

ABT v ABU
[2014] SGHC 25

Case Number : Divorce Transferred No 4834 of 2011
Decision Date : 10 February 2014
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Chia Chwee Imm Helen (Chia-Thomas Law Chambers LLC) for the plaintiff/husband; Rina Kalpanath Singh (Kalco Law LLC) for the defendant/wife.
Parties : ABT — ABU

Family Law – Matrimonial assets – Division

Family Law – Maintenance

10 February 2014

Judgment reserved.

Choo Han Teck J:

1 This case concerns issues of maintenance and the division of matrimonial assets. The plaintiff/husband was born on 4 March 1964 and the defendant/wife, on 5 February 1965. Both are permanent residents of Singapore. The plaintiff is working as an editor, drawing a net monthly income of S\$24,587.70. They were married in the district of Sudbury, in the county of Suffolk, on 10 February 1997. They have one daughter, “V”, born on 20 November 1998. Pursuant to a mediation agreement reached by the parties on 27 October 2010, V was to stay with the defendant and parties were to have joint custody over her. In May 2011, V moved to stay with the plaintiff. V continues to stay with the plaintiff to date. When counsel appeared before me, they had no objections with the current arrangement, that is, V to stay with the plaintiff and the defendant to have reasonable access. Leave to apply will not be prejudiced so long as V remains a minor. The only issues before me were of division of assets, and maintenance for the defendant.

2 In August 2011, while the marriage was still subsisting, the defendant commenced maintenance proceedings against the plaintiff, claiming arrears for maintenance – which the plaintiff agreed to pay pursuant to the mediation agreement – since May 2011. In the midst of the maintenance proceedings, the plaintiff filed the writ of divorce on 6 October 2011. Interim judgment was granted on 19 June 2012. The defendant subsequently withdrew her claim for maintenance, as the plaintiff was already paying her a monthly sum of S\$5,750 at that point. Parties were in agreement on the matter of custody, care and control of, and access to, V. I deal now with the division of assets.

3 While the parties were largely in agreement over what constituted the pool of assets, both parties arrived at different values, each on either side of the S\$1.5m mark. The plaintiff provided the most recent declaration, dated 13 January 2014. On the plaintiff’s calculation, the net value of the matrimonial assets, as at 13 January 2014, was below S\$1.5m. I am of the view that the plaintiff’s calculations were flawed as his numbers did not add up. Mathematically, the sum of the declared gross assets was not S\$1,647,056.20, as stated. Rather, the gross figure should have been S\$1,679,675.45. This brought the plaintiff’s total net value to S\$1,480,163.98, instead of the stated S\$1,447,544.80. In any case, the plaintiff’s net figure remained below S\$1.5m.

4 The defendant, however, asserted the net figure was more than S\$1.5m. Her most recent declaration, dated 10 October 2013, excluded one of the parties' largest liabilities, that is, the mortgage on the house in Suffolk. This amount was quantified as £79,072, dated 31 March 2013, by the plaintiff. In Singapore currency, this would be S\$164,975.27, calculated by the plaintiff using the exchange rate as at 13 January 2014. If subtracted from the defendant's total net figure (S\$1,650,791.13), this would bring the sum to S\$1,482,080.93, below the S\$1.5m mark.

5 There were some other inconsistencies between the parties' declarations. This is set out in the table below:

No	Asset	Plaintiff's valuation	Defendant's valuation	Comments
1	Plaintiff's car	S\$39,000, subject to loan of S\$13,457.20. Net value: S\$25,542.80	S\$29,000	The plaintiff asserted his car was a Mazda RX-8, bearing registration number SKCxxxZ. The defendant asserted the car was a Hyundai Getz, bearing registration number SGVxxxxE. The plaintiff mentioned the sale of a Hyundai Matrix in his submissions, the proceeds of which were split equally (S\$8,500 went to the defendant). The defendant's assertion is likely inaccurate and outdated. The plaintiff's valuation is preferred.
2	Plaintiff's Citibank savings account bearing number xxxxxxx029	S\$32,618.78 (as of 10 January 2014)	S\$139,606 (as of July 2012)	
3	Defendant's DBS current account bearing number xxx-xxxx04-0	S\$110,784.65 (as of 30 June 2012)	S\$43,526.37 (as of 31 August 2013)	
4	NatWest current plus joint account bearing number xxxxx418	£810.30 (S\$1,689.26) (as of 13 December 2013, converted using exchange rate as of 13 January 2014)	£808.22 (S\$1,640.68) (as of 13 September 2013)	This entry featured twice in the defendant's declaration, once in the plaintiff's assets and once in the defendant's. This led to double-counting.

5	Defendant's NatWest first reserve account bearing number xxxxx232	£41,222.44 (S\$82,244.42) (as of 3 April 2012, converted using exchange rate as of 11 October 2013)	£41,273.85 (S\$83,785.92) (as of 3 July 2013)	The defendant argued she is holding this amount on trust for a friend.
6	Defendant's NatWest account bearing number xxxxx169	Not applicable	£15,108.68 (S\$30,670.62) (as of 28 June 2013)	The plaintiff did not declare this asset.

6 While some of the discrepancies can be explained by the outdated nature of the defendant's declaration, some, such as item 4 in the table, were a result of accounting errors. It was on the unreliable numbers that the parties founded their arguments on division. The defendant argued that she should be entitled to at least 50% of the assets. Calculated based on the defendant's declaration, this amounted to S\$825,395.57. The plaintiff argued no further division should be ordered, as he had already given S\$778,372 to the defendant. The plaintiff argued that this amounted to 54% of the net total of the matrimonial assets. However, this figure of 54% appeared to have been reached by dividing S\$778,372 by S\$1,447,544.80 (his declared net value as of 13 January 2014); it was unreliable for two reasons. First, as pointed out in [3], the sum of S\$1,447,544.80 was wrong. Second, and more importantly, the sum of S\$778,372, considered with the assets declared as at 13 January 2014, would not account for monies that had been spent over the period of around 4 years. The plaintiff's failure to incorporate the amount that has been spent on living expenses, between 27 October 2010 and 13 January 2014, in effect, served to "inflate the numerator while decreasing the denominator".

7 In the light of these inconsistencies, I propose to first determine the total value of the pool of the matrimonial assets at present. In this regard, two dates are of importance: the date for deciding what fell into the pool and the date for determining the value of the pool. With respect to the former, the Court of Appeal in *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 ("*Yeo Chong Lin*") recognised that there was no definitive operative date that governed. With respect to the latter, the Court of Appeal (at [39]) identified the date of the hearing. However, in the more recent High Court decision of *Anthony Patrick Nathan v Chan Siew Chin* [2011] 4 SLR 1121, Quentin Loh J opined (at [29]) that "the date on which matrimonial assets should be valued is up to the court's discretion... What is critical is to arrive at a 'just and equitable division'". This flexible approach was followed by the High Court in *Yong Shao Keat v Foo Jock Khim* [2012] SGHC 107 and *Chan Yuen Boey v Sia Hee Soon* [2012] 3 SLR 402. Also, the Court of Appeal in *Wan Lai Cheng v Quek Seow Kee and another appeal and another matter* [2012] 4 SLR 405 decided that several of the properties were to be valued as at a date different from the date of the hearing (at [93]). As observed by Belinda Ang J in *Wong Kien Keong v Khoo Hoon Eng* [2013] SGHC 275 at [106]:

...although the general starting point would be that as iterated in *Yeo Chong Lin*, the case law seems to indicate that the court will have discretion to choose a more appropriate date of valuation.

I agree.

8 In this case, I generally rely on the more recent figures provided by the plaintiff, after having taken the errors into account. The plaintiff's most recent declaration of assets was dated 13 January

2014, whereas the defendant's was dated 10 October 2013. The only exception is item 3 in the table above at paragraph 5. For this, the defendant's figure (S\$43,526.37, as of 31 August 2013) was more recent than the plaintiff's (S\$110,784.65, as of 30 June 2012). Further, during oral submissions, the plaintiff did not seem to have quarrel with the defendant's more recent valuation. I have therefore preferred the defendant's figure for this item. I note that even amongst the figures I have chosen to rely on, some are still quite outdated. Short of requesting that counsel source for the most recent figures, which may cause their clients to incur greater costs, I will make do with what I have before me. As a preliminary point, I note there was no question that the matrimonial property (which has hence been sold and the proceeds divided) was no longer part of the assets for division. I find the following should be included:

- (a) House in Suffolk, net value: S\$596,154.47;
- (b) Plaintiff's CPF funds, net value: S\$345,142.72;
- (c) Plaintiff's Citibank savings account bearing number xxxxxx029, net value: S\$32,618.78;
- (d) Plaintiff's Citibank savings account bearing number xxxxxx541, net value: S\$17,779.26;
- (e) Plaintiff's NatWest current account bearing number xxxxx418, net value: S\$1,689.26;
- (f) Plaintiff's DBS account bearing number xxxxxxxxxxxx223, net value: S\$120,091.39;
- (g) Plaintiff's POSB savings account bearing number xxxxxx278, net value: S\$426.05;
- (h) Plaintiff's 208 shares in Barclays PLC, net value: S\$1,111.90;
- (i) Plaintiff's 19,560 shares in UK NS & I premium bonds, net value: S\$41,558.30;
- (j) Plaintiff's retirement fund, net value: S\$46,250.58;
- (k) Plaintiff's car (Mazda RX-8 bearing registration number SKCxxxZ), net value: S\$25,542.80;
- (l) Defendant's property in Ukraine, net value: S\$49,808;
- (m) Defendant's DBS current account bearing number xxxxxx040, net value: S\$43,526.37;
- (n) Defendant's NatWest first reserve account bearing number xxxxx232, net value: S\$82,244.42;
- (o) Defendant's NatWest current plus account bearing number xxxxx791, net value: S\$40.40;
- (p) Defendant's NatWest account bearing number xxxxx169, net value: S\$30,670.62; and
- (q) Defendant's car (Mazda bearing registration number SGDxxxxA), net value: S\$8,921.

9 The total pool of assets, on this calculation, amounted to S\$1,443,576.32 (net value). Counsel for the defendant argued that item (n) should not be included in the pool of assets. Her reason was that she was holding the money in the account on trust for a friend. However, in the absence of any evidence of this, I am not inclined to exclude it from the pool.

10 I now come to the matter of how the pool should be divided. I find that an equal division would

be just and equitable in this case. This is within the range of the cases cited by the plaintiff, *AAY v ATS* [2012] 2 SLR 859, which involved a 15 year marriage and resulted in the wife being awarded 45% of the assets, and *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 ("*Lock Yeng Fun*"), in which an equal distribution was ordered. While I acknowledge that equality of division should not be the norm (see *Lock Yeng Fun* at [55]), I find it is a just figure in this case, in particular because even the plaintiff is willing to agree to an equal division of assets. This can be gleaned from the mediation agreement, as well as the plaintiff's submissions. However, the mediation agreement did not deal comprehensively with all the matrimonial assets. Further, as noted above at [6], how the plaintiff arrived at the figure of 54% was questionable. As such, I am inclined to intervene, notwithstanding the mediation agreement. I find that a 50-50 split of the assets listed in [8] is appropriate.

11 I turn now to the issue of maintenance for the defendant. The defendant sought S\$12,000 per month. Counsel for the plaintiff argued that no maintenance should be awarded. The plaintiff was initially paying S\$10,500 per month in maintenance to the defendant, pursuant to the mediation agreement dated 27 October 2010. After paying 19 months' worth from October 2010 to May 2011, the plaintiff reduced the amount to S\$6,750 per month. After paying this reduced amount for 9 months, from June 2011 to 12 March 2012, the plaintiff further reduced the amount to S\$5,750 per month, and has been paying this amount to date.

12 In view of the earning capacity of the parties, and the needs of the defendant, especially in the light of her medical condition, I am inclined to order that the plaintiff continue paying S\$5,750 per month to the defendant. Counsel for the defendant cited *Prasenjit K Basu v Vinti Vaish (m.w.)* [2003] SGDC 303 (at [41]) for the proposition that the main factors the court should focus on in a *maintenance pendente lite* application are the immediate financial needs of the parties and their incomes. While this is not such an application, I have taken those two factors into account. The defendant does not earn a monthly salary. According to counsel for the defendant, her monthly expenses amount to S\$12,735 per month. This is inclusive of S\$2,000 for the daughter's savings, S\$1,200 for groceries, S\$950 for maid and agency fees, S\$1,250 on toiletries and clothes, and S\$1,200 on transport. All these expenses should be significantly reduced given that V is no longer living with the defendant.

13 Counsel for the defendant argued that the current sum of S\$5,750 was "grossly insufficient", and that she may be crippled in a few years due to her condition. I am of the view, however, that this sum is sufficient as it must be viewed against the backdrop of the order relating to the division of assets. Further, if the defendant's condition deteriorates to the point that she may need more financial support, she is able to apply to court to vary the maintenance order at that juncture.

14 I thus order that:

- (a) The matrimonial assets be divided equally between the plaintiff and the defendant;
- (b) The plaintiff pay a sum of S\$5,750 per month to the defendant with effect from 10 February 2014;
- (c) There will be liberty to apply in respect of access; and
- (d) Each party is to bear its own costs.

Parties shall have liberty to apply, where necessary, for specific orders dealing with disposal of the properties involved.