

Lock Yeng Fun (mw) v Chua Hock Chye
[2006] SGHC 230

Case Number : D 2059/2005
Decision Date : 14 December 2006
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Helen Chia (Clifford Law Corporation) for the Petitioner; The Respondent in person
Parties : Lock Yeng Fun (mw) — Chua Hock Chye

Family Law – Maintenance – Assessment – Ex-husband elderly and ailing with low income and low prospects of higher earnings – Parties agreed on lump sum maintenance in lieu of monthly payments – Whether a lump sum payment was equitable in the circumstances – Section 114(1) Women's Charter (Cap 353, 1997 Rev Ed)

Family Law – Matrimonial assets – Division – Wife's financial contributions minimal but marriage was long – Whether length of marriage and non-financial contributions were relevant considerations – Section 112(2) Women's Charter (Cap 353, 1997 Rev Ed)

14 December 2006

Lee Seiu Kin J:

1 On 25 September 2006 I made, *inter alia*, the following ancillary orders in relation to Divorce Petition 2059 of 2005:

(a) The matrimonial property is to be sold in the open market within 12 months. The net proceeds of sale, but before CPF deductions, is to be divided in the ratio of 60% to the respondent and 40% to the petitioner. The respondent is to refund his own CPF from his share of the proceeds of sale.

(b) For the other assets, the division of such assets shall also be in the ratio of 60% to the respondent and 40% to the petitioner. The net difference is to be deducted from the division of the sale of the matrimonial home from the petitioner's share of the proceeds of sale.

(c) The respondent is to pay the petitioner a lump sum maintenance of \$60,000. This amount may be paid from the proceeds of sale of the matrimonial home.

The petitioner appealed against these orders on 23 October 2006 and I now give my grounds of decision.

2 The parties registered their marriage at the Registry of Marriages, Singapore on 4 September 1975. The petition for divorce was filed on 12 May 2005 and the decree nisi was granted on 9 December 2005. The ground for divorce was that the marriage had irretrievably broken down. Although the marriage was in its thirtieth year, according to the petitioner, the parties had ceased to have a happy union since 1998 and they slept in separate bedrooms and had stopped sexual relations from 2002. According to the respondent, it was even earlier: the union was not a happy one from mid-1980. In their affidavits, both parties hurled accusations of abuse and unreasonable behaviour against each other. As these are not a consideration in the matters that I have to decide, I need not discuss them further here.

3 The matters for my consideration concerned the division of matrimonial assets and the petitioner's application for maintenance to be paid by the respondent.

Background

4 At the time of their marriage the respondent was an Administrative Executive aged 25 years and the petitioner a clerk aged 24 years. There are 2 children to the marriage, a daughter born in 1978 and a son born a year later. Both of them are now working adults and independent of their parents although they live with them. They do not provide any financial support to the respondent but they give the petitioner about \$400 per month in total.

5 After marriage, the petitioner continued to work as a payroll clerk until the birth of their first child. The petitioner then stopped work to tend to the home and to the new addition to the family, and later on, to the second child (although she took a temporary job for four months in 1992 when the respondent was retrenched and unemployed for a while). The respondent thus became the sole breadwinner. The family never employed any maids except for the two years that they lived in Thailand.

6 Although the respondent did not attend university, he rose to become a vice-president in three foreign banks. He was based in Singapore until 1981. Between 1981 and 1983, he worked in Thailand and relocated his young family there. In 1983, the respondent relocated to Malaysia and his family was there with him for a year. The petitioner moved back to Singapore with the children in 1984 but the respondent remained in Malaysia until 1985. In that year he joined the Chase Manhattan Bank in Singapore where he worked until he was retrenched in 1992. His annual income during the period he was with Chase Manhattan Bank was about \$110,000.

7 The respondent then went to Indonesia to work in a bank called Unibank, but the petitioner and children remained in Singapore. In 1994 he moved to Standard Chartered Bank and was also based in Indonesia. His annual income was about \$230,000. He was retrenched in 1998 and returned to Singapore to join the Chubb Insurance Group at an annual income of about \$150,000. He remained there until his retrenchment in 2000. During the period he was overseas and without his family, he returned home frequently, but otherwise the petitioner looked after the children and the home on her own.

8 After he was retrenched in 2000, the respondent started a training and consultancy business, but this did not succeed and he incurred losses amounting to about \$25,000. In 2002 he started another training and consultancy business called Max Impact with a partner. However this also incurred losses and was wound up in 2005. The respondent had made various investments but during the stock market downturn in 1981, he lost approximately \$300,000.

Matrimonial Assets

9 The matrimonial assets to be divided comprise, in the main, the matrimonial home which the parties estimate to be worth \$1.7m. The other matrimonial assets comprised CPF accounts, insurance policies and other investments.

10 The petitioner had asked for a 70:30 split of the matrimonial home in her favour. The respondent also asked for a similar split, but in his favour.

11 As for the remaining matrimonial assets, the petitioner asked for them to be divided equally. The respondent's position is that they should also be divided in the ratio of 70:30 in his favour.

Matrimonial home

12 The parties' first matrimonial home was an HDB flat in Telok Blangah purchased in 1976. The respondent's position was that this was fully paid by way of a cash payment of \$4,000 and a withdrawal of \$20,000 from his CPF account. The petitioner's position was that she had made a small financial contribution towards its purchase, though she did not specify the sum involved. They sold the flat in 1989 for \$52,000 and from the proceeds, a sum of about \$31,000 was returned to the respondent's CPF account. The balance was divided between them.

13 The parties purchased the present matrimonial home at 16 Namly Garden in 1988 for the sum of \$535,000. The respondent obtained a staff loan of \$400,000 and paid the remaining \$135,000 in cash. The respondent stated that he contributed another \$30,000 towards the purchase of furniture, fixtures and fittings and electrical appliances for the new home. The petitioner also stated that she had contributed \$30,000 towards the same items. She produced evidence of a payment by way of cheque in the name of the respondent from her POSB account for the sum of \$30,000. However the respondent's position was that this went towards repayment of a loan for the purchase of some shares. In my view, it does not matter too much either way – this was her contribution towards the assets of both parties. The petitioner stated in her affidavit of assets and means that she had made contributions of \$80,000 towards renovations. This was denied by the respondent who stated that this was not supported by any documents. The petitioner replied that part of this was supported by the said cheque for \$30,000. In relation to the balance of \$50,000, she provided details in an expense list in her second affidavit.

14 The housing loan was repaid by way of deductions from the respondent's CPF account for the principal sum of about \$335,000. The respondent paid off the remaining outstanding sum of \$65,000 in cash in 1992. Along with the bank interest of \$227,000, the total amount of the respondent's contribution amounted to \$762,000. The parties estimate the present value of the property to be about \$1.7 million.

Other assets

15 The respondent declared the total value of his other assets to be about \$230,000. This comprised his CPF funds totalling about \$90,000, as well as cash in bank and investments in various unit trusts totalling about \$140,000. The petitioner disputed the respondent's declaration and produced documents showing that the respondent held various other assets. The respondent explained that those documents pertained to investments he had held before but which he had switched to his present portfolio. He had also incurred a great deal of losses in his investment portfolio. I was satisfied with his explanation after examining it.

16 The petitioner declared that her assets totalled about \$450,000. This comprised her CPF funds, cash in bank, insurance policies and investments in various unit trusts and shares totalling about \$450,000. The respondent alleged that the petitioner had under-declared her assets by as much as \$320,000. In particular, he pointed to a number of insurance policies which appeared to have surrender values totalling about \$127,000. I added these to the \$450,000 declared by her and arrived at the conclusion that her total assets amounted to some \$577,000.

Order for division of matrimonial assets

17 The parties can no longer live together and both are in essential agreement that the matrimonial home should be sold and proceeds divided so that they can each go about their own lives. I therefore considered the assets in their entirety.

18 Under s 112(2) of the Women's Charter (Cap 353, 1997 Rev Ed), in deciding on the division of matrimonial assets, I must have regard to all the circumstances of the case. The subsection sets out as relevant the following matters:

- (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; and
- (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.

Of these, the most important in the present case are (a) and (d).

19 In addition, s 112(2)(h) makes reference to s 114(1) of the Women's Charter, and so far as the matters set out there are relevant for the purposes of division, they are to be considered. Section 114(1) provides that in determining the amount of maintenance, 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.

20 Finally, it should be noted that the matters set out in s 112(2) are not exhaustive; instead the test is what is just and equitable in *all the circumstances* of the case. This was a family that had built up most of its assets over 30 years of marriage. The petitioner essentially bore the children and looked after them and the home while the respondent went out to work. Both did not have an easy time but by dint of hard work and perhaps a little bit of luck and good timing, they accumulated assets now worth about \$2.5m while raising two children. On the part of the respondent, he had financed almost single-handedly the purchase of the matrimonial home which is now worth about \$1.7m and which constituted about 68% of the total assets. However he did not have much luck with his other investments and he only managed to accumulate about \$230,000 after almost a lifetime of work. The petitioner on the other hand appeared to have better luck with the money that the respondent had given to her throughout their marriage and had almost \$580,000 in her name. Although, as noted earlier, the petitioner claimed that she had contributed \$80,000 to the acquisition of those assets, there is no evidence that she had brought substantial funds into the marriage or that she had the earning capacity to muster that amount. It is therefore likely that she had managed to save this money from the money the respondent gave her. In any event, the amount is a small quantum and is disputed by the respondent. All she could show was her contribution of \$30,000, which I took into account.

21 Counsel for the petitioner cited the decision of the Court of Appeal in *Ng Hwee Keng v Chia Soon Hin William* [1995] 2 SLR 231. There, the parties, aged 43 years, divorced after 19 years of marriage on the grounds of the husband's adultery. The wife was a postmaster earning \$1,470 per month. The husband was a bank manager who earned, including his work as a part-time lecturer, about \$6,000 per month. The matrimonial home was an HDB flat in respect of which a substantial part of the purchase price was paid from the parties' CPF and the remaining sum from a loan serviced by the husband. The husband's contribution to the purchase was about 80% and the wife's about 20%. The proceeds after sale came to \$380,000. The wife agreed that of this, \$100,000 should be paid to the husband's mother for her financial assistance in the purchase of the flat. The Court of Appeal divided the remaining \$280,000 in the ratio of 60:40 in the husband's favour. In the last years of the marriage, the husband purchased an apartment at Duku Road without any financial assistance from the wife. The net value of the Duku Road apartment, together with the remaining matrimonial assets, totalled about \$467,000 at the time of division. The Court of Appeal awarded 20% of this sum to the wife. Combining the two amounts, the wife's share represented about 29% of the assets divided.

22 In the present case I took into consideration the fact that, although the petitioner's financial contributions had been minimal, the marriage lasted almost 30 years although it was an unhappy one in the last ten. The petitioner looked after the home and bore the children; indeed for a few years she did it alone while the respondent was based overseas. In the circumstance, I was of the view that an award to her of 40% of the value of the matrimonial assets would be a fair and just one.

Maintenance

23 The petitioner asked for a lump sum of \$144,000 in lieu of monthly maintenance. The respondent proposed the payment of a lump sum of \$18,000 in lieu of monthly maintenance. This is based on \$300 per month for five years.

24 The petitioner is not working and, after almost 30 years out of the job market and at 55 years of age, is not likely to find employment easily.

25 The respondent is now 56 years old and suffers somewhat more than the normal share of ailments for people of that age. He has knee problems and acute macular degenerative disability (vision problems). He runs a training and consultancy business, operating from home under the name

of Maxim Training & Consulting. The business itself has no value and he earns \$600 to \$800 monthly from it. He does not appear to have much prospect of a higher earning capacity.

26 Based on his present income, I would not be inclined to order anything more than \$300 per month. Both parties have proposed a lump sum in lieu of monthly maintenance and, given their ages, the acrimony between them, and the fact that the respondent would be able to fund such lump sum maintenance from the division of matrimonial assets, I was of the view that a lump sum of \$60,000 would be an equitable amount in the circumstances. This amount represents, on a multiplier of 16 years, a multiplicand of about \$300 per month.

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