

Tan Soan Lian v Edwin Lee Yong Chuan
[2000] SGHC 109

Case Number : D 774/1997
Decision Date : 15 June 2000
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : R Raj Singam and Edmund Kronenburg (Drew & Napier) for the petitioner;
Lawrence Quahe with Foo Siew Fong, Tricia Feng (Harry Elias Partnership) for
the respondent
Parties : Tan Soan Lian — Edwin Lee Yong Chuan

JUDGMENT:

GROUND OF DECISION

1. The parties were married in July 1980 and have two children, a son Mark born in 1981 and a daughter Nicole born in 1984. The marriage broke down in 1992 and the husband left the matrimonial home at Block 48 Henley Court, #06-04, Astrid Meadows, Coronation Road West (the "Astrid Meadows property"). The wife petitioned for a divorce in March 1994 and was granted a *decree nisi* in June 1997.

2. The parties were unable to agree on the ancillary matters. They were heard by a district judge who made the following orders on 7 May 1999 –

a) 45% of value of Astrid Meadows (45% of \$4,380,000 = \$1,971,000) (round up - \$2 million).

If sale, Respondent to make his own refunds to CPF, to pay
outstanding mortgage fees and expenses relating to sale.

b) Other assets

25% of \$1,807,113 = \$451,778.25 (round up - \$500,000).

c) Lump sum maintenance to Petitioner - \$960,000

Total
-
\$3,442,111
(\$3,460,000)

d) Maintenance for Nicole - \$3000 per month with effect from 15 May 1999.

e) Costs to Petitioner fixed at \$12,000.

3. Both parties appealed against the orders. The husband sought to have the maintenance for the wife reduced to \$480,000 calculated at \$4,000 a month for 10 years, to reduce her share of the matrimonial assets (other than the Astrid Meadows property) to 25% of the net value rather than the gross value and against the order for costs. In her appeal the wife wanted to have the orders on the division of the matrimonial assets varied, and to have the costs taxed.

4. After hearing counsel, I ordered that

1. Orders 1 and 2 of the Order of Court dated 7 May 1999 be varied to read:

(1) The Petitioner is to receive \$2 million as her share of the property at Block 48 Henley Court, #06-04 Astrid Meadows, Coronation Road West, Singapore 269263.

(2) The Petitioner is to receive 25% of the value of the following assets –

(a) Property at 1805 Highgate, 127 Kent Street, Sydney 2000

(the "Sydney property").

The share is to be computed on the open market value of the property, deducting the outstanding sums and interest accrued on the two loans raised for the purchase of the property.

(b) 1,800,000 Lee Kim Tah Holdings Ltd shares.

(c) 3,606,279 Lee Kim Tah Investments Pte Ltd shares.

(d) 629 United Engineers (M) Ltd shares.

(e) 4,999 Faber Merlin shares.

(f) 720 Sing Tel 'A' shares.

(g) 600 Sing Tel 'B' shares.

(h) 540,000 Lee Kim Tah Holdings Ltd share warrants valued at \$54,000.

(i) Singapore Island Country Club membership with conversion fee of \$4,000 to be deducted.

(j) American Club membership.

(k) Amount standing in POSB account 019-09995-4.

(l) Amount standing in POSB account 010-02681-4.

(m) Amount standing in ANZ account 012-366-5520-17492.

(n) Half the amount standing in OCBC account 501-359020-001.

(o) Half the amount in POSB account 004-48467-3, and

(p) The amount in CPF account 1185692/F.

2. The Registrar shall assess the values of the assets, except (d), (e) and (h) as at 7 May 1999.

3. The value of assets (d) and (e) shall be the market value when they can be disposed of.

4. The payment of the \$2 million under Order 1(1) hereof to be made within three months.

5. The payments in respect of the assets in Orders 2 and 3 hereof (except for the property in Sydney) shall be paid within two weeks of the value of each asset being assessed

6. The payment in respect of the property in Sydney is to be made within three months of the assessment of its net value.

7. The other orders of the Order of Court of 7 May 1999 are to stand.

8. There shall be liberty to apply.

9. Each party is to bear its own costs in the appeal.

5. The husband was unhappy with the result and appealed against the orders in italics. I shall explain those of my orders which are under appeal.

Order 1 - The Astrid Meadows property

6. My order was an affirmation of the district judge's order. The effect of the order was that the wife was to receive \$2 million as her share in this property. I changed the wording to reflect its effect more succinctly.

7. As the district judge did not specify the time for payment of this amount, I ordered that it be paid

in three months, lest it be argued that the order was effective and enforceable from the day it was made. The three month period was set to enable the husband to sell the property or to raise the \$2 million by other means.

8. The husband had not appealed against the district judge's order, and appeared to have accepted that he has to pay the wife the \$2 million as her share in the property. His counsel in their written submissions confirmed

It was also ordered by the Learned District Judge on 7 May 1999 that the Petitioner be entitled to 45% of the matrimonial home at Astrid Meadows, which share shall be ascribed the rounded-off value of \$2 million, the said \$2 million to be paid by the Respondent to the Petitioner forthwith, either from the net proceeds of the sale of the matrimonial home or otherwise. *The Respondent has not appealed against this order ...*

(Emphasis added)

Order 2 – The other matrimonial assets

9. Both parties have identified the matrimonial assets available which they considered were subject to division. The wife's list was "Annex A" to the Petitioner's Skeletal Submissions filed on 16 March 1999, and the husband's list was exhibit "R4".

10. The district judge proceeded on the assumption that both parties were comfortable with the wife's list. This was not borne out by the notes of evidence which showed counsel for the husband to have said "Annex A. It's a fair list of assets in the neutral sense. I will submit which should not be matrimonial assets."

11. The district judge added up the values of the assets in Annex A (except an inheritance from the husband's grandfather's estate) and arrived at the figure of \$12,559,320.00. He then deducted from that the market value of the Astrid Meadows property, shares in Lee Kim Tah Holdings Ltd ("LKTH") and Lee Kim Tah Pte Investments ("LKTI"), and the husband's liabilities, and arrived at the figure of \$1,807,113, which he took to be the value of the other matrimonial assets.

12. There were difficulties with his approach, *inter alia* -

(i) The husband had not accepted the wife's list.

(ii) In that list the recorded values of the Astrid Meadows property and the Sydney property were their open market values without deducting the outstanding loans secured on these properties. These loans must be deducted from the market values. The value of an asset for the purpose of division is the value available for division. It is inappropriate to use market value (or gross value as the district judge put it) when loans are secured on the properties because only the balance remaining after discharging the loans is available for division.

(iii) The district judge mistook the numbers of LKTH and LKTI shares for their values.

(iv) The district judge erred in deducting the husband's liabilities from the value of matrimonial assets. His liabilities could be taken into consideration if they come under section 112 (2)(b) of the Women's Charter in apportioning the matrimonial assets, but they should not be taken out from the value of the matrimonial assets unless the liabilities are secured by the assets.

13. I employed a different approach to identify the matrimonial assets. I used the wife's list as a starting point and determined which asset should be taken into account, and how their values should be determined.

The Sydney property

14. The two loans were taken by the husband to purchase the property. The loans taken in 1994 and 1995 were documented. I ordered that the outstanding loans and annual interest be deducted from the market value of the property in determining its value for the purpose of division.

The LKTH and LKTI shares

15. The husband explained how he came to own these shares. Before his marriage he received shares in three companies, namely Lee Realty Pte Ltd, Lee Development Pte Ltd and Lee Kim Tah Pte Ltd as gifts from members of his family.

16. In 1982 the three companies were part of an amalgamation exercise to consolidate the companies into a holding company, LKTH. He deposed that "I was offered the shares in Lee Kim Tah Holdings Ltd and Lee Kim Tah Investments Pte Ltd in consideration of the shares which I held earlier." He was married by this time.

17. The husband argued that the LKTH and LKTI shares are not matrimonial assets under s 112(10), but I disagreed with him. The gift shares in the original companies were no longer in existence at the time of division. He had accepted the offer to exchange them for new shares. The new shares did not come from the donors and were not gifts received in the course of amalgamation.

The SingTel shares

18. The husband did not dispute that he held 720 SingTel (A) shares and 600 SingTel (B) shares. He wanted to exclude them from division because "... these shares were not acquisitions and the Petitioner herself has the same number of shares."

19. He did not explain how he came by those shares, and cannot expect anyone to act on his bare assertion. The fact that the wife also held SingTel shares does not mean that his shares are not matrimonial assets. It may mean that her SingTel shares should also be considered for division, but that is another matter, and that is not a matter under appeal before me.

The Singapore Island Country Club ("SICC") and American Club memberships

20. The husband claimed that they were given to him by his father. In respect of the SICC membership, it was submitted that

This was a gift from the Respondent's parents. When the membership was made transferable, in January 1992, the Respondent made an upfront payment of \$14,000.00 and paid the balance in instalments of \$500.00 monthly from 1st July 1992 to 1st June 1998.

21. The husband did not get his father to confirm the gifts, or obtain confirmation from the clubs as he did in respect of the gift of a British Club membership. I found that he had not proved them to my satisfaction. Even if there was a gift of the SICC membership, it was a gift of a non-transferrable membership with no realisable value. The present membership is a transferable membership. Assuming that it originated from a gift, it is no longer that membership after it was converted at a cost of \$50,000.

The bank accounts

22. Three accounts are in the husband's sole name. One account with OCBC is held with his father and another with POSB is held with his mother.

23. The husband's submissions dealt with these accounts in two sentences - "There is no available cash for division. The Petitioner has more cash than the Respondent." I cannot understand that. The accounts are in credit. Whether or not the wife has more cash has no bearing on the issue. Her cash holdings may be subject to division, but that is not a matter before me on the appeal.

24. He also claimed that he was holding the account with his mother as her trustee. This was a bare assertion with no documentary evidence, no explanation to the purpose and terms of the trust, and no affidavit by the mother to confirm her beneficial interest.

25. In the circumstances, I ruled that the sums in the three accounts in the husband's name and half the funds in each of the accounts he held with his parents are matrimonial assets.

The CPF funds

26. The husband's position before the district judge was that the wife should not be entitled to more than 20% of his CPF funds. In his appeal from the district judge's decision, the husband accepted the 25% apportionment but contended that it should be computed on the net value. I have dealt with this net/gross issue in paragraph 12(ii).

Valuation of the assets

27. I ordered that the values of the matrimonial assets on which there was no agreed values to be assessed by the Registrar. I also ordered that the values be taken as at 7 May 1999 – the day when

the district judge ordered the division. With regard to the shares in two Malaysian counters United Engineers and Faber Merlin which cannot be transacted currently, I ordered that their values be set at the time they can be disposed of.

The maintenance for the wife

28. The district judge had ordered that she is to receive a lump sum of \$960,000 computed at \$8000 per month for 10 years. Both parties agreed that there should be a lump-sum amount pegged at 10 years. The wife had asked it to be computed on \$14,000 per month, and the husband offered \$4000.

29. In coming to his figure of \$8000 the district judge took into account the fact that it was common ground between the parties that the wife had enjoyed a very high standard of living and a good quality of life during the marriage.

30. Prior to the hearing before him, the parties had an arrangement whereby the husband paid to the wife \$5000 for the maintenance of her and the daughter. He also paid \$3000 per month for the rental of the house the wife and daughter were staying in, and \$3090 towards the payment of the wife's car. This arrangement is a reflection of the parties' expectations and abilities with regard to maintenance. The award based on \$8000 a month is reasonable.

Maintenance for the daughter

31. There was no appeal against this order in the husband's notice of appeal. Nevertheless his counsel submitted on it before me.

32. Since it was brought up, I will comment on it, although I do not regard it as a matter under appeal.

33. In fixing the maintenance at \$3000, the district judge found that to be adequate maintenance. He was not obliged to set out the components to that figure, and he did not. His finding that the wife and the family had enjoyed a very good quality of life must have contributed to his decision, and he must have considered the wife's break-down of the \$3400 that she claimed as well as the husband's basis for offering \$2000.

34. On the available material, I would not say that the district judge's award of \$3000 was wrong. I may have come to a lower figure if the matter came before me at the first instance, but the difference would not merit disturbing the order even if there was an appeal.

The costs below

35. The district judge awarded costs to the wife for the hearing of the ancillary matters fixed at \$12,000. No costs were awarded on the petition, which was grounded on separation and was not contested. There can be two bases for the husband's objection to the order – on principle and on quantum.

36. His complaint is that costs should not be ordered because the divorce proceeded on a no-fault

basis, citing in support *Shi Fang v Koh Pee Huat* [1996] 2 SLR 221 where the Court of Appeal said at pp 237-8

The wife obtained a decree nisi on the ground that the marriage had irretrievably broken down owing to desertion on the part of the husband. Implicit in the grant of such decree to the wife was the finding of fault on the part of the husband as a cause for the divorce. In granting the decree nisi the court ordered, *inter alia*, that costs be adjourned for further hearing. We can find no reason why the wife should not be allowed the full costs of the hearing of the petition. As the hearing of the ancillary matters was a continuation or part of the hearing of the divorce petition, the wife should be entitled to the costs of such hearing also. The wife was awarded \$240,000 as a lump sum maintenance and \$10,000 as her share of the matrimonial assets. We cannot see any reason for depriving the wife of her costs of the hearing of the ancillaries. In our judgment, she should be entitled to full costs of the hearing of the petition and the ancillaries below, and we so order.

37. This is not really relevant or helpful to the husband's cause. The Court held that the petitioner was entitled to the costs of the divorce hearing and the hearing of the ancillary matters in a fault-based divorce. I do not read that to imply that where a divorce proceeded on fault-free basis, costs should not be awarded for the ancillary matters.

38. In the usual case where marriage is dissolved on a fault-free ground no costs are awarded. This is especially so when the petition is not contested. If it is contested, costs may be awarded if the respondent acts unreasonably, e.g. by unreasonably disputing the separation or the breakdown of the marriage.

39. However it does not follow that costs would not be awarded in ancillary applications in fault-free uncontested proceedings in all cases. It really depends on the conduct of the parties. If one party's unreasonable conduct led to a long hearing of ancillary matters, there is no reason why that party could not be ordered to pay costs. In *Grenfell v Grenfell* [1978] 1 All ER 560 Ormrod LJ said at 568

(I)f the court dissolves a marriage on the ground of five years' separation, it should not, in the ordinary way, grant costs to either side, the object being to prevent parties insisting on the court conducting an enquiry as to why they have been living apart for five years; in other words, having a contested suit simply for the purpose of deciding who should pay the costs.

So far as ancillary relief is concerned, it seems to me that *the costs in any proceedings for ancillary relief must depend on the way in which those proceedings are conducted on both sides*, and the judge must exercise his discretion in the ordinary way, bearing in mind perhaps that it is a five year separation case, but certainly not regarding himself as bound to make no order as to costs because the ground for decree was a five year separation. The matter must be dealt with, it seems to me, in a reasonable way in the light of the facts of any particular case.

(Emphasis added)

40. In a hearing on ancillary matters, it is for the judge hearing them to decide whether costs should be awarded. The Court of Appeal ruled in *Tham Khai Meng v Nam Wen Jet Bernadette*

[1997] 2 SLR 27 at p 47 that

(T)he hearing of the ancillaries is part of or a continuation of the hearing of the petition. It therefore follows that where a party, whether petitioner or respondent, is awarded costs at the hearing of the petition, the same order as to costs should follow at the hearing of the ancillaries, *unless the party to whom the costs were awarded at the hearing of the petition has acted unreasonably at the hearing of the ancillaries* or for other good reasons.

(Emphasis added)

41. Thus a party awarded costs for the hearing of the petition may not get the costs for the hearing of the ancillary matters if it acted unreasonably. This can be taken further. In an appropriate case a court may even find a party's conduct in respect to the ancillary matters so unreasonable that costs be awarded against that party although it was awarded costs on the divorce proper. To illustrate the point, a petitioner proceeds on the ground of adultery. The respondent does not contest the petition, and costs therein are awarded to the petitioner. On the ancillary matters, the petitioner makes unjustified and unacceptable claims and demands on the matrimonial assets, maintenance and care and custody of the children of the marriage and rejects reasonable proposals from the respondent on these matters. In such a situation, costs for the hearing of the ancillary matters may well be ordered against the petitioner.

42. The district judge had exercised his discretion to award costs for the ancillary applications to the wife, and had fixed costs at \$12,000, taking into account the fact that the hearings took 2 days and the complexity in computation. I did not think that the order was wrong in principle or excessive in amount, and I affirmed the order.

Costs of the appeal

43. Neither party has succeeded in getting what it wanted from the appeals. The wife did not obtain the revision of the share of the matrimonial assets she wanted, and the husband did not get the reduction of the wife's maintenance and the rescission of the order for costs. Looking at the matters as a whole, I ordered that each party bears its own costs in the appeal.

Kan Ting Chiu

Judge

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