

BCB v BCC
[2012] SGHC 144

Case Number : Divorce Transfer No 4208 of 2010
Decision Date : 17 July 2012
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Plaintiff in person; Mimi Oh (Mimi Oh & Associates) for the defendant.
Parties : BCB — BCC

Family Law – Custody – Maintenance – Matrimonial assets

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 15 of 2012 was allowed in part by the Court of Appeal on 28 January 2013. See [\[2013\] SGCA 14.](#)]

17 July 2012

Lee Seiu Kin J :

Introduction

1 The plaintiff (“Husband”) and defendant (“Wife”) were married in January 1991. They have three children, a girl, B born in 1993 and two boys, C born in 1997, and D born in 2001. B attends a polytechnic, C is in secondary school and D is in primary school. The Husband filed this divorce suit on 20 August 2010, on the basis of four years’ separation. The Wife did not contest the divorce and interim judgment was granted on 27 October 2010.

2 On 1 February 2012, after hearing the parties’ submissions, I made orders pertaining to custody, care and control of the three children, maintenance for the three children and the Wife, and division of matrimonial assets. After a number of hearings to clarify those orders, the settled order is as follows:

Care, Control and Custody of the three children

- (a) That parties are to have joint custody of the three children of the marriage, namely:
 - (i) B, aged 18 years-old
 - (ii) C, aged 14 years-old
 - (iii) D, aged 9 years-old
- (b) with care and control to the defendant and reasonable access to the plaintiff as outlined herein:
 - (iv) The plaintiff is to liaise directly with B with regards reasonable access to her.
 - (v) With regards C and D, the plaintiff is to have access as follows:

Weekly access

- (A) Every alternate Friday 6pm to Sunday 6pm with effect from 10th February 2012;
- (B) At least one weekday's access for 3 hours, which may be on Friday's night on the children's option and if it is on Friday's night, then it shall be for 4 hours.

Alternate Public holidays access

- (C) Every alternate public holidays from eve of the said public holiday, 6pm to the public holiday, 9pm and for the plaintiff to commence with the next public holiday access save that:
 - (I) The plaintiff is to have access for every Deepavali and New Year day;
 - (II) The defendant is to have access for every Christmas and Good Friday (through to Easter Sunday and if that is the weekend, the plaintiff is supposed to have access, then the Plaintiff shall have access the following weekend in lieu thereof).

School holiday access

- (D) Every alternate half of the school holidays:
 - (I) Two weeks for May/June school holidays (with the plaintiff to have the first two weeks);
 - (II) Three weeks for November/December school holidays (with the plaintiff to have the first three weeks).
- (E) Both parties are at liberty to take the children overseas during the school holidays provided that each party provides the other with the itinerary, travel and accommodation arrangements. The defendant to hand over the children's passports to the plaintiff as necessary, which shall be handed back to the defendant upon return.

Maintenance for the three children of the marriage

- (b) Plaintiff is to contribute a monthly maintenance sum of S\$2,400 but only pays a cash sum of \$730 into DBS bank account no xxx with regards the maintenance support of the three children of the marriage every 1st day of the month and every subsequent month thereafter with effect from the date of this order, save that plaintiff is to pay directly to the three children, a total sum of \$640:
 - (i) to B, her monthly allowance of \$300, which includes transport;
 - (ii) to C, his monthly allowance of \$160 which includes transport together with his tuition fees and any enhanced tuition fees;
 - (iii) to D, his monthly allowance of \$120 and to directly pay for his transport cost, his tuition fees and any enhanced tuition fees; and

- (iv) for the avoidance of all doubts, the plaintiff is to pay for all tuition fees for C and D.
- (c) Any reasonable ad-hoc expenses for the three children will be borne in the proportion of $\frac{1}{3}$ and $\frac{2}{3}$ between the defendant and plaintiff respectively.

Maintenance for the Wife

- (d) Plaintiff is to pay a monthly maintenance sum of \$1 to the defendant, to be credited into DBS bank account no xxx every 1st of the month and every subsequent month thereafter with effect from the date of this order.

Passport of the three children

- (e) That the plaintiff is to return to the defendant, the two international passports of the two boys, C and D and all the birth certificates of the three children.

Division of the Matrimonial Assets

- (f) For Braemar home ("Braemar home"):

(i) That the Braemar home known as [address redacted] is to be sold, and the net sale proceeds after deducting the outstanding mortgage loan and paying all costs and expenses related to the sale, be divided in the proportion of 30% to plaintiff and 70% to the defendant. The defendant shall utilise her share of the sale proceeds to refund into her CPF account, all CPF monies utilised in the said mortgage repayments plus accrued interests.

- (g) For Serangoon HDB flat ("Serangoon HDB flat"):

(i) That the Serangoon HDB flat known as [address redacted] is to be sold, and the nett sale proceeds after deducting the outstanding mortgage loan and paying all costs and expenses related to the sale, be divided in the proportion of 30% to plaintiff and 70% to the defendant. Parties shall utilise his/her own share of the sale proceeds to refund into his/her own respective CPF account, all CPF monies utilised in the said mortgage repayments plus accrued interests.

(h) The plaintiff shall have conduct of the sale of both properties, as abovementioned forthwith including appointment of solicitor and agent. The plaintiff and defendant are to procure the removal of the defendant's name as a joint tenant of the Serangoon HDB flat as soon as funds are available from exercise of option of the sale of the Braemar home.

(i) The proceeds of sale of either of the two abovementioned properties may be distributed in the ratio of 40% and 30% to defendant and plaintiff respectively pending appeal and the balance sale proceeds to be held by solicitors having conduct of sale as stakeholder pending appeal.

(j) Each party is to bear his/her own costs.

(k) Liberty to apply.

3 The Husband has filed a notice of appeal and I now give my grounds of decision.

4 The background facts are as follows. The Husband is self-employed and earns about \$7,000 per

month from consultancy and project work, much of which was conducted overseas. His work entailed some travelling and in 2010, he had been based in Thailand for one year. The Wife is a manager earning a net income of \$4,350 per month. In her earlier job, from which she was retrenched in 2006, she had an income of about \$6,000 per month.

5 After marriage, the parties lived in rented premises before purchasing and moving into an HDB maisonette flat at the end of 1991. In 1998, the parties sold the HDB maisonette flat and enjoyed a substantial gain. The family moved to a rented house. In 1999, the parties purchased and moved into an HDB flat at Serangoon Ave 3 ("the HDB Flat"). The Husband's mother moved in to live with them. In 2003, the parties purchased a house at Braemar Drive ("the Braemar Home") and it was registered in the sole name of the Wife. In 2006, the parties separated although they continued to live under the same roof, which at this time was in the Braemar Home.

Custody, Care and Control, and Access

6 The parties agreed that they would have joint custody of the children. However they disagreed on care and control. After considering their submissions, I awarded care and control to the Wife for the following reasons.

7 There is no doubt that both parties have been closely involved in raising the children. Indeed the Husband has manifested great concern in his affidavit for the children and had detailed the manner in which he had raised them. But it did appear from his affidavits that he was somewhat domineering in his approach. The custody evaluation report ("the Report") ordered by the court confirmed this impression. The Report was prepared by Miss Sarinah bte Mohamed ("Miss Sarinah"), a Deputy Director of the Counselling and Psychological Services. It stated that B and D were closer to the Wife than the Husband, and that C was divided between the two of them. However all children wanted to live together. The Report recommended that the care and control of the three children be awarded to the Wife.

8 The Husband submitted that the Report was defective because Miss Sarinah had not had the benefit of interviewing four persons: (a) C's Chinese language tutor who had taught him for seven years; (b) the Malay language tutor for B and D who had taught them for nine years; (c) D's Malay language teacher; and (iv) D's form teacher. I note, however, that Miss Sarinah had interviewed the following persons other than the parties and the three children: (a) the maternal grandfather; (b) paternal grandmother; and (c) C's school counsellor. What is most important is that she had talked to the three children and obtained their views on whom they would like to live with. Also important is that she had spent time to observe the children's interactions with both parents. The Husband did not state on what basis the failure to interview those four persons had reduced the validity of the recommendations in the Report. I was satisfied with the manner in which the Report had been prepared and presented. Its conclusions on the Husband was in accord with the impressions I gained from reading his affidavits. There was therefore nothing in the circumstances for me to doubt the validity of the recommendations in the Report. I was satisfied that at least two of the children were in favour of living with the Wife and the third was neutral. In my view, it is bad enough for the children that their parents should break up. In the absence of good reasons to do so, the court should not compound the tragedy by splitting the children up. It was eminently clear to me in this case that the Wife should have care and control, but with generous access to the Husband.

Maintenance

9 The financial circumstances of the parties are such that it is not appropriate to order the Husband to provide maintenance for her under s 113 of the Women's Charter (Cap 353, 2009 Rev Ed).

However to preserve her right to future maintenance, I ordered the Husband to pay a nominal \$1.00 per month.

10 As for the children, the Wife claimed that their expenses were as follows. B, who is attending a Polytechnic, had the largest expenditure. The two boys require a lower sum. The parties are in substantial agreement that the total sum amounts to \$4,800 per month. I ordered the Husband to bear half of this sum. However he had some objection in paying this in cash to the Wife and I therefore ordered him to pay directly to the children their monthly allowances (totalling \$580) and to directly pay the school transport fees for D and tuition fees for both boys. The balance, amounting to \$730 per month would be payable to the Wife.

Division of Matrimonial Assets

11 The following were the matrimonial assets of the parties:

- (a) The Braemar Home, with an estimated net value (deducting the loan) of \$2.3m;
- (b) The HDB Flat, with an estimated net value (deducting the loan) of \$273,000;
- (c) Assets in the Husband's name totalling about \$60,000; and
- (d) Assets in the Wife's name totalling about \$130,000.

12 As items (c) and (d) were small in comparison to (a) and (b), I found it expedient to exclude them from the equation and to order each party to retain those assets.

13 At the time of their marriage, the Husband's annual income was about \$65,000 and that of the Wife, who had worked throughout the marriage, was about \$24,000. They purchased the HDB maisonette flat in 1991 for about \$162,000. They used the money available in their CPF accounts to make the cash payments and their monthly CPF contributions to pay the monthly loan instalments. The Husband claimed he contributed \$130,000 towards renovation and furniture. However the Wife disputed that such a large amount was spent and she claimed that she had also paid part of these expenditures. Given the length of time and the circumstances, it is not surprising that parties' recollection would be poor and there was no documentary evidence. It does seem surprising, however, that the amount spent on renovation and furniture would be an amount of a similar order of magnitude as the cost of the property. Be that as it may, the parties lived there for about eight years and sold the HDB maisonette flat in 1999 for about \$472,000. Of this, \$102,000 was used to repay the balance housing loan, \$97,000 was refunded into the Wife's CPF account and \$28,000 to the Husband's CPF account. Since the parties had fully funded the purchase with their CPF monies, the 97:28 ratio in CPF refund showed that the Wife had contributed more than three quarters towards the purchase price of the property. This, of course, has to be balanced against the Husband's claim that he had spent about \$130,000 in renovation and furniture. The parties were left with a tidy sum of about \$245,000 in cash.

14 In 2000, the Husband and Wife bought the HDB Flat for \$160,000. The Husband utilised \$30,000 from his CPF and the Wife used \$50,000 from her CPF to make part payment. The balance was paid with a housing loan of \$80,000. From 2000 to 2007, the monthly instalments were made from the Wife's CPF contribution. After 2007, the Husband took over and paid those instalments in cash. The outstanding loan at the time of the hearing was about \$57,000.

15 The Braemar Home was purchased in October 2003 for \$860,000. The Wife's father lent them

the 10% down payment of \$86,000. The Wife took out \$135,000 from her CPF to make a further cash payment. The parties took out a housing loan of about \$639,000. The Wife serviced the monthly instalments until June 2007 when her CPF account dried up; thereafter the Husband took over the monthly payments.

16 Taking both properties together, the total cost was \$1,020,000. (\$160,000 + \$860,000).

17 According to the Husband, his direct contribution was \$50,000 towards the HDB Flat and \$162,000 towards the Braemar Home, plus another \$19,000 which came from his mother. The Wife did not dispute the first two sums, but disputed that the Husband's mother had contributed \$19,000. Thus the Husband's direct contribution totalled \$212,000 or \$231,000. I took the average of these two sums, *ie* \$221,500.

18 The Wife's direct contribution was \$83,000 for the HDB Flat and \$313,000 for the Braemar Home, plus another \$86,000 loan from her father for the down payment for the Braemar Home. This totalled \$482,000. However the Husband had, for a period in 2008, handed over cash to the Wife for the instalment payments, but in that period, the Wife still had funds in her CPF and which was used to repay the mortgage, while pocketing the cash. This totalled \$68,000 and must be deducted from the Wife's total of \$482,000 to avoid a double count. Hence the Wife's direct contribution totalled \$414,000.

19 The ratio of direct contributions by the Husband and Wife is 34.9:65.1. As concerns indirect contributions, I took into account the length of the marriage (which is 15 years to the separation in 2006), and the birth of the three children. I took into consideration that the Husband had been as much involved in the upbringing of the children as the Wife, but against that is the fact that he had to travel frequently, during which time the Wife had to care for the children on her own. When the Husband was not doing so well in his business, the family had relied principally on the Wife's income. Taking all these factors into account, I awarded the Wife an additional 5% for indirect contribution.

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