Sigrid Else Roger Marthe Wauters *v* Lieven Corneel Leo Raymond Van Den Brande [2011] SGHC 237

Case Number	: Divorce Suit No 3195 of 2009
Decision Date	: 01 November 2011
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Tan Anamah Nee Nagalingam (Ann Tan & Associates) for the plaintiff; Loo Ming Nee Bernice and Magdalene Sim (Allen & Gledhill LLP) for the defendant.
Parties	: Sigrid Else Roger Marthe Wauters — Lieven Corneel Leo Raymond Van Den Brande

Family Law

1 November 2011 Judgment reserved.

Choo Han Teck J:

1 The parties are Belgian nationals who married on 25 February 1992. The plaintiff (wife), a housewife, is aged 48 years old and the defendant (husband), a business management consultant, is 55 years old. The plaintiff said that she worked briefly as an interior designer from 2006 to 2010 but the defendant disputes this claim. It was not material to my decision. They have a daughter, aged 19 years, who is studying at the LaSalle School of Art; and a son, aged 17 years, studying in the United World College of South East Asia. The family has been living in Singapore since June 2000. They reside at a rented property at No 27 Tudor Close, Tudor Ten Singapore 297954. The plaintiff filed for divorce on 25 June 2009 and an interim judgment was granted on 11 June 2010. The parties appeared before me on 24 August 2011 for orders regarding the ancillary matters.

2 The division of matrimonial property concerned inter alia three assets. The first is the sale proceeds from an investment of US$300,000.00 made jointly by the parties in May 2007, deposited into one HSBC USD Multi Currency Savings Account ("the New Asia Fund"). The second is a property in Bali, Indonesia, bought for approximately US$300,000.00 in 2002 ("the Bali Property"). The third is the monies in two Fintro bank accounts owned by the defendant, which were the proceeds of sale from the parties' former matrimonial home together with two adjoining garages, in Belgium ("the Belgian Property").

3 The defendant prefers all matrimonial assets, save for the New Asia Fund, to be placed in a single pool and divided based on the parties' respective contributions. He proposes that since he made all the financial contributions to the acquisition and maintenance of these assets, a division of 90% to him, with 10% given to the plaintiff in recognition of her non financial contribution, would be fair. He proposes that for the New Asia Fund, as the plaintiff had made financial contributions, she should be awarded 17%. The plaintiff claims that she is entitled to 50% of the Fintro accounts as well as 85% of the New Asia Fund. The Bali Property should also be transferred to her as she paid for most of it and did most of the work relating to its construction and management. The extent of financial and non-financial contributions is disputed by both parties. For instance, in relation to the Bali Property, while the plaintiff claimed that she made the bulk of the payments and played a major role in the construction and the management of the property, the defendant says the reverse is true. He claims that he negotiated all the construction contracts and maintained the property. In this regard,

the following observation by the High Court in *Yow Mee Lan v Chen Kai Buan* [2000] 2 SLR(R) 659 at [43] ("*Yow Mee Lan*") must be borne in mind:

> ...[M]arriage is not a business where, generally, parties receive an economic reward commensurate with their economic input. It is a union in which the husband and wife work together for their common good and the good of their children. Each of them uses (or should use) his or her abilities and efforts for the welfare of the family and contributes whatever he or she is able to. The parties often have unequal abilities whether as parents or income earners but, as between them, this disparity of roles and talents should not result in unequal rewards where the contributions are made consistently and over a long period of time.

4 The court's power to order division of matrimonial assets under s 112 of the Women's Charter (Cap 353, 2009 Rev Ed) ("Women's Charter") must be exercised, as everyone knows, to obtain a "just and equitable" result. How that is to be achieved is the difficult part. In *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 at [78], the Court of Appeal recognised that the court was not expected to make an exact calculation of each spouse's contributions, whether financial or non-financial. Since bright lines are rarely clear in such matters, a broad brush approach is often the most appropriate in deciding what constitutes a just and equitable division. In this case, all the indications point to an equal contribution towards the matrimonial assets. I am thus inclined to order an equal division of the matrimonial assets. The parties were married for 18 years and were cohabiting about two or three years before marriage. The plaintiff, together with the children, accompanied the defendant when he moved from Belgium to Singapore for work in 2000. I am satisfied that most of the investments made by the couple were in fact joint decisions, with input by both parties, both financially and non-financially. These included the investment in the Bali Property and the New Asia Fund. While the monies in the Fintro bank accounts represent the proceeds of sale of the Belgian property which was purchased by the defendant before marriage, the property was the matrimonial home while the parties were in Belgium. The plaintiff had also helped to maintain, upkeep and improve the property. In addition to the plaintiff's role as a housewife and caregiver to their two children, she was also a shareholder and director of Bromo Consulting Pte Ltd ("Bromo"), the company used by the defendant to run his business management and consultancy services. Although he claims that her role in the company was merely administrative, it nevertheless indicates the fact that both parties were involved in almost all of their economic endeavours throughout their marriage. In the light of both the financial and non-financial contributions by the plaintiff, she is entitled to a 50% of the matrimonial assets.

5 Although not directly addressed in the parties' main submissions, there is an issue of whether the various inter-spousal gifts made by the parties to each other falls within or outside the pool of matrimonial assets. As indicated by the parties' Ancillary Matters Fact and Position Sheets, the plaintiff argues that such gifts are not matrimonial assets, while the defendant is of the contrary view. In the case of *Wan Lai Cheng v Quek Seow Kee* [2011] 2 SLR 814 ("*Wan Lai Cheng*"), the court found that inter-spousal gifts are not matrimonial assets liable to division under s 112 of the Women's Charter (Cap 353, 2009 Rev Ed) ("Women's Charter"). Section 112(10) of the Women's Charter states:

> 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.

The reasons given in *Wan Lai Cheng* seemed to be based on a technical reading of the provision. Firstly, on a plain reading of the provision, there is no distinction made between inter-spousal gifts and third-party gifts. Both types of gifts should therefore fall within the exclusionary phrase and not be considered matrimonial assets. The other reason was that when amendments to the Women's Charter were under consideration in 1996, both Professor Leong Wai Kum and The Law Reform Committee of the Singapore Academy of Law had proposed to the Select Committee that a distinction be made between the two types of gift. Both Professor Leong and the Law Reform Committee had put forward draft definitions of "matrimonial assets" which specifically included inter-spousal gifts. Nevertheless, these proposed definitions were not adopted and s 112(10) in its current form was enacted. Accordingly, the court in *Wan Lai Cheng* was of the view that the new definition in s 112(10) had changed an earlier Court of Appeal ruling that inter-spousal gifts are matrimonial assets. I had expressed my views on this question in *Tan Cheng Guan v Tan Hwee Lee* [2011] SGHC 216 ("*Tan Cheng Guan*") and will now only add the following points.

6 Prior to the amendments to the Women's Charter in 1996, the Court of Appeal had in the case of *Yeo Gim Tong Michael v Tianzon Lolita* [1996] 1 SLR(R) 633 ("*Tianzon*") held that gifts acquired by one spouse and given to the other fell to be included within s 112 [previously s 106] of the Women's Charter, no matter what the intention of the spouses regarding the gift at the time it was made. The rationale was explained by LP Thean JA at [12] of the judgment:

> ...In considering the issue of a gift in the division of matrimonial assets under s 106, the starting point is whether the subject matter of the gift is property originally acquired during the marriage through the sole effort of the donor or the joint efforts of the donor and his or her spouse, the recipient. If the property was so acquired during the marriage, it falls within sub-s (1) or (3) (as the case may be) of s 106, and depending on the circumstances would be taken into account in the division of matrimonial assets, notwithstanding that it was a gift from one spouse to the other. The spouse who made the gift would have no doubt expended moneys in acquiring it. The fact that the gift was contemporaneously or immediately thereafter or later transferred to the other spouse does not affect the original acquisition of that gift. Such a gift was nonetheless acquired by the donor and not the recipient, and if it was acquired during the marriage it would fall within the class of assets covered by s 106. However, where the subject matter of the gift is itself a gift from a third party, for instance from a parent of the donor, then the gift is not property acquired by the donor by any effort on his part and it follows that that property would not fall within s 106...

I am of the view that the distinction drawn by the Court of Appeal between third party gifts and inter-spousal gifts is a principle that remains applicable even after the enactment of s 112(10) in 1996. As pointed out by Debbie Ong and Valerie Thean in (2000) 1 SAL Ann Rev 180 at 193, such a distinction would be sensible because, where inter-spousal gifts are concerned, the husband would have to expend efforts or liquidate other assets to acquire the gift for his recipient wife. The gift, having been acquired through the personal efforts of one or both of the spouses during the

subsistence of their marriage, is properly a matrimonial asset. Transfers between the parties *inter se* over the course of their marriage do not alienate the gift from the pool of matrimonial assets. This view can be supported by a construction of s 112(10)(b) of the Women's Charter, which is the applicable sub-provision here. While the use of the word 'gift' in the exclusionary phrase does not distinguish between third-party and inter-spousal gifts, it not only excludes 'gifts', but also 'inheritances'. The exemption goes on to provide that if such 'gifts' and 'inheritances' had been substantially improved by the effort of either the other party or by both spouses, they would nevertheless be considered matrimonial assets. The crucial point is therefore whether the asset was acquired or substantially improved, through the sole or joint efforts of the parties during the marriage.

7 This also seems to be the conclusion reached in *Yow Mee Lan*, although the court did not specifically discuss the gift exclusion in s 112(10) of the Women's Charter. In *Yow Mee Lan*, the court at [63] and [64] noted that the court's power to divide gifts between spouses has been established beyond a doubt in *Tianzon* and that if the gift was derived from the efforts of the husband, there was no doubt that it was properly a matrimonial asset. In doing so, the court distinguished the case of *Lee Leh Hua v Yip Kok Leong* [1999] 1 SLR(R) 554 as an exceptional case, where the equities of the situation were clearly against a retraction by the husband of his gift (see *Yow Mee Lan* at [68]). As a matter of conceptual clarity, inter-spousal gifts can clearly be distinguished from third-party gifts and inheritances and ought not to fall within the scope of the exclusionary phrase. While my views differ from the position adopted in *Wan Lai Cheng*, it ought to be pointed out that there ultimately will be little difference in the end result for most cases. In *Wan Lai Cheng*, although the court found that inter-spousal gifts were not matrimonial assets under s 112(10) of the Women's Charter, it relied on s 112(2)(h) read with s 114(1)(a), which ultimately allowed the court to take the gifts into consideration in determining each party's share of the matrimonial assets.

8 In relation to the Bali Property, despite the defendant having no professional valuation, he valued it at S$880,000.00. In contrast, the plaintiff had commissioned a professional valuation for it and it was valued at S$1,249,277.87. I would accept the valuation done by the plaintiff as the value of the property. In light of the foregoing, the pool of matrimonial assets available for division would therefore comprise as follows:

Real Property

(a) The Bali Property valued at S$1,249,277.87;

Joint Accounts

(b) HSBC USD Multi-Currency Savings Account No. [xxx] (New Asia Fund) valued at S$573,576;

(c) HSBC SGD Current Account No. [xxx] valued at S$20.42 as at 22 July 2010;

(d) DBS Current Account No. [xxx] valued at S$98.08 as at 22 July 2010;

(e) Bromo Consulting's HSBC SGD Current Account No. [xxx] valued at S$139.04 as at 22 July 2010;

(f) Bromo Consulting's DBS Current Account No. [xxx] valued at S$166.98 as at 31 October 2010;

(g) Bromo Consulting's HSBC HKD Account No. [xxx] valued at S$21,234 as at 9 November 2010;

Assets in defendant's name

(h) HSBC SGD Current Account No. [xxx] valued at S$2,524.80 as at 3 November 2010;

(i) HSBC HKD Current Account No. [xxx] valued at S$1,527.22 as at 3 November 2010;

(j) HSBC HKD Savings Account No. [xxx] valued at S$358.38 as at 3 November 2010;

(k) ING Savings Account No. [xxx] valued at S$794.20 as at 3 December 2011;

(l) Fintro Current Account No. [xxx] valued at S$15,587.70 as at 5 May 2011;

(m) Fintro Savings Account. [xxx] valued at S$258,650 as at 5 May 2011;

(n) Motor Vehicle Opel Blazer DOHC B8242 K (in Bali) valued at approximately S$3,600;

(o) Mercator Life and Savings Insurance Policy No. 1.281.505/01029 valued at S$22,091.70 as at 20 June 2011;

Assets in plaintiff's name

(p) HSBC SGD Account No. [xxx] valued at S$811.21;

(q) ING Belgium Account No. [xxx] valued at S$324.97 as at 3 January 2011;

(r) Jewellery worth S$18,000;

(s) Buddha Statute worth S$6,225;

(t) Han Dynasty Ornament worth S$8,900;

Inter-spousal Gifts [from plaintiff to defendant]

(u) Treadmill worth S$5,000;

(v) Painting worth S$5,000;

(w) Terracotta horse worth S$3,000;

(x) Chinese Antique Vase worth S$1,800.

(y) Montblanc Watch: S$2821.50

9 The total value of the matrimonial assets is approximately S$2,201,529.07, to be split equally between the parties. In accordance with my decision in *Tan Cheng Guan* at [3], the inter-spousal gifts are to remain with the respective parties; however, the gifts are to form part of the 50% share awarded to each party. Additionally, I note that both parties have made allegations of a lack of full and frank disclosure on the part of the opposing party. However, I find that these allegations are not made out on the evidence before me.

10 On the issue of maintenance, I am satisfied that the maintenance ordered by the District Judge below should be allowed to stand, with liberty to apply. While the plaintiff had asked for additional maintenance for her medical condition, I am of the view that since the defendant is already taking care of most of the household and children's expenses, it would be reasonable for the plaintiff to contribute to her own medical expenses.

11 As the parties have agreed for both to have joint custody of the children, with care and control given to the plaintiff with reasonable access to the defendant, I order accordingly. I will hear parties on costs on a later date.

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