

Peh Chui Choo v Kuah Peng Ah
[2000] SGHC 138

Case Number : Div P 3160/1995
Decision Date : 12 July 2000
Tribunal/Court : High Court
Coram : G P Selvam J
Counsel Name(s) : Chua Swee Keng (Chua Swee Keng & Co) for the petitioner; Serene Chan (Tan Lee & Choo) for the respondent
Parties : Peh Chui Choo — Kuah Peng Ah

Family Law – Maintenance – Wife and children – Application by husband for downward variation of order – Husband divesting assets and unable to pay – Whether downward variation should be granted

: This is an application for a downward variation of a maintenance order. The applicant is the husband/respondent. The order was first made by the Subordinate Court in Maintenance Order No 119/96. The amount was \$2,800. This order was continued by Lai Siu Chiu J in DP 3160/95. The order was in favour of the petitioner/wife and two younger sons of the marriage. The mother was given custody of the two boys. There were two older twin boys. The husband was given custody of the twins. The husband seeks a reduction of almost 80%, that is from \$2,800 to a mere \$600.

From February this year, he reduced the payment of maintenance by \$2,300. The petitioner has taken out enforcement proceedings. They are pending in the subordinate courts.

The parties were married in 1977. By 1993, the respondent had fathered four sons. By that year he had acquired a girl friend whom he later married. That marriage, too, is on the rocks. Before the petition was filed, he ignored his responsibilities to the family in that he failed to provide maintenance for his wife and four children. This impelled the wife to take out a maintenance summons in November 1995. She also filed a divorce petition seeking dissolution of the marriage. The ground she relied on was the husband's irresponsible behaviour.

In the event, in March 1996 a decree nisi was pronounced. Ancillary matters were adjourned to chambers. In October 1996, orders were made on ancillary issues. By then the wife had obtained an order for maintenance in the subordinate courts. The ancillary orders gave the wife custody of the two younger sons. Maintenance in the sum of \$2,800 for the wife and two younger sons was continued. The respondent was given custody of the twins. There was a financial adjustment in respect of the matrimonial home: No 830 Mountbatten Road. The matrimonial home was sold in October 1997 for \$1,710,000. After deducting what was due to the bank, some \$22,000 in respect of commission, legal charges and other incidentals the petitioner received about \$420,000. The respondent, however, received some \$700,000. About \$233,000 out of that amount was refunded to his CPF account. Being interested to what he did with that money, I expected to find the answer in his bank statements but without avail.

I now turn to a very important matter. The respondent at the time of divorce was a substantial shareholder and director of a family company - Bok Soon Hardware Engineering Pte Ltd. The documents placed before me showed that in November 1998 he transferred 1,693 shares in Bok Soon Hardware to his brother. The consideration stated in the transfer form was \$186,230. That was at \$110 per share. I noticed that the stamp duty paid on that lot was \$5,945.60. It was patent that the consideration stated in the transfer form was not a genuine representation of the value of the shares. I therefore asked for the company secretary to attend before the court. The company secretary did

so. He tendered evidence and established that the net asset value of the shares was \$1,755.89 per share. On that basis the true value of the shares was \$2,972,721.77.

I further asked for the respondent's sister to attend before the court and provide information. She did so. According to her, the respondent's father was unhappy about the divorce. In consequence he wanted the shares to be transferred and the respondent did so. The respondent gave them free. However, it was their intention not to leave the respondent with nothing. So goods were given to him in return.

The documents before the court showed that the respondent in July 1998 set up a company called Bok Soon Metal (Singapore) Pte Ltd. The object of this company was to do the same business as Bok Soon Hardware. After Bok Soon Metal was set up, it received goods with invoice value of over \$850,000. The invoices were addressed to the respondent and Bok Soon Metal. Bok Soon Metal has not paid for the goods. Further, in the accounts of Bok Soon Metal for the year ending 30 September 1999, the respondent was owed \$740,141 by his company. This was in respect of the goods supplied by Bok Soon Hardware. The respondent receives goods without having to pay for them.

Before I consider the application of the respondent, one other factor must be mentioned. In February 1999 he married the woman who came into his life before the divorce contributing to the breakup of the marriage with the petitioner.

Now I turn to the application before me. It was filed on 16 December 1999 seeking reduction of the maintenance from \$2,800 to a mere \$600 for three souls. The application was premised on the following assertions: he was forced to divest his shares in Bok Soon Hardware. The consideration of \$186,280 stated in the transfer form was not given to him in cash but in the form of goods. His company, Bok Soon Metal, was insolvent. His free assets which excluded the HDB flat, the moneys in CPF and the money owed by Bok Soon Metal were worth very little. He then gave expression to his grief by these wailing words: 'As my take-home pay is only \$1,758, there is no way for me to pay maintenance to the petitioner in the sum of \$2,800. For the past months, I have been digging into my savings to pay the petitioner as well as borrowing from banks and my present wife. In order to help me, my present wife has been lending one part of her salary and even had to pawn her jewellery to help me. My savings are now depleted and I cannot keep borrowing.'

It should be remembered that the petitioner in November 1995 filed a complaint against the respondent for failing to maintain the petitioner and the two younger children of the marriage. The maintenance sum of \$2,800 was originally determined by the court after a long fray and by agreement was continued by the divorce court. It shows that the respondent shirked his responsibility even when he was in possession of considerable power and pelf as a substantial shareholder in Bok Soon Hardware.

The petitioner's response to the application was that the respondent had devised a scheme to do her out of her entitlement. To make out her case she obtained four orders for discovery against the respondent and Bok Soon Hardware. There was much revelation from the discovery. There was further revelation when the company secretary and the sister of the respondent attended before me and answered queries. These revelations clearly refuted the respondent's assertions. They showed that the contents of the documents produced by the respondent did not bear out the truth. This requires an explanation.

When he transferred away his shareholding in Bok Soon Hardware, the consideration stated in the transfer form was \$110 per share. But then the secretary in 1998 valued the shares at \$1,755.89 each. In fact he received nothing in return for the shares whose value was just shy of \$3m. The

transferee, who was his brother, did not give any hardware in return as the respondent alleged. The company, Bok Soon Hardware, gave goods with an invoice value of some \$850,000. The respondent paid nothing for them. It was apparent that the respondent was not required to pay for them. It follows that the documents in effect were a sham to create a false appearance to the outside world. The true purpose was to protect the company from any claim on them by the petitioner and present wife.

Additionally, in April this year the respondent transferred 80,000 shares he held in Bok Soon Holdings Pte Ltd to his brother Kuah Peng Ann. The consideration stated in the transfer form was \$80,000. He was the owner of these shares when he made the application for reduction of the maintenance. Yet he did not disclose this asset. The reason he gave for the non-disclosure was that he was not paid anything for them. What is the same thing he made a gift of them to his brother. This is another instance of the respondent giving away an asset which would be subject to enforcement proceedings.

There is another important piece of evidence. The petitioner held 100 shares in a company called Stellite (S) Pte Ltd. As part of the property adjustment order in the wake of the divorce the petitioner was ordered to relinquish them at a value of \$1,000. Documents disclosed at the hearing before me revealed that the respondent's sister-in-law (Madam Soh Lai Chan) was the purchaser of the shares. The respondent collected \$10,000 from Madam Soh and paid only \$1,000 to the petitioner and pocketed the difference of \$9,000.

The documents further established that the respondent holds membership in Island Country Club, Chinese Swimming Club, Desaru Golf and Country Club and Safra National Service Association. The Island Country club membership is a marketable asset.

It occurred to me that the respondent's bank account statements from 1997 might give additional useful information about the way he handled his personal finances, particularly his share of the proceeds of the matrimonial property. Indeed there was an order compelling him to disclose those statements. Notwithstanding that, he adamantly refused and failed to provide all the statements. He produced some which were in his favour. He said he produced whatever was in his possession. When told that he could easily have obtained copies of the missing statements, his reply was that he had no time and, more importantly, no money to obtain them. It was clear to me that all his excuses were part of his general propensity to deceive the petitioner and the court.

Having narrated the factual matrix of the case I shall proceed to rule on the application. First, an interesting and important principle of law.

It is a common and ancient practice of debtors to put away from the reach of the law property which would otherwise be available to creditors and others to whom they owe a monetary duty. To suppress such surreptitious motives, the court was empowered to demolish such transfers and dispositions. The Fraudulent Conveyance Act of 1671 which was passed in the reign of Queen Elizabeth I provided, in effect, that all conveyances and dispositions of property intended to delay, hinder or defeat monetary debts and duties shall be void. The transferee will be protected only if he can show that he gave fair consideration in good faith without notice of the design of the debtor. Mala fides of both parties vitiated the transaction even if the transferee gave consideration. This statutory empowerment was merely declaratory of what was previously the common law provision. For 'the law detests covin, and therefore every covinous act shall be void'. The foundation of the principle of law is that one must discharge his debts and duties to creditors before he decides to be generous.

It is now apt to read what Lord Mansfield CJ said about the doctrine of fraudulent conveyance in **Cadogan v Kennett** [1776] 98 ER 1171 at 1172:

The principles and rules of the common law, as now universally known and understood, are so strong against fraud in every shape, that the common law would have attained every end proposed by the statutes 13 El c 5, and 27 El c 4. The former of these statutes relates to creditors only; the latter to purchasers. These statutes cannot receive too liberal a construction, or be too much extended in suppression of fraud.

The stat 13 El c 5, which relates to frauds against creditors, directs `that no act whatever done to defraud a creditor or creditors shall be of any effect against such creditor or creditors.` But then such a construction is not to be made in support of creditors as will make third persons sufferers. Therefore, the statute does not militate against any transaction bona fide, and where there is no imputation of fraud. And so is the common law. But if the transaction be not bona fide, the circumstance of its being done for a valuable consideration, will not alone take it out of the statute. I have known several cases where persons have given a fair and full price for goods, and where the possession was actually charged; yet being done for the purpose of defeating creditors, the transaction has been held fraudulent, and therefore void.

One case was, where there had been a decree in the Court of Chancery, and a sequestration. A person with knowledge of the decree, bought the house and goods belonging to the defendant, and gave a full price for them. The Court said, the purchase being with a manifest view to defeat the creditor, was fraudulent, and therefore, notwithstanding a valuable consideration void. So, if a man knows of a judgment and execution, and, with a view to defeat it, purchases the debtor`s goods, it is void: because, the purpose is iniquitous. It is assisting one man to cheat another, which the law will never allow. There are many things which are considered as circumstances of fraud. The statute says not a word about possession. But the law says, if after a sale of goods, the vendee continue in possession, and appear as the visible owner, it is evidence of fraud; because goods pass by delivery: but it is not so in the case of a lease, for that does not pass by delivery.

Twyne`s Case (1601) 76 ER 809 is an excellent illustration of the doctrine. Pierce was indebted to Twyne in £400, and to Chamberlain in £200. Chamberlain brought an action against Pierce. While the action was pending, Pierce secretly made a general gift of all his property (which was worth about £300) to Twyne, in satisfaction of his debt of £400. Pierce, however, still continued in possession of the goods, selling some of them, and exercising other acts of ownership over them, as if, in fact, no gift of them had been made. Chamberlain obtained judgment in his action. Twyne resisted the execution by Chamberlain, claiming under the gift to him. The Chief Justice, and the whole Court of the Star Chamber held that the gift was fraudulent within the Fraudulent Conveyance Act. Although there was apparently a perfectly good and valuable consideration for the gift (it being made in satisfaction of a debt exceeding the value of the property given), yet there were such marks of fraud and mala fides as to avoid it, notwithstanding: see **Kerr on Fraud And Mistake** (6th Ed) pp 274-275.

When all the evidence, in particular the evidence of the respondent`s sister, is evaluated, it was transparent that the transfer of the shares were tailor-made to turn away the petitioner and perhaps the other woman he was about to marry. He put away his shareholding in Bok Soon Hardware worth some \$3m. He gifted away his 80,000 shares in Bok Soon Holdings. And he failed to reveal the documents which would inform the court what he did with some \$700,000 that he had received from the proceeds of the sale of the Mountbatten Road matrimonial property. Accordingly, the petitioner has a strong prima facie case to set aside the transfers and recover the outstanding maintenance.

Enforcement, however, is not the matter before me. Nonetheless I would dismiss the application for reduction on the simple reasoning that a husband who puts away his property from the reach of his creditors disables himself from seeking the assistance of the court because the change in circumstances is his own creation. He must make adequate provision to meet his legal obligations especially when they have crystallised in the form of an order of court. The law will not lend a hand to anyone who seeks to take advantage of his own wrong. The application, therefore, is dismissed with costs.

Outcome:

Application dismissed.

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