

BHP v BHQ and another
[2013] SGHC 103

Case Number : DT Suit No 4756 of 2009
Decision Date : 10 May 2013
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Alain Johns (Alain Johns Partnership) for the plaintiff; the defendant in person.
Parties : BHP — BHQ and another

Family law – Matrimonial assets

10 May 2013

Tay Yong Kwang J:

The background

1 The plaintiff (“the wife”) and the defendant (“the husband”) were married in Singapore on 19 August 2000. Both are now 41 years old. They have 3 children. The first is a 15-year old daughter (“child 1”), who is actually the natural child of the wife’s sister. To the credit of both parties, in particular the husband, they took her into their home and accepted her as their daughter. The second child (“child 2”) is a son who is 7 years old now. He suffers from a condition known as Global Development Delay and has severe disabilities. After extensive medical treatment, his condition has improved significantly. He still undergoes treatment. The third child (“child 3”) is a healthy 5-year old son.

2 The marriage broke down towards the end of 2008. The husband left the matrimonial home in early 2009 and the wife commenced divorce proceedings in September 2009. Interim judgment was granted in 2010. The husband has a child with the co-defendant and is now living in rented premises with them. As the judgment has not been made final pending the disposition of all ancillary matters, he could not marry the co-defendant at present.

The ancillary matters

Custody, care and control

3 The ancillary matters relating to the custody of the three children were dealt with in earlier hearings. I ordered joint custody of the three children to both parties with care and control to remain with the wife. Various access arrangements for each of the children were also ordered.

Maintenance

4 The husband was ordered to pay \$2,500 per month as maintenance for the wife on the basis that her reasonable expenses each month were \$5,000. The parties agreed on \$1,400 and \$1,600 per month as maintenance for child 1 and child 3 respectively. As child 2 has special needs, I ordered the husband to provide \$2,300 per month as child 2’s maintenance and to pay for his physiotherapy and other treatment expenses.

Matrimonial assets

5 The issues relating to the distribution of matrimonial assets between the parties were the most contentious. The matrimonial home was a large penthouse in the condominium known as Teresaville situated in Lower Delta Road. There were four investment properties with three located in Singapore and one located in Phuket, Thailand.

6 I directed the parties to agree on a valuer to provide indicative values for each of the five properties mentioned in [5] above. The husband was to pay for the cost of the valuations first and 50% of the cost was to be borne by the wife in the final distribution of the matrimonial assets. As matters turned out, the parties did not agree on a valuer and the valuations done on two of the investment properties were by a valuer appointed by the husband. The wife did not engage her own valuer as the costs of doing so would have been prohibitive for her.

7 The husband was represented by counsel in all the earlier hearings on the ancillary matters. However, at the final hearing relating to the matrimonial assets, he decided to dispense with legal representation. He conducted his own case, speaking fluently in English. The wife continued to be legally represented.

The matrimonial home

8 The condominium unit is in the parties' joint names. It was bought in December 2006. Its present value is about \$3.6m. After deducting the loan owing to the mortgagee bank, its net worth is about \$2.3m. The wife is presently living there with the three children and her parents. The husband submitted that his direct contributions amounted to slightly above 90% while the wife submitted that his direct contributions were about 81%. The husband explained that the discrepancy arose because the wife had not factored in the renovation and furnishing costs and the continuing expenses (such as management fees and property tax) which were paid by him.

The investment properties

9 All the investment properties were either in the husband's name or held jointly by him and his co-investors. The first property was a condominium unit in the development called Waterford Residence in Kim Yam Road, in the vicinity of Robertson Quay ("Investment Property 1"). It was sold by the husband in August 2012 for which he received a net amount of \$520,000.

10 The second property is an apartment in Emerald Gardens in Club Street ("Investment Property 2"). It was agreed that its value was \$1.5m. There was a slight divergence between the parties as to the amount of the outstanding loan but it was in the region of \$1m. The tenant is paying rent at \$4,000 per month.

11 The third property is at 64, Boat Quay ("Investment Property 3"). It is a three-storey commercial property worth about \$6m. There is an outstanding loan of \$3.3m owing to the bank. The husband's evidence was that he was merely one of three equal partners who purchased this property. As the net worth was about \$2.7m, his one-third share in this property would be \$900,000 even though the property is in his name. The wife disputed the husband's assertions as she was not convinced of the documentary proof of the joint venture provided by him.

12 The final investment property is a villa in Patong Beach, Phuket, Thailand ("Investment Property 4"). The husband's valuer stated its value as US\$2m while the wife estimated it as about S\$3m. She

disputed the valuer's method of valuation and asserted that he had understated the area of land on which the villa stands. The husband stated that there was an outstanding loan of US\$210,000. He claimed that this was also a joint venture investment with three other partners and he had only a quarter share in the property. In S\$ terms therefore, his share would be worth about \$545,950.

Other matters

13 In addition, the wife claimed that the husband had other assets such as shares and cash amounting to about \$548,000. The husband claimed that his other assets were worth about \$200,000. The wife reckoned she had about \$152,000 worth of such other assets (including a car) while the husband estimated her other assets were worth about \$268,000.

14 The husband is an accountant by training and works in Barclays Capital Services, earning a monthly income of about \$23,000. Although he also receives rental income from Investment Property 2 (see [10] above), he has to pay monthly rental of \$4,500 for his present living premises (where he resides with the co-defendant and their child), as well as their living expenses.

15 The wife works part-time in a company called Icon International Communications. On the company's website, she is described as Group Director. She earns \$5,000 per month in this part-time job. She was not able to work full-time because of the needs of the younger children, particularly child 2. The husband said that the wife is a capable woman who can earn more much and should be working full-time since her parents are living with her and can take care of the younger children.

16 The wife suggested that she be given the matrimonial home together with 30% of the husband's assets (which she calculated at \$1.63m). She would retain whatever other assets were in her name. The husband submitted that the matrimonial home should be apportioned at 11% for the wife and 89% for him. He suggested the same ratio for all his other assets with the wife retaining all her assets. He wanted the matrimonial home sold as it was too much of a luxury to maintain.

17 In addition to the arguments relating to the matrimonial assets, the husband also wanted the expenses for child 2 to be capped so that he could know how much he had to prepare to pay each year. The wife estimated the costs of the local therapy for child 2 at \$3,500 per month and at \$100,000 per year for two trips abroad for overseas therapy. She was in the process of looking for cheaper alternatives in China and the Philippines so that she and child 2 would not need to travel to the United States of America and to Poland for his treatment. The husband suggested that the overseas expenses be capped at \$50,000 per year.

The decision of the court

18 I decided to take a holistic view of all the matters before me in determining a fair division of the matrimonial assets. I would not wish to approach such issues as though the parties were shareholders in some commercial enterprise and calculate their entitlements with cold mathematical formulas.

19 It was not disputed that the husband had been the main income earner. His direct financial contributions to the matrimonial assets would naturally be much more than the wife's. He is financially savvy and has a job commanding a good salary. He has provided well for the family too. I commend him especially for accepting child 1 as part of the family, for continuing to take an interest in her life (by wanting joint custody and access) and for agreeing to continue to provide maintenance for her. His love for the children, especially child 2, is no less than the wife's love for them.

20 The wife has to take care of the three children with the help of her parents. She has to restart

her career and to balance her work needs with the family's needs. Although they are living in a rather large residential unit (estimated by the husband to be 4,000 sq ft in size), that has been their home for the last six years or so. I therefore prefer not to order it to be sold if equity between the parties could be achieved through some other route.

21 Proceeding on a broad brush approach and hoping to create minimal disruption to both parties' lives and properties, I therefore made the following orders:

(a) The matrimonial home is to be given to the wife with the husband continuing to pay the instalments on the outstanding loan from January to December 2013. The wife is to pay the maintenance and service charges, property tax and all other outgoings forthwith. She will have to decide what to do with this property after 2013, bearing in mind that she will have to be responsible for all payments relating to the property from then onwards. The wife informed me that the maintenance and service charges for the matrimonial home had been outstanding for several months amounting to some \$7,500 in total. The husband retorted that the wife had not paid him the costs of \$8,000 ordered against her in her application for a Mareva injunction against him. At my suggestion, the parties agreed to set off these two sums against each other.

(b) All other assets are to remain in the respective names of the parties. This means that the husband gets to keep all the investment properties (according to whatever shares he has in them).

(c) The local expenses for child 2's treatment will be capped at \$40,000 per year and the overseas expenses at \$50,000 per year. Such expenses are to be paid by the husband in addition to the monthly maintenance of \$2,300 ordered earlier (see [4] above).

22 By making the above orders, the wife and the children get to keep the matrimonial home and there will be no disruption to their lives in the near future. Child 2, in particular, can continue to live in a place that he has become familiar with and in which he has been living for practically his entire young life. With the husband paying the instalments on the outstanding loan up to the end of this year, that should give the wife sufficient time to adjust her financial matters now that all the ancillary matters have been concluded.

23 Similarly, the husband gets to keep all his investment assets and does not have to liquidate his shares in Investment Properties 3 and 4. The total net value of the investment properties, plus his other assets, is more than the net value of the matrimonial home given to the wife. In computing the total net value, I accepted his evidence on their respective values and his share in the relevant properties. In addition, he can choose to move into Investment Property 2 instead of renting it out since he is presently living in rented premises with the co-defendant and their child. The potential for financial gain is great for him and he has the choice of liquidating one or more of his assets at his chosen timing.

24 On the other hand, if the wife sells the matrimonial home, she has to consider where the family should live thereafter. The alternative accommodation has to be suitable for her and the three children, in particular, child 2. In the event that she makes a huge profit from the sale of the matrimonial home (whether on its own or on an *en bloc* basis), that may constitute a material change in circumstances providing justification for the husband to apply to court for variation of her maintenance.

25 Arguments were also made on the costs of the private investigator's report and of the divorce proceedings. These had been reserved by the Family Court. The wife asked that these costs be paid

to her. The husband submitted that there should be no costs order made against him. He said that he had informed the wife that he was living with the co-defendant six months before she even engaged the services of the private investigator. There was therefore no need for the report which was merely to embarrass him.

26 In the interest of helping the parties to move forward and not continue to be locked in this unhappy litigation, I made no order as to costs for the entire divorce proceedings.

27 The husband has appealed to the Court of Appeal against my decision. His appeal was filed by his new solicitors, Harry Elias Partnership LLP.

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