

Smith Brian Walker v Foo Moo Chye Julie
[2009] SGHC 247

Case Number : D 649/2007, RAS 38/2009
Decision Date : 29 October 2009
Tribunal/Court : High Court
Coram : Steven Chong JC
Counsel Name(s) : Tan Siew Kim (Wong Tan & Molly Lim LLC) for the plaintiff; Subramanian s/o Ayasamy Pillai (ACIES Law Corporation) for the defendant
Parties : Smith Brian Walker — Foo Moo Chye Julie

Family Law

29 October 2009

Judgment reserved.

Steven Chong JC:

1 The respondent husband and appellant wife were married on 6 March 1996. The husband is a British citizen and the wife is a Singaporean. The marriage lasted 11 years and the couple has been living separately since July 2006. They have no children from this marriage. The husband has three children from his previous marriage. The husband filed for divorce on 9 February 2007 and interim judgment of divorce was granted on 18 May 2007 on the ground that both parties had behaved in such a way that each of them cannot reasonably be expected to live with the other. The District Judge who heard the parties on the ancillary matters made the following orders on 23 March 2009:

- (a) The matrimonial flat at 220 Westwood Avenue #02-07 The Floravale shall be sold in the open market and the proceeds of sale after payment of the outstanding mortgage and the costs and expenses of sale shall be divided in the proportion of 67% to the wife and 33% to the husband. Each to reimburse their respective Central Provident Fund ("CPF") accounts from their own share of the net proceeds of sale.
- (b) The husband is to pay to the wife \$23,100 being 15% of the market value of 8 Langlaw Road, Mayfield, Dalkeith, Scotland.
- (c) Each party to keep all other assets in his or her own name.
- (d) The parties' joint accounts shall be closed and any balance in the accounts to be divided equally.
- (e) The husband is to pay the wife \$12,000 as lump sum maintenance.
- (f) Each party to bear their own costs.

Issues on appeal

2 The wife has appealed against the orders made by the District Judge in *Smith Brian Walker v Foo Moo Chye Julie* [2009] SGDC 256 ("GD"). The appeal relates to three issues:

- (a) whether the sale proceeds from the matrimonial flat should be distributed in the proportion of 67% to the wife and 33% to the husband before or after the full reimbursement of the amounts drawn out from the parties' CPF accounts so as to achieve a fair and equitable

distribution of the sale proceeds;

(b) whether apportioning 15% share in the Scottish property to the wife is fair, given that the property was purchased with the consultancy fees earned from the Shanghai Sun Island International Golf Club project ("Shanghai Project") which was awarded to the husband primarily on the strong recommendation of the wife; and

(c) whether the maintenance of \$12,000 (\$1,000 for 12 months) is fair and reasonable.

3 The wife initially also appealed against the District Judge's decision in relation to a loan of \$24,113.56 which she had extended to the husband. The husband claimed that the amount has been repaid. The District Judge made no order on the wife's claim for repayment of the loan amount on the ground that the claim did not come within s 112 of the Women's Charter (Cap 353, 1997 Rev Ed) ("Women's Charter"). During the appeal, counsel for the wife commendably conceded that the disclosed statements appear to indicate that some payment may have been made for the loan. Accordingly, the appeal as regards the loan was not pursued by the wife.

The matrimonial flat

4 In the court below, the District Judge divided the sale proceeds of the matrimonial flat in the proportion of 67% to the wife and 33% to the husband. However, each party had to reimburse their respective CPF accounts from their own share of the sale proceeds. In other words, the division of the sale proceeds is at source and not after reimbursement of their CPF accounts. Before me, the wife accepts the apportionment at 67:33 in her favour. However, she submits that the apportionment should apply to the net sale proceeds after repaying the parties' respective CPF accounts. This was the same submission made by the wife in the court below.

5 There is no hard and fast rule whether the sale proceeds should be divided at source or after repayment of the parties' respective CPF accounts. The approach to divide the net proceeds after repayment of CPF found favour in *Wang Shi Huah Karen v Wong King Cheung Kevin* [1992] 2 SLR 1025 and recently by the Court of Appeal in *Ong Boon Huat Samuel v Chan Mei Lan Kristine* [2007] 2 SLR 729. Equally, the approach to apportion at source has also been adopted in several other instances. It will be neither possible nor helpful to attempt to formulate rigid guidelines to assist in deciding whether the apportionment should be made before or after refund of the CPF contributions. This exercise of judicial discretion will depend on a number of imponderables such as their contributions and the reasons why contributions were made in particular proportions, whether the parties had pooled all their assets and in particular their cash, whether the market value of the property has risen or fallen since its acquisition, the amount of CPF and accrued interest to be refunded to the CPF account and the outstanding loan, if any. In the final analysis, each case must necessarily be assessed and decided on their facts. After all, the issue is not which approach should be preferred per se but rather which approach would achieve a fair and equitable distribution taking into account all the factors and the contributions from both parties. In this regard, it is instructive to refer to the observation by Justice V K Rajah in the case of *NI v NJ* [2007] 1 SLR 75 at [18] (quoted with the approval by the Court of Appeal in *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR 520 at [34]):

The division of matrimonial assets is a subject to be approached with a certain latitude; it calls for the application of sound discretion rather than a purely rigid or mathematical formulae. All relevant circumstances should be assessed objectively and holistically. Generally speaking, however, when a marriage ends a wife is entitled to an equitable share of the assets she has helped to acquire directly or indirectly.

6 In the court below, the wife submitted that the market price of the matrimonial flat was approximately \$450,000 whereas the husband submitted that the value was closer to \$550,000. In arriving at her decision, the learned District Judge accepted the market value as \$550,000. For this appeal, I will also apply the value at \$550,000 as accepted by the court below. Further this was also the value originally submitted by the husband.

7 It is the wife's case that if the sale proceeds are divided at source, her share would be insufficient to fully refund her CPF account. In the court below, the outstanding home loan which was used by the District Judge to arrive at the net value of the flat was \$198,999.18. This was the outstanding loan as at September 2007. Since then, further repayments have been made and the outstanding loan presently stands at about \$157,000. In addition, it was agreed that agent's commission and legal fees in the sum of \$12,000 and \$1,500 would be payable for the sale of the matrimonial flat. If the sale proceeds are divided at source, the wife's share would be insufficient to fully repay the CPF account together with accrued interest as at September 2007. It will result in a shortfall of about \$4,373.19. The husband would instead receive the sum of \$53,164.13 after full reimbursement of his CPF account. The shortfall would be even more significant if the outstanding loan of \$198,999.18 as adopted by the District Judge was used instead. If the accrued interest is calculated as of October 2009, the shortfall would be even greater:

Sale Price	\$550,000.00
Less	
(a) Outstanding Mortgage	\$157,000.00
(b) Agent's commission (2%)	\$ 12,000.00
(c) Legal fees	\$1,500.00

Balance of sale proceeds	\$379,500.00

Wife's share (67%)	\$254,265.00
Less (a) CPF	\$233,755.92
(b) Interest (as at Sept 2007)	\$24,882.27

Balance to the wife	(\$4,373.19)

Husband's share (33%)	\$125,235.00
Less (a) CPF	\$66,390.15
(b) Interest (as at Sept 2007)	\$5,680.72

Balance to the husband	\$53,164.13
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8 If the sale proceeds are divided after full reimbursement of the CPF contributions, the wife and husband will instead receive net sums of about \$32,689.93 and \$16,101.01 respectively.

Sale Price	\$550,000.00
Less (a) Outstanding Mortgage	\$157,000.00
(b) CPF Contributions:	
Wife's CPF	\$233,755.92
Interest	\$24,882.27
Husband's CPF	\$66,390.15
Interest	\$5,680.72
(c) Agent's commission (2%)	\$12,000.00
(d) Legal fees	\$1,500.00
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Balance of sale proceeds	\$48,790.94
Wife's share (67%)	\$32,689.93
Husband's share (33%)	\$16,101.01

9 During the hearing of the appeal, there was some confusion as to the financial contributions made by both parties towards the initial payment for the matrimonial apartment. At my suggestion, both parties produced an agreed schedule for the initial payment. The agreed initial payment for the matrimonial flat amounting to \$260,000 came from the following sources:-

(a) Wife's CPF account	\$169,550.00
(b) Husband's CPF account	\$20,450.00
(c) Loan extended by the husband's employer (Melchers Project Management Pte Ltd) ("Melchers")	\$70,000.00

10 It is not disputed that part of the initial payment was funded by a loan from the husband's employer, Melchers, in the tune of \$70,000. The husband claimed that the loan was fully repaid by

him while the wife maintains that \$40,000 was repaid with her funds. In the court below, the District Judge disallowed the wife's further affidavit to adduce additional documents on the ground that no reason was offered why they were not furnished earlier. The additional documents concern the bank statements of their joint accounts. The purpose was to show, inter alia, that the wife's funds had been used to repay \$40,000 to Melchers. I see no reason why the documents should be excluded given that they relate to the parties' joint account and therefore were documents within the possession and control of both parties at all material times. Moreover, there is no suggestion that the documents are not genuine or that the husband will also need leave to call rebuttal evidence. From the July 2003 United Overseas Bank statement, it is clear that \$40,000 which was repaid to Melchers came from the sale proceeds of the wife's property in Australia. In the light of this, Counsel for the husband accepted that the wife did repay \$40,000 to Melchers. In the court below, the District Judge accepted that the full \$70,000 was repaid by the husband. Since the evidence now shows that the wife had contributed at least \$40,000 over and above her CPF contributions, the division of sale proceeds as ordered by the District Judge does not appear fair or equitable as the sale proceeds would be insufficient to even fully reimburse the wife's CPF account.

11 The husband, however, submitted that if the division of the sale proceeds is applied after the reimbursement of their respective CPF contributions, it would result in an unfair distribution of about 77% in favour of the wife. I do not agree. In my view, such a result would be a fair and equitable outcome for the following reasons:-

(a) The net value of the matrimonial flat after repayment of the outstanding loan and deduction for agent's commission and legal fees is about \$380,000. The purchase price was substantially funded from the wife's CPF contribution amounting to about \$233,755.92 excluding accrued interest. Out of this amount, the wife accepted that the husband did reimburse her for the CPF contribution of \$1,000 for five months from September 2006 to January 2007. Even after deducting the \$5,000, the wife's financial contribution alone towards the purchase of the matrimonial flat would be about \$228,000 (CPF contributions) and \$40,000 repayment to Melchers. This would represent about 70% of the net value of the matrimonial flat (\$268,000 of \$380,000).

(b) In applying the 67:33 of the net sale proceeds after reimbursement of the CPF account, the wife will receive a net share of about \$32,000 compared to a shortfall of \$4,373.19. Therefore, the net difference is slightly over \$36,000. In exercising her discretion below, the District Judge proceeded on the basis that the entire \$70,000 from the Melchers loan was repaid by the husband. It is now clear that at least \$40,000 was actually repaid by the wife. This alone would be sufficient to justify the difference in approach.

12 Typically, if the marriage is very short with no children, the non-financial contributions of either spouse is usually less significant. In such situations, the court would usually apportion the sale proceeds with reference to the direct financial contributions of both spouses towards the acquisition of the matrimonial home after making some adjustment to slightly increase the share of the spouse who contributed in the way of homemaking: see *Ong Boon Huat Samuel v Chan Mei Lan Kristine* at [28].

13 In the present case, the marriage is not short. It lasted for 11 years. Furthermore, the wife did provide a significant non-financial contribution towards the marriage. The District Judge found, and I accept, that the wife's most significant contribution "was in helping the husband to secure the Shanghai Sun Island International Golf Club project" (GD at [10]). The husband was paid a lump sum consultancy fee of S\$350,000 and a monthly allowance of RMB2,000 for the project.

14 Given that the wife's financial contribution alone is at least 70% of the net market value, the marriage having lasted 11 years and her significant non-financial contribution towards the marriage, I order the net sale proceeds to be divided 67:33 in favour of the wife after full reimbursement of the parties' respective CPF accounts with accrued interest. I am conscious that in so doing this will result in a gross share of about 76% in favour of the wife. For the reasons set out above, I find that such an outcome is eminently fair in the circumstances.

Property in Scotland

15 This relates to a property in Scotland which was purchased in 1998 by the husband in the name of his parents. They were sitting tenants of the property. The Municipal Council offered to sell the property to his parents at a discounted price of £15,000. It was agreed that his parents would transfer the property to the husband after three years. This was done in October 2001.

16 The wife accepted that the property is presently valued at about £70,000 (S\$154,000). In the court below, the wife was awarded 15% of the market value of the property in Scotland. Accordingly, the husband was ordered to pay to the wife the sum of \$23,000 being 15% of the value of the property. The wife's case is that she should be entitled to at least 50% of the value of the property.

17 In my view, the 15% apportionment is too low for the following reasons:

(a) The District Judge found that the property in Scotland is a matrimonial asset for division contrary to the husband's submission that the property was a gift from his parents and therefore did not constitute matrimonial property.

(b) It is not disputed that the purchase price for the property came from the consultancy fees which the husband earned from the Shanghai Project.

(c) It cannot be disputed that the Shanghai Project was awarded to the husband on the strong endorsement and recommendation of the wife. To be fair to the husband, I should add that there is no doubt that he had the competence and ability to manage such a project. The wife's strong recommendation was acknowledged by the project owners as a key reason the project was awarded to the husband [\[note: 1\]](#):

Mr Smith was introduced to us by our ex-employee Ms Julie Foo, then the Assistant General Manager of the Club; a valuable member of our senior management team. Though we were approached by many other credible Consultants from USA and Europe and notwithstanding Mr Smith's capabilities to handle our project requirements, Ms Julie Foo's strong endorsement and recommendation of Mr Smith were the key reasons we awarded the project to him.

(d) Finally, it cannot be overlooked that the District Judge found that the wife's most significant contribution towards the marriage was in helping the husband to secure the Shanghai Project which ultimately enabled the husband to purchase the property.

18 I am mindful of the fact that the wife did not make any direct financial contribution towards the purchase of the property. Having regard to all the relevant circumstances, it is just and fair for the wife to be awarded 33% instead. Accordingly, the husband is ordered to pay the wife \$50,820 being 33% of the value of this property.

Maintenance

19 As regards the maintenance awarded, there are three sub-issues before me:

- (a) Monthly amount.
- (b) The appropriate multiplier.
- (c) Whether it should be a monthly payment or a lump sum.

Amount

20 Pursuant to s 114(2) of the Women's Charter, when making a maintenance order, the task of the court is:

to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

Section 114(1) requires the court to have regard to all the circumstances of the case, including the following matters:

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family; and
- (g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring.

21 The District Judge awarded the wife \$12,000 being \$1,000 a month for 12 months. In this appeal, the wife, who is 47 years of age, is seeking a lump sum of \$300,000 based on \$2,500 per month for 10 years. It is relevant to consider the wife's earning capacity, her medical condition as well as the standard of living which she enjoyed prior to the breakdown of the marriage. The wife resigned as office manager with Macquarie Telecom earning a monthly salary of \$5,800 in November 2006. In August 2007, the wife was diagnosed with cancer. She resumed working as a temporary secretary in July 2008 after her medical condition went into remission. Her last drawn salary as a temporary secretary was about \$3,300. She is currently unemployed. Clearly, her earning capacity has been affected by her medical condition.

22 Prior to the breakdown of her marriage, her expenses were about \$4,800 a month. The husband is 57 years old. He was very recently retrenched due to the current economic downturn. However, his last drawn monthly salary was about \$15,800 as the director of development with Ripley International. This would be indicative of his earning capacity.

23 Taking into account the fact that the wife's earning capacity has been adversely affected by her medical condition and that the marriage lasted for about 11 years, I would vary the monthly maintenance to \$2,000 instead.

Multiplier

24 The District Judge awarded maintenance only for one year payable as a lump sum having regard to the parties' needs and means and that the parties have been living apart since 2006. No authority has been cited by the husband to support a multiplier of one year in similar circumstances. In the court below, the husband had offered maintenance of \$1,000 for three years but such maintenance to be settled with the wife retaining the car which he claimed he had purchased for her. The car is registered in the wife's name and has not been fully paid up. It does not appear from the GD that in awarding a multiplier of one year, the District Judge accepted that the car was purchased by the husband for the wife or that the amount was reduced on account of the car.

25 In deciding on the multiplier, the age of the husband is relevant. He is currently 57 years old. The typical retirement age in Singapore is 65 years old. In *Yow Mee Lan v Chen Kai Buan* [2000] 4 SLR 466, ("*Yow Mee Lan*"), the District Judge had given the wife eight years maintenance as a lump sum on the basis that the husband was 52 years old at the time of the hearing and that having regard to the demands of his business, he would retire from active business at the age of 65. Judith Prakash J observed at [95]:

In my judgment, it is highly speculative to put the husband's retirement age at 60 when he is working for himself and can carry on for as long as his health permits and his financial needs require. He has a young family by his mistress and the chances are that if he can he will work beyond the age of 60 for at least four or five years, if not considerably more. Further, the husband if he were paying monthly maintenance could not expect to be relieved entirely from this obligation by reason of retirement. In the normal case of an order for the periodic payment of maintenance, the husband is able to go back to the court and ask for a variation of the order if his financial circumstances change for any reason including retirement. At that stage, the court will assess the parties' needs and assets and adjust the maintenance order so as to be fair to both parties. In some cases, it is possible that the maintenance order will be discharged entirely but this is not the most probable outcome of such a variation application. In any event, *prima facie*, the husband's obligation to maintain the wife would continue beyond his retirement and up to her remarriage or the death of either party.

The husband can be expected to retire no earlier than eight years from now. However, as I have increased the wife's share in the sale proceeds of the matrimonial home as well as the property in Scotland, I will only vary the multiplier to five years.

Whether lump sum or monthly payments

26 The law is clear that lump sum should not be ordered if the husband does not have adequate or liquid assets: see *Lee Puey Hwa v Tay Cheow Seng* [1991] SLR 198. The Scottish property is not currently liquid as the husband's parents are permitted to live on the property. Although the husband

will receive some payment from the sale of the matrimonial property and full reimbursement of his CPF contributions, the amount is also not very substantial. In the circumstances, it appears that the husband may not have the financial means to make payment in one lump sum. As such, I will not order a lump sum payment since I have increased the monthly payment as well as the multiplier. However, if the husband prefers a clean break and is able to raise funds to pay the maintenance in one lump sum, an appropriate discount rate should be applied as the wife would enjoy the benefit of immediate lump sum payment. Accordingly, I order the husband to provide monthly maintenance of \$2,000 to the wife for five years or a lump sum payment of \$100,000 (a discount of \$20,000 for immediate payment) at his option. He has 21 days to decide on which course of action he will take. If he decides to make a lump sum payment, I allow him three months to raise the money.

Conclusion

27 For the reasons above, I allow the appeal in part and vary the orders made below. Instead, my orders are as follows:

- (a) The matrimonial flat at 220 Westwood Avenue #02-07 The Floravale shall be sold in the open market and the net proceeds of sale after payment of the outstanding mortgage, the costs and expenses of sale and full refund to both parties' CPF accounts together with accrued interest shall be divided in the proportion of 67% to the wife and 33% to the husband.
- (b) The husband is to pay to the wife \$50,820 being 33% of the market value of 8 Langlaw Road, Mayfield, Dalkeith, Scotland.
- (c) Each party to keep all other assets in his or her own name.
- (d) The parties' joint accounts shall be closed and any balance in the accounts to be divided equally.
- (e) The husband is to pay the wife, at his option, a monthly maintenance of \$2,000 for five years or a lump sum maintenance of \$100,000. The option must be exercised within 21 days from the date hereof failing which the maintenance would be payable at \$2,000 per month for five years.
- (f) No order as to costs.

[\[note: 1\]](#) Defendant's Record of Appeal (Vol 3) at p 778

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