

ATD v ATE
[2015] SGHC 131

Case Number : DT 1693 of 2013
Decision Date : 15 May 2015
Tribunal/Court : High Court
Coram : Lai Siu Chiu SJ
Counsel Name(s) : Koh Tien Hua and Yoon Min Joo (Harry Elias Partnership) for the plaintiff; Helen Chia (Chia-Thomas Law Chambers LLC) for the defendant.
Parties : ATD — ATE

Family Law – Matrimonial Assets – Division

[LawNet Editorial Note: The appeals to this decision in Civil Appeals Nos 64 and 65 of 2015 were allowed in part by the Court of Appeal on 26 November 2015. See [\[2016\] SGCA 2.](#)]

15 May 2015

Lai Siu Chiu SJ:

1 The ancillary matters relating to the divorce proceedings between the plaintiff ATD (“the Wife”) and the defendant ATE (“the Husband”) came up for determination before this court on 3 March 2015. At the conclusion of the hearing, I made the following orders:

- (1) The net sale proceeds of No. 950 Dunearn Road #05-01 Gardenvista, Singapore 589474 (“the matrimonial home”) in the sum of \$186,097.51 were to be divided equally between the parties;
- (2) The Defendant was to pay the Plaintiff a sum of \$36,000.00;
- (3) The parties were to retain all other assets in their respective names and possession;
- (4) The Defendant was to pay the Plaintiff maintenance of \$1 per month for herself;
- (5) Parties were to bear their own respective costs of the proceedings.

2 The Husband is dissatisfied with the orders made in [1(2)] and [1(4)] and has filed a Notice of Appeal (in Civil Appeal No. 64 of 2015) against the same.

The background

3 The Husband and the Wife were married on 28 March 2008 and separated in January 2013. The Wife currently is the Deputy Director in a Ministry while the Husband is an associate director with a local university. There is one child of the marriage, a daughter who was born on 5 April 2011. On 18 September 2013, an interim judgement was granted on the Wife’s petition for divorce filed on 5 April 2013 (under s 95(3) of the Women’s Charter). The ancillary matters that were adjourned and which came up before this court for determination related to:-

- (a) Maintenance for the daughter;
- (b) Maintenance for the Wife;
- (c) Division of the proceeds of sale of the matrimonial home;
- (d) Division of matrimonial assets other than the matrimonial home;
- (e) Costs.

Custody of their daughter was no longer an issue by the time of the hearing as the parties had earlier agreed on joint custody with care and control to the Wife and reasonable access to the Husband.

The affidavits

4 Both parties filed the mandatory affidavits of their means as well as replies/rebuttals to the other party's affidavits.

5 As at the date of the hearing and earlier, the Wife earned more than the Husband (by about \$1,749 per month). However, she requested (which request the court acceded to) for \$1.00 nominal maintenance to be awarded to her in order to preserve her right to claim maintenance in case something untoward should happen to her and there was a need to do so in the future. This award is the first ground of the husband's appeal.

6 The affidavit evidence before the court showed the Husband's assets exceeded the Wife's assets by \$242,335.00. I awarded the Wife 15% of the Husband's surplus assets amounting to \$36,350.25 which was rounded down to \$36,000. This award is the second ground of the Husband's appeal.

The matrimonial home

7 Before giving my reasons for the two awards under appeal, it would be necessary to first refer to the division of the sale proceeds of the matrimonial home.

8 The matrimonial home had been purchased by three parties namely, the Wife, the Husband and the Husband's mother. The Husband's mother contributed \$560,000, which was 50% of the purchase price. The remaining 50% was funded by a loan from United Overseas Bank Ltd ("UOB") towards which repayment the Husband and the Wife contributed equally by cash payments and through deductions from their respective Central Provident Fund ("CPF") accounts. In so far as payments for the property via CPF deductions were concerned, it was agreed that the Husband had paid \$53,409.17 while the Wife had paid \$53,591.30. As for the cash component, the Husband paid the mortgage instalments direct to UOB and then claimed half back from the Wife (to the last cent according to the Wife) who would reimburse him either in cash or by transferring the sums to his account via internet banking.

9 The parties also shared equally the outgoings of the matrimonial home including maintenance fees, property taxes, the costs of renovation, and the cost of furniture and household appliances. The Wife contended (which the Husband disputed) that in addition, she alone paid for a queen-size mattress, a refrigerator, a washing machine and a dryer. She shared the household utilities bills equally with the Husband, but she alone bore all the accouchement fees and incidental expenses relating to their daughter's birth as well as her milk/food/living expenses. Although she disputed that the loan was taken, the Wife also reimbursed the Husband \$5,000 being part of a loan of \$30,000

allegedly obtained in October 2007 from the Husband's mother for renovations and furnishings, of which the Husband claimed \$20,000 was still outstanding.

10 The matrimonial home was sold in or about 2013. The Husband's mother had instituted proceedings (in Originating Summons No. 796 of 2014), but the couple settled her claim out of court and she received an agreed sum of \$627,670.12 from the sale proceeds. Less outgoings, sale/incidental expenses/disbursements and refunds to their CPF accounts, a net sum of \$186,097.51 was left for division between the Husband and the Wife; (this was the Husband's figure which the Wife accepted; her figure was a lesser sum of \$185,997.51). This court rejected the Wife's request for 60% of the sale proceeds. I held the sale proceeds should be divided equally in view of the parties' equal contributions to not only the purchase price, but all the outgoings listed in [9]. Hence each party was awarded half of \$186,097.51 namely \$93,048.76.

The parties' assets

(i) The Husband's assets

11 The court then considered the parties' individual assets. The Husband's assets included his present Housing and Development Board ("HDB") flat that he had purchased after the parties separated and where he resides, various insurance policies, three personal bank accounts (which included a fixed deposit account) and CPF savings.

12 It was noted from entries from his POSB savings book (disclosed pursuant to the Wife's discovery application) that the Husband had deposited two large sums of \$60,000 and \$300,000 on 20 November 2013 and 30 December 2013 respectively, into the account. In his affidavit filed on 12 March 2014 pursuant to the Wife's second request for discovery and her request for Interrogatories, the Husband deposed he had taken the following loans from his mother:

Date	Amount
7 March 2014	\$40,000.00
20 November 2013	\$60,000.00
30 December 2013	\$300,000.00

13 The Husband claimed the loans (totalling \$400,000) were to help him to repay his credit card debts while the remainder was held on trust for his mother. The Husband did not (as he said he would) produce evidence by way of his mother's bank statements showing corresponding withdrawals of the three sums from her bank account(s). It was also noteworthy that as of November 2013, the Husband's credit card debts amounted to about \$60,384.24 which could have been more than adequately covered by the two smaller loans totalling \$100,000.

14 Neither did the Husband furnish any explanation/particulars of the alleged trust, or why his mother (who appeared to be an astute businesswoman/investor in her own right) needed him to hold her monies on trust. He similarly claimed that the fixed deposit amount of \$150,000 placed with ANZ Bank was held on trust for his mother. Apart for his bare assertions, no evidence was produced by the Husband in support of the alleged trust.

15 The Husband had disclosed a fourth (UOB) bank account which was a joint account he held with the Wife. The UOB account had been opened in August 2007 and was solely operated by the

Husband who used it to repay his UOB credit card bills. After the housing loan had been redeemed and the sale of the matrimonial home was completed, the Husband closed the UOB account and withdrew the balance of \$1,535.20. He did not account for the said balance nor did the Wife receive any part of the sum.

16 At the hearing (according to the Wife's updated figures which counsel for the Husband did not dispute), the Husband's CPF savings were \$370,262.43 comprising of \$254,717.02 in his ordinary account, \$70,046.41 in his special account and \$45,500.00 in his Medisave account. Finally, the Husband owned a motor vehicle (a Subaru Legacy) of approximately \$34,250 in value.

(ii) The Wife's assets

17 I turn now to the Wife's assets. She had purchased a property jointly with her sister ("the jointly held property") after the parties separated and her half share, net of the outstanding mortgage was \$152,669.95. However, this property was excluded from division as, like the Husband's HDB flat in [11], it was not deemed a matrimonial asset. Also excluded from the Wife's assets was a DBS bank account jointly held with the Wife's sister as it was used to disburse the mortgage loan for the jointly held property and for the monthly mortgage instalments paid by the sister.

18 The Wife's other assets were an OCBC savings account (credit balance \$102,127.96), an OCBC current account (credit balance \$92,737.37) and a motor vehicle (a Volvo) with a negative value because the outstanding hire-purchase loan exceeded the vehicle's market value.

19 The Wife's Prudential Life insurance policy had expired on 1 July 2014 and was given a zero value. Her CPF savings were \$256,668.88 (as of 20 February 2014) comprising of \$96,206.97 in her ordinary account, \$45,500.19 in her Medisave account and \$114,691.72 in her Special account.

20 The Wife had other assets which were excluded from division namely, two bank accounts that were maintained for the parties' daughter's benefit. There was a Life Assurance Policy (worth \$30,000) that was also excluded from division as the sum was returned to the Wife's mother as part-repayment of the latter's loan to her of \$381,000 ("the Wife's mother's loan"). Part (\$250,000) of the Wife's mother's loan was extended to enable the Wife to purchase the jointly held property where the Wife currently resides with her mother and the parties' daughter. According to the Wife, the balance (about \$131,000) was to be safeguarded in the Wife's name and would only be distributed to the Wife's sisters as their inheritance after the mother's death. The Wife refused to disclose her residential address for fear of her family and her being harassed by the Husband. She claimed the Husband had verbally abused her mother when he returned to pack his belongings after he left the matrimonial home.

21 The Wife deposed she incurred rental expenses of \$4,000 per month from April to June 2013, after the matrimonial home was sold, while making arrangements for alternative accommodation for herself and the parties' daughter. After their daughter was born, the Wife deposed she stopped work for four months to look after her. As that is the period of maternity leave prescribed by law, I gave this claim no weightage in my consideration of the Wife's contributions towards the marriage. After she returned to work, the Wife's mother took over taking care of their daughter. However, when she came home from work, the Wife claimed she resumed taking care of their daughter. She asserted that the Husband never assisted her in taking care of their daughter (or helped with the household chores) even before he moved out of the matrimonial home in January 2013.

22 Apart from her direct monetary contributions to the marriage as set out earlier in [8] and [9], the Wife asserted she had made indirect contributions to the marriage by: (i) providing emotional

support to the Husband; (ii) spending time with him; (iii) taking charge of running the household and (iv) taking care of their daughter so that the Husband had all the free time to pursue his own interests and hobbies.

The findings

23 When the Husband initially filed his affidavit of means (dated 9 December 2013), he disclosed only two bank savings accounts with balances of \$12,067.75 and \$498.00. He deposed his average monthly income was \$6,720 gross and \$5,720 net. In that first affidavit, the Husband exhibited his original tax assessment form for Year of Assessment 2013 and his pay slip for November 2013 (reflecting a figure of \$6,720 as his monthly salary). The Husband had also produced a letter from his employer dated 3 January 2013 stating his annual base salary and performance bonus from then on would be \$80,631 (or \$6,719.25 per month) and \$14,600 respectively. The total earned income henceforth would be \$95,231 per annum for the Husband. However, his income tax assessment for Year of Assessment 2013 (ie relating to income for 2012) showed a figure of \$96,150 from his employment; this figure already exceeded his annual salary for 2013.

24 Despite the Wife’s request however, the Husband failed to produce his tax assessment for year of assessment 2014. The Wife accused the Husband of failing to declare he had been promoted to the post of Associate Director and failing to disclose documents such as his letter of promotion and new salary entitlement.

25 Against his stated salary of \$6,720, the Husband deposed his monthly personal expenditure totalled \$5,600 (including maintenance of \$1,300 for their daughter) which the Wife contended was excessive. In support of his rental expense of \$1,600 (for a room in a HDB flat) for one year (15 January 2013 to 14 January 2014), the Husband had exhibited an undated tenancy agreement with one Lee Yen Nee which strangely, did not have his particulars inserted as the tenant. Another example of the Husband’s questionable expense was his claim of \$180 per month on “pet care” without explanation or proof.

26 As the Wife disbelieved the Husband’s figures pertaining to his assets, she applied for discovery as well as administered Interrogatories to him (I should add that the Husband countered with similar applications against the Wife). Arising from the information/documents (including bank statements) that he provided pursuant to the Wife’s aforesaid applications, the Wife questioned the following large withdrawals made by the Husband from his POSB account:

No	Date	Remark	Amount	Source
1	19 /4/12	Fund transfer	\$41,970.61	POSB statement dated 30/4/12
2	17/5/12	Ditto	\$23,500.00	POSB statement dated 31/5/12
3	18/5/12	Ditto	\$42,000.00	POSB statement dated 31/5/12
4	13/3/13	Banks	\$7,107.80	POSB statement dated 31/12/13
5	3/1/14	Fund transfer	\$11,594.43	POSB statement dated 31/1/24
6	22/1/14	Fund transfer	\$150,000	POSB statement dated 31/1/14
		Total	\$276,172.84	

Less the \$150,000 withdrawn on 22/1/14 (which has already been addressed in [14] above), the

Husband's other withdrawals totalled \$126,172.84 for which the Wife contended no credible explanation was given

27 In his third affidavit filed on 26 Aug 2014, the Husband explained (save for item 3) that the fund transfers in [26] were payments for his credit card bills. The husband said item 3 was repayment for a friend's loan made to him on 16/4/12.

28 The Wife had also questioned the following deposits made by the Husband into his POSB account:

Date	Amount	Source
5/4/12	\$9,540.00	POSB bank statement dated 30/4/12
16/4/12	\$42,000.00	POSB bank statement dated 30/4/12
14/5/12	\$62,000.00	POSB bank statement dated 31/5/12
17/5/12	\$10,000.00	POSB bank statement dated 31/5/12
14/6/12	\$20,000.00	POSB bank statement dated 30/6/12
16/10/12	\$10,000.00	POSB bank statement dated 31/10/12
22/2/13	\$10,000.00	POSB bank statement dated 28/2/13
7/3/13	\$40,000.00	POSB bank statement dated 31/3/12
13/5/13	\$10,400.00	POSB bank statement dated 31/5/13
6/6/13	\$10,000.00	POSB bank statement dated 30/6/13
12/6/13	\$8,000.00	POSB bank statement dated 30/6/13
30/7/13	\$10,000.00	POSB bank statement dated 31/7/13

The deposits totalled \$251,940.00.

29 The Husband explained that the deposits questioned were either (i) fund transfers from his other accounts or (ii) loans (\$42,000.00 from his friend on 16/4/12 and \$40,000.00 from his mother on 7/3/12) or (iii) proceeds (\$62,000 on 14/5/12) from the sale of his motor vehicle SJW8624H.

30 The Husband denied the Wife's allegation (see [9] of this judgment) that she alone had made payment for certain household items. He further denied he spent little time with their daughter. He asserted that the Wife should not be awarded any sum as maintenance as she was a capable woman with good career prospects who could support herself on her own salary and look after her own financial needs. This contention was repeated in his closing submissions.

31 The Husband, on his part, questioned the following transactions:

- a) First, the Husband questioned the loan of \$381,000 allegedly extended to the Wife by her mother (discussed at [20] of this judgment). He pointed out that there was no necessity for the Wife to borrow from anyone at all in view of her sound financial position. If indeed the Wife had borrowed from her mother, the loan need not be repaid. He pointed out that the Wife had

contradicted herself. On the one hand, the Wife said she was to retain the balance (\$131,000) of the Wife's mother's loan for distribution to her sisters after the mother's death. Yet, the Wife claimed that she had to return the sum of \$30,000 to her mother from the Life Assurance Policy as part-payment of that loan.

b) Second, the Husband questioned the large transactions shown on a page in the bank book of the Wife's mother. This bank book was exhibited at page 59 of the Wife's affidavit of means.

c) Third, the Husband questioned the sum of \$2,000 that the Wife set aside every month for her mother as her dependent.

32 In her response to (b) above, the Wife explained that her mother's bank book showed the sums that were lent to her and deposited into the Wife's account. Her mother used to work as a cleaner and her mother's savings came from her late father's insurance pay-out after he passed away in 2002; this was from insurance coverage provided by his employer Jurong Port where he worked as a crane operator. The Wife pointed to the fact that she had provided the documentary evidence requested by the Husband, including all her bank statements from January 2012 onwards, and these showed no deposits equivalent to the amounts withdrawn from her mother's bank book.

33 The court came to the following conclusions from the conflicting affidavits filed by the parties:

(a) neither party had at the outset given full disclosure of its assets until discovery applications were applied for and/or Interrogatories were administered by the other side. That said, the Wife gave better discovery than the Husband and her explanations were more credible and were supported by documentary evidence. Even after the Wife's discovery application and rendering of Interrogatories, the Husband did not produce updated documents relating to his emoluments and his latest tax assessment, bearing in mind the ancillaries hearing took place more than fifteen months after the parties filed their initial affidavits of means;

(b) there was a tendency (not uncommon) on the part of each party to inflate his/her expenses;

(c) the Husband had a calculating nature – from the emails exhibited to his first two affidavits, it could be seen that the Husband claimed 50% reimbursement from the Wife (down to the last cent) for each and every item he expended on mortgage instalments, maintenance contributions, purchases for the family and purchases for the matrimonial home. As generosity was not part of his nature, it was highly unlikely that the Husband would have been out-of-pocket in incurring expenses over and above what he asked the Wife to reimburse him for her share.

The decision

34 As I noted at [5] of this judgment, the Wife explained why she wanted nominal maintenance of \$1.00 – to maintain her right in case a need arose for her to apply for maintenance in future. I found this perfectly reasonable. It was wholly unreasonable of the Husband to deny her this right bearing in mind that the Wife may never exercise her right at all. On the other hand, if the Wife did not have at least a nominal maintenance order in her favour, she would be precluded from making any such claim in future (see *Tan Bee Giok v Loh Kum Yong* [1996] 3 SLR(R) 605).

35 As for the lump sum award of \$36,000 the court made in favour of the Wife, the award may not have been made if the Husband had been more forthright in his disclosure obligations. It was reasonable to conclude from the manner in which the Husband filed his affidavits and provided

selective documents (before the Wife's discovery applications) that the Husband would not voluntarily disclose all his assets. Even then, there was a lingering suspicion that the Husband had not fully disclosed his assets. For instance, he could have, but failed, to produce his income tax assessment form for the year of assessment 2014 and/or a letter from his employer on his promotion to Associate Director. At the risk of repetition, the alleged loans (including the renovation loan of \$30,000) from his mother were highly suspect as the Husband did not produce one iota of evidence to substantiate any of the large amounts purportedly lent to him.

36 That being the case, the court had an option – either (i) draw an adverse inference against the Husband or (ii) give a higher percentage of the disclosed assets to the other party (see *Yeo Chong Lin v Tay Ang Choo Nancy* [2011] 2 SLR 1157 ("*Yeo Chong Lin v Tay Ang Choo Nancy*") at [64] - [66]) adopting *NK v NL* [2007] 3 SLR (R) 743 at [62]).

37 The Wife wanted \$111,539 as her 60% share of the balance sale proceeds of the matrimonial home. The court rejected her claim and awarded her 50% of the matrimonial home. It was just and equitable to divide the sale proceeds equally between the parties as the documentary evidence (particularly the Husband's emails to the Wife) strongly suggested that the parties contributed equally towards the purchase, the upkeep and the outgoings. It was difficult to accept the parties' claims that he/she had contributed more in the way of additional expenses on furniture, appliances and/or fixtures, food/provisions etc. Such claims and cross-claims cancelled one another out in any event.

38 As for the other matrimonial assets, the Wife wanted \$207,538 or 23% of \$902,339 which was the total value of all matrimonial assets other than the matrimonial property. The court awarded her \$36,000 or 15% of the Husband's surplus assets of \$242,335.00. In this regard, counsel for the Wife had produced to the court a table that showed the Husband's assets totalled \$784,340. The figure included the ANZ deposit of \$150,000 (since the court disbelieved that the sum belonged to the Husband's mother) and the balance of \$166,049.33 in his POSB savings account as of 28 February 2014. The cash portion of the Husband's assets comprising his bank account balances (including the balance in the UOB joint account at [15]) plus his CPF savings totalled \$693,343.22. The Wife's balances in her two bank accounts plus her CPF savings totalled \$454,008.63. The Husband's assets exceeded the Wife's by \$242,335.00 (the figure is incorrect and should be \$239,334.59). I awarded her 15% of the Husband's surplus assets of \$242,335.00 which amounted to \$36,350.25.63 which was rounded down to \$36,000. I should add that had the correct figure of \$239,334.59 been applied, the 15% would have amounted to \$35,900.19 which would have been rounded up to \$36,000.00.

39 The court noted that the marriage was fairly short. The parties separated less than five years after their marriage while their daughter was born two years after the marriage. Even so, some recognition must be given to the Wife for her indirect contributions towards the marriage as a wife and mother. Adopting a broad brush approach, it was not unreasonable to award the Wife 15% of the excess of the Husband's known (cash) assets over her assets.

40 In making the award of \$36,000, the court was mindful of the fact that it had not acceded to the Wife's claim to 60% of the net sale proceeds of the matrimonial home. The court also bore in mind the approach recommended by the Court of Appeal in *Yeo Chong Lin v Tay Ang Choo Nancy* (see [37]). The court could not determine what other assets (especially cash/bank accounts) the Husband had and which he had failed to disclose. Giving the Wife a small percentage of the Husband's known cash assets would go some way to address the Wife's disadvantage in that regard. In so doing, the court was mindful that the Wife's salary was higher than the Husband's salary (as disclosed).

41 Having made an award to the Wife that achieved a balance between the parties' assets, the court felt it would only be fair to allow the parties to retain their own assets. Accordingly, such an

order was made. In the light of the acrimonious relationship between the parties, any costs orders awarded in favour of one party against the other would only have served to aggravate the situation and cause the relationship to deteriorate further. Hence, it was ordered that each party should bear its own costs.

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