

Sigrid Else Roger Marthe Wauters v Lieven Corneel Leo Raymond van den Brande
[2013] SGHC 256

Case Number : Divorce Transferred No 3195 of 2009 (Summonses Nos 4285 & 5164 of 2012 and Summonses Nos 3882 & 5502 of 2013)
Decision Date : 22 November 2013
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : The plaintiff/wife in-person; Bernice Loo Ming Nee and Darren Chan Eng Jin (Allen & Gledhill LLP) for the defendant/husband.
Parties : Sigrid Else Roger Marthe Wauters — Lieven Corneel Leo Raymond van den Brande

Family Law – Matrimonial assets

Family Law – Maintenance

Civil Procedure – Judgments and orders – Liberty to apply

22 November 2013

Judgment reserved.

Choo Han Teck J:

1 The parties are Belgian nationals who were married on 25 February 1992. The plaintiff/wife is 50 years old and the defendant/husband is 57 years old. They have two children who are 21 and 19 years old. The wife filed for divorce on 25 June 2009. Interim judgment was granted on 11 June 2010 and the ancillary matters came before me. On 1 November 2011, I handed down a written judgment: *Sigrid Else Roger Marthe Wauters v Lieven Corneel Leo Raymond van den Brande* [2011] SGHC 237. I ordered that the pool of matrimonial assets, with an approximate value of \$2.2 million, be divided equally between the parties. I also ordered that the maintenance order made on 28 April 2010 in the Family Court continue to stand. This order obliged the husband to pay the wife \$7,800 a month as maintenance for her and their two children, in addition to direct payment of various other sums to the relevant third parties for, *inter alia*, rental, utilities bills and school fees.

2 On 24 August 2012, the wife applied to vary the maintenance order by way of Summons No 4285 of 2012. The husband, in turn, likewise applied to vary the maintenance order by way of Summons No 5164 of 2012 filed on 8 October 2012. The husband also sought other orders in his application, a few of which concerned a property that the parties owned in Bali (the “Bali Property”) valued at \$1,249,277.87. This was the single most valuable asset in the pool of matrimonial assets that was divided equally between the parties. I heard the two summonses together in chambers. On 28 February 2013, I ordered that maintenance be varied to a sum of \$14,000 a month to be paid to the wife, of which \$7,000 was for her rental expenses. I adjourned the outstanding issues, including that of the Bali Property, to a later date. Parties returned on 10 April 2013 and a week later on 17 April 2013 I gave my decision on the outstanding issues. I ordered that the Bali Property be sold within six months, that the husband have sole conduct of the sale, and that the wife hand over to him the originals of certain documents to facilitate the sale, namely, the title deeds, building permit and proof of land tax payment. I also granted parties liberty to apply.

3 On 24 July 2013, the wife filed Summons No 3882 of 2013 and sought one of two alternative

orders in relation to the Bali Property. The first option proposed was that she be given sole authority to sell the Bali Property, the proceeds from the sale to be divided equally between the parties, with the husband's share kept in an escrow account with the court and applied towards the monthly maintenance payments of \$14,000 to the wife until it was exhausted, after which he would make the monthly payments from his other funds. The second option was that the husband's share of the Bali Property be transferred to the wife, in exchange for her forgoing her maintenance payments for 43 months, after which time the husband would resume payment of \$14,000 a month. The wife also alleged that the husband had not met his maintenance obligations and sought payment of the arrears. On 22 October 2013, the husband filed an application of his own, Summons No 5502 of 2013. I shall describe and deal with the orders which he sought later in this judgment. I heard both summonses in chambers on 5 November 2013.

4 The main issue in these two summonses was that of the Bali Property. Insofar as the wife's request that the husband's share of the Bali Property be transferred to her, I decline to make an order in those terms. In my order of 17 April 2013 I took the view that it was not feasible to effect such a transfer because the wife was not in a position to pay the \$624,638.94 being the value of the husband's share. I did not think that the wife ought to be allowed to pay this sum by setting it off against her maintenance payments of \$14,000 a month. That would be tantamount to ordering a lump sum maintenance payment, which I did not think was appropriate because I accepted that the husband was not cash-rich, the Bali Property being the parties' main asset. I do not think that the situation has changed since I made my order of 17 April 2013. The wife remains in no position to purchase the husband's share, and the husband's liquidity problems appear to persist. In the circumstances I am of the view that the Bali Property must be sold and the proceeds divided equally between the parties. I decline to grant the wife's application for an order that the husband's share of the proceeds from the sale of the Bali Property be held in escrow and applied towards his maintenance obligations to her. I am not satisfied that it is necessary to give her security in this manner, because the husband appears to have shown a readiness to meet his obligations notwithstanding his late payments.

5 The question that follows is how then the sale of the Bali Property should be effected. The husband argues that it is not open to the wife to seek sole conduct of the sale by invoking the liberty to apply which formed part of my 17 April 2013 order. I do not agree. As I said in *Koh Ewe Chee v Koh Hua Leong and another* [2002] 1 SLR(R) 943 at [4]–[5], liberty to apply is meant to "supplement the main orders in form and convenience only so that the main orders may be carried out". In the present case, the main order was that the Bali Property be sold and the proceeds divided equally. It would not be open to parties to apply to vary this, *eg*, to apply for an order that one party's share be transferred to the other, under the rubric of liberty to apply. However, my order of 17 April 2013 that the husband has sole conduct of the sale was no more than an order supplementing the main order and enabling it to be carried out. To change that 17 April 2013 order would not be to change or vary the main order. Therefore the wife was not precluded from invoking liberty to apply to seek sole conduct of the sale.

6 In my judgment, the wife should now be given sole conduct of the sale. There was some dispute as to whether the originals of the title deeds, building permit and proof of land tax payment were needed to effect the sale — these were documents that the wife refused to hand over to the husband. Each party adduced some evidence that the originals were required or not required. Given this state of affairs, I think it would be most convenient to give the wife sole conduct of the sale, since she has the originals in her possession. Furthermore, as I understand, the wife is presently living in the Bali Property. This should make it even more convenient for her to make the necessary arrangements for the sale. I do not think I should alter my decision just because the husband worries that the wife might conduct the sale in a manner designed to secure some secret profit for herself.

Such is the mutual distrust between them that whichever party has conduct of the sale, the other will allege that there is a risk of unsavoury conduct. According to my 17 April 2013 order the Bali Property was to have been sold within six months. This has not been done. I think that I should cut down on the latitude that I gave parties initially and so I order that the Bali Property be sold within three months of the date of the release of this judgment. This should assuage the husband's concern that the wife might deliberately hinder or delay the sale in order to keep the Bali Property for herself. I order that the wife be reimbursed out of the sale proceeds for reasonable expenses incurred in improving the condition of the Bali Property to an extent sufficient for it to be sold. Having made these orders, I decline to grant the defendant's applications for, first, a penal notice to be included in my 17 April 2013 order; second, an order that the wife hand over the originals of the documents mentioned above; and third, an extension of time of six months in which to sell the Bali Property.

7 As to my maintenance order of 28 February 2013, the husband applied to suspend the \$7,000 monthly rental component until the wife secures a rented residence. The wife acknowledged at the hearing before me that she has been living in the Bali Property, although it is not clear when she started doing so. I accept that while she is living there she does not need to pay rent. But I am not inclined to make any retrospective adjustments to the maintenance amount because it would be difficult to determine when these adjustments should have begun to take effect. I am also not inclined to make any prospective adjustments, because she will have to move out of the Bali Property in three months at the latest, and while she is making arrangements to sell the Bali Property she might not be able to live in it. Hence I order that the husband is to continue paying \$14,000 a month to the wife. He also asked for liberty to make his monthly payments on any day of the month in question. I decline to grant such liberty on the basis that the wife ought to have certainty as to when she will receive her monthly maintenance. But I order that he be obliged to make payment on the 15th day of each month instead of the first. At the hearing on 5 November 2011, the wife informed me that the husband had paid only \$7,000 for the month of September 2013, and had not yet paid at all for the months of October and November. I order that the husband make good these arrears.

8 The husband applied for an order that the wife furnish an account of what she did to the furniture and household items in the parties' former matrimonial home, so that the proceeds from the sale of these items might be divided equally between the parties. I decline to grant an order in those terms. These items should have been included in the pool of matrimonial assets for division when the ancillary matters were first heard and decided upon in 2011. It is too late to include them at this juncture.

9 I decline to grant the husband leave to adduce the affidavit which he filed in support of Summons No 5502 of 2013 as his response affidavit to Summons No 3882 of 2013. On 16 September 2013 I gave clear directions that he was to file his affidavit in the latter summons by 30 September 2013, which he failed to do. He ought not to be allowed to get around his failure to meet that deadline by filing an affidavit in a fresh summons and adducing it in the other summons. Further, the defendant's affidavit filed on 22 October 2013 is 69 pages long and contains far too many paragraphs that are not depositions of fact but submission, some of which in language that counsel would not be allowed to use in court — such as "grossly disgusted with the plaintiff". Counsel is reminded that they are responsible for the affidavits filed by their clients and witnesses for matters that are opinion and submission (other than the opinion of the deponent that explains his actions). In future, counsel may be made to pay the costs personally of having the affidavit expunged and a fresh one filed. I would also order that paragraphs 7 to 11 and pages 15 to 19 of the wife's affidavit filed in support of Summons No 3882 of 2013 be expunged. I accept that husband's argument that these paragraphs and pages pertained to "communications in the course of negotiations genuinely aimed at settlement of a dispute" — I use here the words of Andrew Ang J in *Cytec Industries Pte Ltd v APP Chemicals International (Mau) Ltd* [2009] 4 SLR(R) 769 at [14] — which meant that the communications were

protected by “without prejudice” privilege and ought not to have been referred to in the wife’s affidavit.

10 Finally, there was the issue of the Mercator insurance policy that the wife raised. It was undisputed that the husband’s obligation to pay the wife €4,514.26 in connection with this insurance policy remained outstanding. I order that this sum be set off against the husband’s share of the proceeds from the sale of the Bali Property. I make no orders as to costs.

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