

Ah So Etee (alias Chua Ming Soo) v Fan Moli
[2008] SGHC 142

Case Number : DT 4586/2008
Decision Date : 29 August 2008
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Andrew John Hanam (Andrew & Co) for the petitioner; Tan Yew Cheng (Leong Partnership) for the respondent
Parties : Ah So Etee (alias Chua Ming Soo) — Fan Moli

Family Law

29 August 2008

Woo Bih Li J:

Background

1 The petitioner, Ah So Etee @ Chua Ming Soo ("the Husband") married the respondent, Fan Moli ("the Wife") on 1 April 1996. The Husband was then 53 years of age and the Wife was 39 years of age. On 17 October 2005, the Husband filed a divorce petition on the ground of the Wife's unreasonable behaviour. The petition was contested by the Wife. On 30 June 2006, a Decree Nisi was granted. The ancillaries were fixed for hearing by the High Court as the Husband was of the view that the value of the matrimonial assets exceeded \$1.5 million. The disputes were over the division of matrimonial assets and maintenance for the Wife as there was no child from this marriage. I should, however, mention that the Husband has an adult son from an earlier marriage and the Wife has an adult daughter from an earlier marriage.

2 After hearing arguments, I gave an oral judgment as follows:

1 I find the matrimonial assets to comprise the following:

<u>S/N</u>	<u>Description</u>	<u>Value (S\$)</u>	<u>Held by</u>
(a)	Blk 290 Bishan Street 24, #18-35, Singapore 570290 ("the Bishan property")	388,000.00	Husband ("H")/ Wife ("W")
(b)	Unit 1006, No 38 Binjiang Road West, Zhuhai District, Guangzhou, People's Republic of China ("PRC") in Swan Building ("the Swan property")	85,659.00	H/W
(c)	Unit 6C, No 7, Longkouzhong Road, Tianhe District, Guangzhou, PRC in Regal Court ("the Regal property")	202,400.00	H/W

(d)	Rent from the Regal property from January 2002 to June 2008	92,179.20	W
(e)	Unit 148, Block 5, Dongfeng Road West, Yuxin District, PRC ("the Dongfeng property")	115,806.12	Daughter of W
(f)	Rent from the Dongfeng property from December 1999 to June 2008	70,864.00	W
(g)	The Overseas Assurance Corporation Limited policy no. 13030618	39,373.25	H
(h)	POSB (savings)	14,994.71	H
(i)	UOB (fixed deposit)	543,760.20	H
(j)	UOB (I-Account)	7,159.45	H
(k)	CPF	46,282.65	H
(l)	Undisclosed money from sale of shares	179,887.00	H
(m)	UOB (savings)	2,782.18	W
(n)	OCBC (savings)	2,309.75	W
(o)	China Construction Bank	1,550.46	W
(p)	China Minsheng Bank	<u>12,000.00</u>	W
		<u>1,805,007.97</u>	

2 As regards items 1(d) and 1(f) above, I have used the rent as asserted by the Husband as the basis for calculation but I have allowed 20% for expenses related to the tenancy, even though expenses like management fees are payable by the tenant of the respective properties.

3 I order the division of matrimonial assets as follows:

(a) The Wife is entitled to the Dongfeng and the Regal properties and the rental thereof and she is also entitled to the amounts in the various banks accounts held by her. The total value is \$499,891.71 which is 27.69% of the matrimonial assets. This is on the generous side as I would have been otherwise inclined to give her 20%. However, I have taken this division into account in the maintenance for her.

(b) The Husband is entitled to the Bishan and the Swan properties and he is also entitled to the amounts in the various banks accounts held by him as well as the undisclosed money from sale of shares and his CPF money. The Wife is to deliver vacant possession of the

Bishan property on or before 31 December 2008.

4 As regards maintenance for the Wife, the Husband is to pay her \$24 (at \$1 per month for 24 months from August 2006 to July 2008) as arrears of maintenance. He is also to pay her a lump sum maintenance thereafter based on three years (that is, from August 2008 to July 2011) but the rate per month is divided into two sub-periods : (a) \$1 per month from August 2008 till the time she delivers vacant possession of the Bishan property to the Husband and (b) thereafter, based on \$1,000 per month up to July 2011.

5 Each party is to take all necessary or appropriate steps to transfer his/her interest to the other party to give effect to the orders made. For the Bishan property, the Registrar of the Supreme Court is to sign any document to give effect to the order made if the Wife does not do so. Until the transfer of the Wife's interest in the Bishan and the Swan properties to the Husband is completed and the delivery of vacant possession of the Bishan property to the Husband is done, the Husband may defer making payment of the arrears and the lump sum maintenance without being liable for any interest. The Husband may also set-off against these sums, any money owing by the Wife to him by way of costs.

6 The Wife is to pay costs of the ancillaries to the Husband to be agreed or fixed by the court, unless otherwise ordered.

7 Liberty to apply.

3 At the party's request, I eventually fixed the costs payable by the Wife at \$7,000 inclusive of disbursements. The Wife was ordered to pay costs of the ancillaries as the Husband had proved his petition against her.

Reasons on division of matrimonial assets and maintenance

4 There was dispute as to whether some assets ought to be included as matrimonial assets. The Dongfeng property was at the top of this list. While the Husband knew about the Swan and the Regal properties which were purchased in both the names of the Husband and the Wife, he learned later that the Wife had also acquired the Dongfeng property. He claimed that the Wife had no money of her own and she had used the excess from the money he had provided her for the Swan and the Regal properties as well as the excess of the monthly maintenance he had given her to buy the Dongfeng property.

5 There was documentary evidence to show that the excess from his remittances to her to buy the Swan property was \$44,532 and the excess from his remittances to her to buy the Regal property was \$62,147. He alleged that even if some of the excess sums had been used to renovate these two properties, the sum spent on renovation would have been a fraction of the total of these two sums.

6 The Dongfeng property was apparently bought for the equivalent of \$115,000. I noted that even if no deduction was made from the excess sums for renovation, they would still not amount to \$115,000 but if the maintenance he had given her then of \$1,500 per month was to be taken into account, it was possible that the money used to purchase the Dongfeng property came from him. The Husband had provided the Wife maintenance as follows:

(a) \$1,500 per month from April 1996 to October 2005.

(b) \$1,200 per month from November 2005 to December 2005.

(c) \$ 500 per month from January 2006 to July 2006.

7 The Husband asserted that he stopped giving the Wife maintenance from August 2006 because she refused to account to him for the rental income she was receiving from the China properties. I should mention that the Swan property was not let out but the Regal and the Dongfeng properties were and are let out.

8 The contract to purchase the Dongfeng property was apparently made in November 1997 and the title deed was apparently issued on 5 April 2001.

9 The Wife said that the money to buy the Dongfeng property came from her first husband, Fu Ming, who had bought the property as a future wedding gift for their daughter. The contract to purchase was in both the names of Fu Ming and the Wife although the title deed was issued in the Wife's name only. She said the latter was done as the daughter was then only 15 years of age. The Wife said that Fu Ming appointed her to take charge of this property as she was still going back to Guangzhou every year. Fu Ming had already emigrated to Australia. In June 2006, she transferred this property to the daughter who was going to get married in March 2008.

10 As for the rent from the Dongfeng property, the Wife initially said in her affidavit of 21 June 2007, that, on Fu Ming's instruction, she had saved all the rent and converted the money into Hong Kong currency and deposited the sum into an account with Bank of China for a fixed period of five years commencing January 2005. The sum was also intended to be a wedding gift for the daughter.

11 In the Wife's affidavit of 9 October 2007, she said she did not have receipts showing the collection of rent for the Dongfeng property. The monthly rent was collected by the daughter's godmother (who was not named) who was a resident in Guangzhou while the Wife lived in Singapore. The godmother would hand the rent collected to the Wife on her visits to China. The Wife used part of the rental proceeds to pay for management and service fees and other outgoings for the Dongfeng property. On or around 21 January 2005, she deposited the rent collected from end 1999 or early 2000 to December 2004 amounting to HK\$250,000 (about \$52,000) into the Bank of China account mentioned in the preceding paragraph. As for rent collected from January 2005, these had been given to her daughter periodically to pay for her further studies and living expenses in Japan. The Wife did not have any supporting documents as this was a matter between mother and daughter.

12 Fu Ming executed an affidavit to support the Wife's allegation that it was he who bought and paid for the Dongfeng property in 1997 as a future wedding gift for their daughter. He said he had accumulated savings from his businesses in Australia where he owned Ascension Pacific Ltd Pty, Top Music Shop and Po Feng CD and Stationery Co. He said that when this property was completed in 1999/2000, it was transferred to the Wife as it would "simplify the renting procedures" as he was too busy. He instructed the Wife to save the rental for their daughter and in 2005, he asked the Wife to deposit the rent into a fixed deposit account, also with a view to giving the same to their daughter. Fu Ming questioned why, if the Wife had money to buy this property, she would want to have his name on the purchase contract.

13 Ms Tan Yew Cheng submitted for the Wife that since the Dongfeng property was rented out from December 1999, it must have been completed and fully paid for by then. The remittances from the Husband for the Regal property were in 2000 and could not have been used to pay for the purchase price of the Dongfeng property. Only the remittances from the Husband for the Swan property might arguably be used by the Wife for the purchase of the Dongfeng property but the excess was only \$44,532 which was not enough to pay for even half of that purchase price.

14 As for the then monthly maintenance of \$1,500 per month, the Wife's position was that she had given some money to her mother and to her daughter and used the rest to pay for tonics for the Husband and for his underwear and her own personal expenses, leaving her with little left.

15 I had doubts about the extent of the expenses of the Wife. I was of the view that she could and did save more than she wanted me to believe.

16 As for the time when the Dongfeng property was completed, what was more important was when the payment or payments for the full purchase price were made and the source of the payments. The title deed was issued in or about March 2001. There must at least be some documentary evidence of the source of the payments being from Fu Ming who was doing business in Australia at the material time. Yet, there was not a single shred of documentary evidence. This was the strongest factor against the allegations of the Wife and Fu Ming.

17 As for Ms Tan's submission that the Husband had taken inconsistent positions by alleging that the excess of his remittances had been used to pay for the Dongfeng property on the one hand and to pay for the renovations of the Swan and Regal properties on the other hand, I was of the view that this should not be construed too much against the Husband because he did not have personal knowledge as to how the excess was spent. It could have been for one or the other purpose or for both, with the aid of the monthly maintenance.

18 As for the argument that there was no reason to include Fu Ming's name as a purchaser in the contract if the money did not come from him, I found it more telling that the title was issued in the sole name of the Wife when she was already married to the Husband. What if something untoward had happened to the Wife and the Husband had come to learn of the Dongfeng property, as he did? Surely he would lay claim to it. There was no valid reason for Fu Ming to take such a risk with a property that he had allegedly bought for his daughter especially when there was no written acknowledgement by the Wife to Fu Ming that the property was his. I did not accept the argument that Fu Ming had allowed the title deed to be issued in the sole name of the Wife so as to enable her to manage the property. The title deed could have been issued in his name and he could have given her a power of attorney or letter of authority if need be. As a businessman in Australia, he should be aware of such avenues. The Wife herself subsequently signed a power of attorney in favour of Bank of China in respect of another matter. Also, surely she could still have managed the property if the title was issued in both the names of Fu Ming and herself. That was the case for the Regal property where the title is issued in both the names of the Husband and the Wife and yet, it was the Wife managing that property.

19 There was a late argument that in 1997, when the contract to buy the Dongfeng property was entered into, the Wife could not have known that she and the Husband would buy the Regal property later and she would receive some more excess from his remittances in respect of the Regal property. However, the Wife could have decided to take a chance and there was no evidence as to how much she stood to lose if she could not complete the purchase of the Dongfeng property. In any event, I was of the view that the other factors against her were still stronger than those in favour of her allegation.

20 On balance, I found that the Dongfeng property was acquired by the Wife using money provided by the Husband and that it was part of the matrimonial assets. The transfer of this property in 2006 to the daughter was the Wife's attempt to put it out of reach of the Husband.

21 The second dispute was in respect of the quantum of rent from the tenancy of the Dongfeng property. The Wife alleged that Fu Ming had instructed her to deposit the balance (up to end 2004)

into a fixed deposit in January 2005 which the Wife did. The Wife said the rent had been collected by the daughter's godmother who handed it to the Wife on her visits back home. Yet, the Wife was silent as to where she had kept the balance before January 2005.

22 The Husband had calculated the rent based on tenancy agreements disclosed. The sum he calculated was more than the amount deposited with the Bank of China in January 2005. There were two reasons for this. First, the Wife claimed that a large part of the rent was used for various expenses, see [11] above and secondly, the Husband had calculated the rent up to June 2008 whereas the Wife said that rent from January 2005 had been given to her daughter for the latter's expenses.

23 The Wife's assertion about rent being used for the daughter's expenses is not valid since the Dongfeng property is and has been part of matrimonial assets. She has to account for the same. I was also of the view that her allegation about other expenses in respect of this property was exaggerated. For example, there was evidence from a tenancy agreement for this property that the tenant was the one liable for any management fee.

24 Using a broad-brush approach, I adopted the Husband's calculation and allowed a 20% deduction therefrom for some expenses related to the tenancy. The balance amounted to \$70,864.

25 The third dispute was the amount of the rent from the Regal property which was admittedly part of matrimonial assets. For similar reasons, I adopted the Husband's calculation of such rent and allowed a deduction of 20% for expenses. The balance amounted to \$92,179.20.

26 The fourth dispute was the sum of \$12,000 which had been in the Wife's account with Min Sheng Bank. She alleged that she had withdrawn this sum in or about February 2006 and given it to her brother to pay for hospital and medical expenses for her mother. Yet, she also alleged that a sum of \$15,057.42 was remitted to her on 21 March 2006 by her brother to help pay for her legal expenses. She also said she had to borrow money from (unnamed) friends to help pay for such expenses. I am of the view that the Wife was using the mother as an excuse to justify the withdrawal of \$12,000. I did not accept her explanations. I was of the view that the \$12,000 should still be treated as part of matrimonial assets.

27 The fifth dispute was in respect of \$709,911.65 which the Wife calculated to be the proceeds from the Husband's sale of shares. After taking into account his bank balances, the sum unaccounted for was \$179,887. There was initially no explanation from the Husband for this sum. He too provided a late argument which was that he had used the sale proceeds from the sale of some shares to buy other shares and that there was no excess as the Wife had claimed. However, he did not produce documentary evidence to substantiate his claim. I concluded that \$179,887 should be part of matrimonial assets.

28 The rest of the matrimonial assets were not disputed and I settled the list of matrimonial assets as stated above at [2].

29 As for the division of the matrimonial assets, I considered the parties' indirect contributions. The Wife stressed how she had waited on the Husband and listed various ways she had done so. For example, she said she had shampooed and cleaned him and also dyed his hair regularly. She also cared for his son, who was 19 years of age when they got married, by cooking, cleaning and ironing his clothes. She elaborated that they had had two matrimonial homes in Singapore before the Bishan property. She had been responsible for and had spent much time on the design, renovations and home furnishings for all the matrimonial homes and also liaised with and supervised many contractors and

suppliers. Likewise, for the two undisputed properties in China which she said she encouraged him to invest in and which she selected. She was also responsible for the maintenance and repair of the various properties in Singapore and China. She also helped to monitor the prices of the Husband's shares on the American stock market.

30 Although the Husband disputed the extent of the Wife's indirect contributions, I found that such contributions were generally true.

31 The Wife had contributed indirectly to the marriage but she did not have to raise any young child and the marriage lasted ten years. I would have given her a share of, say, 20% of the matrimonial assets but, using a broad-brush approach, I granted her more so that she might have the Regal and Dongfeng properties and the rental proceeds. I considered her claim for 50% of the matrimonial assets to be excessive and the Husband's submission of 15% a bit low.

32 As for maintenance, the Husband had at one time offered arrears of \$500 per month from August 2006 to June 2008 and a lump sum maintenance based on \$500 per month thereafter. The Wife wanted \$2,200 a month for the arrears. She sought the same sum for the next 15 years which works out to \$396,000. She was quite happy to receive this in a lump sum. In the alternative, she asked for the Husband's interest in the Bishan, Swan and Regal properties to be transferred to her although it was not clear whether this was to be in lieu of the \$396,000 or both the \$396,000 and the arrears which, based on her claim, would be another \$52,800 (*ie*, \$2,200 x 24 months). The value of the three properties was \$676,059. If the Husband transferred his interests, said to be half to her, this would be a value of \$338,029.50.

33 The Wife listed her monthly expenses as \$2,200 a month and claimed \$2,200 a month although the maximum sum the Husband had ever given to her was \$1,500 a month. Ms Tan submitted that the Husband had been paying for various expenses like the outgoings of the Bishan property and her travelling and medical expenses. Initially, the Wife had not included in her computation, any expense for rent for accommodation for herself if she should have to move out of the Bishan property. Upon my inquiry, she said that it would cost about \$1,800 per month to rent a three-room HDB flat in the Bishan Estate. The Husband was prepared to offer only \$400 a month for four months to help her with the rent but he did not provide any other figure for rent in Singapore.

34 It is significant to note that the Wife would be able to collect rent from the Regal and Dongfeng properties since I have granted them to her. Based on the figures provided by the Husband which were supposed to be derived from tenancy agreements of the respective properties, the Regal property was rented out for sums between RMB 6,840 (S\$1,368) to RMB 8,000 (S\$1,600) and the Dongfeng property was rented out for the equivalent of S\$860 per month. This had not been taken into account by either side in the arguments for maintenance.

35 As for the Wife's earning capacity, Ms Tan submitted that such a capacity had diminished as she had left the workforce for more than ten years, had never worked in Singapore before and is 52 years of age in 2008. I was not provided information as to what jobs she had held previously. On the other hand, the Husband is older than the Wife and is 65 years of age in 2008. He retired in November 2002. While he has an annuity policy with the Overseas Assurance Corporation Limited yielding \$418.94 per month, he has accounted for its surrender value for the division of matrimonial assets.

36 I have summarised the account that the Wife gave of her indirect contributions. I concluded that she was and is a very capable person with various talents who would have no difficulty in getting a job or even starting a business. The fact that she has not worked in Singapore before is a minor disadvantage. True, she is no longer youthful, but in my view, her earning capacity was greater than

the Husband's.

37 Taking into account the factors stated in s 69(4) of the Women's Charter, I allowed the Wife \$1 a month maintenance for the period August 2006 to July 2008. Thereafter, a lump sum was ordered since that was what the parties suggested. However, I was of the view that the lump sum should be based on maintenance for three years, as suggested by the Husband. That was more than enough time for the Wife to get on her feet. The lump sum calculation was also to be based on \$1 per month until the Wife delivers vacant possession of the Bishan property and \$1,000 per month thereafter until the expiry of the three-year period.

38 In the circumstances, I made the orders stated in [2] above.

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