IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 39

Civil Appeal No 172 of 2020

Between

UJN

… *Appellant*

And

UJO

… *Respondent*

In the matter of HCF/Divorce (Transferred) No 2337 of 2016

Between

UJN

… *Plaintiff*

And

UJO

… *Defendant*

JUDGMENT

[Family Law] — [Matrimonial assets] — [Division]

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v
UJO

[2021] SGCA 39

Court of Appeal — Civil Appeal No 172 of 2020
Judith Prakash JCA, Belinda Ang Saw Ean JAD and Woo Bih Li JAD
31 March 2021

16 April 2021 Judgment reserved.

Woo Bih Li JAD (delivering the judgment of the court):

Introduction

1 This appeal is in respect of a pool of matrimonial assets. The judge below delivered his judgment on 17 September 2020. On 16 October 2020, the husband filed an appeal against the judge's decision.

2 The appeal is in respect of the following findings of the judge:

(a) that the husband had not accounted for his bonuses and awards from Company [J] totalling US$1,870,000;

(b) that the husband's assets included half the value of two properties, one in New York and one in London;

(c) that the husband had not properly accounted for US$2.3m worth of shares in Company [D];

(d) that the balance sum of $367,599.68 in a trading account with [H] was distinct from the sale proceeds of the abovementioned US$2.3m worth of shares in Company [D]; and

(e) that the value of a property located at Loyang was $6m as at 5 October 2016, the date of the interim judgment ("IJ").

The court's decision

The bonuses and awards of US$1,870,000 from Company [J]

3 The judge was of the view that the husband had failed to disclose US$1.5m in bonus payments and US$370,000 in deferred awards from Company [J]. Therefore, the judge considered that this aggregate sum of US$1,870,000 was part of the assets held by the husband and added it to the pool of matrimonial assets.

4 The husband was allowed to adduce fresh evidence for the appeal. The evidence comprised the following:

(a) A bank statement for POSB savings account number xxxxxx104 ("the POSB a/c") showing that a deposit of $1,496,572.85 was made into this joint account on 26 March 2015. We will refer to this statement as "the POSB statement of account".

(b) An email from Company [J] to the husband dated 2 December 2020 enclosing a copy of his payslip for March 2015 and a March 2015 Reward Statement. The March 2015 Reward Statement had apparently already been adduced in evidence below.

(c) A letter from DBS Bank Ltd to the husband dated 11 January 2021 setting out details of three fund transfers from the POSB a/c on 27 March 2015.

5 As mentioned, the POSB statement of account showed that a deposit of $1,496,572.85 was made into a joint account of the parties on 26 March 2015. From the husband's payslip for March 2015 from Company [J] and the March 2015 Reward Statement, it could be seen that the sum of $1,496,572.85 comprised a bonus payment of $1,475,822 and other sums being his basic salary and benefit allowance, with some deductions taken into account. The $1,475,822 was the equivalent of a US$1,165,000 bonus payment payable to the husband by Company [J]. The remainder of the US$1.5m bonus payment, *ie*, US$335,000, had not been credited into the POSB a/c. It appeared from a March 2015 Deferred Awards Statement from Company [J] (which had been adduced below) that this sum of US$335,000 was to be paid to the husband only in January 2018. However, the husband had left Company [J] in June 2015. Hence, he had forfeited any right to be paid that sum.

6 Although the fresh evidence only specifically accounted for US$1.5m, it also supported the husband's assertion that his salary and bonuses had previously always been paid into the POSB a/c. This would include any payment of deferred awards. Indeed, the wife did not suggest where else such a payment would have been credited into. According to the March 2015 Deferred Awards Statement, the US$370,000 would have vested in January 2015. It was logical to deduce that this sum too had, in the normal course of the arrangement between the husband and his employer, been credited into the POSB a/c. No one had produced a POSB statement of account for January 2015 nor pressed the other for the same.

7 While the wife was reluctant to accept the fresh evidence, she had no real basis to dispute it especially with regard to the figure of US$1,165,000. Importantly, she would have been aware of the deposit of $1,496,572.85 into the POSB a/c for two reasons. First, earlier in the proceedings below, she had initially said that the husband's salary and bonus had been credited into the parties' joint account (*ie*, the POSB a/c) before subsequently contending that he had not accounted for his bonus (and deferred awards). Second, the POSB statement of account showed withdrawals of two sums of $50,000 each and a sum of $500,000 on 27 March 2015, *ie*, the day after the deposit of $1,496,572.85 had been made. The husband said that the withdrawals were made by the wife. The wife did not dispute that she had made these transfers. Each sum of $50,000 was transferred to the respective accounts of their two sons and the sum of $500,000 was transferred to the wife's own account. Hence, she must have been aware of the deposit made on 26 March 2015.

8 In this appeal, the wife argued in the alternative that even if the court were to accept the husband's arguments on this issue, he had not accounted for the balance in the POSB a/c when he subsequently closed it. We are of the view that it was too late for the wife to raise this point. She had sufficient opportunity and time to seek discovery of documents or to render interrogatories below. She knew about this joint account and that moneys had been credited into it. Yet, she did not specifically seek an explanation from the husband about the balance in the POSB a/c at the time of closure.

9 In the circumstances, we are of the view that the husband has accounted for US$1,870,000 and that this sum should be deducted from the pool of matrimonial assets.

The value of properties in New York and in London

10 The husband was a joint owner of a property in New York and of a property in London. The other owner was [MC] who was a former superior of his.

11 The first issue was whether the husband was entitled to 50% of the value of the properties or only 50% of the capital appreciation of these properties. He had applied to adduce fresh evidence on appeal which included a statutory declaration from [MC] to the effect that the husband was entitled only to 50% of the capital appreciation of the properties. His application was dismissed. In the circumstances, there was no evidence to support his bare allegation. Indeed, his initial evidence below was that he was entitled to 50% of the value of these properties (and not just the capital appreciation thereof). It was only at a late hour that he attempted to change his position below. We are of the view that the judge was correct to find that the husband was entitled to 50% of the value of these properties and also that he had failed to disclose the full value of the London property.

12 The second issue in respect of these properties was the husband's allegation that [MC] had collected all the rental proceeds from the two properties. However, since the husband was a joint owner who was entitled to 50% of the full value of the properties, there was no valid reason for [MC] to collect and retain all the rental proceeds from the properties as the husband suggested. The husband did not produce any objective evidence in the proceedings below to support that contention.

13 The third issue in respect of these properties was the husband's allegation that the judge had failed to take into account an outstanding mortgage

on the New York property. However, the husband had not contended below for a mortgage to be taken into account nor had he adduced evidence of the quantum of the mortgage. For the appeal, the husband argued that even a document which the wife had relied on showed a monthly mortgage payment of US$6,807. However, at the hearing of the appeal, the wife clarified that this document was a listing of a similar but different unit from the New York property. This was not challenged in the husband's reply.

14 We therefore agree with the judge that the husband had failed to disclose the full value of the London property and the rental proceeds from both properties. This omission should be taken into account in deciding whether to apply an uplift to the wife's share of the matrimonial assets, as the judge had done.

US$2.3m worth of shares in Company [D]

15 The judge found that the husband had failed to account for some shares in Company [D]. Under the husband's employment contract dated March 2015, he was to be granted US$2.3m worth of restricted shares in Company [D] within three months of the commencement of his employment to compensate him for the forfeiture of deferred equity by his previous employer due to his resignation. According to the husband, his employment with Company [D] commenced on 21 July 2015. Hence, Company [D] would have awarded him the shares by October 2015.

16 The husband submitted that the shares were awarded to him after the three-month deadline. He *specifically* claimed that he had been awarded 1,444,558 shares on 7 March 2016 and a further 1,444,558 shares on 4 August 2016. He tendered statements of account from his account with The Central

Depository (Pte) Limited ("CDP") showing the credit of such number of shares. In the proceedings below, he alleged that the total of 2,889,116 shares had been valued at $0.70 per share when awarded to him, that the shares were eventually sold at US$0.04 per share in September 2016 and that the sale proceeds were retained in his securities trading account with [H]. There was a credit balance of $367,599.68 in the trading account which allegedly represented the sale proceeds of the shares. The judge did not accept that the husband had accounted for the US$2.3m worth of restricted shares which he was supposed to have received and we agree that he was justified in not doing so.

17 First, the husband was inconsistent about the date of award of the shares from Company [D]. As the wife pointed out, he initially said that he had received them in July 2015. However, when he subsequently sought to rely on the CDP statements of account which showed a credit of 1,444,558 shares in March 2016, he conveniently claimed that the first award of shares had in fact been made in March 2016.

18 Second, the husband said that there was a delay in the award of the shares because he needed time to provide evidence to Company [D] on the forfeiture of deferred equity by his previous employer. However, this explanation was not proffered earlier. In the parties' amended Joint Summary of Relevant Information, the husband had instead claimed that the first award of shares in March 2016 "coincide[d] with the employment contract with [Company [D]] which was signed in March 2016 as well". This explanation was clearly unmeritorious since he had signed his employment contract with Company [D] in March *2015*. The husband must have decided to allege a delay in the award of the shares upon realising that his previous position was

untenable. However, there was no documentary evidence to support his claim that the shares had been awarded to him late. This brings us to the next point.

19 Third, there should have been some written evidence from Company [D] to the husband confirming the number of shares awarded to him, the date of award and the value ascribed to each share. If the husband had misplaced such evidence, he should have been able to obtain a copy thereof or at least written confirmation from Company [D] that the total of 2,889,116 shares represented the US$2.3m worth of restricted shares that he was entitled to. He did not adduce any written evidence from the company nor elaborate on any difficulty that he faced or might have faced in doing so. This was a crucial omission.

20 Fourth, the husband argued that any earlier award of shares before March 2016 would have been reflected in the CDP records. As such records showed that the first time his CDP account was credited with shares in Company [D] was in March 2016, he asserted that this showed that he had first received the shares from Company [D] then. In addition, and as mentioned above at [16], the CDP records showed that a second lot of 1,444,558 shares from Company [D] was credited in August 2016.

21 We do not accept that any award of shares from Company [D] would necessarily have been credited into the husband's account with the CDP. He was supposed to have been awarded restricted shares. This suggested that perhaps the shares might not have been credited into his CDP account. Alternatively, he might have reached an arrangement with Company [D] to exchange the intended award of shares for something else. While this was speculative, it was incumbent on him to produce the letter of award which would have avoided such round-about explanations, but he did not do so.

22 Furthermore, the entire 2,889,116 shares could not have been awarded to him in his capacity as an employee. The CDP statements of account showed that his account had been credited with 1,444,558 shares in March 2016. Then, in July 2016, he was granted the right to subscribe for another 1,444,558 shares in a rights issue. This was not a bonus issue. The rights issue would have been granted to him in his capacity as a shareholder, without regard to his status as an employee, and he would have had to pay in order to acquire them. The CDP statements of account for July and August 2016 showed that he had subscribed for the rights and had been granted the additional 1,444,558 shares. Therefore, it was not true that all 2,889,116 shares were shares awarded to him in his capacity as an employee. That also tainted the credibility of his explanation that the first tranche of 1,444,558 shares was awarded to him in his capacity as an employee pursuant to his employment contract.

23 Fifth, the husband could not make up his mind on the number of shares awarded to him by Company [D]. On the one hand, he was suggesting that the 2,889,116 shares were the US$2.3m worth of shares that were supposed to be awarded to him. On the other hand, the Appellant's Case for the appeal stated (at para 46) that not all of the US$2.3m worth of shares were awarded to him. He had to forfeit "some" of the shares upon his subsequent resignation from Company [D]. It seemed to us that this allegation was made because the wife had pointed out that 2,889,116 shares at $0.70 per share would not match the US$2.3m figure. The husband's suggestion of a forfeiture was quite remarkable as he did not elaborate on how many in number or how much in value had been forfeited and more importantly, why he had to forfeit them. His vague reference to his subsequent resignation from Company [D] raised even more questions.

24 Sixth, the husband's initial explanation that he had sold the 2,889,116 shares at US$0.04 per share turned out to be inconsistent with his case. On his own case, the credit balance of $367,599.68 in his trading account with [H] was the sale proceeds of the 2,889,116 shares. However, that would mean that he had sold the shares at about US$0.09 per share and not at US$0.04 per share (see the judgment below at [109]). For this appeal, the husband attempted to disavow his position below by claiming he had made a "typographical error" in stating that he had sold his shares at US$0.04 per share. He instead asserted that he had sold each share for between $0.12 to $0.14 per share. Given that the husband had claimed to have sold his shares at US$0.04 per share on various occasions in the proceedings below, we find his latest explanation to be contrived and unconvincing.

25 Ultimately, even if the $367,599.68 were to be attributed to the husband's sale of 2,889,116 shares in Company [D], the husband still had to connect these shares with the US$2.3m worth of restricted shares which he was supposed to have received under his contract of employment. For the reasons stated above, he failed to make the connection.

26 In the circumstances, we are not persuaded by the husband's explanations and conclude that he failed to account for the US$2.3m worth of restricted shares.

The sum of $367,599.68 in a trading account with [H]

27 The sum of $367,599.68 was a credit balance in the husband's trading account with [H]. As this sum was disclosed late by the husband and had not been included as part of his assets, the judge was entitled to include it as part of the husband's assets in identifying the pool of matrimonial assets. The husband

argued that since he had accounted for the US$2.3m worth of shares from Company [D], the sum of $367,599.68 representing the sale proceeds of the shares should not have been included in the pool. However, this was not a valid argument. Even if the $367,599.68 could be attributed to the sale of shares awarded by Company [D] to him, the sum had still not yet been included by the husband as part of his assets as it was disclosed late. The sum of $367,599.68 would hence have had to be included in any event. Indeed, at the hearing of the appeal, the husband accepted this.

The value of the Loyang property

28 The husband had applied to adduce fresh evidence on the value of a property in Loyang owned by the parties. This evidence was in the form of a valuation report dated 8 January 2021, which valued the Loyang property as at 1 January 2017. The date of 1 January 2017 was close to the date of IJ, *ie*, 5 October 2016. His application to adduce that report was dismissed.

29 He had attempted to adduce the valuation report to show that the judge was wrong to attribute a value of $6m to the Loyang property as at the IJ date. Based on information which each party had gathered, the husband had initially attributed a value of $5m while the wife had initially attributed a value of about $7.9m as at the IJ date. The valuation report valued the property at $3.8m as at 1 January 2017.

30 Even without the valuation report, the husband argued that the judge was wrong to ascribe a value of $6m to the Loyang property as this figure was not borne out by the evidence adduced by the parties below, which was in the nature of information on property sales in the same area. The husband's contention was simple: the Loyang property was a detached house with a land area of about

6,113 sq ft but the wife had used the sale price of a terrace house with a smaller land area and a higher unit price in valuing the Loyang property at $7.9m. Based on the sale prices of detached houses in the area that were on larger pieces of land, the unit price of the Loyang property ought to have been lower. Applying a lower unit price, the Loyang property would be valued at between $4.5m and $5m. He argued that perhaps the judge had taken a point somewhere between the parties' figures of $7.9m and $5m to derive a figure of $6m and that the judge was wrong to have done so. At the hearing of the appeal, the husband was prepared to adopt the figure of $5m.

31 The wife did not dispute the husband's contention that she had applied the unit price of a terrace house with a smaller land area to the Loyang property in order to derive a value of $7.9m. As mentioned, the husband argued that the sale prices of detached houses in the surrounding area that were sold at around the date of the IJ and that were of larger land areas would support a valuation of between $4.5m and $5m. In response, the wife referred to a detached house in the list of property sales obtained by the husband and pointed out that the said property had been sold at $969 per square foot. Applying that unit price to the Loyang property would support the judge's assessment of $6m. However, this was not a valid comparison as that sale was carried out in April 2015, more than a year before the IJ date.

32 In the circumstances, we conclude that a fair value of the Loyang property as at the IJ date would be the husband's initial valuation of $5m and not $6m.

Summary

33 We conclude that the judge was justified in drawing an adverse inference against the husband for failing to disclose all his assets and in giving effect to that adverse inference by applying an uplift of 5% to the wife's share of the matrimonial assets. We note that the judge had various reasons for doing so as mentioned at [157] of the judgment below. In other words, the judge did not rely only on the husband's omission to disclose (a) the value of the London property; (b) the rental proceeds from the properties in New York and London; and (c) the shares from Company [D]. However, in the light of fresh evidence that was successfully adduced for this appeal, a reduction of US$1,870,000 must be made to the judge's computation of the pool of matrimonial assets. This is distinct from the 5% uplift mentioned earlier.

34 Accordingly, we vary the decision below as follows:

(a) The sum of US$1,870,000 (*ie*, $2,580,600 at the agreed exchange rate of US$1=$1.38) is to be deducted from the pool of matrimonial assets.

(b) The value of the Loyang property, encumbrance-free as at the IJ date, must be calculated at $5m. As there was a mortgage of $3,153,166 then, the net value of the Loyang property would be $1,846,834 and the husband is to pay the wife 45% thereof in exchange for the transfer of her interest therein to him.

35 The aggregate amount that the husband is to pay the wife is to take into account the above variations.

36 The husband's appeal is therefore allowed to the above extent. The rest of his appeal is dismissed.

37 As the husband is only partially successful in his appeal, we will not grant him the full costs thereof. After taking into account the costs schedules of the parties, we order the wife to pay the husband $25,000, inclusive of disbursements, as his costs of the appeal.

Judith Prakash
Justice of the Court of Appeal

Belinda Ang Saw Ean
Judge of the Appellate Division

Woo Bih Li
Judge of the Appellate Division

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