

Kwek Eng Long v Gwee Chee Deng
[2011] SGHC 96

Case Number : Divorce Transfer No 4350 of 2008
Decision Date : 19 April 2011
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Johnny Seah (Seah & Co) for the plaintiff; Jeanny Ng (Jeanny Ng) for the defendant.
Parties : Kwek Eng Long — Gwee Chee Deng

Family Law – matrimonial assets – division

19 April 2011

Lee Seiu Kin J:

Introduction

1 The defendant, Madam Gwee Chee Deng (“the Wife”), has appealed against my decision on 31 January 2011 in which I divided the matrimonial assets of the parties in the ratio of 68% to the Wife and 32% to the plaintiff (“the Husband”).

2 I had decided on this apportionment after considering the following factors:

(a) The parties married in 1963 and separated in 2004, a period of 41 years. They have four children, three sons and a daughter. They had lived as a family throughout this period. The first three children were born when they lived in Penang, the last was born in Singapore. Three of the children had health difficulties, requiring blood transfusion at birth and extra care at infancy. The Wife took care of the home and children throughout their childhood. The Wife also cooked for other partners of the Husband’s company in Penang. In 1969 the family returned to Singapore and lived in a rental flat. They lived under poor circumstances during the prime years of their lives.

(b) I found that the direct contribution of the Husband towards the acquisition of the matrimonial assets was 64.9% while the Wife’s direct contribution was 35.1%.

3 I had considered that if the Wife had made no direct contribution, in the circumstances of this case she would have been entitled to between 40% and 45% of the matrimonial assets. To arrive at the division in the situation where she had directly contributed towards 35% (rounded to the nearest percentage) of the matrimonial assets, I took the following approach: the Wife would receive between 40% and 45% of the matrimonial assets on account of her indirect contribution with the remainder split 65:35 in the proportion of their direct contribution. Applying this formula:

(a) If the Wife got 40% for her indirect contribution, and the remaining 60% split 65:35, the division would be 61:39;

(b) If the Wife got 45% for her indirect contribution, and the remaining 55% split 65:35, the division would be 64:36.

4 Looked at from all the circumstances of the case, a division ranging from 61:39 to 64:36 appears to be appropriate. I therefore took a figure midway between the two and ordered a division of 62:38 in favour of the Wife.

5 The Wife's Notice of Appeal ("NA") filed on 24 February 2011 states as follows:

TAKE NOTICE that the abovenamed Appellant, Madam Gwee Chee Deng, being dissatisfied with part of the decision [of the judge] given on the 31st day of January 2011 ... appeals to the Court of Appeal against the said decision as follows:-

1. That the Appellant be granted seventy percent of the two third in the matrimonial assets at No 28 Jalan Limau Purut, Singapore, Block 632 Bedok Reservoir Road, #01-868, Singapore and Block 152 Serangoon North Avenue 1, #01-332, Singapore;

2. That the Court had not but should take into consideration:-

(i) the value of the [Husband's] public listed and private shares when the parties separated in May 2004

(ii) the proceeds of sale of the property at 46/46A Kempas Heights, Taman Bukit Kempas, 81200 Johor Bahru, West Malaysia

when dividing the matrimonial assets between the parties.

3. That the court should only take into consideration the value of the Appellant's public listed shares as of May 2004 - \$124,056.82 (when parties separated) and not the value as of April 2009 - \$250,000 when dividing the matrimonial assets between the parties.

6 It can be seen from the NA that the Wife is dissatisfied with the following aspects of my decision:

(a) The value of the Husband's shares at the time of separation in May 2004 should have been taken into consideration.

(b) The proceeds of sale of the property at 46/46A Kempas Heights, Taman Bukit Kempas, 81200 Johor Bahru (the Malaysian property) should have been taken into consideration.

(c) The Wife's shares should have been valued at the time of separation in May 2004 rather than at the time of division in April 2009.

My grounds of decision will deal only with these three points that the Wife had set out in the NA.

7 Although the NA states that the parties separated in May 2004, it is not clear from the affidavits the circumstances surrounding this separation. However there are allusions to this by the Husband, when he stated in his affidavit that he had incurred personal expenses from June 2004. The Wife's affidavits made mention of the Husband being involved with a female third party. In any event, in an attempt to avoid divorce proceedings being taken out, the parties entered into a deed of family arrangement ("the Deed") on 2 November 2004. Under the Deed, the parties agreed to, *inter alia*, the following:

(a) The Husband would transfer to the Wife his interest as HDB tenant in a coffee shop at

Block 20 Lorong 7 Toa Payoh #01-758.

(b) Their eldest son would be added as the third joint owner of the matrimonial home at 28 Jalan Limau Purut.

(c) The Husband would receive the sum of \$980 each month from (i) rental proceeds of \$680 from a shop ("the JB shop") at Kempas Height, Johor Bahru, Malaysia; and (ii) \$300 from their second son.

(d) The JB shop would be a "family asset" notwithstanding that it is registered in the Husband's sole name.

(e) In the event that the JB shop had no tenant, the "family income" would make up the shortfall of \$680 for the Husband. If the Husband incurred substantial medical expenses, any amount in excess of the monies available from the Husband's Medisave account and insurance would be borne equally by the Husband and Wife.

"Family business" is defined in the Deed as the traditional Chinese medicine business known as "Come-Well Chinese Medicine Hall", the matrimonial home, a shop at Block 152 Serangoon North Ave 1 and a coffee shop at Block 20 Toa Payoh Lorong 7. All these four assets were the subject of the division in the present proceedings. It is clear from the Deed that "family income" is intended to mean income of the "family business". In the event, the Deed did not achieve its objective and the Husband commenced the present proceedings on 2 September 2008.

8 Points (a) and (b) in [6] above relate to certain property that the Husband had at the time of separation. The Wife alleged, and the Husband admitted, that he had left with shares in listed and unlisted companies as well as cash amounting to 70,000 Malaysian Ringgit and \$5,000. The Husband had, on affidavit made on 21 October 2009, stated that he sold the shares for about \$55,000 and that, by the time of the affidavit, he had used up the money for his living expenses and medical expenses. A total of some \$90,000 was spent over more than five years, an average of \$18,000 per year. Even with the monthly sum of \$980, there is no reason to disbelieve the Husband as the expenses included medical fees. There is certainly no evidence to disprove the Husband's assertions made on affidavit.

9 As for point (c) in [6] above, this is a question of whether the matrimonial assets should be evaluated at the time of separation or at the time of decree nisi. First of all, as pointed out in [7] above, there is little information from the affidavits about the circumstances of the separation. But quite apart from this, I am of the view that even if the parties had separated in May 2004, whether formally or *de facto*, that would not justify dealing with the issue of division on that date. In any divorce it is necessary to put all the facts before the court and this process, which entails each side garnering its own facts and putting them to the other side for its response, usually takes time. During this time, the value of those assets may increase or decrease. Making the decision on division based on the date of decree nisi would mean that the risk of a change in the value of each party's assets is shared by both sides. Making the decision at a time far removed from the final decision as the Wife had urged in the present case would mean that one or the other party may be heaped with a windfall or burdened by a loss simply because of the fact that he or she held on to the asset. I see no reason in the present case to deviate from the usual practice. It is fortuitous that the value of the Wife's shares had gone up since May 2004. If they had gone down, I have no doubt that this would not have been a cause for complaint on her part.