 April 2010 and 21 April 2010 without the three-day limitation;

(d) the offer was accepted on 3 June 2010; and

(e) the husband stated his rejection of the acceptance in his affidavit of 28 September 2010.

22 When the swap offer was extended without the three-day response period, there is no legal basis to read that condition into the subsequent offers. In the circumstances, the offer was open for acceptance until it is withdrawn by the husband, or is deemed to have lapsed after a reasonable time.

23 What is a 'reasonable time' on the facts? Three factors are relevant:

- (a) the 9 July 2010 deadline in the Order of Court for the transfer of the properties;
- (b) the importance of the property swap to the wife; and
- (c) the husband's response to the wife's acceptance of the offer.

24 It would be reasonable to deem the offer to have lapsed if it was not accepted by 9 July 2010 as the husband was entitled to proceed with the implementation of the terms of the Order of Court. It would also be reasonable to allow adequate time to the wife to consider the offer carefully as the two properties were the entirety of the matrimonial assets to be divided following the divorce (see the letter of 21 April 2010 and the advice to the wife to consider the swap seriously). Against this background, the response on 3 June 2010 cannot be said to be unreasonably delayed. The husband's delayed response to the acceptance indicated that he had not considered the offer to have lapsed when he received the acceptance of 3 June 2010.

25 For the reasons stated, I found that the husband's offer was open for acceptance when it was accepted by the wife, and I granted her application to vary the Order of Court of 9 February 2010 to give effect to the proposed swap that she accepted.

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