

Toh Buan Eileen v Ho Kiang Fah
[2015] SGHC 12

Case Number : Divorce Transfer No 3914 of 2006 and Summons No 4553 of 2014
Decision Date : 19 January 2015
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

19 January 2015

Judith Prakash J:

Background

1 On 18 November 2014, I made certain orders to effect the final distribution of the matrimonial property of the plaintiff (whom I shall call “the wife”) and the defendant (whom I shall call “the husband”) consequent upon their divorce pursuant to an interim judgment given on 29 January 2008. The husband was dissatisfied with the orders and filed an appeal on 18 December 2014.

2 The general background of the parties and history of this litigation are contained in my Judgment dated 21 March 2013 ([2013] SGHC 66) (“2013 Judgment”) and my Grounds of Decision dated 29 August 2014 ([2014] SGHC 170) (“2014 Grounds”). The 2014 Grounds contained the reasons for certain consequential orders that I had made at a hearing on 23 July 2014 (“the July 2014 hearing”) in relation to the following properties:

- (a) the matrimonial home known as Block 842 Sims Avenue, #14-762, Singapore (“the Sims property”);
- (b) the apartment unit known as 263 River Valley Road, #02-01, Singapore (“the Aspen Heights property”);
- (c) an apartment in Malaysia known as the Vistana, 143C, Lots 106 and 107, Jalan Taiping, Kuala Lumpur (“the Vistana property”).

3 The Sims and Vistana properties were held in the joint names of the parties while the husband was the sole owner of the Aspen Heights property. The orders that I made during the July hearing were directed at obtaining a valuation/sale of these properties so as to assist in the distribution of the properties (or their proceeds) between the parties in order to effect the 50:50 distribution of matrimonial assets that I had previously made in the 2013 Judgment.

4 At the end of the July 2014 hearing, I adjourned the matter for further consideration after the valuation reports and supporting affidavits had been submitted.

The orders

5 The matter came on for hearing before me again on 18 November 2014. I heard submissions on how the properties should be dealt with. Thereafter, I made the following orders which the husband now disputes:

(a) On the basis of the evidence before me, I value the Sims property at \$800,000 and the Aspen Heights property at \$1,480,000 ("Order 1").

(b) I give to the husband the first option to buy the wife's share in the Sims property for the sum of \$400,000 plus \$179,397.64 plus \$5,489.40, total: \$584,887.04 ("Order 2").

(c) This option shall be exercised in writing within two months hereof. If the husband does not pay the wife the sum of \$584,887 on or before 18 January 2015, the Sims property shall be sold in the open market and to effect the same:

(i) The husband shall move out on or before 15 February 2015.

(ii) The sale of the Sims property shall be handled by the wife.

(iii) If the husband does not sign the necessary papers to effect the sale within two weeks of being requested to do so, the Registrar of the Supreme Court shall have full authority to do so on behalf of and in the name of the husband.

(iv) The net proceeds of sale shall be applied in paying the wife \$179,397.64 plus \$5,489.40 and a further sum representing half of the net proceeds. The costs of the sale shall be shared equally between the parties.

("Order 3").

(d) The Aspen Heights property shall be sold within six months hereof and the net proceeds after payment of the mortgage loan and all costs shall be divided equally between the parties. In addition, from the proceeds of sale, the husband shall pay the wife the Singapore equivalent of RM167,500 being 50% of the sale price of the Vistana property ("Order 4").

(e) In the first instance, the sale of the Aspen Heights property shall be handled by the husband. If the husband does not obtain a sale contract for the property on or before 15 March 2015, the wife shall be entitled to take over conduct of the sale ("Order 5").

(f) If the husband does not sign the documents necessary for the sale of the Aspen Heights property, including any sale option or agreement, the Registrar of the Supreme Court shall be empowered to do so in the defendant's name and on his behalf ("Order 6").

(g) Liberty to apply in respect of any of these orders ("Order 7").

(h) All costs outstanding from the husband to the wife shall be paid forthwith ("Order 8").

Events between July and September 2014

6 At the July 2014 hearing I had, amongst other things, directed the parties to jointly appoint a valuer to value the Sims and Aspen Heights properties. The parties were permitted to each appoint his/her own valuer if they could not agree on a single valuation. Copies of the valuation reports were to be provided to me within three weeks. I also made an order for the sale of the Vistana property

with the husband being solely responsible to repay the outstanding overdraft due to Malayan Banking Berhad ("Maybank"), the mortgagee. The proceeds of sale were to be equally divided between the parties.

7 On 25 August 2014, the wife filed an affidavit making reference to the orders made at the July 2014 hearing. She stated:

(a) On 25 July 2014, the wife's solicitors wrote to the husband suggesting four time-slots between 1 August and 6 August 2014 during which her appointed valuer, M/s Knight Frank, could inspect the Sims property in order to value it. The letter also asked the husband to suggest alternative dates if all the dates proposed were unacceptable. The husband did not respond to this letter or to a further letter sent on 6 August 2014 with another four time-slots.

(b) The wife's valuers were, therefore, unable to inspect the Sims property and prepare their valuation.

(c) Annexed to the affidavit was a copy of a document obtained from the HDB website showing that in October 2012, a flat in the same block as the Sims property had been sold for \$820,000 whilst in respect of a similar block, Block 846, a unit was sold for \$800,000 in January 2013 and another for \$770,000 in March 2013.

(d) In respect of the Aspen Heights property, annexed to the affidavit were Knight Frank's valuation report dated 23 December 2013 giving the value of the property as \$1,460,000 as at that date and Knight Frank's letter dated 18 August 2014 stating the value of the property as at 21 March 2013 to be \$1,480,000.

(e) With respect to the Vistana property, the wife had met with representatives of Maybank in Kuala Lumpur in mid-August 2014. She was informed that the Vistana property had been sold by the bank through a public auction on 10 May 2012. The sale price was RM335,000 and a copy of the contract of sale was annexed to the affidavit.

(f) Maybank informed the wife that before the sale it had written to the husband asking him to settle his overdraft facility and telling him that the bank would sell the Vistana property if payment was not made. On completion of the sale, the bank utilised the sales proceeds to redeem the outstanding overdraft facility and the remaining moneys were given to the husband. The wife said that she did not receive any portion of the sales proceeds of the Vistana property.

(g) The wife noted that at the first hearing of the ancillary matters on 10 April 2012, the husband was likely to have already received notification from the bank of the intended public auction of the Vistana property. The husband failed to inform the court of this matter at the first hearing or at the second hearing on 6 September 2012. Further, he said nothing about it when his appeal was heard on 6 November 2013 by the Court of Appeal or at the July 2014 hearing before me.

8 The husband did not respond directly to the wife's affidavit. Coincidentally, on 25 August 2014, the last day for doing so, he filed an appeal (CA 138/2014) against the orders made at the July 2014 hearing. On 12 September 2014, the husband followed up the appeal with an application for a stay of execution on the orders made on 21 March 2013 and 23 July 2014 pending the determination of his appeal in CA 138/2014. This application was accompanied by an affidavit which dealt mainly with his complaints against my previous orders. He did not address any of the matters raised by the wife in her 25 August 2014 affidavit. The husband did not thereafter file any separate affidavit to deal with

these matters.

9 The parties appeared before me again on 22 September 2014. The wife was represented by counsel and the husband, as usual, appeared in person. The husband wanted an adjournment to enable his application for a stay to be heard first. I informed the husband that for that purpose he had to demonstrate his *bona fides* and that his appeal was a genuine one, not one taken solely for the purpose of frustrating the wife. I explained that in my view the way for the husband to do this would be to let the wife's surveyor into the Sims property in order to provide a valuation and, second, to file an affidavit giving full disclosure in relation to the Vistana property, *ie*, when the sale took place and for how much the property was sold; exhibit a copy of the completion account; and disclose how much had been received by Maybank and himself from the sale proceeds.

10 I asked the husband whether he would let the surveyor into the house. He responded that he could not answer yes or no because the hearing was not a trial and he was not on trial. I asked if he would file the affidavit regarding the Vistana property. His response was that he objected to filing an affidavit and the wife had said that she would get the information. He asserted that whatever he said, the wife would not believe. He also stated that he had received a cheque from Maybank sometime earlier – he did not indicate the date of receipt or the amount received – and that Maybank had not been helpful to him. He then tendered a skeleton argument. Half of those arguments related to matters already decided during the July 2014 hearing and the other half dealt with the next steps relating to distribution and, therefore, would have to be considered later.

11 I decided to give the husband a final opportunity to disclose the information relating to the Vistana property. I therefore made the following order:

The plaintiff and the defendant shall each, by 20 October 2014, file an affidavit containing all information they may each have as to the circumstances in which the Vistana property was sold and the amount of the sale price, the outstanding mortgage amount, the completion account and the amount received from the bank or its solicitors and what happened to the same.

Thereafter, I adjourned the further hearing of the ancillary proceedings to be heard after the husband's application for a stay.

Events from October 2014 to 22 November 2014

12 Subsequently, the wife filed two affidavits and the husband filed one. The wife's earlier affidavit was filed on 20 October 2014 and was filed to comply with my order. In this affidavit, the wife stated that since 25 August 2014, she had not received any further information from Maybank with regard to the sale of the Vistana property. She had called one Mr Johari Ismail, a manager of Maybank, on 13 October 2014 but he had not been available to take her call. He had not returned her call thereafter. She had also corresponded with Mr Johari Ismail asking for specified documents in relation to the overdraft facility and the amount paid to the husband from the sales proceeds. Initially, Mr Johari Ismail had replied stating that he would need to liaise with another department to obtain the information that the wife wanted but thereafter he had failed to communicate further with her despite several reminders.

13 The wife's second affidavit was filed on 27 October 2014. This affidavit contained the wife's rebuttals to the assertions and allegations made by the husband in his affidavit in support of his stay application. The husband's only affidavit, filed on 10 November 2014, dealt entirely with the wife's affidavit of 27 October 2014. The husband said nothing in that affidavit that could have been construed as an attempt to comply with the order I had made on 22 September 2014.

14 The parties attended before me again on 18 November 2014. I dealt first with the husband's application for a stay. I considered that application to be without merit and dismissed it. I then went on to deal with the remaining ancillary matters.

15 The husband did not make submissions that were relevant to the issue of the distribution. He maintained his position that everything had ended after I issued the 2013 Judgment and that since parties had not complied with the orders made in the 2013 Judgment, the case had ended and I had no further power to make any further orders in relation to the distribution of the assets. I rejected that argument for the reasons given in the 2014 Grounds. The husband then wanted the distribution to be deferred until the Court of Appeal had heard CA 138/2014. I declined to do this. I was of the view that the matter had been long delayed by the obdurate stand taken by the husband. He had refused to engage with the proceedings in any meaningful manner and had put the wife to a great deal of trouble and expense. I did not think the situation could continue. Therefore, I proceeded to make Orders 1 to 8 as set out in [5] above.

My reasons for Orders 1 to 8

Orders 1 and 2

16 According to the determinations made earlier in the 2013 Judgment, at the end of the marriage the wife had cash (or equivalent) assets amounting to \$712,396.61 whilst the husband had cash (or equivalent) assets amounting to \$1,527,738.95. This meant that total value of matrimonial assets in cash (or equivalent) was \$2,240,135.50. The wife was entitled to 50% of this, *ie*, \$1,120,067.78. In order for her to have cash assets of that amount, the husband would have to pay her a sum of \$407,671.17. However, according to the judgment of the Court of Appeal, the husband was entitled to a 50% share in the surrender value of the wife's insurance policy, an item that I had not taken into consideration in the 2013 Judgment. The surrender value was \$456,547 and that made the husband's 50% share worth \$228,273.50. The husband's share of this policy had to be set off against the amount he owed the wife and this meant that the amount of cash payable by the husband to the wife to equalise their respective shares in the cash assets would be \$179,397.67 (*ie*, \$407,671.17 – \$228,273.50).

17 The evidence before me as to the values of the Sims and Aspen Heights properties was that provided by the wife. The husband did not provide any evidence to contradict the wife's evidence or to give a different view as to what the values of those properties were. Since the valuation of the Aspen Heights property had been undertaken by a professional real estate valuer, I was satisfied with the evidence as to value given by the wife. The situation was not so satisfactory with respect to the value of the Sims property. Information from a website is not as authoritative or comprehensive as a valuation report produced by a professional valuer. In this case, however, I was prepared to accept that the extract from the HDB website adduced by the wife was a sufficient indicator of the value of the Sims property. This was because the failure to obtain a professional valuation was entirely due to the husband's refusal to cooperate. Not only did he not produce a report of his own, he also refused to allow the wife's valuer to have access to the Sims property. Thus, using the evidence supplied by the wife, I valued the Sims property at \$800,000 and the Aspen Heights property at \$1,480,000.

18 The Sims property had been occupied solely by the husband since the wife left in 2002. In accordance with the division made in the 2013 Judgment, this property had to be shared equally between the parties. The husband had indicated throughout the proceedings that he wished to continue to reside there. I therefore ordered that he be given the first option to purchase the wife's share of the Sims property from her at a price of \$584,887.04. I derived this price by taking the wife's 50% share of the value, *ie*, \$400,000, and adding to it the sum of \$179,397.64 referred to in [16]

above, and a further sum of \$5,489.40 which the husband was found liable to pay the wife by [60(d)] of the 2013 Judgment.

Order 3

19 Order 3 is a consequential order which I made in order to provide for the situation which would arise if the husband did not exercise his option under Order 2 to purchase the Sims property.

Order 4

20 This order covers the Aspen Heights and Vistana properties. As regards the Aspen Heights property, it is to be sold within six months of 18 November 2014 and the net proceeds of sale (after deduction of mortgage expenses and costs) are to be divided equally between the parties in accordance with the 50:50 division prescribed by the 2013 Judgment. Further, as the husband had apparently received the proceeds of sale of the Vistana property and kept them for himself, he would have to pay the wife the Singapore equivalent of RM167,500 being 50% of that sale price. I used the net sale price of RM335,000 on the basis that the husband had already been held solely liable to discharge the overdraft facility secured by the Vistana property. Therefore, once the Vistana property was sold, the husband would have to account to the wife for half the sale proceeds regardless of the amount he actually received. The husband did not adduce any evidence regarding this sale. He did not controvert on affidavit receipt of the sale proceeds. He simply ignored the issue.

Orders 5, 6 and 7

21 Orders 5 and 6 are consequential orders necessary to implement Order 4 and Order 7 is the usual liberty to apply clause.

Order 8

22 Various costs orders had been made against the husband which he had not complied with. For what it was worth, Order 8 directed the husband to pay the same forthwith.

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