

BMG v BMH
[2013] SGHC 244

Case Number : Divorce Transferred No 6149 of 2009
Decision Date : 13 November 2013
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Jimmy Yim SC (Drew & Napier LLC) and Dennis Chua Soon Chai (Dennis Chua & Co) for the plaintiff/wife; Tan Cheng Yew (Leong Partnership LLP) for the defendant/husband.
Parties : BMG — BMH

Family Law – Matrimonial assets – Division

Family Law – Maintenance

13 November 2013

Judgment reserved

Choo Han Teck J:

1 This case concerns the ancillary matters of division of matrimonial assets and maintenance. The defendant/husband is 47 years old and a British citizen, and the plaintiff/wife is 37 years old and a Thai citizen. They were married in Bangkok on 25 April 2001. They have two children who are 11 and 10 years old. The children have been living with the husband since parties separated in June 2009. In December 2009, the wife commenced divorce proceedings. Interim judgment was granted on 15 March 2011. Parties reached agreement on the ancillary matter of custody, care and control of and access to the children, but contested the other two ancillary matters.

2 Much of the parties' dispute in the matter of the division of assets centres around three companies which the husband has a stake in. These three companies are [X] Pte Ltd, [Y] Ltd and [Z] Pte Ltd. The husband is a 50% shareholder of [X], the other 50% of shares in [X] being held by one Gordon MacGregor. The husband is also the 100% shareholder of [Y], and [Y] is in turn a 50% shareholder of [Z], the other 50% of shares being held by the husband's brother. In 2007, [Z] purchased two vessels from [Y] for a total price of US\$1.5 million. The purchase price remains unpaid.

3 As to the division of matrimonial assets, I shall begin by determining the total value of the pool of these assets. There are a number of assets that parties had agreed on —

First, the husband's 50% shareholding in [X], which based on the company's net tangible asset value alone, is worth \$1,834,884.50.

Second, the properties in Bangkok worth \$1,245,297.

Third, the monies in the husband's various bank accounts — parties put forward different amounts but I accept the wife's figure of \$363,934, since that was what the husband accepted in his ancillary matters position sheet.

Fourth, the husband's cars, valued at \$222,704.

Fifth, the husband's CPF monies worth \$128,791.

Sixth, the husband's watches, valued at \$46,000.

Seventh, the money in [Y]'s bank account — parties put forward different amounts but I accept the wife's figure of \$18,656 because that was what the husband accepted in his position sheet.

Eighth, the monies in the wife's various bank accounts, plus her CPF monies, her policies and her jewellery and watches valued at 60% of the price at which they were purchased — parties put forward different amounts but on closer examination it appeared that they agree on the individual items, except that there was an error in the wife's arithmetic, and the correct figure is \$182,398.54.

Ninth, the husband's loan of £100,000 to his brother, which based on the current exchange rate of £1 to \$2, works out to \$200,000.

All these add up to \$4,242,665.04.

4 Then there are assets which parties disputed —

First, a payment of £100,000 — worth \$200,000 at the current exchange rate — that the husband said was a gift from him to his parents. I agree with the wife that this should be added to the pool of matrimonial assets, because the gift was made more than a year after divorce proceedings were commenced. With divorce proceedings afoot, parties surely cannot be allowed to deplete the pool of assets by making gifts, however genuine the spirit of magnanimity behind those gifts.

Second, a sum of \$100,000 which the wife received from selling their Mercedes car in Bangkok around the time that parties ceased living together. I agree with the husband that this should be taken into account even though the sale was made before the commencement of divorce proceedings. When the wife applied in 2010 for interim maintenance, the Family Court decided that a separate sum of \$100,000 which she withdrew was sufficient to maintain her from June 2009 to July 2011. I see no reason to depart from that decision, which means that the sum of \$100,000 from the sale of the Mercedes should be considered money remaining in the wife's hands and thus part of the pool of assets.

Third, the proceeds received by the wife from sale of her watches, other than the watches already taken into account. The wife appears to accept in her reply submissions that she received such proceeds, but she disputed the amount. I accept the husband's figure of \$63,143 because the wife did not disclose the proceeds from these watches in her position sheet even though counsel submitted that she did.

5 As I have said, the main disputes in the division of assets concerned the three companies [X], [Y] and [Z]. As to [X], first the wife says that the husband is not merely a 50% shareholder of [X] but is in truth the full beneficial owner of that company. Until December 2007 the husband was registered owner of 100% of the shares of [X]. In that month, he transferred 50% of his shares to Gordon MacGregor for \$1. The wife alleged that this was a sham transaction. I do not accept the wife's allegation. It surely could not have been a transfer intended to deplete the pool of matrimonial assets, since this was a year and a half before parties ceased living together and thus probably well in advance of any contemplation of divorce. The wife has not furnished any convincing reason why the husband would make the transfer were it true that he was nonetheless to remain the full

beneficial owner of [X]. Next the wife says that the husband's 50% shareholding in [X] has been undervalued because its value was assessed with reference to the company's net tangible asset value and nothing else. The wife pointed to an offer made in July 2009 by a third party to purchase all the shares of [X] for \$13 million. She said that \$13 million is the true value of the company's shares because that took into account the company's goodwill. I do not accept the wife's argument. The intended transaction was no more than an offer which ultimately did not go through. Further, as a private company its shares were not freely traded and there was no market for them. Hence, what one particular purchaser had appeared willing to pay was not an accurate gauge of the value of the shares. It may be that the value of the shares was more than just the company's net tangible asset value, but in the absence of any way to quantify the company's goodwill or other intangible value-enhancing characteristics I am unable to include all that in the assessment.

6 The wife said that the pool of matrimonial assets should also include dividends which the husband received from [X] amounting to at least \$2.25 million. The husband said in response that the dividends were no longer in his hands but were largely, if not wholly, invested into [Z]. In support, the husband produced evidence of cheques issued by [X] in [Z]'s favour, as well as fund transfers from him to [Z]. I do not need to determine what had become of the dividends that the husband received from [X]. I need only look at how much money [Z] owes the husband. According to [Z]'s 2011 financial statement and the Baker-Tilly report, [Z] owed the husband a sum of \$1,120,363. This was an asset in the husband's hands and thus must be added to the pool of assets. The wife then pointed to [Z]'s purchase of two vessels from [Y] for US\$1.5 million. She argued that, even though the US\$1.5 million had not been paid to [Y], it should be recognised as enhancing [Y]'s value, which as a consequence increased the value of the husband's 100% shareholding in the company. I agree with the wife's argument on this point, given that this US\$1.5 million debt was reflected in [Z]'s financial statement as a liability of \$1,920,000.

7 What remains is to assess the value of [Z]'s debt to the husband as well as [Z]'s debt to [Y]. According to [Z]'s 2011 financial statement, it had a negative net tangible asset value, its liabilities exceeding its assets by \$506,543. Since [Z] had \$100,000 by way of share capital, if all its assets and share capital were applied to meeting its liabilities, there would have been a shortfall of \$406,543. This meant that even though [Z] owed the husband \$1,120,363, the value of that debt to the husband was less than \$1,120,363, and the same reasoning applied to [Z]'s debt to [Y]. In my opinion a rough method for determining the value of the debts would be as follows. The premises were that [Z] would liquidate at once all its assets and apply everything it had towards paying its creditors, and that the shortfall of \$406,543 would be borne among [Z]'s creditors in proportion to the amount of their debts. Since [Z]'s creditors are owed a total of \$3,483,155 — this being the amount of total liabilities in [Z]'s 2011 financial statements — each creditor will by reason of the shortfall receive approximately 88.33 cents per dollar owed to them by [Z]. The husband would have stood to receive \$989,597.72 and [Y] would have stood to receive \$1,695,903.58. Working in a discount of 20% to take into account possible restrictions on [Z]'s ability to liquidate its assets, it may roughly be said that the debt owed by [Z] to the husband was worth \$791,678.18. The debt owed to [Y] was roughly worth \$1,356,722.86, and the value of the husband's 100% shareholding in [Y] was increased by that amount. Therefore a sum of \$2,416,951.17 should have been added to the pool of matrimonial assets. Rounding down, this would mean that the total value of the pool of matrimonial assets would be \$6.75 million.

8 As for the share of the assets that each party should receive, I am of the view that the wife should receive 30%. The marriage was not a long one, and the wife's financial and non-financial contributions to the marriage did not appear to have been extensive. Hence the wife's share would be \$2.025 million. For convenience, parties should retain whatever assets are currently considered theirs. Hence the wife should retain the properties in Bangkok worth \$1,245,297, her bank account monies,

policies, jewellery and watches worth \$182,398.54, the \$100,000 from the sale of the Mercedes and the \$63,143 of proceeds from the sale of her other watches. This would leave a sum of \$434,161.46 due from the husband to the wife. I shall round this down to a sum of \$434,000.

9 On the question of maintenance, the wife sought a lump sum of between \$508,800 and \$763,200. The former figure is \$10,600 per month for four years while the latter is the same monthly amount for six years. The husband on the other hand said that the wife should receive no more than \$42,000, being \$3,500 a month for one year. The wife said that her expenses amounted to \$10,600 a month, and that this was reasonable having regard to the husband's expenses, which amounted to \$31,000 a month. I think that the husband's expenses are relevant insofar as they tended to show that the wife enjoyed a certain standard of living when she and the husband lived together, and on that basis I am of the opinion that the wife's expenses of \$10,600 a month were not unreasonable. But she should not receive a monthly sum of maintenance equal to her expenses, because she is still able to earn a salary and receive income from the Bangkok properties. In my judgment a monthly sum of \$8,000 would be reasonable. I think that maintenance should cease after 18 months because this was not a long marriage. I am of the view that although this might be an appropriate case for a lump sum payment, given that much of the husband's wealth appeared to be illiquid and locked up in his own and the companies' assets, I order that a sum of \$8,000 per month be paid by the husband to the wife for 18 months instead, but on condition that should the husband default on his maintenance obligations for two months in succession, the wife shall be entitled immediately to apply for the future maintenance to be converted into a lump sum.

10 I will hear submissions on costs at a later date if parties are unable to agree costs.