

Tan Poh Beng v Choo Lee Mei
[2014] SGHC 163

Case Number : Originating Summons No 160 of 2014
Decision Date : 18 August 2014
Tribunal/Court : High Court
Coram : Edmund Leow JC
Counsel Name(s) : Manoj Sandrasegara & Jonathan Tang (WongPartnership LLP, instructed) and Patricia Quah (Patricia Quah & Co) for the plaintiff; The defendant in person.
Parties : Tan Poh Beng — Choo Lee Mei

Civil Procedure – Foreign judgments

Civil Procedure – Inherent powers

Land – Sale of land

18 August 2014

Judgment reserved.

Edmund Leow JC:

Introduction

1 This case raises the novel issue of whether an ancillary order issued by a foreign court for the division of property situated in Singapore may be given legal effect in Singapore. I have reluctantly come to the conclusion that it may not.

Facts

2 The Plaintiff and the Defendant (collectively, “the Parties”), who are both Malaysian citizens, were husband and wife. On 7 October 2005, they obtained a *decree nisi* for divorce from the High Court of Malaya at Ipoh (“the Malaysian Court”) which was made absolute on 15 September 2006.

3 On 18 August 2006, the Malaysian Court made the following ancillary orders by consent (“the Malaysian Court Order”):

(1) the property known as Blok [sic] 950 Jurong West Street 91, #04-629, Singapore 640950 (“Matrimonial Asset”) to be sold immediately by “private treaty”; whereby the Petitioner Husband shall have full authority to conduct the sale.

(2) the entire proceeds of the Matrimonial Asset be remitted to the Petitioner Husband and shall thereafter be utilised to settle the following payments in the order of priority as set out below;

(a) to repay outstanding Housing and Development Board Mortgage Loan (the said HDB loan); and

(b) to refund “Central Provident Fund Account” for the sums withdrawn from the said Petitioner

Husband's account for the purchase of the said Matrimonial Asset and the interest accrued; and

(c) to pay all costs including the property agent's fee and commission, legal fees for the sales transaction and expenses, other expenses (including Matrimonial Asset valuation fee, including but not limited to any costs of and necessary overhaul, repair, correction and/or removal of the matrimonial asset in order for the same to be sold;

(3) in the event the proceeds of sale are insufficient to pay in full, the items as stated under paragraphs 2 (a) (b) and (c) stated above, the Petitioner Husband shall bear the difference;

(4) only in the event there is a balance of sale proceeds after the full payment of the items as stated in paragraphs 2 (a) (b) and (c), the said balance shall be divided between the Petitioner Husband and Respondent in the ratio of 60:40 respectively;

(5) the Respondent is to sign the Sale and Purchase of Matrimonial asset [*sic*] Agreement and other related documents of transfer within 14 days from the date the documents are served on the Respondent, and shall take and carry out steps as deemed necessary in order to complete the sale of the Matrimonial Asset;

(6) each party is to bear their respective costs for this application.

4 Thereafter, the Plaintiff sought to engage an agent to sell the Singapore property ("the Property"). However, the Defendant refused to sign or execute any of the documents served on her to facilitate the sale. On 13 July 2011, the Plaintiff applied for and obtained an order from the Malaysian Court directing a court officer or registrar to execute the sale and purchase agreement and any other related documents of transfer on the Defendant's behalf.

5 On 19 January 2012, the Plaintiff found buyers for the Property ("the Purchasers") and proceeded to sign an option to purchase, with the Registrar of the Malaysian Court signing it on the Defendant's behalf. The transfer instrument ("the Transfer Instrument") was executed on 23 April 2013 by the Plaintiff and the Registrar on the Defendant's behalf. On 17 May 2013, a cashier's order for the sum of \$1,001.50 in favour of the Defendant was sent to her solicitors, being the proceeds due to her from the sale of the Property.

6 On 13 September 2013, the Purchasers' solicitors wrote to the Singapore Land Authority ("the SLA") seeking to register the Transfer Instrument under the Land Titles Act (Cap 157, 2004 Rev Ed) ("the LTA"). However, the SLA replied saying that under s 56(2)(d) the LTA, read with s 2 of the Interpretation Act (Cap 1, 2002 Rev Ed), it can only register a transfer if it has been executed on behalf of the registered proprietor by an officer of a court of competent jurisdiction *in Singapore*. The SLA therefore rejected the Purchasers' request to register the Transfer Instrument.

7 On 15 November 2013, the Plaintiff filed Originating Summons No 1108 of 2013 seeking to register the Malaysian Court Order in the High Court of Singapore under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) ("the RECJA"). However, he withdrew this application after the duty registrar pointed out that the RECJA only applied to money judgments (see s 2(1) of the RECJA).

8 The Plaintiff then filed the present application on 25 February 2014 seeking the following orders:

1. the property situated at Block 950 Jurong West Street 91, #04-629, Singapore 640950

(hereinafter referred to as "the Matrimonial Asset") is to be sold by the Plaintiff and the Defendant at \$400,000.00 to Nurazmi Bin Mohamd and Faridah Binte Ungku Ismail ("the Purchasers") pursuant to the Option to Purchase dated 10th January 2013.

2. the orders relating to the Matrimonial Asset contained in the Orders of Court dated 18th August 2006 and 19th March 2012 granted by the High Court of Malaya at Ipoh in Joint Divorce Petition No:- 33-182-2005 in Annexure A attached hereto in this Originating Summons shall stand in that:-

(a) the proceeds of the sale of the Matrimonial Asset shall thereafter be utilized to settle the following payments in the order of priority as set out below:-

(i) to repay outstanding Housing and Development Board Mortgage Loan (the said HDB loan);

(ii) to refund "Central Provident Fund Account" for the sums withdrawn from the Plaintiff's account for the purchase of the Matrimonial Assets and the interest accrued; and

(iii) to pay all costs including the property agent's fee and commission, legal fees for the sale transaction and other expenses (including valuation fee pertaining to the Matrimonial Assets including but not limited to any costs of and necessary overhaul, repair, correction order for the Matrimonial Asset to be sold;

(b) in the event the proceeds of sale are insufficient to pay in full, the items as stated under paragraphs 2(a)(i),(ii) and (iii) stated above, the Plaintiff shall bear the difference;

(c) only in the event there is a balance of the sale proceeds after the full payment of the items as stated in paragraphs 2(a)(i),(ii) and (iii), the said balance shall be divided between the Plaintiff and Defendant known as "Choo Lee Mei" ... in the ratio of 60:40 respectively;

(d) the Defendant is to sign the relevant Sale and Purchase of the Matrimonial Asset Agreement, Option to Purchase and other related documents of transfer pertaining to the sale of the Matrimonial Asset ("the Sale Documents") the Order of Court dated 19th March 2012 shall apply in the event the Defendant fails to execute the Sale Documents.

3. for purposes of the Defendant's and Plaintiff's compliance with Section 56(2)(d), Section 56(3) and Section 132 of the Land Titles Act ("LTA") in order for the lodgement and registration of the Transfer instrument pertaining to the Sale of the Matrimonial Assets to occur, the orders contained in Orders of Court dated 19th March 2012 in Annex A hereto shall apply and all execution by Najwa Binti Che Mat of Mahkamah Tinggi Ipoh on behalf of the Defendant be deemed to have complied with the aforesaid sections of the LTA. In the alternative the Registrar of the Supreme Court Singapore shall be empowered to execute the Transfer Instrument for and on behalf of the Defendant for purposes of the lodgement and registration of the relevant Transfer Instrument at the Singapore Land Authority ("SLA") for the conveyance of the Matrimonial Asset to the Purchasers to be completed.

4. such further or other orders and relief as this Honourable Court shall deem fit for purposes of the lodgement and perfection of the Transfer Instrument relating sale of the Matrimonial Flat by the Plaintiff and Defendant to the Purchasers at SLA.

9 I heard the application on 22 May 2014 and reserved judgment. After considering the matter in

greater detail, I was of the view that the Plaintiff had not provided any legal basis for the orders sought. I therefore asked the Plaintiff to tender written submissions addressing this issue. Counsel for the Plaintiff then instructed counsel from WongPartnership LLP to render an opinion and assist in crafting the submissions.

10 On 27 June 2014, the Plaintiff applied for leave to amend his application to seek the following orders instead:

1. that the property situated at Block 950 Jurong West Street 91, #04-629, Singapore 640950 (hereinafter referred to as "the Matrimonial Asset") is to be sold by the Plaintiff and the Defendant pursuant to the Option to Purchase dated 10th January 2013.
2. that the Defendant do within 7 days of the Order of Court made herein execute the Transfer Instrument pertaining to the sale of the Matrimonial Asset (the "Transfer Instrument");
3. In that alternative, that the Registrar of the Supreme Court of Singapore be empowered to execute the Transfer Instrument for and on behalf of the Defendant; and
4. such further or other orders and relief as this Honourable Court shall deem fit.

I heard the application for leave to amend on 14 July 2014 and granted it.

11 On 29 July 2014, the Plaintiff tendered his written submissions setting out the purported legal bases on which I could make the orders he is seeking. The Plaintiff submits that each of the following "heads of jurisdiction" would independently empower me to make the orders sought:

- (a) paragraph 2 of the First Schedule to the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") read with O 31 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC");
- (b) the Defendant's voluntary submission to the jurisdiction of this Court by attending the hearings before me; and
- (c) this Court's inherent jurisdiction.

My decision

12 I will address the three legal grounds relied on by the Plaintiff in turn.

Paragraph 2 of the First Schedule to the SCJA and O 31 r 1 of the ROC

13 Section 18(2) of the SCJA states that the High Court shall have the powers set out in the First Schedule. Under para 2 of the First Schedule, this includes the power to order the sale of land where it appears necessary or expedient in any cause or matter relating to land:

Partition and sale in lieu of partition

2. Power to partition land and to direct a sale instead of partition in any action for partition of land; and in any cause or matter relating to land, where it appears necessary or expedient, to order the land or any part of it to be sold, and to give all necessary and consequential directions.

14 O 31 r 1 of the ROC states that the High Court has the power to order that any immovable property be sold where it appears "necessary or expedient" for the purposes of the cause or matter

to do so:

Power to order sale of immovable property (O. 31, r. 1)

1. Where in any cause or matter relating to any immovable property it appears necessary or expedient for the purposes of the cause or matter that the property or any part thereof should be sold, the Court may order that property or part to be sold, and any party bound by the order and in possession of that property or part, or in receipt of the rents and profits thereof, may be compelled to deliver up such possession or receipt to the purchaser or to such other person as the Court may direct.

15 The Plaintiff submits that it is indeed “necessary or expedient” for this Court to order the sale of the Property. This is because the sale of the Property to the Purchasers has been completed and the Parties have received consideration for the sale. The Purchasers have also taken possession of the Property and now reside there. However, because of the SLA’s refusal to register the Transfer Instrument, legal title to the Property has not passed to the Purchasers more than a year after the completion of the sale. The Court’s order for a sale of the Property is therefore necessary to rectify this unfortunate circumstance.

16 The scope of O 31 r 1 does not appear to have been considered by local courts. In *Wicks v Wicks* [1998] 3 WLR 277, the English Court of Appeal had occasion to consider O 31 r 1 of the Rules of the Supreme Court 1965 (UK), which is similar in terms to our O 31 r 1. In that case, the wife, pending determination of her application for ancillary relief, applied for an order that the matrimonial home be sold under O 31 r 1. The High Court Judge allowed her application but was reversed by the Court of Appeal. Despite sympathising with the wife’s position, the Court of Appeal held that O 31 r 1 was a procedural provision and did not confer an original source of jurisdiction allowing it to make the orders sought by the wife (at 289):

It does not follow that Order 31 is an original source of jurisdiction. *It is a procedural provision the exercise of which is dependent on there being a cause or matter in the Chancery Division relating to land or an application for ancillary relief in the Divorce Court relating to land.* In its application in the Chancery Division Order 31 seems to remove the need for the previous practice to direct a sale either “with the approbation of the judge” or “out of court” and to give a flexible procedure for the management of any sale. It seems to be purely procedural in its intent and in its effect. I agree with Sir Donald Nicholls V.-C. in *Panayiotou v. Sony Music Entertainment (U.K.) Ltd.* [1994] Ch. 142, 149 when he said:

[The Rules of the Supreme Court] regulate and prescribe the ‘practice and procedure’ to be followed in the Supreme Court: section 84 of the Supreme Court Act 1981. They regulate the exercise by the court of its jurisdiction; they cannot extend the court’s jurisdiction or confer a jurisdiction which, in the absence of rules, the court would otherwise lack.

In my judgment Order 31 has no application to the facts of this case. Moreover, and again with regret, I conclude that it is not a source of jurisdiction enabling the court to make interim orders for the sale of property pending the determination of the claims for ancillary relief.

[emphasis added]

17 Likewise, in *In re Robinson, Pickard v Wheeler* (1885) 31 Ch D 247, the court had to consider the scope of Order LI r 1 of the Rules of Supreme Court 1883 (UK), which stated: “If in any cause or matter relating to any real estate, it shall appear necessary or expedient that the real estate or any

part thereof should be sold, the Court or a Judge may order the same to be sold ...". Pearson J held that this rule did not give the court the power to order a sale of the property where it otherwise would not have the power to do so (at 249–250):

[O LI r 1] is taken from sect. 55 of the Act 15 & 16 Vict. c. 86, from which it differed by the omission of the words "for the purposes of such suit." Those are, no doubt, important words, and the applicant is fully entitled to rely on their omission as shewing that the Court has now a larger power than it had under sect. 55. Jessel, M.R., laid it down that those words meant "for the purposes of the suit only." *But still I think the rule means that the Court may order a sale whenever it is necessary for the purposes of the action, and that it was not intended to enable the Court to sell real estate when otherwise it had no power to do so. It is said that here there is an action properly commenced by originating summons, and that the Court has every power which it would have in any other action, and I was referred to In re Fawsitt [30 Ch D. 231] as shewing that an originating summons is an action, and that the rules which relate to actions apply to it. Independently of that authority, I should have had no doubt that that was so. But at any rate there is some difference between a summons taken out for the determination of some particular question or questions, and an action for the general administration of an estate. If this summons is to be treated as expressly asking for a sale under rule 1 of Order LI., I am of opinion that it is not a proper originating summons under rule 3 of Order LV. It was not intended that that rule and rule 1 of Order LI. should be combined in this way, or that the Court should have a power of selling an infant's property which it never had before. There are no trusts to administer, and I think I can only approve of such a sale as the executor could have previously made himself. [emphasis added]*

18 The Plaintiff argues that these authorities are inapplicable here because apart from O 31 r 1, this Court also has the power under para 2 of the First Schedule to the SCJA to order the sale of the Property. Therefore, that paragraph supplies the original jurisdiction or power for this court to make the orders sought.

19 This argument is misconceived. The Court's power under both the SCJA and the ROC to order the sale of a property is contingent on there being a *substantive legal basis* to justify the exercise that power. Neither provision was intended to create an unfettered power on the Court's part to order the sale of a property simply because it is "necessary or expedient" to do so. In this regard, it bears noting that both para 2 of the First Schedule and O 31 r 1 refer to the need for a "cause or matter" relating to any land or immovable property. In my view, for the purposes of O 31 r 1 and para 2 of the First Schedule (the phrase might have a broader meaning elsewhere), that phrase signifies the need for there to be a cause of action, whether based on common law or statute, creating a substantive legal basis for ordering a sale of the property. An application seeking the sale of property under O 31 r 1 and/or para 2 of the First Schedule does not, without more, qualify as such a "cause or matter".

20 This was the interpretation implicitly given to that phrase by the courts in the two English cases cited above, and it was stated in more explicit terms by the High Court of Shah Alam in *Rubyna Kaur a/p Surinder Singh v Jasbir Singh a/1 Harbajan Singh* [2003] 6 MLJ 753. In that case, the applicant applied for an order for the sale of a piece of property under O 31 r 1 of the Rules of the High Court 1980 (Malaysia) and para 3 of the Schedule to the Courts of Judicature Act 1964 (Malaysia) (these provisions are the equivalents of our O 31 r 1 and para 2 of the First Schedule to the SCJA respectively). The property was bought by the applicant and the respondent before their marriage with the intention of turning it into their matrimonial home. There were no separation or divorce proceedings by the parties or litigation taken up by any interested third party at the time of the application. The court rejected the application, holding that there was no "cause or matter"

relating to property (at 761):

... As O 31 speaks succinctly of the existence of the precondition of cause or matter, and unless that precondition is established first, any application would face certain rejection at the outset. What then is cause or matter in the context of this order? Under s 3 of the CJA, the interpretation of cause includes 'any action, suit or other original proceeding between a plaintiff and defendant, and any criminal proceeding, whilst matter would include 'every proceeding in court not in a cause'. *Black's Law Dictionary* defines cause as 'a suit, litigation, or action. Any question, civil or criminal, litigated or contested before a court of justice'. As regards matter *Black* defines it as 'substantial facts forming basis of claim or defense; facts material to issue; substance as distinguished from form; transaction, event, occurrence, subject-matter of controversy'. Despite the wide scope of the words cause and matter or because of it, as defined by the CJA and *Black* (as the terminology includes is adverted to), I was satisfied that these two words must relate to some existing court proceedings pertaining to the impugned property within the context of O 31. Without mincing words, *prima facie* if there are no court proceedings, not necessarily confined to actions filed by the contending parties, then justification of necessity or expediency of that intended sale does not exist. *From the evidence, and also admitted by both parties, I had managed to gather that there was no cause or matter in relation to the impugned property having been filed in court in whatever form, eg a separation or even divorce proceedings by the contending parties or any litigation taken up even by an interested third party anywhere in Malaysia.* On that score, bearing in mind that the additional powers 'shall be exercised in accordance with any written law or rules of court', and as the applicant had failed miserably as regards a pertinent requirement, she already at the opening stage was hard pressed to convince me. To avoid any uncertainty, I must unhesitatingly state that as I had found no cause or matter at the stage of the application, to grant the application would mean exercising the powers of sale in contravention of any written law or rules of court relating thereto. [emphasis added]

21 In my judgment, therefore, neither para 2 of the First Schedule to the SCJA nor O 31 r 1 of the ROC permits me to order a sale of the Property in the absence of some other legal basis for doing so.

The Defendant's voluntary submission to the Court

22 This ground can be disposed of shortly. The mere fact that the Defendant has voluntarily submitted to this Court's jurisdiction does not mean that I have an open-ended discretion to make any orders I wish in relation to the Property. I must still decide the Plaintiff's application on the basis of established legal principles. This supposed ground of jurisdiction therefore does not add anything to the analysis at all.

The inherent jurisdiction of the Court

23 I now turn to the Plaintiff's final argument, which is that I should exercise the inherent jurisdiction of this Court to make the orders sought. In this context, the phrase "inherent jurisdiction" is really being used to mean the inherent *powers* of the Court – the former refers to the Court's inherent authority to hear a matter, while the latter is its inherent capacity to give effect to its determination by making or granting the orders or reliefs sought by the successful party to the dispute: *Re Nalpon Zero Geraldo Mario* [2013] 3 SLR 258 at [33] and [40]–[41]. The Court's inherent powers are recognised in O 92 r 4 of the ROC, which states:

4. Inherent powers of Court (O. 92, r. 4)

4. For the avoidance of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

24 The inherent powers of the Court may only be exercised in exceptional circumstances where there is a clear need for it and the justice of the case so demands: *Roberto Building Material Pte Ltd and others v Oversea-Chinese Banking Corp Ltd and another* [2003] 2 SLR(R) 353 at [17]. The principles governing the exercise of the Court's inherent powers were summarised by Professor Jeffrey Pinsler in his article *Inherent Jurisdiction Revisited: An Expanding Doctrine* (2002) 14 SAcLJ 1 ("*Inherent Jurisdiction Revisited*") at [19] as follows:

(i) Order 92, rule 4 refers to the inherent jurisdiction of the court. It provides that the court may make orders which are necessary to 'prevent injustice' or 'prevent an abuse of the process of court'.

(ii) The exercise of the court's inherent jurisdiction is not limited to a strict sense of 'injustice'. For example, the jurisdiction may be exercised to prevent or avoid a situation of 'serious hardship or difficulty or danger'. The court must be flexible and not bind itself to 'rigid criteria or tests'.

(iii) As long as the court acts 'judiciously' or in a 'just and equitable' manner, it does not have to limit the circumstances in which it can exercise its jurisdiction.

(iv) An essential consideration is the 'need' of the party concerned.

(v) However, this need must be of a sufficient degree to justify the exercise of the court's inherent jurisdiction. It will not be exercised merely to satisfy the party's interest or desire. In *Wee Soon Kim* [[2001] 2 SLR(R) 821], the Court of Appeal stated that the need was not of 'such a gravity' that the court should invoke its inherent jurisdiction.

(vi) Such a need does not arise if there is a procedural mechanism (whether provided by statute or the Rules of Court) in place which effectively governs the circumstances.

(vii) The court may consider its own needs as, for example, whether it would be able to deliberate more effectively if it were to exercise its inherent jurisdiction.

(viii) The court should not exercise its inherent jurisdiction merely because to do so would not cause prejudice to the other party.

(ix) However, the issue of whether prejudice would be suffered by one party or the other as a result of the court's decision to exercise, or refrain from exercising, its inherent jurisdiction, is a consideration to be taken into account.

(x) There must be 'reasonably strong or compelling reasons' why the court should exercise its inherent jurisdiction.

25 The Plaintiff submits that these principles are satisfied in the present case, for the following reasons:

(a) First, the orders sought will prevent injustice to the Purchasers who, being *bona fide* purchasers of Property, are still unable to take legal title more than one year after completion.

(b) Second, the orders sought will prevent or avoid a situation of serious hardship or difficulty or danger. This is because the Parties are in continuing breach of their implied obligation in the Terms and Conditions for Sale and Purchase dated 10 January 2013 to transfer the title in the Property upon completion, and are liable to be sued for substantial damages.

(c) Third, there is no existing procedural mechanism effectively governing the circumstances. The RECJA only applies to money judgments, and the Malaysian Court Order is not a maintenance order that can be registered and enforced under the Maintenance Orders (Facilities for Enforcement) Act (Cap 168, 1985 Rev Ed) or the Maintenance Orders (Reciprocal Enforcement) Act (Cap 169, 1985 Rev Ed). There is a lacuna in the law insofar as the enforcement of foreign ancillary orders relating to the division of property in Singapore is concerned.

(d) Fourth, there are no alternative procedures available to perfect the sale of the Property.

26 I am sympathetic to the Plaintiff's position and am prepared to accept that, as a matter of justice and need, there are strong grounds for making the orders he is seeking. In my judgment, however, I am precluded from exercising this Court's inherent powers to fill in a lacuna in the law *that was deliberately left there by the legislature*. This point was highlighted in Goh Yihan, "The Inherent Jurisdiction and Inherent Powers of the Singapore Courts: Rethinking the Limits of their Exercise" [2011] SJLS 178 at 201–202:

2. Legislative Silence: Sliding Scale of Assumptions as to Implied Exclusion

Most of the time Parliament does not expressly indicate its intent in statutes. Assuming no express prohibition, the second stage of the test is then to ask whether Parliament has impliedly excluded the courts' inherent jurisdiction or power in the matter concerned. This approach reflects the constitutional point that the courts are bound by the legislative intent as embodied in statutes. Sometimes, an exclusion can be discerned by implication via the text, but often courts are left with little guidance, save for their self-imposed broad tests based on "need" and "justice"....

[emphasis in original]

27 A similar observation was made by Professor Jeffrey Pinsler in relation to gaps in the ROC (*Inherent Jurisdiction Revisited* at [21]):

If there is a *lacuna* (gap) in the rules so that no procedure governs the situation before the court, the court will have to decide whether it would be acting 'judiciously' by exercising its inherent power. In determining this, it will have to take into account the 'need' of the party seeking the relief. To warrant the court's intervention, he would have to show at least 'serious hardship or difficulty or danger'. *The court should also take into account any reason why the Rules Committee did not provide rules to govern the situation. If the omission can be justified (for example, in the interest of the administration of justice) over and above the personal need of the party seeking relief, the court would not be acting judiciously by exercising its inherent power in favour of the party.* In any event, there must be 'reasonably strong or compelling reasons' why the inherent jurisdiction should be exercised. This would take into account the party's need, the concerns of the opposing party and whether the intention of the Rules of Court is to permit or bar any relief that my [*sic*] be provided by the judicial exercise of inherent power in circumstances not catered to by those Rules. Although the incidence of prejudice is a factor to be considered, it will not be determinative. [emphasis added]

28 In the present case, there is compelling evidence to show that Parliament was well aware of the lack of legal avenues to enforce foreign ancillary orders for the division of property in Singapore, but chose *not* pass legislation to enable their enforcement here. This very area of law was reviewed in the Report of the Law Reform Committee ("LRC") of the Singapore Academy of Law on Ancillary Orders after Foreign Divorce or Annulment (July 2009). The LRC observed at para 26 that:

The legal effect in the forum of a foreign order as to the division of matrimonial assets depends on the nature of the order itself. ... Under the existing common law, only money judgments are enforceable. Thus, a foreign order dividing up property situated in the forum will not be enforceable in the forum. Recourse to the Singapore court after a foreign matrimonial judgment is most likely to be in respect of assets in Singapore, but these are cases where the foreign orders are least likely to have any legal effect in Singapore.

29 Following the LRC's Report, the Ministry of Community Development, Youth and Sports issued a Consultation Paper dated 13 September 2010 on certain proposed amendments to the Women's Charter (Cap 353, 2009 Rev Ed) ("Women's Charter"). Paragraphs 13–15 of the Consultation Paper stated:

13. Under current laws, the Singapore court is not empowered to make orders on ancillary matters such as division of matrimonial assets, maintenance of wife and children, and custody of children, if the parties have obtained a divorce in a foreign court and the divorce is recognised by Singapore law. *Even if ancillary orders have been made in the foreign court, the ability of the Singapore court to enforce such foreign orders is limited.* We propose to expand the powers of the Courts to help Singaporeans who marry foreigners and later divorce overseas, especially if they move back to Singapore or have assets in Singapore.

14. *For division of matrimonial assets, the expanded powers of the Courts will apply even when a foreign order on this has been made, as a foreign order made on an asset that is immovable and located in Singapore has questionable legitimacy since the asset is out of the foreign court's geographical jurisdiction.* For maintenance of wife and children, the expanded power of the Singapore court will apply only where foreign maintenance orders have not been made.

15. To effect this, we are introducing a new Chapter 4A (comprising new s.121A to s.121G) and amend s.132(1) by inserting a new (sub-)s.132(1)(e) to Part X of the Women's Charter. Under this new chapter, a person who is divorced, legally separated or whose marriage is annulled under foreign judicial proceedings may apply to the Singapore courts upon the satisfaction of specific conditions. These conditions are that either party must have sufficient connection with Singapore (s.121C); there are substantial grounds to ask the court to exercise its powers (s.121D); and the Singapore court must be satisfied that it is the appropriate forum (s.121F). In effect, the court, when exercising its jurisdiction over the case, may make any of the orders for the division of matrimonial assets and maintenance as if the divorce, separation or nullity had been granted in Singapore.

[emphasis added]

30 The proposed amendments were eventually passed by Parliament on 10 January 2011. The Minister for Community Development, Youth and Sports, Dr Vivian Balakrishnan, explained the amendments as follows (*Singapore Parliamentary Debates, Official Report* (10 January 2011) vol 87 at cols 2048–2049):

Lastly, a new Chapter 4A of Part X will be introduced in the Charter to empower the Singapore courts to provide financial relief for divorces granted in overseas courts which are also recognised in Singapore. Under the present law, the Singapore court has power to grant important ancillary financial orders for maintenance of the ex-spouse and children and for the division of matrimonial assets if the parties obtain a divorce from a Singapore court, but not if they have already obtained a divorce overseas. Sir, with the increasing number of Singaporeans working and residing overseas and increasing marriages between locals and foreigners, this proposed provision will help those who are made vulnerable by foreign divorces and who have a relevant connection to Singapore to seek relief.

Let me give Members an example: A Singaporean woman who marries a foreigner and then lives in a matrimonial home in Singapore. Suppose the foreign spouse then obtains a divorce from a foreign court which is recognised in Singapore but for some reason makes no financial provisions. Currently, the Singaporean spouse will have no financial remedy in Singapore because the Singapore courts do not have the power to make such ancillary orders. *With this new Chapter, the courts here will be able to make orders on matrimonial assets in Singapore and the maintenance for divorces that were obtained in foreign courts. **This will plug an existing gap.***

The related amendments will also be made to the Central Provident Fund Act to effect this, as CPF monies may constitute part of the matrimonial assets to be divided between parties.

[emphasis added in italics and bold italics]

31 It can be seen from the above material that Parliament was clearly cognisant of the gap in the law relating to the enforcement of foreign ancillary orders for the division of property in Singapore. It chose to plug this gap not by allowing such orders to be enforced here, but by enacting Chapter 4A of the Women's Charter. Chapter 4A allows the Court to hear applications and make orders for financial relief in respect of foreign divorces (including the division of matrimonial property) if certain conditions are met, and it may hear an application for financial relief even if ancillary orders have already been made by a foreign court (s 121D(3)). Unfortunately, it appears that the Plaintiff will be unable to avail himself of Chapter 4A because the decree for his divorce was made before its commencement date (s 121A(2)). That, however, does not change the fact that I would be circumventing the statutory regime enacted by Parliament if I relied on the inherent powers of the Court to grant the Plaintiff the relief he seeks.

32 I should add that even without considering the 2011 amendments to the Women's Charter, I would have been hesitant to rely on my inherent powers to procure what is in effect the enforcement of a foreign order which cannot otherwise be enforced under the relevant law here. In every case where a foreign judgment cannot be enforced in Singapore, there would *prima facie* be injustice in the sense that the party seeking enforcement would be unable to realise certain legal remedies that have been granted to him by a foreign court after an assessment of the merits of the case. However, that alone is not a sufficient basis for the court to enforce the foreign judgment. In this case, for example, the Malaysian Court Order cannot be enforced under the RECJA because it is not a money judgment. If I were to enforce it on the basis of injustice alone, then the limitations in the RECJA and other laws relating to the reciprocal enforcement of judgments would be rendered meaningless.

33 Thus, I hold that this is an inappropriate case to exercise the inherent powers of the Court to make the orders sought by the Plaintiff.

Conclusion

34 For the foregoing reasons, I dismiss the Plaintiff's application. However, given the fact that this

application was necessitated by the Defendant's unreasonable refusal to execute the Transfer Instrument in defiance of the Malaysian Court Order, I make no order as to costs.

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