

TOE v TOF
[2020] SGHCF 18

Case Number : Divorce (Transferred) No 3134 of 2019
Decision Date : 26 October 2020
Tribunal/Court : High Court (Family Division)
Coram : Choo Han Teck J
Counsel Name(s) : Siaw Susanah Roberta (Siaw Kheng Boon & Co) for the plaintiff; Defendant in-person.
Parties : TOE — TOF

Family Law – Custody – Care and control

Family Law – Custody – Access

Family Law – Maintenance

Family Law – Matrimonial assets – Division

26 October 2020

Choo Han Teck J:

1 The plaintiff wife is a 53-year-old homemaker and the defendant husband is a 54-year old former fund manager. The parties were married on 24 November 2000. They have, by consent, joint custody of their ten-year old son. On 9 December 2019, interim judgment was granted on the basis that the parties had been separated for four years since November 2012. The matters for determination before me were care and control of and access to the child, maintenance of the wife and the child, and the division of matrimonial assets. I made my orders on 13 October 2020 and these are my grounds.

2 I shall address the issue of care and control of and the child first. Counsel for the wife, Ms Siaw Susanah Roberta, sought sole care and control to the wife with reasonable access to the husband. She argued that the husband had persistently refused to work with the wife on matters concerning the child's welfare, and had deliberately obstructed the wife's access to the child. Emphasis was placed on the fact that the husband had previously cancelled the child's Student Pass without the wife's consent or an Order of Court, causing the child to be unable to attend his school, [School X], for about six months. The husband, who was unrepresented, sought shared care and control or, in the alternative, sole care and control to him in the event that the wife refused to cooperate in co-parenting.

3 The interim arrangement of shared care and control is not working well as it is disruptive to the child and has created more conflicts between the parties. Moreover, the child himself has stated that he does not like the current access arrangement. The husband intends to return to the UK to care for his aged mother. In contrast, the wife, a Korean, intends to continue residing in Singapore, where she hopes to earn a living by opening a small business. The child was born in Korea but came to Singapore when he was two months old, and has attended [School X] ever since. He appears to have several close friends in [School X] and is performing well. Given these circumstances, I am of the view that

the wife should be granted sole care and control of the child. I am confident that the wife will be able to provide the child with a stable and nurturing environment in his growing years. I also accept the wife's evidence that she would have less support from family and friends if she were to relocate to the UK to be with the child.

4 I am aware that the child also enjoys a close relationship with his father. I therefore think that it is appropriate to grant overnight access to the husband from 2pm on Saturday to 2pm on Sunday, as well as one mid-week access from 6pm to 9pm on a day to be agreed between the parties. Access during the school holidays shall be half to each parent. Given the circumstances of this case, and the fact that the child is ten years old, articulate and intelligent, with access to email and his mobile phone adding to further contact with the father, this arrangement achieves a fair balance between the child's time with each of his parents and also affords him sufficient time for his own commitments and activities, including schoolwork and friends.

5 I next address the matters pertaining to maintenance. The interim maintenance orders were that the husband pay S\$5,000 a month and S\$4,100 a month to the wife and the child respectively. In addition, the husband was to pay directly for the following:

- (a) the child's school fees and other school-related activities;
- (b) the child's enrichment classes and tuition where necessary;
- (c) all of the child's existing insurance policies; and
- (d) the child's medical and dental expenses.

6 Although the wife has a higher education qualification in hospitality and worked as a cabin crew member for more than ten years, it is undisputed that she has not been employed since the parties were married in 2000, and that she depended on the husband for financial support throughout the marriage. It is clear that the wife requires some financial assistance to help her as she has just begun some temporary low-paying jobs but has not yet found a stable, permanent one.

7 The husband was working as a fund manager with Tudor Capital Pte Ltd from 2007 to 2011. After leaving Tudor Capital, the husband incorporated Jagger Technologies Pte Ltd ("Jagger Singapore"), of which he is the sole shareholder, and continued to work as a fund manager under this company. Based on the husband's IRAS Notices of Assessment, the husband's income was approximately S\$49,538 a month in 2011 but decreased to about \$10,000 a month from 2012 to 2015. The husband claims that he has not earned an income since 2016 and is currently in debt. Yet, as noted by District Judge Edgar Foo ("DJ Foo") in *TOE v TOF* [2017] SGFC 45 at [61], despite this apparent drop in income, the husband was nevertheless able to rent a property for S\$20,000 a month, pay S\$2,500 a month for a car, pay for his son's school fees amounting to S\$2,657 a month and hire a domestic helper. The husband also did not deny the wife's allegations that he had taken the child on numerous overseas trips to the United Kingdom, Hong Kong and Maldives in 2016 to 2017, and that he had flown business class on these trips. Furthermore, the husband complained, in the hearing before me, that he was effectively paying double maintenance because he had (voluntarily) purchased numerous gifts for the child, such as tennis and football equipment, on top of fulfilling his existing maintenance obligations. In my view, the husband's spending patterns are not consistent with that of an individual who has no income, much less one who is in debt. Based on the evidence before me, I am satisfied that the husband is fully capable of supporting himself, the wife and the son. I therefore affirmed the interim maintenance orders.

8 I turn finally to the division of matrimonial assets. As several of the assets are foreign assets, I adopt the following exchange rates (which were proposed by the wife and not disputed by the husband):

- (a) 1 USD: 1.4 SGD
- (b) 1 GBP: 1.76 SGD
- (c) 850 KRW: 1 SGD

9 The only disclosed assets consist of —

- (a) a deposit paid by the wife for her mother's rented apartment in Korea;
- (b) a Korean property owned by the wife; and
- (c) the wife's bank accounts.

All three assets belong to the wife. The husband claims to have no assets whatsoever. This is disputed by the wife, who asserts that the husband has assets amounting to S\$39,474,303.30.

10 Parties in matrimonial proceedings are duty-bound to make full and frank disclosure of their assets. And the failure to do so would leave the court the only option of drawing an adverse inference against him or her. The effect of the adverse inference is that the court can choose to give a value to what it considers to be the undisclosed assets or to give a higher percentage of the disclosed assets to the other party (see *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 at [66]). As shall be seen below, these principles are of fundamental importance in a case like the present, where the husband has persistently refused to make full and frank disclosure of his assets. It is obvious that from 2012 when the marriage broke down, the husband had set about making his purse seem small and empty, and withheld all information as to his income and assets. Moreover, the husband's demeanour throughout the proceedings gave me further reason to disbelieve whatever limited evidence he put forward. He was glib and theatrical when it suited him in the course of presenting his case, including a moment when he broke down in tears. But his hard and arrogant self emerged after I had read the orders to the parties, and I had to caution him that he would be held in contempt should he continue as he did. The wife, in contrast, was straightforward and forthright. In a marriage, spouses have to be honest and forthright to each other, in a divorce, they have to be honest and forthright to the court, especially in the difficult task of dividing matrimonial assets and making orders for the welfare of the children of the marriage.

11 I begin by determining the value of the disclosed assets, which the wife estimates to be as follows:

- (a) the value of the deposit for her mother's rented apartment is KRW280,000,000 (S\$325,500);
- (b) the net value of the Korean property (after deducting the tenant's deposit of approximately S\$88,000) is S\$17,000; and
- (c) the value of the money in her bank accounts is S\$47,888.

12 In his submissions and during the hearing before me, the husband disputed the extent of the

wife's contributions to these assets but did not seriously challenge her valuation of the same. I therefore add a sum of S\$390,388 (being the total value of the wife's assets) to the parties' matrimonial pool.

13 Next, I deal with the husband's alleged assets. According to the wife, these consist of the following:

- (a) an Audi motor car valued at S\$140,000;
- (b) money in the bank accounts of Jagger Singapore, amounting to at least S\$1,050,000.00;
- (c) money in the bank accounts of Jagger Technologies Cayman Ltd ("Jagger Cayman"), amounting to at least S\$2,236,404.18;
- (d) sale proceeds from the sale of the parties' matrimonial home, "The Peak", amounting to at least S\$5,585,309;
- (e) a property investment in Barama Bay, Phuket with a value of at least S\$6,082,585;
- (f) a property in the UK with a value of at least S\$968,000;
- (g) a property investment in Bali with a value of at least S\$6,160,000;
- (h) shares in Kings Keys Capital Partners ("KKCP") with a value of at least S\$1,584,000;
- (i) shares in Barclays PLC with a value of at least S\$75,005.12; and
- (j) cash amounting to at least S\$5,200,000.

14 I briefly address each of the abovementioned assets in turn. In relation to the Audi car, the husband informed the court, at the hearing for FC/SUM 648/2020 ("SUM 648") before District Judge Toh Wee San ("DJ Toh") on 28 May 2020, that he no longer owns the said Audi car, and that he is presently renting another car. DJ Toh had accordingly ordered him to provide documentary evidence of the net sale proceeds of the car and the rental charges incurred for the new vehicle pursuant to s 63(1) of the Family Justice Rules 2014 (S 813/2014) ("FJR"). These documents were never provided by the husband. The wife submits that in view of the husband's omission, an adverse inference ought to be drawn against him. I agree and do so accordingly.

15 In relation to Jagger Singapore, the wife had managed to obtain several bank statements of Jagger Singapore's Standard Chartered account before leaving the matrimonial home in 2014. These statements show that a sum of USD750,000 had been deposited into the bank account during the period from 2012 to 2013. In SUM 648, DJ Toh ordered, pursuant to s 63(1) of the FJR, that the husband provide all Jagger Singapore bank statements from the date of account opening to date, in an affidavit to be filed and served no later than 4 June 2020. Again, the husband did not comply with these directions. I therefore draw an adverse inference against the husband in this regard.

16 The position in relation to Jagger Cayman is more complicated. The husband admits that he is a director and manager of Jagger Cayman but denies that he is a shareholder. Based on bank statements taken by the wife before she left the matrimonial home, there were numerous transactions between Jagger Cayman's account and the parties' joint accounts, as well as between Jagger Cayman's and Jagger Singapore's bank accounts. The wife argues that this demonstrates that the husband treats Jagger Cayman as his own company and that he had used the monies in Jagger

Cayman's account "whenever and however he wanted". Furthermore, Jagger Cayman's bank statements were sent to the parties' matrimonial home for many years. In the premises, I am inclined to agree with the wife that the husband is more than a mere director and/or manager of Jagger Cayman. I therefore draw an adverse inference against the husband for refusing to disclose the true extent of his interest in the company.

17 As for the matrimonial home, the wife says that the parties received proceeds of S\$5,585,309.63 from the sale of the apartment, which was initially deposited into the parties' joint account but subsequently transferred by the husband to Jagger Cayman's Standard Chartered account. The husband claimed, during the hearing of MSS 1826/2015 before DJ Foo, that he had made the transfer in order to pay off his debts to Jagger Cayman. I am unable to see any basis for this bare assertion which, it seems to me, is no more than a convenient afterthought on the husband's part. I therefore draw an adverse inference against the husband in respect of his failure to fully account for the sale proceeds of the matrimonial home.

18 The wife also asserts that the husband has properties and/or property investments in Phuket, Bali and the UK. In respect of the Phuket property, the wife claims that the husband had previously informed her that he and a fellow friend had set up a company to invest in a piece of land in Barama Bay, Phuket. The wife produced records showing that the husband had transferred sums of money to various parties in Thailand in or around 2012, including a payment of USD163,463.33 with the details "Purchase Sor Kor 1 Baht 5,000,000 for purchase of land in Thailand". Also adduced by the wife was a letter from a Thai law firm to the husband with the subject "Barama Bay — Invoice No. 680015881". The letter and the accompanying invoice were sent to the parties' matrimonial home. Based on the documentary evidence before me, I am satisfied that the husband indeed made a property investment in Phuket, and that he has failed to make full and frank disclosure of the same. I therefore draw an adverse inference against him in this regard.

19 The wife also alleges that the husband owns a property in Nottingham, UK that is valued at GBP643,000–711,000. This house is registered in the husband's mother's name, and the husband argues that the purchase price of the property was paid for by his mother. In response, the wife argues that the husband periodically sent large sums of money to his mother, which must have been used to pay for the UK property. In my view, there is insufficient evidence to suggest that the husband had a legal or beneficial interest in the UK property. I therefore decline to draw an adverse inference against the husband in this regard.

20 As for the property investment in Bali, the wife's evidence is that she and the husband gone to Bali together to choose a piece of land, and that the husband had subsequently purchased this piece of land together with one Neil Franks. In support of this contention, the wife adduced a bank statement showing that a sum of \$2,679,420 had been transferred from their joint account to Neil Franks on 19 June 2008 with the reference "Pmt for Property Investment". When the husband was cross-examined on the Bali property investment in MSS 1826/2015, he stated that he did not own the Bali property but admitted that he had "invested into a vehicle" as a "scheme or mechanism.. to gain control over real estate". The husband now avers that he does not and has never made such an investment. In my view, the husband has not made full and frank disclosure of the Bali property investment and I therefore draw an adverse inference against him in this regard.

21 I now consider the shares which the husband allegedly owns in KKCP and Barclays PLC. During the hearing for MSS 3796/2019 before District Judge Kathryn Thong, the husband produced an Agreement of Sale and Purchase of Shares showing that he had agreed to sell 25 shares in KKCP for GBP750,000, with the right to repurchase the shares at GBP900,000. He subsequently admitted in oral evidence that these shares represented approximately 25% of the total shares in the company. The

wife says that in the absence of any incontrovertible evidence by the husband that he only owns 25 shares in the company, this court must assume that he is the sole shareholder of the company, and that his shares are worth at least GBP4.5m. I disagree with the wife's submission. In my view, there is nothing to suggest that the husband owns or owned any shares in KKCP beyond the 25 shares which he has already disposed of. I will therefore not draw any adverse inference against him in this instance.

22 Where the Barclays PLC shares are concerned, the wife relies on a copy of a Barclays Tax Voucher addressed to the defendant, showing that he had 35,588 shares in Barclays PLC as at 7 December 2012. The 35,588 shares are presently valued at S\$72,005.12. The husband claims to have sold the shares but he has not furnished any evidence of the same. In the circumstances, I find that the husband has failed to make full and frank disclosure of his Barclays PLC shares and I draw an adverse inference against him in this regard.

23 I turn finally to the husband's cash assets. In the husband's Notice in Response to Request for Interrogatories dated 30 January 2020, he refused to give details of any bank account which he holds, whether in Thailand, the UK, Hong Kong, Singapore or elsewhere. I agree with the wife that this is inherently unbelievable. Based on the husband's employment history, his financial status during the marriage, and his current spending patterns, it is clear that the husband must have cash assets that he is unwilling to disclose. I therefore draw an adverse inference against him in this regard.

24 Having established the pool of matrimonial assets, I now consider the parties' direct and indirect contributions to the marriage. The wife argues that the direct contributions should be apportioned 97:3 in favour of the husband, and that the indirect contributions should be apportioned 30:70 in favour of the wife. This gives rise to an average ratio of about 36.5:63.5 in favour of the husband. The husband does not object to the ratio of direct contributions but asserts that the wife's indirect contributions must be less than 70% since she had the support of "domestic help, nannies, and family members living with [the parties] to care for [the child]". I accept that the wife had the assistance of domestic helpers at certain points of the marriage, but I disagree that her indirect contributions should be diminished on that basis. It is clear that before the breakdown of the marriage, the husband was largely preoccupied with his career and that the wife, as a homemaker, had devoted her full time and attention to managing the parties' properties and caring for the husband and the son. Having considered all the circumstances of the case, I am of the view that the percentages of direct and indirect contributions proposed by the wife are appropriate.

25 Given the husband's plans to relocate and the severe acrimony between the parties, my view is that the best approach towards the division of matrimonial assets in the present case would be for the husband to pay a lump sum to the wife in full and final settlement of the division of matrimonial assets. The question, then, is how to arrive at a just and equitable sum. My task in this regard has been made more complicated by the husband's persistent failure to disclose the full extent of the assets within his possession. The difficulty with finding a figure based on adverse inferences is that it is not a figure established by proof, but in finding a fair sum on that basis the court should not give a discount that my result in unfairness to the ex-spouse. In this case, rounding the wife's contributions to the marriage with her claim for S\$5m and the numerous adverse inferences drawn against the husband, I am of the view that S\$4m is a reasonable figure. Between the competing claims of nil assets (husband's case) and almost S\$40m (wife's case), the little evidence that we have inclines towards the latter, and is totally against the husband's assertion that he has no assets.

26 Only one minor issue remains: The wife wishes for the husband to return her personal belongings, namely her jewellery and watches (consisting of two Tiffany rings, two Tiffany necklaces, a 1.35 carat diamond ring, a pair of pearl earrings, a pearl necklace, a Pandora bracelet, a Cartier

watch, a Rolex watch and other accessories, all of which are kept in the parties' safe), paintings, handbags and clothes. She also wishes to have half the furniture, kitchenware (including a dinner set, plates and crockery that she had bought from Korea and Japan), Christmas tree decorations and bedclothes. The husband did not object to this request. Moreover, although some of these items may have been gifts from the husband, the court has discretion to exclude *de minimis* inter-spousal gifts from the pool of matrimonial assets (see *Tan Hwee Lee v Tan Cheng Guan and another appeal and another matter* [2012] 4 SLR 785 at [48]–[49]). Considering the size of the pool of matrimonial assets in the present case, I am of the view that the value of the items requested by the wife is *de minimis*, and I accordingly granted her request.

27 In summary, my orders were as follows:

- (a) The parties shall have joint custody of the child.
- (b) The wife shall have sole care and control of the child. The husband shall have overnight access to the child from 2pm on Saturday to 2pm on Sunday, and one mid-week access from 6pm to 9pm, on a day to be agreed between the parties. Access during school holidays shall be half to each parent.
- (c) The husband is to pay monthly maintenance of S\$5,000 to the wife and S\$4,100 to the child. In addition, the husband is to pay directly the following:
 - (i) the child's school fees and school-related activities;
 - (ii) the child's enrichment classes and tuition, where necessary;
 - (iii) the child's existing insurance policies; and
 - (iv) the child's medical and dental expenses.
- (d) The husband is to pay the wife the sum of S\$4m in full and final settlement of the division of matrimonial assets.
- (e) The husband is to return the wife her personal belongings, namely her jewellery and watches (consisting of two Tiffany rings, two Tiffany necklaces, a 1.35 carat diamond ring, a pair of pearl earrings, a pearl necklace, a Pandora bracelet, a Cartier watch, a Rolex watch and other accessories, all of which are kept in the parties' safe), paintings, handbags and clothes.
- (f) The husband is to return the wife half the furniture, kitchenware (including a dinner set, plates and crockery that she had bought from Korea and Japan), Christmas tree decorations and bedclothes.
- (g) There shall be liberty to apply.
- (h) There shall be no order as to costs.