

O'Connor Rosamund Monica v Potter Derek John
[2009] SGHC 258

Case Number : DT 310/2008
Decision Date : 18 November 2009
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : G Raman (G R Law Corporation) for the plaintiff; Kanyakumari and Serene Gan (Tan Kok Quan Partnership) for the defendant
Parties : O'Connor Rosamund Monica — Potter Derek John

Family Law

18 November 2009

Lai Siu Chiu J:

Introduction

1 The proceedings before me concerned the division of the matrimonial assets between a couple O'Connor Rosamund Monica ("the wife") and Derek John Potter ("the husband") pursuant to their divorce. I ordered, *inter alia*, that the wife and the husband receive two-thirds and one-third share respectively in the parties' matrimonial home, that the parties retain their own assets and that the husband should pay the wife a lump sum of \$50,000 as maintenance. As the wife has filed a notice of appeal (in Civil Appeal No 132 of 2009) against my orders, I now set out the reasons for my decision.

Background

2 The wife, a Singaporean from a relatively well-off family, [\[note: 1\]](#) married the husband on 19 September 1986. [\[note: 2\]](#) The husband, a British citizen and permanent resident of Singapore, had resided here for three decades or so. [\[note: 3\]](#) They have no children. The wife was a person of some talent. She was a linguist [\[note: 4\]](#) and had obtained, in 2003, a degree in Fine Art (Painting) from the La Salle College of the Arts. [\[note: 5\]](#) The husband paid for the wife's degree exclusively. The wife was also good at sales. Before resigning from her job in 1991, the wife sold advertisements in an oil-industry related magazine. She performed exceptionally well and was rewarded by her employer with two first-class air tickets for a trip around the world and two yacht cruises. [\[note: 6\]](#) She made the trips with the husband.

3 The husband too was successful. He was a professional engineer by training [\[note: 7\]](#) and had formerly served with the British Navy before making most of his money as an oil trader. In their happier times, the husband paid for the parties' many family holidays to countries in Europe, North America, Australasia and the Middle East.

4 The parties enjoyed other luxuries. The husband had purchased, for the parties' enjoyment, memberships in various country clubs, namely the Changi Sailing Club, the Republic of Singapore Yacht Club, the Keppel Club, the Tanglin Club and the Singapore Island Country Club. [\[note: 8\]](#) Because the husband owned a yacht which he had purchased prior to the parties' marriage, the couple also went on many boat trips. While the husband owned the yacht, the wife helped maintain it by regularly

scrubbing and varnishing the decks.[\[note: 9\]](#) Apart from the yacht trips, the couple would also visit Cameron Highlands where they would stay at the plaintiff's family villa and London where they would stay at the wife's uncle's apartment.[\[note: 10\]](#)

5 It was perhaps this love for travel that led the husband to organise tours on behalf of the Singapore Nature Society and the National University of Singapore to East Asian countries after he had retired.[\[note: 11\]](#) The wife played her part in helping him to organise these trips.[\[note: 12\]](#) In his retirement, the husband also wrote a guidebook on golfing in Malaysia which the wife had helped to edit, publish and market.[\[note: 13\]](#) To many, the parties appeared to have a happy and enviable marriage, and perhaps, at a time in the distant past, they did.

6 Beneath the happy veneer however, cracks started to appear in the marriage. Even before they were married, the wife had contracted Herpes and Chlamydia (sexually transmitted diseases) from the husband.[\[note: 14\]](#) Herpes causes painful outbreaks of lesions and because of this, the wife claimed, she stopped working full-time in 1991 shortly after her marriage[\[note: 15\]](#) although she did, making use of her artistic talent, take on silver and goldsmith projects at a workshop in Far East Shopping Centre for about two years.[\[note: 16\]](#) As a result of contracting Chlamydia, the wife also suffered from scarring to her uterus which led to her being unable to conceive and this was why the couple was childless.[\[note: 17\]](#) There were many other unhappy episodes in the parties' marriage including allegations of affairs the details of which it would not be necessary to mention.

7 Eventually, after more than two decades of marriage, the parties were divorced on 14 October 2008 on the ground of irretrievable breakdown of their marriage by reason of their living apart for a continuous period of at least four years prior to the application for divorce.

The parties' proposals on division of matrimonial assets and maintenance

8 On the issues of division of the parties' matrimonial assets and maintenance, the wife proposed that she be awarded the following:

- (a) The entire share in the parties' matrimonial home at Block 79, Farrer Drive, #05-03, Sommerville Park ("Sommerville Park Apartment") valued at approximately \$1.75m;
- (b) The Singapore Island Country Club membership;
- (c) A lump sum of \$180,000 for maintenance backdated for the three years preceding the hearing of this application at \$5,000 a month;
- (d) A lump sum of \$600,000 for her future maintenance in lieu of 30% of the defendant's personal assets.

9 The husband counter-proposed the following:

- (a) the Sommerville Park Apartment be sold and the net proceeds, (less reimbursement to the parties' Central Provident Funds of withdrawals that were made for the purchase) be divided equally;
- (b) That the parties be allowed to retain their other personal assets;

(c) That the wife receives no maintenance;

(d) That the husband reimburses the wife a sum of \$10,000 which she had paid towards the Tanglin Club membership.

The decision

10 Section 112 of the Women's Charter (Cap 353, 1997 Rev Ed) confers upon the court the power to order a division of the matrimonial assets. Section 112(1) provides that:

The court shall have power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable.

11 In exercising its discretion under s 112(1), the court will consider the following factors provided for in s 112(2):

- (a) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the matrimonial assets;
- (b) any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage;
- (c) the needs of the children (if any) of the marriage;
- (d) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party;
- (e) any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce;
- (f) any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;
- (g) the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business; and
- (h) the matters referred to in section 114(1) so far as they are relevant.

12 Section 112 has been considered in innumerable cases. It is well-established that the court is to exercise its discretion in broad strokes rather than by way of an unrealistic mathematical approach (see *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR 520 at [33]). In exercising its discretion, the court will focus on achieving a fair and reasonable division (*Id.*). With these principles in mind, I turn to the present case.

13 The wife wanted the entire share of the Sommerville Park Apartment but failed to provide good

reasons in support. Her primary argument was that the husband had not truly contributed *equally* to the purchase price of the property.[\[note: 18\]](#) She claimed and this was not contested by the defendant, that payment of the Sommerville Park Apartment was made in part from the sale proceeds of another property at 47B Jalan Arnap ("the Kim Lim property") previously owned by the parties. Because (so the wife claimed) the husband had only contributed \$144,000 to the purchase of the Kim Lim property whilst she had contributed \$232,375.93, she should be regarded to have contributed more, financially, to the purchase of Sommerville Park Apartment since it was paid in part with the sale proceeds of the Kim Lim property.

14 With respect, it seemed to me that the wife was taking an unrealistically mathematical approach to quantifying the parties' contributions. Even if she had paid more for the Kim Lim property (which I disbelieved for the reasons set out below) and may in a sense, be regarded to have contributed more towards the purchase of the Sommerville Park Apartment since it was paid in part with the sale proceeds of the former, the husband had paid the rental of the apartments the parties had lived in for *three years* from 2001 to 2004 *after* the Kim Lim property was sold (en-bloc for \$2,024,193.54) before the couple purchased and moved into the Sommerville Park Apartment in November 2003.[\[note: 19\]](#)

15 In any case, it was unlikely that the wife had paid more for the Kim Lim property. The husband had paid the wife's sister \$88,000 in October 1988 to buy over the sister's half interest in the same. He had also paid rent to the wife's sister when he moved in to live with the wife before he bought over the sister's share. According to the wife's first affidavit of means, the husband then serviced the interest of about \$1,300 on the outstanding mortgage loan of \$82,786.60 (from NTUC Income) from 1988 to 2001. The annual mortgage instalments paid by the husband would have totalled \$15,600 or \$202,800 for 13 years. The wife claimed she paid \$132,825.30 towards the loan of NTUC Income and wanted to add thereon the sum of \$29,041.33 she had spent on renovations. Her contribution towards the purchase of the Kim Lim property was thereby increased to \$161,866.53. On his part, the husband's contributions approximated \$290,800 (\$88,000 + \$202,800). I could not overlook the fact that the husband thereafter solely paid for rented accommodation for three years before they purchased and moved into the Sommerville Park Apartment. The rent paid by the husband was \$1,400 per month and it would total \$16,800 per year or \$50,400 for three years thereby increasing the husband's financial contributions to \$341,200 (\$290,800 + \$50,400) which sum exceeded the wife's contribution of \$161,866.53 by \$179,333.47. In effect the husband's contribution equated 68% of the parties' total contributions ($\$341,200 \div \$503,066.53$ [$341,200 + 161,866.53$]) but I awarded the wife 67% of the Sommerville Park Apartment for her contribution of 32% giving her thereby an additional 35% share.

16 Consequently, I found that the plaintiff's contention that she had contributed financially more towards the purchase of the Sommerville Park Apartment to be untenable. In my view, taking a broad-brush approach, the parties' financial contributions to the purchase of the matrimonial property which was the main matrimonial asset, it was at best equal if not more, by the husband.

17 Apart from financial contributions to the matrimonial home, the wife also claimed to have made other indirect contributions to the household. She claimed to have cooked and cleaned and to have paid for household expenses such as the part-time maid's salary, the cost of car washes as well as the purchase of newspapers, cat food and litter.[\[note: 20\]](#) These claims were matched by the defendant's competing claims of his indirect contributions. According to him, he had helped out in the household by washing the dishes and by ensuring that the couple's cars were regularly serviced and repaired if they had broken down.[\[note: 21\]](#) There were many other indirect contributions raised by the parties (as can be deduced from the account of their married life above at [\[2\]-\[5\]](#)) but it will be

unnecessary to examine the minutiae of their claims.

18 At this juncture, I should mention that the parties' claims of their respective contributions to the marriage manifested a common feature in such accounts for the purposes of matrimonial proceedings. Amicable divorces are in the minority. In most cases, in the course of legal battles, the joys of the marriage, however fleeting, and past co-operation in the household are quickly forgotten. An objective and honest assessment of the parties' contributions is often eschewed in legal submissions in favour of a subjective self-centred narrative of the important role the parties had played in the marriage.

19 The truth lies, as it often does, between the two extremes. While the wife may have sometimes cooked and cleaned, the husband had washed the dishes and had taken the car(s) to the workshop. While the husband may have paid for most of the family holidays and the country club memberships, the wife had taken him along for the charter cruises and incentive trips she had previously been rewarded with by her employer. Although the parties now downplay each other's contributions, it seemed to me that, taking a broad-brush approach, the marriage which, despite its difficulties, had lasted more than two decades was one in which the parties had contributed fairly equally. I therefore rejected either party's claim to have contributed more than the other.

20 In the result, I was minded to grant an equal division of the matrimonial assets. However as she wished to remain and to retain the Sommerville Park Apartment, I awarded the wife two-thirds share thereof with one-third share to the husband. The matrimonial home was purchased for \$1.1m and had been valued at between \$1.7m to \$1.9m when the matter came up for hearing. That meant that the wife's two-thirds share was worth between \$1,133,334 (\$1.13m) and \$1,266,667 (\$1.26m). To retain the matrimonial home for her own occupation, the wife need only pay the husband his one-third share which was well within her means (see [\[27\]](#) below). Had it been an equal division of the matrimonial home as the husband had proposed, the wife would have received between \$283,334 and \$316,667 less. The husband's one-third share equalled \$566,666 or \$633,333.

21 To even out the equation, I granted the husband's request for the parties to retain their own assets. Since the wife's personal assets (which was approximately \$1.4m excluding gifts) were lesser than the husband's (which was approximately \$2.19m), [\[note: 22\]](#) the parties effectively received an almost equal share of the matrimonial assets by the division I made in [\[20\]](#) above. The wife kept her assets of \$1.4m to which would be added \$1.13m or \$1.26m to make a total of \$2.53m to \$2.66m. The husband's assets approximated \$2.75m-\$2.82m (\$2.19m plus \$566,666 or \$633,333). In addition, I ordered the husband (in accordance with his proposal (see [\[9\]](#) above)) to refund the wife \$10,000 for her contribution towards the purchase of the Tanglin Club membership. In my view, this was a fair and reasonable division of the matrimonial assets. I turn now to consider the question of maintenance.

22 Under s 113 of the Women's Charter, the court has the power to order a man to pay maintenance to his former wife pursuant to the grant of a judgment of divorce. In exercising this discretion, s 114 provides that:

... the court shall have regard to all the circumstances of the case including the following matters:

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family; and
- (g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring.

...

In exercising its powers under this section, the court shall endeavour so to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

23 I ordered the husband to pay the wife a lump sum of \$50,000 as maintenance (at *approximately* \$400 per month backdated for the three years preceding the hearing of this application and \$500 per month for the six years thereafter). This was a significantly smaller amount than that sought by the wife (see [\[8\]](#) above). However it factored in the effect of my order on the unequal division of the matrimonial home and two of the factors stated in s 114(a) and (b), namely the parties' financial resources and their financial needs.

24 The award of \$50,000 to the wife was reasonable and appropriate. First, the husband at 61 years of age was getting on in years and he had had several health problems. He had osteo-arthritis for which he had undergone total hip replacement operations in 2004 and 2006.[\[note: 23\]](#) He also suffered from ankylosing spondylitis, a disease which affected his spine and caused him pain, resulting in his dependence on medication for the rest of his life.[\[note: 24\]](#) These were chronic health problems for which he would have to incur medical expenses in the future and which needed to be provided for. He may or he may not return to England to live. Whether he stayed on in Singapore or he returned to England to spend the rest of his days, the husband needed to find permanent accommodation for himself for which a considerable outlay would be required.

25 As for the husband's financial resources, while he had considerable assets, he had also retired and his sporadic lecturing engagements, short-term consultancy jobs and business ventures would not generate regular or significant levels of income.[\[note: 25\]](#) Given the outlook of the defendant's

financials, on balance, I did not think it appropriate to require him to make periodic payments or to pay too large a lump sum in maintenance to the wife.

26 Secondly, it must be remembered that the object of an award of maintenance (as stated in s 114 of the Women's Charter at [22]) is to ensure that the wife is put in the financial position she would have been in had the marriage not broken down. Although the wife enjoyed a high standard of living while the parties were married, she is not a woman without means and her financial resources were such as to allow her to continue with the lifestyle she was accustomed to.

27 While it may be difficult for the wife to obtain full-time employment because of her medical condition (see [\[6\]](#) above), she does have considerable assets and sources of passive income. Apart from the two-thirds share in the Sommerville Park Apartment I had awarded her, the wife had personal assets of \$1.4m and this did not include a gift of \$1.32m from her grandmother and mother. Further, the wife had investments in foreign currency accounts from which she received approximately \$37,000 annually. [\[note: 26\]](#) In consideration of the fact that the wife's financial resources were adequate to meet her needs and to maintain her standard of living, it appeared to me that there was no reason to order a large sum by way of maintenance.

28 Based on the parties' financial resources and needs, I found it fair and appropriate to order the husband to pay the wife a lump sum of \$50,000 as maintenance.

Conclusion

29 For the foregoing reasons, I ordered, *inter alia*, that the wife and the husband were to have two-thirds and one-third share respectively in the parties' matrimonial home; that the husband was to pay the wife \$10,000 to reimburse her for the payment she had made towards the Tanglin Club membership; that the parties shall retain their own assets; and that the husband pay the wife a lump sum of \$50,000 as maintenance to achieve a clean break between the parties.

Costs

30 The court was told that the husband had made an offer to settle on 1 September 2009 the terms of which were more favourable to the wife than the orders I had made. Pursuant to O22A r 9(3) of the Rules of Court Revised 2009 edition, I awarded the husband costs on a standard basis up to 31 August 2009 and on an indemnity basis thereafter, to be taxed unless agreed.

[\[note: 1\]](#) See Pf's affidavit filed on 15 August 2008 at [34].

[\[note: 2\]](#) See Df's submissions at [\[1\]](#).

[\[note: 3\]](#) *Id.* at [\[21\]](#).

[\[note: 4\]](#) *Id.* at [32].

[\[note: 5\]](#) See Pf's submissions at [\[2\]](#).

[\[note: 6\]](#) See Pf's affidavit filed on 19 September 2008 at [\[7\]](#).

[\[note: 7\]](#) See Pf's submissions at [\[2\]](#).

[\[note: 8\]](#) See Df's submissions at [\[27\(d\)\]](#).

[\[note: 9\]](#) See Pf's submissions at [\[18\(x\)\]](#).

[\[note: 10\]](#) See Pf's affidavit filed on 19 September 2008 at [\[7\]](#).

[\[note: 11\]](#) See Pf's submissions at [\[26\]](#).

[\[note: 12\]](#) See Pf's affidavit filed on 15 August 2008 at [\[7\]](#).

[\[note: 13\]](#) See Pf's affidavit filed on 19 September 2008 at [\[7\]](#).

[\[note: 14\]](#) See Pf's submissions at [\[3\]](#).

[\[note: 15\]](#) See Pf's submissions at [\[4\]](#).

[\[note: 16\]](#) See Pf's affidavit filed on 11 February 2009 at [\[43\]](#).

[\[note: 17\]](#) See Pf's submissions at [\[3\]](#).

[\[note: 18\]](#) See Pf's submissions at [\[5\]](#)-[\[11\]](#).

[\[note: 19\]](#) See Df's submissions at [\[27\(ii\)\]](#).

[\[note: 20\]](#) See Pf's submissions at [\[16\]](#) and [\[18\]](#).

[\[note: 21\]](#) See Df's submissions at [\[28\]](#).

[\[note: 22\]](#) See Df's submissions at [\[62\]](#).

[\[note: 23\]](#) See Df's submissions at [\[80\]](#).

[\[note: 24\]](#) *Id.*

[\[note: 25\]](#) *Id.* at [\[83\]](#).

[\[note: 26\]](#) *Id.* [\[98\]](#).