

Chan Mei Lan Kristine v Ong Boon Huat Samuel
[2006] SGHC 108

Case Number : D 602355/2003, RAS 720033/2005
Decision Date : 16 June 2006
Tribunal/Court : High Court
Coram : Andrew Phang Boon Leong J
Counsel Name(s) : Nicole Loh Wern Sze (Harry Elias Partnership) for the petitioner; Ooi Oon Tat (Low Yeap Toh & Goon) for the respondent
Parties : Chan Mei Lan Kristine — Ong Boon Huat Samuel

Family Law – Matrimonial assets – Division – Wife servicing payments for matrimonial home whilst husband financing purchase of second property – Whether second property forming part of matrimonial assets – Section 112(10) Women's Charter (Cap 353, 1997 Rev Ed)

16 June 2006

Andrew Phang Boon Leong J:

Introduction

1 The petitioner wife and respondent husband were married on 1 July 2000. After one unsuccessful attempt at presenting a divorce petition, the wife filed a divorce petition on 17 June 2003 on the ground of unreasonable behaviour on the part of the husband. The decree *nisi* was granted on 19 September 2003. Looked at from a practical perspective, given the initial (albeit unsuccessful) attempt by the wife at presenting a divorce petition, it is clear (as the learned district judge ("the judge") found) that the marriage lasted, effectively, for only 19 months. There were no children from the marriage.

2 Ancillary matters with regard to maintenance for the wife and the division of matrimonial property were heard before the judge on 18 April 2005, who made the following order (see *Chan Mei Lan Kristine v Ong Boon Huat Samuel* [2005] SGDC 187 ("the GD") at [3]):

- (a) The Petitioner was entitled to 18.56% of the net total value of both properties at 259, Onan Road (the matrimonial home) and 373, Onan Road, #01-10 Malvern Springs (Malvern Springs property) which, using the Respondent's amended calculations, amounted to \$22,596.64.
- (b) The Respondent was given the option either to sell the Malvern Springs property or he could retain it upon paying the Respondent the said \$22,596.64.
- (c) The matrimonial flat was to be sold within 6 months.
- (d) No order on other claims of both parties.
- (e) Respondent to pay \$1 per month as maintenance to Petitioner.
- (f) Costs of Divorce Petition to Petitioner fixed at \$1,500 and costs of \$2,000 for the ancillary proceedings.

3 Both parties lodged an appeal and cross-appeal, respectively, against the decision of the judge. When these appeals and cross-appeals came up for hearing before me, the wife sought leave

to withdraw her application. Leave was granted. In the meantime, I was given to understand that the husband was amenable to a settlement. This may well have been the reason why the wife withdrew her appeal. His then counsel requested an adjournment, which was granted. There followed three more adjournments, all at the request of the husband – and all with a view to an amicable resolution. The husband, having obtained several adjournments, had a sudden change of heart and decided to proceed with his appeal. He had also decided to change his lawyers in the meantime. This was a radical shift in his legal stance – one which he was of course legally entitled to do but which nevertheless wasted much court time as it was clear that counsel for the wife, Ms Nicole Loh, was prepared to argue the case but nevertheless graciously acceded to the repeated requests for adjournments. The husband's present lawyer, Mr Ooi Oon Tat, in fact requested for an adjournment in the first instance as he had just taken over the file. I granted the adjournment. Finally, at the sixth time of asking, the husband was prepared to argue his case. Having heard and considered the arguments from counsel for both parties, I found the judgment rendered by the judge below to be, on the whole, both logical and fair. I therefore varied the judge's order slightly, ordering that the husband pay the wife 15% of the net total value of both properties at 259 Onan Road ("the matrimonial home") and 373 Onan Road #01-10 Malvern Springs ("the Malvern Springs property"), which amounted to \$18,000. The husband was dissatisfied and has appealed against my decision.

4 In appealing against the judge's decision, the husband had in fact sought the following instead (see the GD at [5]):

(a) That the matrimonial home at 259 Onan Road, Singapore 424651 be sold in the open market after two years from the date of the making of this Order and for the net proceeds of sale after deducting the following expenses be divided between the Petitioner and the Respondent in the proportion of 36%:64% respectively or any other apportionment which the Court deems to be fair and just:

- (i) The Respondent's cash contribution towards the initial downpayment, stamp fee and legal fees amounting to \$151,268.00;
 - (ii) Costs of sale including legal costs and agents' commission;
 - (iii) Payment of all outstanding bank loan;
 - (iv) Refund to both parties' CPF account of all monies utilized for the acquisition of the matrimonial home together with accrued interest;
 - (v) Costs of the repair works carried out; and
 - (vi) Any other costs and expenses incidental to the sale.
- (b) That the Petitioner shall not be entitled to any share in the Malvern Springs property.
- (c) That the parties bear his/her own costs of the Court below.
- (d) That the Respondent's costs of and incidental to this Appeal be paid by the Petitioner.

5 No issue arose with regard to the issue of maintenance for the wife. This is not surprising as she was awarded only a nominal sum of \$1 per month. In the words of the judge, such "a token sum" was appropriate because "[t]he Petitioner [wife] was not dependent on the Respondent [husband]" (see the GD at [16]). Indeed, the evidence demonstrated in no uncertain terms that the wife was far

more successful financially compared to the husband (see the GD at [10]).

6 I turn, therefore to the main issue at hand, which centres on the division of the matrimonial assets.

Division of the matrimonial assets

7 The matrimonial assets comprised the two properties, *viz*, the matrimonial home and the Malvern Springs property, respectively.

8 The husband's principal argument centres around the fact that the wife had no claim to the Malvern Springs property and that the judge had therefore erred in including it in the pool of matrimonial assets for the purposes of s 112 of the Women's Charter (Cap 353, 1997 Rev Ed) ("the Act"). It is relevant to note that of the two properties concerned, the matrimonial property has fallen rather drastically in value whilst the Malvern Springs property has appreciated in value. It is therefore imperative to ascertain the reasons behind the husband's claim that the wife has no claim to the Malvern Springs property.

9 Before proceeding to examine the husband's arguments, it would be appropriate to set out the brief background to both properties. As already alluded to above, the present position is that the matrimonial home has fallen drastically in value whereas the Malvern Springs property stands on an entirely different financial footing.

10 According to Ms Loh, the wife was servicing the payments for the matrimonial property whereas it was agreed that the husband would service the payments for the Malvern Springs property. More importantly, the intention of the parties was that *the Malvern Springs property would replace the matrimonial property*. At this point, there can therefore be no doubt that the Malvern Springs property was clearly part of the pool of matrimonial assets; indeed, it was to be *a central part* of that pool as it would constitute the *new* matrimonial home.

11 As it turned out, however, the purchase of the Malvern Springs property was aborted and herein we approach the nub of the dispute between the parties. According to the wife, she did not have sufficient funds to service the financing required for both the matrimonial home and the Malvern Springs property. In other words, the original intention as to why the Malvern Springs property was sought to be purchased in the first instance (that it was envisaged as the new matrimonial home) remained. As Ms Loh put it, "[i]n paying for the matrimonial property, she [the wife] enabled him [the husband] to purchase Malvern Springs".[\[note: 1\]](#)

12 Not unexpectedly, the husband's argument was radically different and, here, we come to his reasons in more detail. He claimed that the wife had relinquished all claim to the Malvern Springs property. In this regard, he referred to the joint record of appeal, which contained the affidavit of means by the wife; he referred, in particular, to paras 11 and 12 of this affidavit.[\[note: 2\]](#) However, a close perusal of these paragraphs *in context* reveals the precise opposite of what counsel for the husband was in fact arguing in favour of. Indeed, these paragraphs confirm the wife's version. As the wife herself put it in the very paragraph cited by counsel for the husband, she "was already unable to afford buying another property as all [her] monies were already being used to finance [the] matrimonial home's outstanding loan".[\[note: 3\]](#) And, in her own words once again, "[t]herefore, it was agreed that the Respondent [the husband] would be the one fully financing the purchase of Malvern Springs".[\[note: 4\]](#) The wife then proceeds to elaborate thus:[\[note: 5\]](#)

However, for the Respondent to obtain a mortgage loan from the bank for such a purchase, the

mortgage loan had to be applied for by both him and I. Therefore, the Respondent asked me to be a joint owner of Malvern Springs and to apply for the mortgage loan with him so that he can continue with the purchase *but it was made very clear that I will not be paying anything for Malvern Springs*. This is confirmed by the fact that the Respondent was the one who paid the initial 10% downpayment for the property. [emphasis added]

13 Paragraph 12 of the affidavit of means, which as we have just noted was relied upon by counsel for the husband, reads as follows:

Subsequently, our relationship broke down and when the Respondent wanted me to sign the mortgage documents, I wanted to enter into a Deed of Financial Settlement with the Respondent to record the agreement between us with regard to the Malvern Springs property. However, the Respondent refused to even confirm via letters that he would be wholly responsible for the housing loan instalments, the second 10% of the purchase price, interest, stamp duty, penalty, outgoings, costs, any bank charges and fees, legal costs etc of the property. Therefore I could not sign the mortgage documents as it would mean that I am legally liable for the payments should the Respondent not pay and I will not be able to indemnify myself from liability.

14 On the other hand, Ms Loh, also referring this portion of the joint record of appeal, pointed to an exhibit (a letter from the wife's then lawyers to the husband's then lawyers) that elaborated upon para 12 of the affidavit (which was reproduced in the preceding paragraph). Ms Loh argued that this particular letter, which also included a request for an indemnity, supported the wife's version. [\[note: 6\]](#) In point of fact, however, even without this letter, it was clear to me that the plain meaning as well as context of paras 11 and 12 of the affidavit supported the wife's version of what the understanding between the parties was with regard to both the matrimonial home and the Malvern Springs property.

15 I found, on the other hand, Mr Ooi's argument to be unpersuasive and, with respect, misconceived. The material he cited was equally consistent with the agreement and understanding between the parties referred to at [11] above. It is true that, by that time, the marriage was (in all probability) not in a salubrious state. But, even if that was the case, it does not detract from the *objective fact* of the agreement and understanding as well as of the wife's financial inability to finance both properties (which led to this agreement and understanding in the first instance). Indeed, it was precisely because the marriage was not going well that the wife did not (as an *additional* reason) want to be a co-purchaser of the Malvern Springs property, lest the husband renege on their agreement and understanding and demand that she service the financing for that property in addition to that for the matrimonial home which she was already servicing. Ironically, the very material supporting this reason was cited by Mr Ooi himself (see [13] above). One must also bear in mind the fact that this agreement or understanding would, in all probability, not have had any legally binding effect as there is a presumption that in a *domestic* context there is no intention to create legal relations: see, for example, the oft-cited English Court of Appeal decision of *Balfour v Balfour* [1919] 2 KB 571.

16 Let us look, in fact, at the *substance* of the matter. As Ms Loh has argued, the only reason why the husband could purchase the Malvern Springs property was because the wife was helping to finance the matrimonial property. She was, to that extent, financially strapped and could not therefore help finance the Malvern Springs property as well. That was the understanding between the parties. Her initial participation *vis-à-vis* the Malvern Springs property was to help obtain financing from the bank. That was her understanding. When the marriage broke down, she was naturally apprehensive. This explains why she decided not to participate in the purchase of the Malvern Springs property even on this superficial and formalistic level. In *substance*, however, the understanding

between the parties never included any participation at all. But this did not mean that the wife had relinquished her interest in the Malvern Springs property – or any of the matrimonial assets for that matter. It was a simple matter of division of financial labour, so to speak. Her contribution, in fact, to the purchase of the Malvern Springs property was in the form of relieving the husband with respect to his otherwise heavier financial burdens *vis-à-vis* the matrimonial home.

17 However, even assuming that the husband is correct in his argument that the wife had backed out of the initial transaction for the Malvern Springs property, albeit not for the reasons (of financing) that she had proffered, did that make that particular piece of property any less a matrimonial asset? After all, it was acquired during the marriage itself. In this regard, the definition of a “matrimonial asset” under s 112(10) of the Act is instructive; it reads as follows:

In this section, “matrimonial asset” means —

(a) any asset acquired before the marriage by one party or both parties to the marriage —

(i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or

(ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and

(b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,

but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

18 Section 112(10), as reproduced above, deals with assets acquired both before as well as during the marriage. There is some controversy as to whether or not the last part of the provision qualifies paras (a) and (b), or para (b) only. Be that as it may, it *is* clear that, whichever view prevails, that particular part does in fact qualify para (b). Paragraph (b) itself is clear and, in this regard, a “matrimonial asset” would *mean* “any other asset of any nature acquired during the marriage by one party or both parties to the marriage” [emphasis added]. It is in fact not only clear but also extensive in nature (see also, for example, the Singapore Court of Appeal decision of *Chan Teck Hock David v Leong Mei Chuan* [2002] 1 SLR 177). It is, as I have just alluded to, only qualified by the last part of the provision. However, an even cursory examination of this last part reveals that it is only a very limited exception; in particular, it is intended to exclude assets that have been acquired by one of the parties to the marriage “at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage” [emphasis added]. It is clear that this exception does *not* apply to the present proceedings. The Malvern Springs property was certainly *not* acquired by the husband by way of “gift or inheritance”. It is, in the circumstances, unnecessary to consider the second limb of that part pertaining to the concept of substantial improvement. I also note that this means that, *even if* the wife had (in the present proceedings) in fact relinquished her right to the Malvern Springs property, this would not make that property any less a matrimonial asset within the meaning of s 112(10) of the Act. In point of fact, however, I find the husband’s argument with regard to relinquishment both vague and contrived. In particular, what did he mean by the wife relinquishing her right to the Malvern

Springs property when she was not even a co-purchaser to begin with? *However*, as we have just seen, the fact that the husband in fact acquired the Malvern Springs property during the marriage meant that it clearly fell within the definition of a "matrimonial asset" in s 112(10) of the Act and therefore formed part of the pool of matrimonial assets. In any event, as I have already pointed out above, I find that the wife had good reason not to proceed with the husband to purchase the Malvern Springs property jointly for the reasons which I have already set out above.

19 Indeed, when I pointed out to Mr Ooi that s 112(10)(b) of the Act was clear, [\[note: 7\]](#) he conceded that "[t]hat is not my strongest ground", although he sought to argue that "it can be excluded because it is not just and equitable". [\[note: 8\]](#) With respect, this last-mentioned reason flew in the face of the language and intention of the provision and was, in my view, no more than a mere assertion and/or a misplaced appeal for sympathy which was (in my view) undeserved in any event.

20 In point of fact, I find that it was the *husband* who had reneged on the arrangement he had with the wife to the effect that she would help to service the financing for the matrimonial home. It would appear that it is he who wishes to take full financial advantage of the situation by denying the wife any share in the Malvern Springs property. This is impermissible as a matter of both fact and law for the reasons I have set out above.

21 I did, however, vary the judge's order slightly. It was clear that the husband's business was not doing well and that he was generally in an unsatisfactory financial state. This was certainly the case when compared to the financial state of the wife. As will be recalled, the wife was, as a result, awarded only a nominal sum for maintenance (see [5] above). Pursuant to s 112(2)(h) of the Act, I am empowered to have regard to "the matters referred to in section 114(1) so far as they are relevant". Section 114(1)(a) of the Act refers to "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". Taking this last-mentioned factor into account, I effected a slight variation to the judge's order. This was, I might add, a tad generous to the husband but I was of the view that I should take into account the fact that he was not in the best of financial straits.

Conclusion

22 Finally, I should observe that although it is perhaps technically possible that the husband was entitled to file the present appeal without first seeking the leave of either the Court of Appeal or a judge of the High Court, this appears (assuming that the technical argument just mentioned succeeds, and on this argument I of course make no pronouncement) to be the result of a technical loophole which was never intended in the first instance. Since the final draft of this judgment was prepared, it has come to my attention that a notice of motion has in fact been filed by the wife seeking to strike out the notice of appeal in the present proceedings (see Summons No 1754 of 2006). I therefore say no more about this particular issue. Be that as it may, the husband's appeal was almost wholly unmeritorious, and I was therefore of the view that the judge's decision ought only to be varied slightly and so made an order accordingly.

[\[note: 1\]](#) See Notes of Evidence ("NE") at p 7.

[\[note: 2\]](#) Vol II, Pt A, p 36 at paras 11-12.

[\[note: 3\]](#) *Ibid* at para 11.

[\[note: 4\]](#) *Ibid*.

[\[note: 5\]](#) *Ibid.*

[\[note: 6\]](#) *Ibid* at p 86.

[\[note: 7\]](#) See NE at p 6.

[\[note: 8\]](#) *Ibid* at p 7.

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