

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2017] SGHCF 30

District Court Appeal No 153 of 2015
(Summons No 137 of 2017)

Between

TIC

... Appellant

And

TID

... Respondent

FOUNDATIONS OF DECISION

[Family Law] — [Matrimonial assets] — [Division]

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

**TIC
v
TID**

[2017] SGHCF 30

High Court — District Court Appeal No 153 of 2015 (Summons No 137 of 2017)

Foo Tuat Yien JC

21, 27 June, 31 August 2017

20 December 2017

Foo Tuat Yien JC:

Introduction

1 The sole issue before the court is as follows: when an order is made permitting one of the parties to a divorce proceedings, say the wife, to fully take over the matrimonial property in return for paying the husband a fixed amount (based on the parties' overall shares in the matrimonial pool and the net equity of the property as at the date of the order), who should bear the outgoings and expenses, including the mortgage payments and property taxes, of the property pending the completion of the transfer (in the absence of any specific order on this issue) – is it solely the wife or should both parties contribute to these ongoing liabilities in proportion to their share of the property?

Context and background

2 This issue arose in the context of matrimonial proceedings after I made an order that, should the Wife wish to fully take over the matrimonial home at [T Condominium] (“the Property”), then she has to pay the Husband a fixed sum for the transfer based on the Wife’s proportion of the matrimonial pool and the net equity of the Property as at 10 September 2015, which is the date when the learned District Judge in the court below made the order for the Property to be transferred to the Wife. If the Wife did not take over the Property, it was to be sold in the open market and the net sale proceeds (after the repayment of the outstanding mortgage and interests, costs and expenses of sale) were to be divided in proportion to the Husband and Wife’s shares in the Property.

Initial and final orders

3 When the issue first arose as to who ought to bear the ongoing liabilities of the Property, including mortgage and property tax payments, pending the completion of the transfer *or sale*, my initial order was that both the Husband and Wife should bear these ongoing liabilities in proportion to their share of the Property. However, after hearing further arguments and confirming that the Wife did, in fact, wish to take over the Property, I held that she should bear the ongoing liabilities solely. I also ordered that the Wife is to bear these liabilities from 10 September 2015 (*ie*, the date when the order for the matrimonial assets to be divided was made). I now provide the reasons for my decision.

Relevant background***Proceedings below***

4 The present divorce proceedings were commenced in the Family Justice Court and the ancillary matters were determined by the District Judge on 10

September 2015.¹ On the matrimonial assets, the District Judge ordered that the Property, which was in the joint name of the Husband and Wife, was to be transferred to the Wife in full and final settlement of all issues relating to the division of property upon the Wife paying the Husband a sum of \$381,000. This sum was calculated based on the net equity of the Property as at the date of the District Judge's order and the parties' respective shares in the Property, which in the District Judge's assessment was 59:41 in the Wife's favour. The District Judge valued the Property at \$1.8m and derived its net equity by deducting the outstanding mortgage as at August 2015 of \$870,664. Later, on appeal, it was agreed by both parties that the value of the Property to be used should be \$1.78m, and that the net equity as at 10 September 2015 was therefore \$909,336 (see [8] below).

5 The District Judge also ordered that the transfer was to be completed within three months from the date of the certificate making interim judgment final. If not, the Property was to be sold in the open market within nine months of the date of final judgment, and the net sale proceeds, after the repayment of the outstanding mortgage and interests, costs and expenses of sale, divided in the ratio of 59:41 set out above. No specific order was made on who should bear the mortgage payments and property taxes of the Property pending the completion of the transfer or sale.

Appeal to the High Court and orders made on division of assets

6 Both Husband and Wife appealed to the High Court against the District Judge's decision. While these appeals were pending, neither party applied for final judgment. Hence, the timelines provided by the District Judge for the

¹ Joint Record of Appeal ("JROA"), pp 44–57.

transfer or sale of the Property were never triggered, which was the cause of the delay in its eventual transfer.

7 After hearing the appeals, I made some variations to the District Judge's orders; they are not material to the present issue. What is relevant is my order, made on 19 December 2016,² that should the Wife wish to fully take over the Property, then she has to pay the Husband \$377,684 for the transfer. This amount was calculated based on my findings on the proportion of the matrimonial pool to which the Wife was entitled, and the net equity of the Property as at 10 September 2015.

8 In particular, I determined the matrimonial pool as follows:

Matrimonial Pool		
S/No	Ownership	Value
1	Net equity of the Property as of 10 September 2015	\$909,336 (Agreed value of the Property at \$1.78m <i>less</i> outstanding mortgage as at August 2015 of \$870,664)
2	Monies in joint account	\$1,258
3	Assets in Wife's sole name	\$213,899
4	Assets in Husband's sole name	\$206,848
Total		\$1,331,341

9 After taking into account the direct and indirect contributions of the parties, I held that the overall ratio in which the matrimonial pool ought to be

² Minute Sheet of HCF/DCA 153 & 154/2015 dated 19 December 2016.

divided is 56:44 in favour of the Wife. Therefore, the Wife's entitlement of the overall matrimonial pool was \$745,551 (56% of \$1,331,341, rounded to the nearest dollar).

10 I then determined the amount which the Wife has to pay to the Husband if she wished to take over the Property as follows:

(a) The Wife's share of the overall matrimonial pool (\$745,551) *less* the value of the assets in her sole name (\$213,899) was \$531,652. This was the proportion of the net equity of the Property to which she was entitled.

(b) However, if the Wife took over the Property, she would receive the *full value* of the net equity of the Property. It was undisputed that, as of 10 September 2015, this value was \$909,336.

(c) Hence, in order to take over the Property, the Wife would have to pay the Husband the *difference* between the value of the net equity (\$909,336) and her entitlement (\$531,652) which was \$377,684.

It should be emphasised that, by receiving the Property, the Wife would be taking over both the rights and obligations of ownership, including the risk of any rise or fall in its value, from the date the net equity was determined (*ie*, 10 September 2015).

11 In addition, I ordered that if the completion of the transfer to the Wife was not effected within three months from the date of the certificate making interim judgment final, the Property was to be sold in the open market within

nine months of the date of final judgment and that the sale proceeds, after the repayment of the outstanding mortgage and interests, costs and expenses of sale, were to be divided in the proportion of 56% to the Wife and 44% to the Husband. As an aside, I acknowledge that this part of my order was made in error as the correct proportion was 58% to the Wife and 42% to the Husband, which is the percentage of the net equity of *the Property* (rather than the overall matrimonial pool) to which the Wife and Husband were respectively entitled to.³ This error, however, is no longer material as the Wife did elect to take over the Property rather than have it sold in the open market.

12 In line with the District Judge's order below, I made no specific order on who should bear the mortgage payments and property taxes of the Property pending the completion of the transfer or sale. This was not raised as an issue by the parties at the hearing of the appeals.

13 There has been no appeal filed against the above orders of 19 December 2016 on the determination and division of the matrimonial pool.

Subsequent applications on ongoing liabilities of the Property

Initial order made on 21 June 2017

14 Subsequently, on 21 June 2017, I heard two cross-applications filed by the Wife⁴ and the Husband⁵ which, among others, first raised the issue of who should bear the property tax, mortgage payments and other ongoing liabilities

³ Minute Sheet of HCF/DCA 153 & 154/2015 dated 19 December 2016 at p 4.

⁴ HCF/SUM 111/2017.

⁵ HCF/SUM 137/2017.

of the Property pending its transfer or sale. On that date, I made the order that the parties are to bear these ongoing liabilities in the proportion of 56:44, until the property is *transferred or sold*.⁶ At this hearing, both parties were represented by counsel.

Revision of order after further arguments

15 Thereafter, the Husband wrote in for further arguments, also on 21 June 2017, urging the court to reconsider the order which I had made in relation to the ongoing liabilities, including mortgage payments. His position was that, because the Wife's position had always been that she would want the Husband's share of the Property transferred to her, he should not be made to contribute to these payments. He relied on the fact that the transfer sum of \$377,684 stipulated in the court order was a fixed sum, and any further payment would benefit the Wife solely.

16 I heard the parties on this specific issue on 27 June and 31 August 2017. By this time, the Wife had discharged her lawyer. At the hearing of 27 June 2017, the Wife, acting in-person, informed the court that she did intend to take over the Property.⁷ Thereafter, on 31 August 2017, I again confirmed that the Wife wished to take over the Property. On that basis, I revised the order made on 21 June 2017 such that the Wife was to be solely liable for the ongoing liabilities, including the mortgage payments and property taxes, of the Property from 10 September 2015.⁸ As noted above, that was the date when the net equity of the property was fixed by the District Judge based on the outstanding mortgage as of August 2015 of \$870,664. It was agreed by the parties that, based

⁶ Minute Sheet for HCF/SUM 111 & 137/2017 dated 21 June 2017 at p 4.

⁷ Minute Sheet for HCF/SUM 137/2017 dated 27 June 2017 at p 2.

⁸ Minute Sheet for HCF/SUM 137/2017 dated 31 August 2017 at pp 1 and 4.

on this revised order, the mortgage and property tax amounts which was to be repaid by the Wife to the Husband was \$30,246.48. It was thus ordered that, upon completion of the transfer of the property to the Wife, she was liable to pay the Husband the sum of \$377,684 (as ordered on 19 December 2014) and the further sum of \$30,246.48.

Wife's appeal against the revised order

17 The Wife now appeals against my revised order made on 31 August 2017. Her position was that the revised order was unjust because there is no meaningful distinction between the situation where she elects for the Property to be transferred to her and the position if she had chosen for it to be sold. She argued that, in both situations, the parties should bear the ongoing liabilities of the Property in proportion to their shares pending the completion of the transfer. She also contended that the status quo would be disrupted by her having to bear the ongoing liabilities solely because, until and unless the Property is transferred to her, both Husband and Wife were still its co-owners.

My decision

18 The issue, as identified above at [1], is a narrow one, and the answer is not complicated. The starting principle is that ownership of a matrimonial property is divided on the date the court makes the order on the division of assets (see *Sivakolunthu Kumarasamy v Shanmugam Nagaiah* [1987] SLR 182 at 191–192). However, and crucially, when the order is for the matrimonial property to be transferred to either the husband or the wife for a fixed sum *based on the value and net equity of the property as at the date of the order*, then the transferee naturally bears the risk of any rise or fall in the property's value after that date. If the value of the property rises, then the transferee (and the transferee alone) would profit as the fixed transfer sum determined by the court would be

favourable to her. The flipside of this is that, if the property value falls, then the transferee would be worse off. The same logic applies to the *net equity* of the property – if the net equity of the property is increased by the time of the transfer, because of mortgage payments made after the date of the court order, then the transferee, and again *only the transferee*, would be better off as she will be getting a property with a higher net equity for the same fixed transfer sum. The difference, however, is that unlike the risk of the property value rising and falling, which is subject to market forces, the increase in the net equity of the property due to the payment of the ongoing liabilities of the property is a factor which is within the control of the parties and the court. And given that such payments only benefit the transferee, it is only fair and logical that it is the transferee who should bear these liabilities. By contrast, if the transferor is ordered to make these payments, then this will upset the status quo and leave him in a worse position. He will be out of pocket and get nothing in return.

19 The situation, however, is completely different when the order made is for the property to be *sold in the open market* and for each party to then receive the sale proceeds, less the outstanding mortgage and interests and the costs of the sale, in proportion to their shares in the matrimonial property. In such a scenario, there is no fixed transfer sum, and the sale price will only be determined when a suitable buyer is found. Any rise or fall in the value of the property, and any increase in its net equity, will affect *both parties*. If the net equity is increased, then both husband and wife will receive more in proportion to their shares in the property. In such a scenario, it is only fair and logical that both parties ought to bear the mortgage payments, property tax and any other ongoing liabilities, in proportion to their shares in the property pending the completion of the sale.

20 I should also emphasise that the above reasoning only applies where there is no specific order of court dealing with the ongoing liabilities of the matrimonial property pending the completion of the transfer or sale. It is, of course, open to the court to tailor a specific order based on the circumstances of the case if, for instance, the wife is a home-maker and unable to bear the mortgage payments of the property (after making suitable adjustments to the other orders on the division of the matrimonial pool to ensure that neither party is left worse off).

21 On the present facts, my initial order made on 21 June 2017 was that the parties were to contribute to the mortgage and property tax payments for the Property as from 10 September 2015 in proportion to the ratio of 56:44, in the Wife's favour, *until the property is transferred or sold* (see [14] above). This order was made on the basis that it was not yet determined whether the Wife would elect to take over the Property or if it would be sold in the open market. If the Wife had elected to take over the Property, then adjustments would have had to be made at the point of transfer. In particular, the Husband would have been entitled to recover any payments made towards the Property from the date of the court order from the Wife.

22 Indeed, that was, in essence, what transpired. The premise of the Husband's request for further arguments dated 21 June 2017 was that the initial order made was unjust to him because the Wife's position has always been that she would want the Property to be transferred to her. This position was unequivocally confirmed by the Wife on both the hearings of 27 June and 31 August 2017. In such circumstances, there was a need to vary the initial order to make clear that, since the Wife had elected to take over the Property, the Husband should not be liable to make any further mortgage payments. As noted above, any such payments by the Husband would have had the effect of

increasing the net equity of the Property and would have unjustly enriched the Wife.

23 I also made it clear that this order was to apply to all mortgage payments and property taxes paid from 10 September 2015. This was the date on which the division of assets was effected by the District Judge's order of court. It was also the date based on which the net equity of the Property was calculated, taking into account the mortgage payments made as of August 2015. It followed that any further payments made towards the Property after that date would have solely benefitted the Wife, as explained above. In such circumstances, there was a need for suitable adjustments to be made and it was ordered that the mortgage and property tax payments of \$30,246.48 made by the Husband since 10 September 2015 were to be repaid to him by the Wife upon the transfer.

Wife's arguments against the revised order

24 As noted above, the Wife argued against the above analysis on the basis that the revised order was unjust. Her position was that there is no meaningful distinction between the situation where she elects for the Property to be transferred to her and the position if she had chosen for it to be sold. While the former transfer would be based on a fixed sum determined by the court, she submitted this was simply due to practical reasons as, in the absence of an offer from a third party, the court could only work out the consideration based on the evidence before it on the net equity of the Property. She also contended that the status quo would be disrupted by her having to bear the ongoing liabilities of the Property pending the completion of the transfer because, until and unless the Property is transferred to her, both Husband and Wife were still its co-owners.

25 In my view, the Wife's submissions were flawed because they failed to appreciate the key fact that, in the event that she takes over the property in return

for a fixed sum based on the net equity of the Property as of 10 September 2015, then any increase in the net equity after that date would only benefit her and her alone. As outlined above, this is the crucial distinction between a scenario where a property is ordered to be transferred to one of the parties based on a fixed sum and the situation where it is ordered to be sold on the open market, with both parties receiving their respective shares of the net sale proceeds.

TZG v TZH

26 The Wife also relied on my decision in *TZG v TZH* [2017] SGHCF 9 (“*TZG v TZH*”). In that case, it was determined that the matrimonial home was owned by the husband and wife in the ratio of 50.8:49.2 in the husband’s favour (at [4(b)]). The net equity of the home was determined as being \$2,612,394 as of the date of the order. Therefore, if the wife wished to fully take over the matrimonial home, then it was ordered that she was to notify the husband in writing within one month of the date of the order and thereafter, within five months, effect the transfer by paying to the husband 50.8% of the net equity of the home (*ie*, 50.8% of \$2,612,394). Just as in this case, it was ordered that if the wife did not take up this option, then the property was to be sold in the open market with the net sale proceeds (less the costs and expenses of sale) to be divided in proportion to the parties’ shares in the property. The relevant part of the decision on who was to bear the mortgage and other property payments pending the transfer or sale of the matrimonial home is as follows (at [53]):

The Husband has also appealed against my indication that parties are to bear the mortgage payments and other payments relating to the matrimonial home in the same proportion as 50.8:49.4 (H:W) (see above at [4(b)]). I had informed counsel when I gave my decision on 28 November 2016, that as the division of the assets, including the matrimonial home, had been effected upon my decision that day, that thereafter (unless changed on appeal), the remaining mortgage instalments as well as other outgoings should rightly be borne in proportion to the ratio of 50.8:49.2 (H:W). *The actual sorting*

out of accounts on this score could be effected upon completion of the transfer of the Husband's estate title and interest in the matrimonial home at KL Road to the Wife or upon completion of the sale of the property, if such was the case. My view was that it was not necessary for a specific order to be made in that regard.

[emphasis added]

27 As the passage makes clear, the order for both parties to bear the mortgage and other property payments in proportion to their shares in the matrimonial home was made in circumstances where it was not yet determined whether the wife would, in fact, be electing to take over the husband's estate and title in the matrimonial home. This was similar to the initial order which I made on 21 June 2017 in the present case. The passage also contains a proviso that "[t]he actual sorting out of accounts on this score could be effected upon completion of the transfer of the Husband's estate title and interest in the matrimonial home ... or upon completion of the sale of the property". I accept that this proviso was somewhat general and is not as clear as it should have been. However, it does provide for the possibility that if the wife elects to take over the matrimonial home, then financial adjustments could be made and the husband would be able to recover the mortgage and other property payments borne by him pending the completion of the transfer. This was the same principle applied in the present case. Thus, the order made in *TZG v TZH* does not assist the Wife.

28 For the above reasons, I rejected the Wife's arguments and ordered that she was to be solely liable for the ongoing liabilities, including the mortgage payments and property taxes, of the Property from 10 September 2015.

Foo Tuat Yien
Judicial Commissioner

Appellant in person;
Walter Ferix Silvester (Joseph Tan Jude Benny LLP) for the
respondent.
