

JAF v JAE
[2015] SGHC 114

Case Number : Registrar's Appeal from the State Courts No [Y]
Decision Date : 16 February 2015
Tribunal/Court : High Court
Coram : Valerie Thean JC
Counsel Name(s) : The appellant in person; The respondent in person.
Parties : JAF — JAE

Family Law

[LawNet Editorial Note: This oral judgment was released in written form on 4 September 2015.]

16 February 2015

Judgment reserved.

Valerie Thean JC [delivering the oral judgment]:

1 Parties first appeared before me on 28 January 2015. As both are acting in person, I give brief oral grounds, some of which are legal in nature, to explain my decision.

Introduction

2 This is an appeal by the wife (“the Wife”) against the following orders granted by the learned District Judge (“the Judge”) in *JAE v JAF* [2014] SGDC 373 (“the GD”) and *JBX v JBY* [2014] SGDC 449 (“the Supplemental GD”) (JBX corresponds to JAE – the Husband; JBY corresponds to JAF – the Wife):

- (a) that the husband (“the Husband”) was entitled to 30% of the current market value of the property in Poland (“the Poland property”); and
- (b) that the Wife should not be awarded a separate sum for the cost of a return air ticket to Poland once a year.

The Poland property

Background

3 I deal first with the Poland property. This was purchased on or around 13 February 2001, and held by the Wife in her sole name. Both parties do not dispute that the purchase was completed before the date of marriage, 25 October 2002.

4 The purchase price of the Poland property, including taxes, was PLN 189,220 (S\$73,149.40). It was not disputed at the appeal that the Husband’s financial contribution amounted to £15,000.

5 This property was one of two that the Judge divided. The second was a property in Scotland (“the Scotland property”) acquired during the marriage, the division for which the Wife has not appealed.

The Judge's decision

6 Although the Poland property was purchased in the Wife's sole name, the Judge found that the circumstances of the purchase showed the parties' intention that the Poland property was meant to belong to both parties.

7 The Judge relied on two grounds to divide the Poland property. The first ground was based on the matrimonial jurisdiction pursuant to s 112 of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Charter"). The Judge preferred the Husband's evidence that the Poland property was purchased as a joint investment and was intended to be used as a holiday home when the family travelled to Poland. His evidence that the family had stayed in the Poland property once after its purchase and that his parents had used the Poland property once as a holiday home was accepted. The Judge held that the Poland property fell within the scope of a "matrimonial asset" under s 112(10)(a)(i) of the Charter.

8 The second ground was based on the general principles of resulting and constructive trusts. The Judge observed that there was clear and sufficient evidence of the parties' respective financial contributions to the purchase price of the Poland property. On the basis of the presumption of resulting trust, the parties were presumed to hold the beneficial interest in the Poland property in proportion to their respective contributions to the purchase price. The Judge held that the presumption of advancement was rebutted on the facts of the case because the Husband had not intended the sum of £15,000 to be a gift to the Wife. In the circumstances, the Judge arrived at the conclusion that the Husband had a 30% beneficial interest in the Poland property.

The Wife's arguments

9 The Wife submitted that the Poland property should not have been divided as it does not fall within the definition of a "matrimonial asset" under s 112(10) of the Charter; parties had never lived in the Poland property.

10 Regarding the trust issue, the Wife took the position that the sum of £15,000 was actually a *gift* from the Husband: as at the date the Poland property was purchased, she did not see any future with the Husband as his previous fiancée was pregnant at that time. It was further argued that if she had not quit her job and moved to Scotland with the Husband, she would have been able to fully fund the purchase of the Poland property without any assistance from the Husband.

The Husband's arguments

11 The Husband submitted that the Wife's evidence had been inconsistent right from the start. He pointed out that the Wife had initially denied receiving any help from him in paying for the Poland property, but eventually conceded when he managed to prove that he had transferred the sum of £15,000 to her.

12 The Husband further argued that he had never intended the sum of £15,000 to be a gift because its source was his property in Scotland which he sold in order to start life afresh with the Wife, and both parties had intended to use the Poland property for vacation and their future joint lives; they did not live in the Poland property as the Wife's brother had been staying there. His answer to the Wife's argument that she could have funded the Poland property alone if she had not moved to Scotland was that the Scotland property was also in his sole name and the Wife was awarded a 35% share in it.

My decision

13 The preliminary issue which has to be dealt with would be whether the Poland property falls within the scope of a "matrimonial asset" which renders it liable for division under s 112(1) of the Charter. The definition of a "matrimonial asset" is set out in s 112(10) of the Charter:

(10) 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.

Given that both parties do not dispute that the Poland property was acquired *before* the date of marriage, s 112(10)(b) would not be applicable. It is further noted that the Husband has not sought to argue that the Poland property was substantially improved by him (only a contribution of furniture was contended) or by both parties during the marriage. It follows then that the Poland property could only qualify as a "matrimonial asset" if s 112(10)(a)(i) of the Charter applied.

14 In this respect, the Judge arrived at the conclusion that the Poland property was a matrimonial asset on the basis that the parties had intended to own the Poland property together and it was meant to be enjoyed by the family for a household purpose (when they were in Poland) or for a recreational purpose (as a holiday home) and found in the Husband's favour that there were two occasions of stay in the Poland property.

15 In my view, the two occasions of stay were insufficient to satisfy s 112(10)(a)(i) of the Charter. For assets acquired prior to marriage, the subsection specifically states that the asset must be "*ordinarily* used or enjoyed" [emphasis added] for the purposes set out therein. The property must, *in fact*, be 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. If parties had *intended* to do so, but eventually failed to carry through with the intention, it is an insufficient basis for the asset to be considered a matrimonial asset. I therefore find that the Poland property is not a matrimonial asset.

16 The Judge's second ground for division applied the law of resulting and constructive trusts in finding that the Husband had a 30% beneficial interest in the Poland property.

17 However, the focus of s 112 of the Charter is to treat all matrimonial assets as community property to be divided in accordance with the principles set out in the section (see *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 at [40]). A court exercising jurisdiction under s 112 uses a broad range of factors, with judgment resting on what is "just and equitable". In contrast, principles

of property law, which include the law of resulting and constructive trusts, are generally more concerned with the *intention* of the parties. In this respect, the power of division in s 112 may be contrasted with that of s 59 of the Charter, which allows the court to decide property issues in a summary way in accordance with property law. In this instant case, parties were not seeking a resolution on any question of title or possession of the Poland property. Section 59 of the Charter was thus inapplicable. Parties too had not applied for relief under this section. Parties had not made submissions or addressed the evidence for the use of s 59 or property law principles. For these reasons, it was not appropriate to make a finding that the Husband had 30% beneficial interest in the property, nor to premise a division of property on the basis solely of trust law.

18 In any event, in view of my earlier finding that the Poland property does not fall within the scope of a matrimonial asset as set out in s 112(10) of the Charter, the logical consequence, whether or not trust principles are in play, is that the court does not have the *power to divide* the Poland property under s 112(1), which is confined to the division of matrimonial assets.

19 Nevertheless, that is not the end of the matter. In dividing *any* matrimonial property, the court is focused on what is just and equitable with reference to a broad range of factors set out in s 112(2) of the Charter. Here the main matrimonial asset was the Scotland property. Parties have not appealed on the division the Judge made for the Scotland property. However, this appeal functions as a rehearing of the matters below, and the issues are related. *Should the unusual history of the case with respect to the Poland property be considered in the context of the division of the Scotland property?*

20 A crucial question is whether the Charter allows for it. At the outset, it must be recognised that the list of factors set out in s 112(2) of the Charter is not exhaustive in so far as the court is to have regard to "all the circumstances of the case". Section 112(2)(g) of the Charter requires, without any restriction as to time period, the court to take into account "the giving of assistance or support by one party to the other party" as one of the relevant factors in determining a just and equitable division of the matrimonial assets. I am of the view that the section is wide enough to encompass pre-marital contributions that enhance a consequent marriage.

21 Of relevance is *Smith Brian Walker v Foo Moo Chye* [2009] SGDC 256, where the wife had cohabited with the husband from 1990 until their marriage in 1996. In 1994, the wife helped the husband to secure a turnkey consultancy project which paid him a lump sum consultancy fee of S\$350,000 and an overseas monthly allowance of RMB2,000 a month. The husband was the project consultant from July 1995 to 1997 and the wife said that this project had put the husband in good stead for his subsequent employment with other companies. The District Court found that the wife's most significant contribution towards the marriage was in helping the husband to secure the consultancy project. This was in spite of the fact that the contribution had occurred prior to the marriage. On appeal, Steven Chong JC (as he then was) accepted the wife's contribution as contribution made towards the marriage. This decision was referenced in the High Court decision of *ACY v ACZ* [2014] 2 SLR 1320 recently.

22 On the basis, then, that the statute allows for it, the question that follows is whether the court, in exercising its broad discretion, should take it into account. Returning to the facts of the present case, it is not disputed that the Wife gave up her job in May 2001 and moved to Scotland to stay with the Husband in June 2001. At that point in time, the Husband had one remaining apartment with his previous fiancée and that apartment was sold in August 2001. The Husband then made two payments of £7,500 each towards the purchase of the Poland property in September and December 2001. Indeed, the Wife (in advocating use of the presumption of advancement) took the position that the parties were already in a "domestic relationship" from June 2001 and the Husband's contributions

towards the Poland property was to be seen in that context. The Judge, after hearing the evidence and cross-examination of the parties, found the presumption of advancement rebutted. She held that the property was intended for use as their vacation home and for their future lives together. Looking at the facts of the case in totality, the causal link between the Husband's contribution and their joint lives was clear. This contribution eventually resulted in a marriage of more than ten years.

23 In weighing up the circumstances, I am of the view that the court may take into account the Husband's contribution towards the purchase of the Poland property, even though it was purchased before the marriage, because this enabled parties to start off their marriage on a secure foundation and functioned as a platform from which they built up their joint lives together. By the Husband having made this investment, the Wife is also presently on a more financially sound footing than before she met him: the Poland property was valued by her at S\$125,686.65, almost double the initial purchase price; she also gets a share of the Scotland property.

24 A fundamental question was the amount to be placed on that pre-marital financial contribution vis-à-vis the division of the Scotland property, in all the circumstances of the case. It is not disputed that the Wife had not made any financial contribution to the Scotland property as she was unemployed from May 2001. She had, however, she said, put in a significant amount of effort in renovating and redesigning the Scotland property; some of the mortgage was also paid for out of rental proceeds after the parties relocated to Singapore. Of primary importance was the homemaker role she played in looking after the husband and the children. And she had played this role in the household prior to the marriage as well, from May 2001. Parties married later when she was pregnant with their first child.

25 In my judgment, looking at all the circumstances of the case, and bearing in mind that the Wife now has the full benefit of the Poland property, a just and equitable division of the Scotland property would be 25% in favour of the Wife and 75% in favour of the Husband. In monetary terms, this works out to S\$59,358.50 of the sale proceeds from the Scotland property. This is higher than the Judge's initial order of S\$45,396.90. The difference lies in the manner of treatment of the Poland property. It was not a matrimonial asset under Singapore law and thus could not be divided as such, nor should I make an order that had the effect of such a division. Neither could I deduct the Husband's beneficial share using property principles. Instead, as explained, I am applying the s 112 approach vis-à-vis the division of the Scotland property. Section 112 gives the court the legislative mandate to view the marriage – and each party's contributions – in its totality, and then to divide the Scotland property with the court's view of what would be just and equitable, using the measure of discretion allowed by statute. Such a conclusion must be a broad brush one, with mutual respect for each spouse's economic and homemaking contributions: *NK v NL* [2007] 3 SLR(R) 743.

26 For the avoidance of doubt, regarding the other matrimonial assets in contention, the Judge ordered the Husband to pay the Wife a sum of S\$10,000 in satisfaction of the Wife's claims against the Husband's bank accounts and car. The parties have not contested this part of the Judge's order and I see no reason to disturb the Judge's order.

The return air ticket to Poland

27 It is not disputed that prior to the finalisation of the divorce, one of the benefits which the Husband enjoyed under his employment contract was the provision of air tickets for the children and the Wife, which she used for trips to Poland. Upon the finalisation of the divorce, the Husband's employer will continue to fund the children's air tickets but not the Wife's.

The Wife's arguments

28 The Wife is seeking a separate sum for the cost of a return air ticket to Poland on a yearly basis over and above the maintenance sum that the Husband has been ordered to pay the Wife on a monthly basis, because she has had this benefit for the last seven years. Further the maintenance sum had been reduced from November last year on the Judge's expectation that she would find employment, but she has not managed to secure employment.

The Husband's arguments

29 The Husband pointed out that he had already remarried and the monthly maintenance he paid was sufficient. He also referred to the Judge's observations that the Wife was well educated and her income could supplement the maintenance she received from the Husband. The Wife's difficulty in obtaining employment was attributed to her setting her expectations too high.

The Judge's decision

30 The Judge first estimated the Wife's expenses to be in the region of S\$2,000. The Judge also took into account the fact that the Wife's last drawn income was US\$1,200 in 2001 and that she had not worked for 13 years. Nevertheless, the Judge noted that the Wife had acknowledged that it was possible for her to earn about S\$2,200 to S\$2,500 per month. The Judge observed that the Husband had already agreed to contribute the sum of S\$100 per month for travel-related expenses and this was one of the components that had been taken into account for the purpose of determining the monthly maintenance order. It was further acknowledged that the Husband was responsible for providing the Wife with accommodation, the services of a full-time domestic helper and paying for the children's expenses. In the circumstances, the Judge found that the Husband should not be made to bear the additional costs of the return air ticket to Poland.

My decision

31 It is common practice not to make a separate reimbursement order for travel where there is a monthly sum set aside. Christopher Lau JC in *Michelle Hong Chi Fung (m.w.) v Lin Cheow Sye and another* [1995] SGHC 267 observed that the "maintenance [did] include a share in the cost of the [wife's] air tickets". In that case, the wife was from Hong Kong and the parties had entered into an earlier agreement, where the husband was responsible for providing two return air tickets to Hong Kong each year until the wife remarried. Nevertheless, Lau JC did not see it fit to incorporate the provision of air tickets as a separate order given that the maintenance sum ordered in favour of the wife already took into account the cost of the wife's air tickets.

32 The issue then is whether, *on the facts, the maintenance sum ordered reasonably includes such travel expenses*. For this reason, although that particular order was not under appeal, I turned my attention to the monthly maintenance sum ordered.

33 Regarding the monthly maintenance sum, there is a discrepancy in the maintenance sum first ordered by the Judge and the Supplemental GD. In the initial order, because the Judge expected the Wife to commence work and bear a part of her own expenses, the Judge ordered the Husband to pay the Wife maintenance of S\$1,200 per month from 3 November 2014. This is also reflected in the notes of evidence recorded by the Judge on 26 June 2014. In the Supplemental GD released on 10 December 2014, the Judge put the post-3 November sum as S\$1,500.

34 This discrepancy was highlighted by the Wife in her supplemental written submissions, where she stated that she was paid S\$300 short in November and December 2014. The Husband has paid maintenance of S\$1,200 per month with effect from November 2014. Those payments must be correct

given the order made by the Judge.

35 Looking at this issue of maintenance again, at [12] of the Supplemental GD, the Judge set out a thorough breakdown of the Wife's claimed expenses. In brief, the Wife claimed that her monthly expenses amounted to S\$3,000, while the court's assessment put the figure at S\$1,500. The Judge then added a further sum of S\$500 per month to the Wife's share of household expenses to arrive at an estimated figure of S\$2,000 per month. It was on this basis that the Judge arrived at the conclusion that the "\$1,500-00 per month award" would pay for the Wife's personal expenses (after 3 November) if she wanted to travel. I find the figures set out and reasons given in the Supplemental GD for the sum of S\$1,500 to be valid and fair.

36 It is useful at this juncture to consider the expenses for which the Husband is currently responsible, whether directly or indirectly through his employment benefits:

- (a) rental for the Wife and the children's current residence, amounting to S\$5,200 per month;
- (b) hire purchase payments for the Wife's car, amounting to S\$1,200 per month;
- (c) utilities, telephone, cable television and internet bills;
- (d) payment for the foreign worker's levy for the Wife's foreign domestic worker, the costs of her medical check-ups as required by the Ministry of Manpower, the insurance associated with engaging a foreign domestic worker and to provide her with airfare for her return to her homeland at the expiry of her employment contract;
- (e) healthcare insurance for the children;
- (f) return air tickets for the children to a destination of the Wife's choice once a year; and
- (g) the children's school fees and bus fares.

37 Over and above the contributions set out above, the Husband is also paying maintenance of S\$2,000 per month for each child. This adds up to S\$4,000 per month for the children's maintenance alone. With reference to the breakdown in expenses set out above, the Husband's financial contributions are by no means insignificant, even without taking into account the maintenance for the Wife.

38 At the same time, the Wife is still enjoying the benefit of the rental home and the car through the Husband's housing allowance. In addition, she receives the rental income from the Poland property. In her written submissions, the Wife stated that she had been receiving rent amounting to PLN 1,000 to PLN 1,200 (S\$400 to S\$480) per month.

39 Having regard to all the relevant circumstances, I order that the Wife's monthly maintenance be set at S\$1,500 per month from 3 March 2015. On this basis, and taking into account the Wife's age and her future employment prospects, I agree with the Judge's view that the Husband should not be made to pay for the Wife's air ticket to Poland over and above the maintenance sum ordered in favour of the Wife. While the Wife took issue with the Judge's comment that it was possible for her to earn up to a maximum of \$2,500, her expected share of the household expenses envisages that she could take an offer of employment at a much lower salary.

Supplemental bundle adduced at appeal hearing

40 At the hearing of the appeal, the Wife used supplemental submissions which included tables based on existing evidence as well as new evidence. I should mention for the avoidance of doubt that there was no application to adduce further evidence on appeal; neither did I take any of the additional evidence into consideration. Evidence had been canvassed at length in the trial below, with cross-examination, and the Judge's findings were made thereafter. The extra materials did not affect the evidence in any crucial way and did not add to the arguments: there was thus insufficient ground to admit the new evidence on appeal (as required in these cases: see *ACU v ACR* [2011] 1 SLR 1235).

Conclusion

41 For the reasons set out above, the appeal is partially allowed. I make the following orders:

- (a) The Poland property is not to be divided. The Wife is to retain the Poland property in her sole name.
- (b) The balance sum of S\$237,434 arising out of the sale of the Scotland property is to be apportioned between the parties as to 25% to the Wife and 75% to the Husband. The Wife's share is S\$59,358.50.
- (c) The Husband is to pay to the Wife the sum of S\$59,358.50 within 14 days from the date of this order.
- (d) The Husband shall pay the Wife monthly maintenance of S\$1,500 with effect from 3 March 2015.
- (e) Liberty to apply.
- (f) All other orders made by the Judge are to stand.

42 I shall hear parties on costs.