

BMG v BMH
[2014] SGHC 112

Case Number : Divorce Transferred No 6149 of 2009
Decision Date : 09 June 2014
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 Yew Cheng (Leong Partnership LLP) for the defendant/husband.
Parties : BMG — BMH

Civil Procedure – Costs – Principles

9 June 2014

Judgment reserved.

Choo Han Teck J:

1 This case concerns costs. Parties appeared before me in 2013. In my judgment, dated 13 November 2013 (*BMG v BMH* [2013] SGHC 244), I stated (at [10]) that I would hear submissions on costs at a later date if parties were unable to agree. As is evident, no agreement was reached.

2 Before me, counsel for the plaintiff/wife, Mr Yim, argued that the plaintiff should be entitled to costs plus disbursements, in the following manner:

- (a) \$150,000 in costs;
- (b) \$5,159.58 in disbursements;
- (c) \$4,708 for the Health Sciences Authority (“HSA”) report; and
- (d) \$44,708.84 for the accountant’s report.

His reasoning was that costs follow the event. As the plaintiff had obtained a judgment in her favour before me, she should be entitled to costs.

3 Counsel for the defendant/husband, Ms Tan, agreed that costs should generally follow the event. She also did not seem to dispute the quantum. However, she disagreed that the judgment was in the plaintiff’s favour. Rather, she submitted that it was in the defendant’s favour. Nevertheless, she argued that each party should bear its own costs of the ancillary matters hearing, save as to the expenses of the HSA and accountant’s reports, which should be borne by the plaintiff.

4 To appreciate the context of the submissions by either party, I will briefly describe the proceedings in 2013. Parties appeared before me with two issues: division of matrimonial assets and maintenance. I set out the submissions of both counsel, as well as my finding, in the table below:

Issue	Plaintiff’s argument	Defendant’s argument	Court’s finding

Total assets	Total assets amount to \$14,639,187	Total assets amount to \$4,346,517	Total assets amount to \$6.75m (rounded down)
Division	Plaintiff should receive 30% of \$14,639,187 = \$4,391,756.10	Plaintiff should receive 20% of \$4,346,517 = \$869,303.4	Plaintiff to receive 30% of \$6.75m = \$2.025m
Maintenance	Plaintiff should receive lump sum of between \$508,800 and \$763,200 (based on \$10,600/mth for between 4 and 6 years respectively)	Plaintiff should receive no more than \$42,000 (based on \$3,500/mth for 1 year)	Defendant to pay to the Plaintiff \$8,000/mth for 18 months (total: \$144,000)

5 As is evident from the figures alone, Mr Yim's argument that the plaintiff secured a favourable judgment was based on a strained interpretation of "favourable". He submitted that the court's final determination on division, in terms of proportion (30% of assets), was identical to what the plaintiff sought. However, this argument neglected the fact that the court's determination of the size of the pool of assets was significantly lower than the plaintiff's figure. Mr Yim also argued that the court's awarding of \$8,000 in monthly maintenance to the plaintiff was a "victory", as it was closer to the \$10,800 figure that she prayed for than the \$3,500 sought by the defendant. This argument neglected the duration for which maintenance was ordered. Looking at the figures as a whole, it is clear that the verdict was numerically closer to the defendant's pleaded case. However, that is not to say that the defendant "won" or the plaintiff "lost".

6 Mr Yim also mentioned that the plaintiff had offered to settle the matter with the defendant on 29 June 2012, and that in that offer (contained in a letter sent by the plaintiff's solicitors to the defendant's), the plaintiff proposed the following terms:

- (a) All the parties' properties in Thailand are to be given to the plaintiff;
- (b) All other properties of each party are to be retained by them;
- (c) The defendant shall pay the plaintiff a lump sum payment of \$800,000; and
- (d) The parties are to pay their own legal costs.

7 The plaintiff argued that these terms, which were rejected by the defendant, were very close to the terms in the final judgment. The terms in the final judgment were as follows:

- (a) The plaintiff is to retain the properties in Thailand;
- (b) Parties are to retain whatever assets were considered theirs;
- (c) The defendant is to pay the plaintiff a sum of \$434,000;
- (d) The defendant is to pay the plaintiff a monthly maintenance of \$8,000 for 18 months; and
- (e) Parties are to agree on costs.

8 The plaintiff argued that (a) and (b) of both the offer and judgment were identical. I agree. She also argued that (c) of the offer was similar to (c) and (d) of the judgment. Notwithstanding that the court's order of \$434,000 was lower than her sought for sum of \$800,000, she argued that if the maintenance order were to be taken into account (\$144,000), along with the interim maintenance of \$110,500 that the defendant had been paying between the date of the offer to settle and the judgment, as well as cost of the accountant's report (\$44,708.84) – which would not have been necessary if the defendant accepted the offer – the total sum would be \$733,208.84. Acknowledging that this was still lower than the \$800,000 figure, the plaintiff further argued that "[g]iven that costs follow the event, the Defendant will also be bearing the Plaintiff's costs of these proceedings, it is likely that the overall sum having to be paid by the Defendant since June 2012 would exceed \$800,000". That is a strained argument, not least because the very issue before this court included the issue of costs. The defendant challenged the plaintiff's inclusion of the interim maintenance paid between the date of the offer and the judgment. He argued that as the offer was only open for four weeks, it would not have been fair to take into account the interim maintenance paid after these four weeks (up to the date of judgment). The plaintiff did not cite – nor did she attempt to rely on – O 22A of the Rules of Court (Cap 322, R 5, 2006 Rev Ed). As such, all these arguments were presumably made to persuade the court in the exercise of its general discretion under O 59. The plaintiff went on to argue that as the defendant rejected the offer, costs for the plaintiff should be provided – for two counsel – on a standard basis up to 28 June 2012, and thereafter on an indemnity basis from 29 June 2012 onwards.

9 I turn first to the plaintiff's repeated emphasis on the notion that costs follow the event. Although uncontroversial as a general guiding principle, it is wholly misleading to extend it to "costs must always follow the event". The matter of costs is, first and foremost, within the discretion of the court. This is captured in O 59 r 3(2) of the Rules of Court, which reads:

[i]f the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.

10 The defendant cited a few recent decisions of the High Court and the Court of Appeal in which the courts made no order as to costs for hearings on ancillary matters. Although I hesitate to draw a trend from these decisions, I can appreciate that – especially in matters relating to divorce – the court will hope to minimise further acrimony and antagonism between parties. After judgment, it may not always be the case that both parties are pleased with the outcome of the ancillary matters. An adverse cost order may aggravate the situation further, making one party out to be the "loser".

11 In this case, contrary to the plaintiff's submissions, there was no clear winner. Even the plaintiff's offer cannot be said to have been clearly "more favourable" than the judgment. I therefore order each party to bear its own costs and disbursements, and to share the costs of the reports.

12 Mr Yim informed me that there remains the administrative task of transferring title in the properties in Thailand to the plaintiff, as they are presently held in the parties' joint names. I order that the defendant execute any necessary document to give effect to the orders in my judgment dated 13 November 2013. Any costs incurred are to be shared by the parties.