

BND v BNE
[2013] SGHC 282

Case Number : Divorce Transferred No 3375 of 2010
Decision Date : 27 December 2013
Tribunal/Court : High Court
Coram : Andrew Ang J
Counsel Name(s) : Gill Carrie Kaur (Harry Elias Partnership LLP) for the plaintiff; The defendant in person.
Parties : BND — BNE

Family Law – Matrimonial assets – Division

Family Law – Maintenance – Wife

27 December 2013

Judgment reserved.

Andrew Ang J:

1 This judgment deals with the division of the parties’ matrimonial assets and the maintenance of [BND] (“the wife”) and her two children, an earlier Order of Court made on 10 May 2012 having dealt with the issues of custody, care and control, and access.

Background facts

2 The parties were married on 29 April 1994. [BNE] (“the husband”) is an accountant by training. Although he is currently unemployed, he has worked in various finance-related roles for several companies in the past. During the marriage, the parties were involved in the running of a partnership known as [C] which was engaged in the wholesale distribution and export of gold jewellery. The wife now works as a part-time sales executive in [D], a company owned by her family in Thailand. Interim judgment for divorce was granted on 17 June 2011 on the basis that the husband behaved in such a way that the wife could not reasonably be expected to live with the husband. The parties have two children aged 17 and 16.

3 On 25 May 2010, the wife and two children were chased out of the matrimonial home by the husband. The wife and children then had to seek short-term accommodation at various locations including a relative’s home, Grand Mercure Roxy Singapore, York Hotel and Amber Point. [\[note: 1\]](#) Shortly thereafter, in June 2010, the husband contracted to sell the matrimonial home without the wife’s knowledge and consent. The wife was deliberately kept in the dark by the husband so that she would not have a share in the sale proceeds (see e-mail dated 6 July 2010 from [E] to [F] (both sisters of the husband)) [\[note: 2\]](#) _:

Hi Sis

How are you? [the husband] asked me to inform you not to mention to [the wife] and his children that he had sold his house already. We are trying to complete this sale asap so that [the wife] cannot claim from the sale proceed [*sic*].

In a later e-mail on 8 July 2010, the husband instructed his sisters not to provide the wife with any information regarding the sale of the matrimonial home [\[note: 3\]](#) _:

So do not (I repeat), do not provide her information of any kind, especially of the sale of [the matrimonial home] and the timing (very critical now) because [the wife] is trying to broke me financially [*sic*] by claiming against the house and other possible asset (such as car, customdy [*sic*] of children, etc).

Fortunately, the wife came to know of the sale before it was completed and lodged a caveat against the property.

4 The net proceeds from the sale of the matrimonial home, after the refund to the husband's Central Provident Fund ("CPF") and the release of \$140,000 to each of the parties, are currently held by Veritas Law Corporation as stakeholders. I note that the husband has not paid any maintenance for the wife or the children since May 2010.

Division of the matrimonial assets

The matrimonial home in Singapore

5 The matrimonial home at Tembeling Road was purchased by the parties at a price of \$1m in December 1999. It was sold for \$1.6m in September 2010. The net sale proceeds were \$1,084,341.74 after deducting the outstanding mortgage of \$451,128.52 and other expenses relating to the sale.

6 The husband made substantial direct financial contributions to the purchase of the matrimonial home. It appears that \$200,000 was paid by the husband as down payment for the property. [\[note: 4\]](#) In addition, the husband paid \$29,601.33 in stamp duty and legal fees. \$344,591.73 was refunded to the husband's CPF account upon the sale of the matrimonial home in 2010 of which amount \$262,628 constituted the amount the husband had contributed towards the matrimonial home and the balance represented the interest deemed by the CPF Board to have accrued on that sum. Although the wife claimed to have contributed half of the down payment (*ie*, \$100,000), this was not supported by any documentary proof.

7 The husband prepared a table detailing the deposits into and the withdrawals out of [C]'s bank account as well as his personal bank account from January 2007 to May 2010. It showed that the monthly mortgage payments for the loan taken to purchase the matrimonial home came from the husband's personal bank account. However, the table prepared by the husband also revealed that there were numerous transfers of money from [C]'s account to the husband's account. In contrast, there were no transfers from [C]'s account to the wife's account. Since the wife was a partner of [C] entitled to an equal share of the profits of the partnership and she did not, from the table prepared by the husband, receive any money from [C], the reasonable inference is that half of the mortgage payments for the matrimonial home should be credited to the wife. Therefore, the parties' respective financial contributions to the matrimonial home are as follows:

Description / Party	Husband	Wife
Cash down payment	\$200,000	-
Total CPF contribution (excluding interest)	\$262,628	-
Stamp duty and legal fees	\$29,601.33	-

Mortgage payments	\$178,200	\$178,200
Total:	\$670,429.33	\$178,200
Direct financial contribution (%)	79%	21%

8 As for indirect contributions, the wife claimed to have been the primary caregiver of the two children during the 17-year marriage. She also asserted that she ran the business of [C] while the husband helped her with the paperwork. Specifically, she stated that she travelled often to Bangkok in order to collect and deliver jewellery. In response, the husband disputed the wife's contributions as the primary caregiver of the two children and argued that they were limited since she had only spent 50% of her time in Singapore. The husband also claimed that he had almost single-handedly managed the business of [C] while providing constant educational guidance to the two children.

9 There was another allegation that was raised by the wife in the affidavits and hearings before me. The wife alleged that the husband was an avid gambler who made frequent trips to casinos outside Singapore. The husband refused to produce his passport when invited to do so at the court below because he felt that it was only fair that the passport of the wife's sister be produced to determine whether the wife's sister made weekly trips to Singapore to transport gold merchandise. In my view, the husband's refusal to produce his passport based on a wholly unrelated matter was unjustifiable and suggested that he had something to hide. I also note that the husband's eldest sister, [E], had sent an e-mail on 20 August 2010 stating as follows [\[note: 5\]](#):

Dear brothers and sisters,

Regarding the divorce between [the husband] and [the wife], shall we all ponder over it calmly: Is [the wife] really heartless for how she treats [the husband] today? She has stayed with [the husband] for more than 10 years, and helped repay his gambling debts to the order of one hundred million dollars. She now also needs to raise the two children so shouldn't she take half of the house sale proceeds? If [the husband] takes all the money today, he may gamble them away very soon, or it may be cheated by that China woman cohabiting with him. ...

This e-mail, together with the husband's refusal to produce his passport and the numerous cash withdrawals from [C]'s account, went some way towards supporting the wife's allegation that the husband had a gambling habit. However, I was unable to tell to what extent (if at all) he was addicted to gambling. The statement of [E] in the e-mail above that the wife had helped repay the husband's gambling debts to the order of \$100m must be taken with a pinch of salt. In coming to a decision on the division of matrimonial assets, I took no account of the husband's alleged gambling habit.

The properties in Thailand

10 The husband alleged that three properties, [X], [Y] and [Z], located in Bangkok, Thailand, were owned by the wife and should therefore be considered in the division of matrimonial assets. For [X], I found that this property was a gift to the wife prior to the marriage in 1990 and therefore fell outside the definition of "matrimonial asset" under s 112(10) of the Women's Charter (Cap 353, 2009 Rev Ed) ("Women's Charter"). Also, [Y] was held in the name of the wife's brother and also fell outside the legislative definition of "matrimonial asset" in the absence of proof that it was held for the wife.

11 [Z] is held in the wife's name and was acquired in 2006 during the marriage. The wife explained

that this property was purchased by her mother and held in her name because her mother was not allowed to acquire property in Thailand as a Chinese national. Also, the wife maintained that she did not pay for this property because the income of both parties was deposited into the husband's account. Although there was no documentary evidence to support her contention that the property was purchased by her mother, I am satisfied that she did not pay for the property because the evidence shows that she did not receive any income or profits from [C] – there were no transfers of money from [C]'s bank account to the wife's account. Furthermore, it was not disputed that the husband did not contribute to the purchase of this property. In the circumstances, I exercised my discretion to exclude this property from the division of matrimonial assets for reasons of justice and fairness (see generally *Ong Boon Huat Samuel v Chan Mei Lan Kristine* [2007] 2 SLR(R) 729; *Oh Choon v Lee Siew Lin* [2013] SGCA 60 at [15]–[17]).

Gold that was allegedly stolen from the matrimonial home by the wife

12 The husband claimed that the wife stole 30.9kg of gold belonging to [C] and exhibited several documents in support of this claim. In response, the wife argued that she only took 3.8kg of gold from the family safe with the husband's knowledge and consent [\[note: 61\]](#) because she had to deliver the gold to certain suppliers in Thailand. The wife in turn accused the husband of taking 15kg of gold which has not been accounted for.

13 I am unable to accept the husband's claims. The documents merely state that certain amounts of gold were held by [C] but they do not prove his claim that the wife took 30.9kg of gold. I am also unable to accept the husband's absurd claim that the wife deliberately quarrelled with the husband so that she could take 30.9kg of gold while being chased out of the matrimonial home in May 2010.

14 Likewise, I am unable to accept the wife's claim that the husband took 15kg of gold because there was no evidence to support this claim.

Liability for debts owed to [C] amounting to \$1,599,448

15 This argument was not entirely clear. It seems that the husband was proposing to take into account certain debts amounting to \$1,599,448 owed by [D] to [C] for the purposes of dividing the matrimonial assets. In so doing, the husband was somehow regarding [D]'s debt as the wife's debt. I am unable to accept this re-characterisation of [D]'s debt because [D] and the wife are separate legal entities. Put simply, the husband's contention had no basis in law.

Liability for debts owed by [C] to creditors amounting to \$68,000

16 The husband also argued that a separate sum of \$68,000 was owed by [C] to its creditors. The husband's proposal was for the wife to pay 50% of those debts. The wife argued that she had paid off all the debts of [C] before it ceased operations. In addition, she had given \$33,000 to the husband to pay off expenses relating to [C] in April and May 2010.

17 The wife failed to exhibit proof of the \$33,000 paid to the husband. However, the evidence shows that there were significant amounts owing from [C]'s customers (eg, \$26,666.78, \$25,714.66, \$3,671.59 and \$2,871.87 [\[note: 71\]](#)) which could have been used to pay off [C]'s debts (if any). Therefore, I did not take the debts of [C] into account in the division of matrimonial assets.

Other assets

18 The wife's proposal was for each party to retain all assets held in their respective names. I am

of the view that this proposal is reasonable in the light of the approximate values of their assets (wife: \$74,064.82, husband: \$121,808.40) as declared in their affidavits of assets and means.

Other allegations

19 The husband alleged that the wife has an interest in [D] which should be taken into account. On the other hand, the wife has consistently maintained that she has no financial interest in the said entity. In this regard, she has produced a certificate of incorporation [\[note: 8\]](#) which shows that her name is not included as one of the six partners listed therein. The husband's only response was that the wife had produced an "irrelevant" certificate of incorporation of the wrong company. This was a bare assertion which I was unable to accept. Therefore, I am not satisfied on the evidence that the wife has an interest in [D] which has to be taken into account.

20 In support of his contention that the wife had an interest in [D], the husband also alleged that the title deeds of [X] and [Z] were pledged by the wife as collateral to Kasikorn Bank in order to secure the business operations of [D]. This allegation was refuted by the wife who exhibited a letter from the same bank showing that the two properties were pledged for the wife's personal overdraft and not to secure the indebtedness of [D]. When confronted with this letter, the husband then shifted his argument, alleging instead that the wife used the money obtained from the overdraft to finance the business operations of [D]. I am unable to accept this further allegation because there was simply no proof of the same.

Maintenance

21 The wife proposed a sum of \$7,250 per month as maintenance for herself and the two children. [\[note: 9\]](#) This was arrived at by taking 50% of the total estimated monthly expenses for herself and the two children. The wife took a somewhat contradictory position in the position paper dated 12 April 2013 by proposing lump sum maintenance for herself. In her first affidavit of assets and means, the wife sought 90% of the sale proceeds of the matrimonial home as a global sum for her share in the matrimonial assets and lump sum maintenance for herself and the two children.

22 On the other hand, the husband proposed "zero wife maintenance" and a sum of \$4,000 annually for the two children on account of his financial situation and his difficulty in finding permanent employment.

My decision

23 Adopting a broad-brush approach, I am of the view that an award of 36% of the matrimonial home's net sale proceeds (*ie*, 36% of \$1,084,341.74) to the wife would be just and equitable in the circumstances of this case. This award is made up of 21% for her direct financial contributions and 15% for her indirect contributions. In arriving at the latter figure, I considered all the circumstances of this case, including the wife's frequent travelling for business and the reduced time she would have had with the two children.

24 The wife is gainfully employed while the husband claims to be unemployed. The two children reside in Bangkok, Thailand, with the wife. As the children are below 21 years of age, they will require maintenance for approximately four more years (see s 69(5) of the Women's Charter). This is a shared responsibility that should, in the circumstances of this case, be borne equally by the parties. The wife claims to spend around \$10,742 per month on the maintenance of the children. In my view, this figure needs to be moderated. For example, expenditure of around \$7,802 per month on school fees paid to the international school may not be reasonable given the husband's financial circumstances. In the

round, I would award a lump sum maintenance of \$168,000 for the two children. This sum reflects the husband's share in maintaining the two children retrospectively from May 2010 and for four years hereafter at a sum of \$1,000 a month for each child. As for the wife, I would award her maintenance at \$1 per month, leaving it to her to claim a higher amount should the husband's financial circumstances improve or hers deteriorate.

25 In total, therefore, I award the wife \$558,363.03 or approximately 51.5% of the sale proceeds of the matrimonial home of which she has only received \$140,000 from the stakeholder account. The husband, on the other hand, has already received \$564,591.73 of the sale proceeds. This is made up of the \$80,000 deposit received from the purchaser; \$344,591.73 in respect of the CPF refund; and \$140,000 withdrawn from the stakeholder account. The balance of the award in favour of the wife is \$418,363.03. I order that:

- (a) the amount of \$379,750.01 standing in the stakeholder account held by Veritas Law Corporation be paid to the wife;
- (b) the wife be entitled to \$38,613.02 of the husband's CPF moneys pursuant to s 112 of the Women's Charter;
- (c) there shall be a charge imposed against the CPF moneys standing to the credit of the husband's CPF account in favour of the wife in the amount specified as follows:

Husband's CPF account against which a charge is to be imposed	Amount to be charged
Ordinary Account	\$38,613.02

(d) In the event that the actual amount standing to the credit of the husband's account stated above at the time when this order is served on the CPF Board is less than \$38,613.02, the CPF Board shall impose the charge only on such actual amount as is available (the "Charged Amount");

(e) The CPF Board shall pay to the wife the Charged Amount or such amount as is payable after deducting the requisite sums under CPF laws:

- (i) after the husband has died or has become entitled to withdraw CPF moneys from his CPF account under s 15(2) or s 27 of the Central Provident Fund Act (Cap 36, 2013 Rev Ed), whichever is earliest in time; and
- (ii) upon an application by the wife for the withdrawal of the Charged Amount.

(f) monthly maintenance of \$1 be paid by the husband to the wife;

26 I will hear the parties on costs.

[\[note: 1\]](#) See receipts and tenancy agreement exhibited in the wife's affidavit dated 20 Dec 2010 at pp 66-73.

[\[note: 2\]](#) Exhibited at p 90 of the wife's affidavit dated 20 Dec 2010.

[\[note: 3\]](#) Exhibited at p 89 of the wife's affidavit dated 20 Dec 2010.

[\[note: 4\]](#) See exhibits B1-B6 of the husband's 1st affidavit of assets and means.

[\[note: 5\]](#) Exhibited at p 81 of the wife's affidavit dated 20 December 2010.

[\[note: 6\]](#) The wife's 1st affidavit of assets and means at p 23.

[\[note: 7\]](#) See the wife's 3rd affidavit of assets and means at p 104.

[\[note: 8\]](#) The wife's 1st affidavit of assets and means at pp 73-74.

[\[note: 9\]](#) The wife's updated Written Submissions dated 18 Nov 2013 at p 26.

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