

Lee Nyuk Lian v Lim Nia Yong
[2007] SGHC 44

Case Number : DT 4829/2004
Decision Date : 30 March 2007
Tribunal/Court : High Court
Coram : Sundaresh Menon JC
Counsel Name(s) : Leslie Foong Siew Hong (Characterist LLC) for the petitioner; Winston Low (Winston Low & Partners) for the respondent
Parties : Lee Nyuk Lian — Lim Nia Yong

Family Law – Matrimonial assets – Division – Indirect contributions to matrimonial assets – Non-financial contributions to marriage – Effect on fair and equitable distribution of matrimonial assets – Section 112(2) Women's Charter (Cap 353, 1997 Rev Ed)

30 March 2007

Judgment reserved.

Sundaresh Menon JC

1 The petitioner, Lee Nyuk Lian, and the respondent, Lim Nia Yong, were married on 20 July 1990. They have two children now aged 16 and 17 years old. The marriage broke down in 2003 and the petitioner left the matrimonial home on 16 December 2003. The children have been with the respondent since then. .

2 A decree nisi to dissolve the marriage was granted on 29 April 2005 on the basis that the respondent had behaved in such a manner that the petitioner could not reasonably be expected to live with him. The ancillary matters were adjourned to be heard in chambers and the question of costs was also reserved to be dealt with in chambers.

3 The ancillary matters took on a life of their own when the respondent raised allegations that the petitioner had misappropriated substantial sums of money out of the family nest-egg. Taking this into account the respondent asserted that the gross value of the matrimonial assets exceeded \$1.5m. The matter then came before me on 5 July 2006.

4 The central allegation made by the respondent was that a sum of around RM5 million had been accumulated over a period of time. He maintained that this was to have been their retirement fund. He further alleged that this sum had been siphoned off by the petitioner over a period of time prior to her leaving the respondent. On the authority of the decision of Judith Prakash J in *Yow Mee Lan v Chen Kai Buan* [2000] 4 SLR 466 ("*Yow Mee Lan*"), the respondent submitted that these amounts should be restored to the pool of matrimonial assets and be taken into account in the distribution.

5 At the hearing before me on 5 July 2006, the respondent was represented by Mr Goh Aik Chew who as it turns out was counsel for the petitioner in *Yow Mee Lan*. During the course of the hearing, Mr Goh went through various payments and transactions involving the petitioner, in some cases with reference to the documents. In particular, Mr Goh submitted that a number of cheques had been signed by the petitioner and were either made out in her favour or to cash and these appeared to have been encashed or paid into bank accounts some of which had not been disclosed by the petitioner. On the basis of Mr Goh's submissions, it seemed to me that some of the

transactions raised questions which warranted a response from the petitioner.

6 Mr Leslie Foong who appeared for the petitioner responded by informing me that his client had not addressed these issues in her affidavits in a way that would have enabled him to respond in detail and with sufficient specificity to the respondent's allegations. He maintained that these allegations were untrue and he contended that they were made by a person used to making such allegations. In my view, this was not a satisfactory or sufficient response. Mr Goh had raised some questions that seemed to be legitimate in relation to funds that appeared to have been banked by the petitioner into accounts not yet disclosed. If the petitioner chose not to respond, then it seemed to me that it would leave it open for me to draw adverse inferences against her.

7 Mr Foong eventually accepted that it was appropriate for his client to respond. However, he maintained that his client was not in possession of the relevant documents. I therefore directed that the respondent was to prepare a schedule of the impugned payments with cross-references to the documents that he relied on. This was to be done within 3 weeks and it was then to be served on the petitioner for her to see the documents and to respond and comment on the respondent's allegations.

8 Two weeks later, the respondent changed solicitors and appointed Mr Winston Low in place of Mr Goh. Mr Low subsequently appeared before me on behalf of the respondent. The respondent filed his schedule and affidavit as directed. However, this led to further requests for documents and clarifications as a result of which the petitioner only filed her response on 28 September 2006. The respondent in turn took until 29 November 2006 to file his final affidavit in response. The matter was then fixed for hearing before me on 19 and 20 March 2007.

9 In relation to the impugned payments, following discussions with both counsel and after I reviewed with counsel the schedules together with the allegations and responses on each side, it became apparent that the petitioner did take issue with the respondent's allegations and that there were very substantial disputes of fact in relation to the allegations by the respondent that the petitioner had embezzled substantial sums of money. The payments in question were made out of the bank accounts of IDA Consultants Sdn Bhd, which was a Malaysian company owned in equal shares by the petitioner and the respondent. The respondent alleged that the company was treated as a family company and that the funds in the accounts were treated as the family's assets.

10 Leaving that to one side it was apparent that the circumstances surrounding these payments were hotly contested. The petitioner and the respondent each had their own version as to how or why these payments had been made. By way of example, where the petitioner alleged that certain payments had been approved by the respondent, his response was that his initials signifying such approval had been forged.

11 It was patently not possible or appropriate for me to make a finding in respect of these transactions based only on the affidavits. The burden is on the respondent who asserts that the money in the bank accounts of IDA Consultants Sdn Bhd was an asset of the marriage and that it had been diverted by the petitioner to her own use without the authority of the respondent. On the basis of the hotly contested facts, it could not be said that the respondent had discharged this burden. This distinguished the present case from *Yow Mee Lan* ([4] *supra*) where there was no dispute as to the existence of the particular sum of money that was held in a joint account or that it had been withdrawn by the wife and placed in her own account after she became aware that the husband was having an extra-marital affair.

12 On those facts, the court in *Yow Mee Lan* was satisfied that the sum in question should be treated as part of the pool of assets to be dealt with in the course of distributing the matrimonial

assets. In the present case, it became evident after the affidavits had been filed that the payments took place over an extended period going back several years before the marriage had broken down and under circumstances that were hotly contested on both sides.

13 It seemed to me in these circumstances that this issue was best left to the respondent and/or the company, IDA Consultants Sdn Bhd to pursue the matter separately through civil proceedings if either or both of them wished to do so. Both counsel accepted that this was the sensible course to take in the circumstances. They also agreed that as far as the parties are concerned, any such claims would be conclusively dealt with in any such civil proceedings as might be commenced and so could be disregarded for the purposes of the present proceedings. Accordingly, these monies are not in any event to be treated as part of the matrimonial assets which are dealt with in these proceedings. My decision here would not foreclose or prevent the respondent or IDA Consultants Sdn Bhd from attempting to pursue their claims elsewhere if they so wished.

14 It was also agreed that I should make no order for the distribution of the shares currently held by each party in IDA Consultants Sdn Bhd. Accordingly, if any separate civil proceedings are brought and if there is any recovery, that will be resolved on the basis of the respective shareholdings of the parties in that company.

15 It then fell upon me to address the remaining ancillary matters. Mr Low argued that aside from the foregoing issues, there had been a failure by the petitioner to disclose her assets fully and accurately. He relied on some bank accounts and an insurance policy that had not been disclosed. Mr Foong produced some letters from the bank to show that the accounts in question were the same as those disclosed save that these had been renumbered following a corporate re-organisation. As to the insurance policy, Mr Foong informed me that as far as the petitioner could recall, this had been terminated but she was trying to confirm this.

16 It did not appear to me that there was anything sinister in the alleged non-disclosures and I gave leave to the petitioner to file a short affidavit to exhibit the letters and to put her explanation on the record.

17 This left the following issues:

- (a) maintenance of the wife;
- (b) custody and access arrangements;
- (c) distribution of the remaining matrimonial assets, in particular two properties; and
- (d) costs.

Maintenance

18 The petitioner is currently employed and residing in a rented flat. She sought an order for nominal maintenance of \$1 per month. The respondent initially agreed to this but later resiled from this position on the basis of the allegation that the petitioner had converted a substantial sum of family money to her own use. As it was eventually concluded that this allegation should be left to be pursued elsewhere and should be ignored as far as the matrimonial proceedings are concerned, I see no basis not to make an order for maintenance in the amount sought and I do so accordingly.

Custody and access

19 The respondent sought sole custody of the children whereas the petitioner sought joint custody. The children are both boys, now aged 16 and 17. There was no dispute that the respondent should retain care and control of the children.

20 In my judgment, as far as possible, both parents should be encouraged to remain involved in the upbringing of the children. Mr Low accepted this as a sound premise. I accordingly order that both parties are to have joint custody with care and control to the respondent.

21 The petitioner is to have liberal access to the children. Mr Foong initially wanted me to fix the hours when access could take place. I did not think it appropriate to do this in the context of children of the age of these boys. In my judgment, it is preferable that the petitioner make the necessary efforts to reach out to her children and to encourage them to see her as often as she and they are willing and able. Both counsel eventually agreed with this approach.

Distribution of the matrimonial assets

22 The following were the only assets that I was asked to deal with in my order for distribution:

(a) HDB flat at Block 105, Bishan Street 12 #02-248, Singapore 570105 ("the HDB flat");
and

(b) House at No 32 Jalan Bukit Kempas 3, Taman Bukit Kempas, 81299, Johor Bahru, Malaysia ("the JB house"). This property is registered in the name of a company known as IDA Resources Sdn Bhd in which the petitioner and the respondent are the only shareholders.

23 The petitioner sought an order that she be entitled to a 50% interest in each of these properties. Although she initially wanted an order that the properties be sold and half the net proceeds be paid to her, Mr Foong made it clear that she was not pressing for an order that the properties be sold as long as she could realise her interest in them.

24 The respondent on the other hand initially maintained that the petitioner should get no share. Subsequently, after it was decided that the allegations concerning the payments made out of IDA Consultants Sdn Bhd would be disregarded for the purposes of these proceedings, Mr Low suggested that the fair and equitable share that the petitioner should be allowed, was between 10% and 20%.

The facts

25 The relevant facts were these. The parties had been married for a period of almost 14 years when the marriage broke down. If the relevant date is taken to be the date of the decree nisi, then the parties were married for around 15 years. The petitioner is aged 40 and the respondent, 49. Insofar as the HDB flat is concerned, this was acquired by the respondent during a previous marriage. There was no dispute that the HDB flat was acquired entirely through the respondent's resources. Mr Foong confirmed that the petitioner did not make any direct or indirect financial contributions towards the acquisition of the flat.

26 At the material times, the petitioner was a housewife although for a period of time in the later part of the marriage, she provided administrative services to the company through which the respondent provided his professional services. The petitioner was the primary caregiver at home. She was also the primary housekeeper. The petitioner also contended that the respondent had travelled on work from time to time and when he did, she had been solely responsible for maintaining the home and caring for the children. At one stage, Mr Foong suggested that the petitioner was the sole

caregiver and the only person doing housekeeping work to the exclusion of the respondent. He based this on the statement that she was "the *one* who took care of our 2 sons' daily needs" in her affidavit of means. I found this difficult to accept in the sense that the petitioner had felt able to leave the respondent with the children and must therefore have felt that the respondent was a capable parent. Indeed, in one of her affidavits, she said as follows:

If I could, I would want to have care and control of them. But I cannot afford to. I know that the respondent loves them too. So I believe he can take care of them well.

27 In this light, it seemed unlikely to me that she could in all seriousness maintain that the respondent had no role whatsoever in caring for the family and providing welfare in the home. In any event, it could not be denied that since December 2003 when the petitioner left the matrimonial home, the husband had been the sole caregiver to the children as well as the sole person looking after and providing for the home.

28 As for the JB property, Mr Foong submitted that the petitioner had made some indirect financial contribution to that. The purchase was financed by a downpayment made by the respondent and by a mortgage he serviced. However, the parties had pulled down the house that had been there and had built a new home. A contractor was engaged and from the photographs exhibited, it was evident that this had been a major undertaking. The petitioner claimed that despite this, she had sourced workers; sourced and purchased materials; arranged deliveries; supervised and co-ordinated the building work; and carried out arduous labour. The respondent did not deny that the petitioner had been involved in this venture as had the respondent himself. However, he contended that she had exaggerated her contribution.

29 This was a project undertaken in the years of the marriage when they had dreams of building a home for their retirement and I have no reason to think that either of the parties exerted appreciably more or less efforts than the other.

30 The wife also contended that for a period of four years or so, she had done administration and accounts in the respondent's business. It was evident that she had been involved in the administrative and accounting aspects of the companies through which the respondent did his work since this had led to his allegation that she had diverted some assets to her own use.

31 Lastly, both parties stated that they were making no claim in relation to the amounts in their CPF accounts. Indeed, Mr Foong said that I could ignore this for present purposes. I do note however that the respondent has declared that there is an amount of around \$125,000 in his CPF account distributed among his ordinary, medisave and special accounts.

The applicable legal principles

32 The starting point of the analysis is S 112(2) of the Women's Charter (Cap 353, 1997 Rev Ed) which provides as follows:

112(2) It shall be the duty of the court in deciding whether to exercise its powers under subsection (1) and, if so, in what manner, to have regard to all the circumstances of the case, including the following matters:

(a) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the matrimonial assets;

- (b) any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage;
- (c) the needs of the children (if any) of the marriage;
- (d) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party;
- (e) any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce;
- (f) any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;
- (g) the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business; and
- (h) the matters referred to in section 114(1) so far as they are relevant.

33 It is evident that the section confers a very wide discretion upon the court to have regard to all the circumstances of the case including the specific matters enumerated in the section.

34 Section 112(2) was the subject of careful analysis and explication by Prakash J in *Yow Mee Lan* at [29] to [34] and the following principles flow from that decision:

- (a) In deciding what is a just and equitable distribution the court should have regard to all relevant circumstances including those listed in the case and this includes financial as well as non-financial contributions to the acquisition of assets and to the care of the family and the home;
- (b) The court adopts a broad brush approach in determining what a just and equitable distribution would be. A party's financial contributions to the acquisition of any particular matrimonial asset would not be principally determinative of how the asset is to be divided. The court is free to give as much or even more weight to other non-financial factors; and
- (c) The court should establish the relevant factors and then determine what would be just and equitable and in this regard, the court should approach the issue without any predisposition towards an assumption that both parties have contributed equally towards the acquisition of assets.

35 Prakash J in *Yow Mee Lan* also noted that a marriage is not a business but a union where the spouses work together for a common goal. In this context even if they each have unequal abilities, this should not result in unequal rewards where they have consistently and over a long period made their respective contributions as best they could.

36 This approach was subsequently approved by the Court of Appeal in *Lim Choon Lai v Chew Kim Heng* [2001] 3 SLR 225. ("*Lim Choon Lai*").

37 Beyond these principles, it is useful to have regard to how the courts have applied the

foregoing principles to arrive at a just and equitable distribution. In *Yow Mee Lan*, Prakash J noted that the wife, though not as capable professionally and academically as the husband, had done her utmost to support him at home and in the business. She had worked almost throughout the course of a marriage lasting 26 years. She had also looked after the home and the children alone during the extensive periods the husband was travelling. Her commitment to the family and marriage was described as "total and unstinting". The learned judge then concluded as follows at [42] – [46]:

42 To summarise, the marriage was a long one. The husband was the main income earner. The wife looked after the home and children and played a supporting role in the family business owned by the husband. It appears that she did not have either the knowledge or the talent which the husband did and could not herself have produced the substantial income he was able to generate. In these circumstances, what would be a just and equitable division of the assets? The District Judge placed great emphasis on the husband's role as the income generator and considered that he should therefore have a major share of the assets.

43 With due respect, that approach no longer accords with the legislation which takes a wider view. It recognises that a marriage is not a business where, generally, parties receive an economic reward commensurate with their economic input. It is a union in which the husband and wife work together for their common good and the good of their children. Each of them uses (or should use) his or her abilities and efforts for the welfare of the family and contributes whatever he or she is able to. The partners often have unequal abilities whether as parents or as income earners but, as between them, this disparity of roles and talent should not result in unequal rewards where the contributions are made consistently and over a longer period of time.

44 In the present case, the wife contributed to the best of her ability both to the maintenance of the family and to the business. She provided essential backup on which the husband could rely. He was able to travel for long periods safe in the knowledge that both his home and his business were in reliable hands. No doubt someone else could have done the administrative work in Plymat which the wife did (the husband was at pains to denigrate her work as being merely clerical) but with someone else in charge, he would not have had the assurance that in the office his interests would not be undermined.

45 It is also relevant to my consideration that the wife's claims to share in the husband's assets do not extend to his CPF contributions, two of his club memberships and to his interest in Plymat itself which would otherwise be regarded as a matrimonial asset. This renunciation is of value to the husband. No doubt, as far as Plymat is concerned, its main assets are the skill and contacts of the husband and those obviously could not be divided between the husband and the wife. Notwithstanding that, it would still be possible to do a valuation of Plymat's business and to award the wife a share of that value.

46 In all the circumstances of this case, I consider that the equitable division would be an equal division of those assets which the parties have asked to share in. ...

38 In *Lim Choon Lai*, the Court of Appeal considered that in the absence of reliable evidence on the exact monetary contributions made by each party to the purchase of the matrimonial home, the fairer view to take was that they had made substantially equal contributions. The Court of Appeal also concluded that the wife earned more and bore the main burden of supporting the family and providing for its welfare. Taking this into account, the Court of Appeal concluded the wife deserved the larger share and therefore awarded her a 60% share.

My decision

39 In the light of these authorities, I turn to the present case. This was a case involving a fairly long marriage of around 15 years. It is clear that the respondent had been the main source of the family's income and so bore the substantial burden of paying for the two properties. Although the petitioner made some indirect contributions towards the JB property as they set about improving it, this was matched by the indirect efforts of the respondent who apparently undertook much of the design of that property quite apart from the direct financial contributions that he alone made.

40 The petitioner was the primary caregiver to the children and the home until she left in 2003. The respondent himself stated that he was preoccupied for years with his work and his efforts in designing and seeing to the construction of the JB property. Further, he did travel from time to time. But the wife's contributions as the primary caregiver to the children are to be balanced against the fact that the husband has been playing this role exclusively since she left and will continue to do so for the foreseeable future. Indeed, the respondent has been having sole care and control of the children since December 2003 when they were aged 12 and 13 respectively and he will continue to have care and control under the present order.

41 It is also true that the petitioner did support the respondent in his business for some years. Further, the petitioner was not seeking any part of the respondent's CPF contributions.

42 Taking all these factors into account and having weighed the monetary as well as the non-monetary contributions made by each party, I consider that the respondent deserved a larger apportionment of the matrimonial assets than the petitioner, but not to the extent suggested by the respondent. Rather, in my judgment, taking a broad brush approach, the fair and equitable distribution would be to grant the respondent 60% of the interest in these properties and to grant the petitioner 40% of the interest in these properties.

43 Both counsel had informed me that they were agreeable to my not making an order for sale. I therefore make the following orders in relation to these properties:

- (a) Each of the properties is to be valued by a valuer acceptable to both parties (or in the case of the HDB flat, to the HDB) within 6 weeks from the date of this judgment;
- (b) Within 12 weeks of the date of the valuation, the respondent is to pay the petitioner 40% of the net value of the two properties;
- (c) Within 1 week of such payment, the petitioner is to deliver signed blank transfers and all the share certificates registered in her name in IDA Resources Sdn Bhd to the respondent at no cost;
- (d) There shall be liberty to apply.

Costs

44 This brings me finally to the question of costs. Mr Foong submitted that his client was entitled to costs because the divorce had been granted on the basis of the respondent's unreasonable behaviour. Further, he submitted on the authority of *Tham Khai Meng v Nam Wen Jet Bernadette* [1997] 2 SLR 27 at [49]-[50] that the ancillary matters are part of the hearing of the petition and the same order should follow on the hearing of the ancillaries. Finally, he submitted that much time and effort had been expended on the ancillaries by reason of the respondent's allegations as to the diversion of funds by the petitioner.

45 Mr Low on the other hand, submitted that each party should bear their own costs.

46 In my judgment seen in the whole, the petitioner has been substantially successful and should get her costs. It is also true that the proceedings were prolonged by virtue of the allegations of embezzlement made by the respondent. Further, the ancillaries came to be tried in the High Court only for that reason.

47 Both parties agreed I should fix the costs if I were minded to make an order for costs. Mr Foong submitted a figure of \$50,000. In my view, this was excessive having regard to the work reasonably required to be done on behalf of the petitioner. The petitioner filed 5 affidavits against 9 that the respondent filed. The hearing took more than 2 days including the first appearance. There were also several attendances for directions. Taking all this into account, I fix the costs to the petitioner at the sum of \$20,000 with reasonable disbursements to be taxed if not agreed.

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