

Toh Buan Eileen v Ho Kiang Fah
[2014] SGHC 170

Case Number : Divorce Transfer No 3914 of 2006
Decision Date : 29 August 2014
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Yap Teong Liang (T L Yap & Associates) for the plaintiff; The defendant in person.
Parties : Toh Buan Eileen — Ho Kiang Fah

Civil Procedure – Jurisdiction

Family Law – Women’s Charter

29 August 2014

Judith Prakash J:

The background

1 On 21 March 2013, I delivered judgment (“the Judgment”) in these proceedings in relation to the dispute between the plaintiff wife (“the wife”) and the defendant husband (“the husband”) regarding the division of their matrimonial assets.

2 In the Judgment, I decided that the matrimonial assets should be divided equally between the parties. Among the assets were the matrimonial home at Block 842, Sims Avenue, #14-762, Singapore 400842 (“the Sims property”), an apartment known as 263 River Valley Road, #02-01 (“the Aspen Heights property”) and an apartment in Malaysia known as The Vistana 143C, Lot 106 and 107, Jalan Taiping, Kuala Lumpur (“the Vistana property”). The Sims and the Vistana properties are held in the joint names of the parties whilst the Aspen Heights property is held in the husband’s name alone. In order to give effect to the division of the matrimonial assets, I made the following orders:

(a) The parties shall jointly appoint a valuer to value the Sims property and the Aspen Heights property on an open market value basis and shall provide me with copies of the valuation reports within three weeks hereof. If the parties cannot agree on a joint valuation, they can each appoint his/her own valuer. The cost of a single valuer shall be shared equally; if the parties appoint their own valuers, then each of them shall be responsible for the cost of the valuer appointed by him/her.

(b) The wife shall be entitled to retain all cash, shares and other assets currently held in her sole name and in the joint names of herself and the children. Subject to payment of the wife of all amounts due to her pursuant to this judgment, the husband shall be entitled to retain the cash, shares and other assets currently held in his sole name.

(c) The Vistana property shall be sold within six months hereof and the net proceeds of sale shall be divided equally between the parties. The husband shall be solely responsible to repay the MayBank KL overdraft and any sum due in respect of this overdraft shall be settled from his share

of the sale proceeds. If there is any shortfall, he shall make it up himself.

(d) The husband shall pay the wife \$5,489.40 being half of the debit balance of the parties' overdraft account with DBS Bank at the time of the completion of the sale of Parc Oasis.

(e) Consequential orders for the sale of the Sims property and/or the Aspen Heights property and the distribution of the proceeds thereof and the adjustment of the parties' respective entitlements to the matrimonial assets shall be made after the valuation reports have come in.

3 The husband was dissatisfied with the orders made and he appealed against them by Civil Appeal No 47 of 2013 ("CA 47"). CA 47 was heard on 6 November 2013. At the end of the hearing, the Court of Appeal made the following order ("the CA Judgment"):

We affirm the order of the judge below save in one respect. The judge appears to have overlooked the surrender value of the insurance policies that the wife maintained. At the date of the divorce, these had a total surrender value of \$456,547. The husband is entitled to half this amount, viz, \$228,273.50. We therefore vary paragraph 60(b) of the judgment by providing that the husband shall be entitled to an additional amount of \$228,273.50, which the wife is required to pay the husband. However, we leave it to the judge to decide on how best to effect this when the parties go back to her under paragraph 60(e) of the judgment for further directions after the valuation ordered by the judge has been carried out.

There will be no order as to costs. The security deposit furnished by the husband is to be released to him.

The hearing on 23 July 2014

4 On 20 May 2014, the wife's solicitor wrote to the court regarding para 60(e) of the Judgment in relation to the consequential orders for the sale of the Sims property and/or the Aspen Heights property and the distribution of the proceeds thereof and the adjustment of the parties' respective entitlements to the matrimonial assets. The wife's solicitor asked for a hearing date so that the issues could be addressed. Attached to the letter were the following documents:

(a) Valuation report issued by M/s Knight Frank on behalf of the wife valuing the Aspen Heights property at \$1,460,000 as at December 2013;

(b) HDB transacted prices relevant to the Sims property showing the transacted value of a lower floor unit at \$800,000 as at April 2013; and

(c) Indicative value of the Vistana property at around RM450,000.

Pursuant to the request made in this letter, the parties were asked to attend a hearing on 23 July 2014.

5 At the hearing, Mr Yap Teong Liang ("Mr Yap") appeared for the wife and the husband appeared in person. Mr Yap tendered his letter of 20 May 2014 and asked me to make orders for the sale of the Sims property and the Aspen Heights property and for the distribution of the proceeds in accordance with my orders in the Judgment as modified by the CA Judgment. The husband objected to any further orders being made by me.

6 The basis of the husband's objection was that I had no jurisdiction to make any further orders

and that I was *functus officio*. He noted that under para 60(a) of the Judgment, I had ordered parties to appoint a valuer to value the Sims and Aspen Heights properties and to provide me with copies of the valuation reports within three weeks of the date of the Judgment. The husband noted that neither party had complied with this order because the husband had filed his appeal against the Judgment. The husband then contended that since the order had not been complied with, it had lapsed and nothing further could be done in respect of the valuation of the two properties. The same argument applied to the order under para 60(c) relating to the sale of the Vistana property: since that property had not been sold within six months of the date of the Judgment as provided for in the order, the order for the sale had expired.

7 I asked the husband if he was going to appoint a valuer pursuant to para 60(a). His response was that the order had expired and that there was nothing that could be done about it. The wife could have, he submitted, applied for an extension of time to comply with that order but, as she had not done so, the order had expired.

8 Mr Yap submitted that the court still had the jurisdiction to make ancillary orders to carry out the Judgment and that this was clear both from the Judgment itself and from the CA Judgment.

9 I was unable to accept the husband's arguments regarding the lack of jurisdiction. When these proceedings first came before me, the issues to be determined by me included how the matrimonial assets were to be divided between the parties to achieve a just and equitable distribution. Dealing with this issue involved not only determining what the assets were and what contributions the parties had each made to the acquisition of the same and to the marriage generally. It also involved deciding how the assets were to be handled and what the parties had to do to achieve the distribution the court had decided upon.

10 It was clear from the Judgment that the orders made therein did not dispose of all the matters that had to be dealt with as detailed above. Having arrived at a decision, I made certain consequential orders but even then I indicated that there would have to be a further hearing in order to give full effect to the findings and determination in the Judgment. In particular, by para 60(e) of the Judgment, I made it clear that consequential orders for the sale of the Aspen Heights and Sims properties and the distribution of the proceeds thereof and adjustment of the parties' entitlement to the matrimonial assets would be made after the necessary valuation reports had been furnished. This order preserved the court's jurisdiction to make consequential orders in relation to the division of the assets.

11 I did not accept the husband's argument that, simply because the parties had decided not to obtain the valuation reports within the specified time and, further had not effected the sale of the Vistana property as directed, the orders had lapsed and the court's jurisdiction had ended. The decision by the parties (although, in effect it was the wife's decision) not to do anything further at that time was a sensible one in the light of the husband's appeal since the Court of Appeal might have made a different determination in relation to the division of the assets. Such decision by the parties, made for practical reasons, could not negate the court's jurisdiction to hold a further hearing in the future and make the appropriate orders to give effect to the Judgment as long as the same was not set aside by the Court of Appeal.

12 At the hearing of CA 47, the Court of Appeal affirmed the Judgment save in one respect which did not affect the court's power to make consequential orders. This was also recognised in the CA Judgment as indicated by its reference to the parties coming back to me under para 60(e) of the Judgment for further directions after the valuations ordered by me had been carried out.

13 Even if my jurisdiction were not preserved by reason of the Judgment or the fact that I had not yet fully disposed of the matters in issue in these proceedings, I would still have had jurisdiction to make further orders under s 112(4) of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Charter"). This section reads:

(4) The court may, at any time it thinks fit, extend, vary, revoke or discharge any order made under this section, and may vary any term or condition upon or subject to which any such order has been made.

The Judgment and the orders therein were made in exercise of the powers conferred on the court by s 112 of the Charter and therefore the court retained power after the issue of the Judgment to make further orders varying or extending the orders made in para 60 of the same.

14 Accordingly, I held that the husband's objections at the hearing to the prospect of any further orders being made to implement the Judgment and the CA Judgment had no merit. I considered that the husband was trying to delay, if not entirely frustrate, the implementation of the Judgment and deprive the wife of the award made in her favour. If the husband was acting in good faith and genuinely believed that I had no further jurisdiction to decide how the Judgment should be implemented, he would have made a proposal to the wife as to how parties could by mutual agreement resolve the outstanding issues. He did no such thing but simply turned up in court to block the wife's attempt to get the court's directions for this purpose.

15 I then considered the evidence that the wife had put before me regarding the values of the Aspen Heights and Sims properties. I considered these to be inadequate and that further valuation reports should be obtained. As it was obvious that the husband would not cooperate with the wife in any way, I ordered each of them to obtain his/her own valuation report. I also considered that the sale of the Vistana property should not be delayed further and I made an order for the wife to conduct this sale.

16 The specific orders I made are as follows:

(a) Each of the parties shall appoint a valuer to give a Valuation Report on the Aspen Heights property stating its value as of 21 March 2013. Such report shall be submitted via an affidavit to be filed no later than 25 August 2014.

(b) Each party shall appoint a valuer to value the matrimonial flat at Sims Avenue as of 21 March 2013. The defendant shall allow the plaintiff's valuer access to the property during office hours on a weekday subject to 48 hours' prior notice having been given.

(c) The valuation reports are to be submitted by affidavit on or before 25 August 2014. If the defendant does not allow reasonable access to the plaintiff's valuer, the plaintiff may submit other evidence of the flat's value.

(d) The Vistana property shall be sold as soon as practicable. The plaintiff shall have charge of the sale and, if the defendant does not sign any documents, records, receipts or forms required to effect the sale within seven working days of being asked to do so, the Registrar of the High Court shall be authorised to execute the same on behalf of the defendant and his execution shall in all respects be as if such documents, records, receipts or forms, had been signed by the defendant himself.

(e) Apart from the variation on the time of sale and the conduct of the sale, para 60(c) of my

Judgment dated 21 March 2013 shall stand.

(f) Adjourned for further consideration after the valuation reports and affidavits have been submitted.

17 Since I made the above orders I have become aware of a judgment which casts some doubt on whether the order described in 16(d) above would really be effective to bring about the sale of the Vistana property. It is quite possible that if the husband refuses to sign the sale papers for that property, the Registrar's signature of the same would not be accepted by the relevant Malaysian authorities. Therefore, it may be necessary to further refine the order made in respect of the Vistana and decide how its value can be divided between the parties in the absence of a sale.

18 The husband is dissatisfied with my orders. On 25 August 2014, he filed an appeal against them. As I read it, his Notice of Appeal indicates that he is maintaining his objection that the court lacked jurisdiction to make any further orders in these proceedings.

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