

Koh Bee Choo v Choo Chai Huah
[2006] SGHC 177

Case Number : DT 358/2004
Decision Date : 03 October 2006
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Mary Ong (Mary Ong & Company) for the petitioner; R Joethy (Joethy & Co) and Peter Tio (Cheo & Tio) for the respondent
Parties : Koh Bee Choo — Choo Chai Huah

Family Law – Matrimonial assets – Division – Apportionment of assets – Section 112(2) Women's Charter (Cap 353, 1997 Rev Ed)

3 October 2006

Lai Siu Chiu J:

1 Koh Bee Choo ("the Wife") who was the petitioner in Divorce Petition No 358 of 2004 ("the Proceedings") against Choo Chai Huah ("the Husband"), applied to the High Court for the ancillary issues to be resolved, after she was granted a decree *nisi* by the Family Court on 20 April 2004. The ancillary matters which came up for hearing before me related to:

- (a) the division of the matrimonial assets;
- (b) maintenance of the Wife; and
- (c) maintenance of two sons of the marriage who were in the care and control of the Wife.

2 After three hearings, I made the following comprehensive orders:

- (a) The Husband was to continue to pay the Wife on or before the first day of every month, a monthly sum of \$3,000 as maintenance apportioned as to \$1,500 for the Wife and \$750 for each of the two sons.
- (b) The Husband was to continue to bear the expenses of the matrimonial home at 53 Hume Avenue #07-02 Parc Palais ("the Parc Palais flat") for utilities (water, electricity and gas) and cable television, as well as the hire-purchase instalments for vehicle no SDZ302U ("the Wife's car") and its road tax and insurance charges. The Husband was to pay for the utilities until such time as the Parc Palais flat was disposed of which would be no earlier than October 2006 with completion for sale to take place no earlier than the last day of the sons' national examinations.
- (c) The Husband was to continue to pay the fees and living expenses of the daughter until she completed her university course in architecture in Australia.
- (d) The parties were to have liberty to apply to the Family Court on the issue of maintenance after the Parc Palais flat had been sold.
- (e) The Wife was to have the entire net sale proceeds of the Parc Palais flat which she would utilise to rent alternative accommodation for herself and the children at not more than

\$2,000 rental per month (inclusive of maintenance charges) for a period not exceeding 24 months (but inclusive of an option to renew for 12 months).

(f) The Wife was to have 50% of the Husband's Central Provident Fund ("CPF") savings and would have a charge on the moneys in his ordinary and special accounts until such time as the CPF Board was able to release the charged moneys to the Wife.

(g) The Wife was to have 50% of the Husband's other assets, in particular, in all branches of Mandarin Dental Centre Pte Ltd ("MDC") which shares would be deemed to include the 60,000 shares transferred to the Husband's father.

(h) The Husband would authorise the Wife to write to all major local banks including, but not limited to, United Overseas Bank ("UOB"), Development Bank of Singapore Limited and/or Post Office Savings Bank, Overseas Chinese Banking Corporation ("OCBC"), Malayan Banking and the Bank of China, to ascertain if the Husband maintained any accounts or fixed deposits. If there were accounts (with credit balances) and fixed deposits with any bank, the Wife would be entitled to 50% of those balances. The Wife was to bear the banks' charges relating to her inquiries.

(i) The Husband would undertake to sell 346 Balestier Road #05-13 Ritz Mansion ("the Ritz Mansion property") by October 2006 and if he had utilised his CPF savings for the purchase, the Husband was to refund those withdrawals to his CPF account upon completion of the sale and render a statement thereof to the Wife's solicitors.

(j) The Husband was to transfer 1,000 City Development Ltd and 500 OCBC shares to the Wife.

(k) The parties were to have liberty to apply to the Family Court on the issue of procuring another property for the accommodation of the Wife and children after June 2008.

(l) The Husband was to pay costs fixed at \$3,500 to the Wife.

3 The Wife was dissatisfied with my decision and has filed a notice of appeal (in Civil Appeal No 68 of 2006) specifically against the orders I made in [2(b)], [2(e)], [2(g)] and [2(k)] above.

The chronology of events

4 I shall first set out the significant milestones in the parties' marriage:

(a) In 1976, the parties started cohabiting; the Wife was then 18 while the Husband was 20 years of age; the Wife worked as a computer typist while the Husband was a dentistry undergraduate;

(b) In April 1984, the parties registered their marriage;

(c) On 20 June 1984, the daughter Zhu Hui was born; the Wife stopped working;

(d) On 2 February 1988, the first son Zhu Xiang was born;

(e) On 5 March 1990, the second son Zhu Chuan was born;

(f) In August 1996, the Parc Palais flat was purchased;

(g) In July 2003, the Husband left the Parc Palais flat to live with the party cited, Sun Chang Yan ("Sun"), who is from mainland China; the couple reside at the Ritz Mansion property and have a son;

(h) On 7 February 2004, the Wife commenced the Proceedings;

(i) On 15 April 2004, a consent interim maintenance order of \$3,000 per month was granted to the Wife, for her and the two sons;

(j) On 20 April 2004, a decree *nisi* was granted to the Wife based on the Husband's unreasonable behaviour.

5 In regard to the orders now under appeal, the 48-year-old Wife submitted the following claims at the hearing:

(a) she wanted the Parc Palais flat to be sold and the entire net proceeds given to her absolutely;

(b) she requested a 50% share or more of the Husband's other assets which included the Ritz Mansion property, two properties in Johor Baru, a property in Perth, Australia, a business in Hangzhou, China, bank accounts in Australia and Johor Baru, stocks and shares, a Mazda motor vehicle, life insurance and other investment-linked insurance policies;

(c) maintenance of \$6,000 per month for herself, or alternatively, a lump sum of \$1,080,000 equivalent to 15 years' maintenance; and

(d) a monthly sum of \$1,335 as maintenance for each of the two sons and \$3,000 per month for the daughter.

6 I turn now to the affidavits of means filed by the parties for the Proceedings. On her part, the Wife filed three affidavits. The Wife deposed the parties were married for 20 years and were together even longer as a couple. She took care of the family full-time after the birth of the daughter, raised the children and took credit for the sterling academic performance of the older son and the musical accomplishments of the younger son. Between 1989 and 1996, the Wife claimed she helped the Husband in book-keeping and prepared the accounts for his dental practice; she received no remuneration for her services. This claim was denied by the Husband.

7 Prior to October 2003, the Wife claimed that in addition to his bearing all the monthly outgoings, the utilities charges, the mortgage of the Parc Palais flat and the hire-purchase instalments of her car, *etc*, the Husband provided her with an additional sum of \$3,500 to \$4,000 to cover expenses such as food, groceries, petrol, the sons' pocket money, the sons' tuition fees and her own personal expenses. In addition, the Husband paid the daughter's university fees and living expenses amounting to \$2,750 per month. Consequently, the Wife complained that she could not make ends meet on the interim maintenance order of \$3,000 per month granted by the Family Court: see [4(i)] above.

8 The 50-year-old Husband not unexpectedly opposed the Wife's claims. In regard to her claim for maintenance, he contended \$3,000 per month for the Wife and \$2,670 for the sons were excessive and he could not afford the sums in any event. The Husband asserted he was living on borrowed money (overdraft banking facilities) as his monthly expenditure of \$17,460.40 (which

included the Wife's and children's maintenance and maintenance of his son by Sun) exceeded his average monthly income of \$12,000 from his dental practice at MDC. The monthly maintenance of \$1,800 to Sun for Zhu Xuan, the six-year-old son by Sun, was evidenced in a maintenance order of the Subordinate Courts dated 22 June 2004.

9 The Husband's income was corroborated by his income tax assessments that were exhibited to two of his affidavits. For 2001 the Husband earned \$114,758.47, for 2002 he earned \$170,895.22, for 2003 he earned \$166,194.20 and for 2004 he earned \$72,555.87, which meant his monthly income was much less than \$12,000. The Wife, however, repeatedly claimed that the Husband had other sources of income which he had failed to disclose. She referred in particular to his rental income from his Malaysian properties and to a joint venture business he apparently had in China.

10 The Husband clarified that one of the Johor properties he owned (in Mukim Tebrau) ("the Mukim Tebrau property") had been sold in 1994 for RM200,000 against an acquisition price of RM144,619 in 1990 and the money, less the redemption amount due and owing to RHB Bank, had already been expended. The other Johor property (at 45 Jalan Pinang) had been vacant since 30 September 2003 after the last tenant left.

11 In regard to the Ritz Mansion property, the Husband deposed that he did not disclose it in his affidavit of means as he did not consider it part of the matrimonial assets. It was the home of Sun whom he intended to marry once the decree *nisi* herein was made absolute. Moreover, the Husband took a loan of \$448,000 from OCBC Bank to part-finance the purchase price of the Ritz Mansion property, at \$560,000. The Husband claimed he paid \$36,000 cash while Sun contributed \$20,000 cash towards the purchase. The Wife had exhibited to one of her affidavits a title search her lawyers had conducted on the property and it appeared therefrom that the CPF Board had a charge on the same, registered on 27 June 2003. Upon inquiries of counsel for the Husband, the court was informed that the Husband had utilised his CPF contributions to help pay for the purchase.

12 As for his car, the Husband deposed that he had purchased the Mazda vehicle in June 2004 with 100% financing by Hong Leong Finance Company Ltd. The car's monthly hire-purchase instalment was \$1,098 according to documents produced by the Husband.

13 The Husband disclosed the two life policies he had taken out with Prudential Assurance Company Singapore (Pte) Ltd on which he had been in arrears on the premiums since 2000/2001, which (with interest) as of 18 January 2005, totalled \$62,131.40. He had another policy with American International Assurance ("AIA").

14 The Wife had complained on affidavit that the maintenance of \$1,800 which the Husband paid to Sun was disproportionately high when compared to her maintenance award as Sun only had a young child to support while the Wife had to support herself and two older boys (now aged 16 and 18) on \$3,000. The Husband explained that he had to pay private kindergarten school fees of \$787.50 for his son by Sun as he was unsuccessful in his application (despite an appeal) for a student's pass, without which the boy could not be admitted to a kindergarten run by the PAP Community Foundation, which fees were considerably lower. A reason for the rejection was probably because the son was neither a Singapore citizen nor a permanent resident, as Sun is a foreign national and the child was born out of wedlock.

15 The Wife inexplicably had also demanded that the Husband disclose his credit cards expenses, which the Husband did, albeit reluctantly. One would have thought she would be more interested in his income than in his expenses. The Husband's Visa card and American Express card bills were produced and they revealed that the Husband had not been paying his bills promptly since

2003–2004, with the result that he received frequent reminders from the Bank of China and American Express respectively.

16 As for the China business, the Husband revealed that Hangzhou Mandarin ORSO Dental Laboratory Co Ltd ceased operations in early 2003 when he could not visit China due to the SARS crisis. The company's equipment was stolen by the staff. The Husband deposed he took a loan from Lloyds TSB Bank (which outstanding sum was \$319,037.92 as of 28 July 2004) secured by a mortgage on 20A Bhamo Road ("the father's property") belonging to his father. The loan was used for a failed business venture in China, which presumably was the Hangzhou business. The Husband explained he transferred 60,000 of his shares in MDC to his father because the latter lent him \$50,000 in 2000 to pay legal fees relating to a case with the Ministry of Manpower; the Husband did not have the means to repay his father's loan. The father's \$50,000 came from the proceeds of an insurance policy with AIA which had matured.

17 The Husband had \$65,283.27 and \$20,759.70 in his CPF ordinary and special accounts respectively as of December 2003. He disclosed his Central Depository Account to show his share portfolio which was not significant.

18 The Husband's Perth property was situated at 2 Masefield Avenue North Lake, Western Australia ("the Australian property"). Documents exhibited to the Husband's affidavit showed that the rental income received from the property was negligible after deduction of outgoings and the fees of the managing agent. The Australian property was mortgaged to Lloyds TSB Bank which repossessed and then sold the same on 28 September 2002 for A\$239,000 with the existing tenancy. After paying off the redemption sum, the net sale proceeds amounted to A\$82,142.92 which in November 2002 was equivalent to S\$80,730.06. The Husband said the funds were used for the family's expenses and for the daughter's university education and maintenance.

19 The Husband had the following dental practices at one time:

- (a) MDC (incorporated in 1989);
- (b) Mandarin Dental Centre (Katong) Pte Ltd (incorporated in 1992);
- (c) Technic Medical & Dental Laboratories Pte Ltd ("Technic"); and
- (d) Far Ocean Development Pte Ltd ("Far Ocean").

By the time of the hearing, the Wife had abandoned her claims to Technic and Far Ocean for the reason that Technic was a loss-making company and its shares were worthless, while the Husband was only a minor shareholder in Far Ocean. As for MDC, the Husband deposed that he held 25% of the shares in MDC which had a paid-up capital of \$200,000. MDC incurred a net loss of \$310,256 in 2003 according to its audited accounts. The Husband had a 51% share in Mandarin Dental Centre (Katong) Pte Ltd.

The decision

20 It was not in dispute that the monthly mortgage instalment of the Parc Palais flat was \$6,200 with \$1,000 or more in overdraft interest for the UOB mortgage and OCBC overdraft facilities respectively, which the Husband had procured for its purchase. The flat was not an asset but a continuing liability which was bleeding the Husband financially and had been doing so for the past ten years. The property is inconveniently situated at Upper Bukit Timah. It was purchased in the

Husband's sole name in August 1996 for \$1.134m but its value was only \$853,000 as of January 2002 (according to UOB's valuation). It would probably be worth more in today's market but it is unlikely to regain its purchase price in the short term.

21 The Husband had deposed in his first affidavit of means that the outstanding loan to UOB on the mortgage was \$421,176.37 while \$301,663.91 was owed on the overdraft facility of OCBC. It appeared from documents exhibited by the Husband that he has had difficulty in servicing the UOB loan since December 2003. This state of affairs cannot continue indefinitely. It will only be a matter of time before UOB sued and/or foreclosed on the mortgage if the Husband continued to be in arrears in servicing the mortgage instalments. It made economic sense for the Parc Palais flat to be sold even at a loss so as to reduce the Husband's liability and monthly expenditure by at least \$6,200 per month, not to mention the other outgoings on the Parc Palais flat such as maintenance fees and property tax.

22 I therefore ordered the Parc Palais flat to be sold and the net sale proceeds, after redemption of the UOB mortgage, be given to the Wife to enable her to rent alternative accommodation, hopefully in a more convenient location. This was not an ideal long-term solution but under the circumstances it was the best that the court could do, in view of the Husband's dire financial straits upon which I shall elaborate at [25] below.

23 I granted a further order in [2(d)] above, giving the parties liberty to apply on the issue on maintenance once the Parc Palais flat had been sold. By then a clearer picture of the Husband's income and liabilities should or would have emerged. If \$2,000 per month as rent for the Wife's and her two sons' interim accommodation was insufficient, the Wife would be entitled to apply for an upward revision of the current maintenance sum of \$3,000. The Wife had conveniently overlooked the fact that the Husband would continue to bear the outgoings of the Parc Palais flat and its utilities, not to mention the expenses of the Wife's car. In real terms, she was getting more than \$3,000 per month. It also bears mentioning that by the end of this year, the couple's older son would likely be serving his national service while the daughter would be completing, or would have completed, her architecture course. The Husband's finances and the Wife's needs would require re-adjustment in those events.

24 Buying another property for the Wife's accommodation after selling the Parc Palais flat was out of the question as neither she nor the Husband had the means. So too was the alternative proposed by the Wife, of transferring the Parc Palais flat to her sole name or to her jointly with the daughter, for the same reason. However, I gave the parties liberty to apply to the Family Court on the issue of procuring another property for the Wife and children after June 2008: see [2(k)] above. By then, the daughter should have joined the work force and the older son would probably be in university. Hopefully, the Husband's finances would have improved by then.

25 It was a constant refrain of the Wife that the Husband had moved his assets to China. However, she offered no evidence to support her allegation. As the onus is on a party who makes a positive assertion to prove the same, I could not give any credence to her complaint. Another argument which the Wife repeated *ad nauseum* was that the Husband could not be earning what he claimed (even though his income was corroborated by his income tax assessments) because it was not possible that his actual monthly income (estimated by his counsel to be \$10,925) could be half his estimated monthly expenses of \$21,265. The Wife contended (in para 8 of her affidavit filed on 27 October 2004) that as the Husband's monthly expenses exceeded \$20,000, he must be earning in excess of \$20,000 every month. This perverse logic overlooked a significant factor – the Husband was living and supporting himself, the Wife, his children by her, Sun and his son by her, mainly on borrowed money. This was obvious from the bank statements and other documents disclosed by the

Husband whether voluntarily or pursuant to discovery applications by the Wife. The family had been living beyond the Husband's means even as his income from his dental practice declined since 2004.

26 The Ritz Mansion property was arguably not a matrimonial asset because its purchase was completed in June 2003 (according to the registration dates of both the mortgage of OCBC and the charge of CPF), which was about a month before the Husband left the Wife in July 2003. Even so, I ordered its sale because the Husband had utilised his CPF savings in its purchase.

27 I had, in consideration of her 20 years of marriage, acceded to the Wife's request to be given half of the Husband's more substantial assets even though she had made no direct contribution at all towards their acquisition; the Wife wanted more. She alleged the Husband had not accounted for a fixed deposit of \$483,478.91 with OCBC Bank which sum was withdrawn on or about 23 August 1999, seven years ago. She disbelieved the Husband's assertion that the amount was used as collateral for overdraft facilities and to buy the Parc Palais flat. As counsel for the Husband pointed out, it would be impossible for the Husband to now recall where he had put and what he had done with those moneys. The Husband had most probably utilised the funds to settle his overdraft facilities and loans.

28 However, I did order the Husband to produce, which he did, his monthly bank statements from UOB from 1 January 2004 to January 2006. The Husband had already exhibited to his fifth affidavit filed on 13 April 2004, copies of his OCBC Bank statements for the years 2002 to 2004. I found no evidence of any substantial credit sums or withdrawals in any of the UOB or OCBC statements. It is to be noted that in 1999, the parties were still living together and there would have been no reason for the Husband to hide or otherwise dispose of his assets.

29 I had accepted the Wife's contention that the Husband's transfer of shares in MDC to his father was not *bona fide* and hence included the 60,000 transferred shares in the 50% I awarded to her of the Husband's interest in the company.

30 The Wife had also requested a share of the net sale proceeds of the Mukim Tebrau property, the net proceeds of S\$80,730.06 from the Australian property, \$6,780.22 from his OCBC account and \$78,000 deposited into the bank account of MDC on 12 November 2004. I did not accede to her excessive demands.

31 The Mukim Tebrau property was sold in November 1994. It was unrealistic to expect the Husband to account for the sale proceeds 12 years later, well after he had disbursed and expended the moneys. The other unsold Johor property had not been tenanted since October 2003 and by the Wife's own admission, it was charged to RHB Bank Bhd to secure a loan of \$80,000. In the present moribund state of the Johor property market, this appeared to be a wasting asset and another bad investment on the part of the Husband. I declined to award the Wife a share in the property nor require the Husband to account for the rental he received (at RM900 per month) up to September 2003. The rental had been converted into Singapore dollars by the last tenant, remitted to the Husband in Singapore and was undoubtedly spent; the evidence suggested the Husband's financial problems started in 2003.

32 I was satisfied that the Husband had used the sale proceeds of the Australian property for the daughter's education and maintenance. In relation to the Australian bank account, the Husband had deposed that the daughter, not he, utilised the account.

33 As for the sum of \$78,000 in MDC's bank account, the Wife's claim was absurd. Moneys in the bank account of a limited company belong to the company and are to be used for its operations, not by its shareholders. The Husband in any event was not the sole or major shareholder of MDC.

34 I declined to award the Wife any share of the surrender values of the Husband's insurance policies with Prudential or his policy with AIA for the reason that the policies had no named beneficiaries but would go to the Husband's estate, being policies that came under s 73 of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed).

35 Counsel for the Wife had cited *White v White* [2001] 1 AC 596 and *Yow Mee Lan v Chen Kai Buan* [2000] 4 SLR 466 to support her argument that the Wife's indirect contributions merited her entitlement to half the matrimonial assets. I did not disagree with the principles extracted from those cases. However, every case turns on its own particular facts. Unlike the wives in *White v White* and *Yow Mee Lan v Chen Kai Buan*, the Wife did not work and had not worked, since June 1984, which was almost the entire period of the marriage, let alone help the Husband in his work. As the Husband rightly pointed out, she could and should find a job. She should be taking up courses to improve and upgrade her skills instead of spending three to four nights a week doing line dancing.

36 I had refused to draw an adverse inference against the Husband as counsel for the Wife submitted I should, relying on *Lee Bee Kim Jennifer v Lim Kew Khang Cecil* [2005] SGHC 209. As stated earlier at [25], the Wife's allegations that the Husband had moved his assets out of the jurisdiction and/or failed to make full disclosure of all his assets were not substantiated.

37 I had adopted the usual broad-brush approach in awarding to the Wife what I thought was a fair and reasonable share of the Husband's main assets and in giving her a reasonable maintenance amount, bearing in mind the factors in ss 112 and 114 respectively, of the Women's Charter (Cap 353, 1997 Rev Ed).

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