IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 38

Civil Appeal No 163 of 2020

Between

CHT

… *Appellant*

And

CHU

… *Respondent*

In the matter of Divorce (Transferred) No 586 of 2018

Between

CHU

… *Plaintiff*

And

CHT

… *Defendant*

EX TEMPORE JUDGMENT

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

CHT
v
CHU

[2021] SGCA 38

Court of Appeal — Civil Appeal No 163 of 2020
Judith Prakash JCA, Belinda Ang Saw Ean JAD and Quentin Loh JAD
14 April 2021

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Judith Prakash JCA (delivering the judgment of the court *ex tempore*):

1 This appeal arises out of the division of matrimonial assets ordered by the High Court Judge. The appellant husband has raised a number of challenges in respect of the Judge's orders. We will consider these in turn but the parties must be aware that, as this court recently re-affirmed in *TQU v TQT* [2020] SGCA 8 at [26], an appellate court will not readily interfere with orders made by the court below pertaining to the division of matrimonial assets. To warrant appellate intervention, the Judge's decision must be shown to be clearly inequitable or wrong in principle.

2 The husband's contentions can be categorised as follows:

(a) The Judge erred in the identification of the matrimonial assets in three ways;

(b) The Judge wrongly assessed the ratio of the parties' contributions;

(c) The Judge wrongly decided that costs were to be agreed between parties, failing which the parties were at liberty to apply for directions in respect of costs.

In addition to these three points of appeal, the husband also proposes a number of consequential orders for the division of the matrimonial assets.

3 In general, with one exception which we elaborate upon below, we are satisfied that there is no merit in the husband's challenges. He has not been able to show that the decisions of the Judge were clearly inequitable or wrong in principle.

4 We turn first to the points about identification of the matrimonial assets. These relate to:

(a) The wife's insurance policies;

(b) The wife's bank statements;

(c) The 19,000 Restricted Stock Units, or "RSUs" for short, which the husband transferred to his mother.

We deal with these in turn.

5 The wife disclosed nine insurance policies but failed to disclose another eight. The Judge drew an adverse inference against the wife for failing to disclose the additional eight policies and for failing to provide reliable and

updated information in relation to some of the disclosed policies. She gave effect to this adverse inference by notionally adding the sum of $200,000, representing the value of the eight undisclosed policies, into the pool of matrimonial assets. Before us, the husband contended that the Judge should not have given effect to the adverse inference by assigning that value of $200,000 to the undisclosed insurance policies for four reasons. First, the Judge's methodology did not accurately account for the value of the undisclosed assets. Secondly, two of the policies that had been disclosed were worth more than the amounts determined by the Judge and she had erred by not taking the increased value of these two policies into consideration when assessing the sum to be notionally added back. Thirdly, the Judge wrongly assumed that the wife had only failed to disclose eight policies, and that four of those policies had no surrender value. Finally, the addition of $200,000 did not sufficiently recognise the wife's flagrant lies and egregious conduct in relation to her non-disclosure.

6 We do not accept the husband's arguments. It is well established that the court has the power to give effect to an adverse inference by either making a finding on the value of the undisclosed assets and including that value in the pool (*ie*, the "valuation approach"), or by ordering a higher proportion of the known assets to be given to the other party (*ie*, the "uplift approach"). Which approach the court takes is a matter of judgment and the court will adopt the method which, in the circumstances, it considers will lead to the most just and equitable result. In the circumstances of this case, we are satisfied that there was nothing inequitable or unprincipled about the Judge's adoption of the valuation approach rather than the uplift approach. As regards the valuation of the two disclosed policies, the husband's contention that they were worth more than the values which the Judge ascribed to them is completely unsubstantiated. Further, the Judge was not bound to peg the estimated value of the eight undisclosed

policies to the value of the disclosed policies. She simply did so as a rough gauge to assign a fair and equitable value to the undisclosed policies. This was an exercise of the Judge's discretion and, given that this is a broad discretion, we can see no difficulty with how the Judge conducted the exercise. Moreover, there was no evidence whatsoever to substantiate the husband's allegation that there were more than eight undisclosed policies. Nor was there any basis except suspicion for the husband's assertion, in effect, that all of the non-disclosed policies had surrender values. In our opinion, the Judge was entitled, in her assessment, to account for the fact that a number of the undisclosed policies might have no surrender value. The Judge was trying to obtain a figure that best reflected the value of the non-disclosed assets. Given that five of the disclosed policies had no surrender value, it was not unreasonable for the Judge to assess that some of the undisclosed ones might be of the same type. The husband was, further, mistaken in his view that adverse inferences are drawn to punish. That is not the intention of this device – it is adopted in order to further the aim of a fair and equitable distribution of assets between the ex-spouses by depriving the one who conceals assets of the benefit of that improper conduct.

7 The husband's next point was that the Judge erred in not drawing an adverse inference against the wife in respect of her failure to provide the complete statements of her three OCBC accounts. No doubt the wife did disclose documents that appeared to have been cropped. Further, she was not forthcoming from the beginning with her disclosure with regard to all three accounts. The Judge recognised the deficiencies in the wife's evidence but gave reasons why these did not justify drawing an adverse inference against the wife. In particular, the accounts summaries which the wife disclosed were dated, spanned a period of six months and contained quite a lot of information. Further, the wife did make up for her initial inadequacy in disclosure by disclosing two

further accounts a few months later. There was also other evidence to support the wife's contention as to the amount that she had in her bank accounts. We see no basis on which to interfere with the Judge's decision not to draw an adverse inference against the wife in this respect.

8 The husband's third ground of appeal was that the Judge erred in drawing an adverse inference against him in respect of 19,000 RSUs that the husband had been given by his employer. Initially, the husband disclosed only 13,264 RSUs. Subsequently, it transpired from documents disclosed later that the husband had transferred a total of 19,000 RSUs to his mother in 2018. The Judge included the value of the 19,000 RSUs, which she assessed to be $1,365,528.57, in the matrimonial pool. She took the view that the husband's transfers were suspicious transactions because they had taken place shortly after the wife filed for divorce and were much larger than the husband's monthly maintenance payments to the mother. The Judge then drew an adverse inference against him for failing to satisfactorily account for these transfers. The husband argued that it was not correct to draw the adverse inference as he had not concealed these assets. He had tendered documents to show the existence and purpose of the transfers. The Judge had also erred in finding that the transfers were suspicious. They had been made for the legitimate purpose of providing financial assistance to his mother.

9 In our view, the Judge was absolutely correct to include the value of the 19,000 RSUs in the matrimonial pool. Whether or not the husband in fact thought that his mother needed the additional financial support, he was not entitled to unilaterally transfer valuable assets to her while the parties were undergoing divorce proceedings. The wife had a putative interest in the 19,000 RSUs and therefore he could not dispose of them without her consent. Having

done so, he had to account for them as part of the matrimonial assets. Having said this, with respect, we think it was not correct for the Judge to draw an adverse inference in respect of the 19,000 RSUs. These assets were disclosed by the husband. He did mount a case that they should not be included in the pool but, weak as the argument was, it did not justify the drawing of an adverse inference. Even if the husband had been trying to put the assets out of the reach of the wife, as it turned out they were disclosed and they were valued thus allowing the amount of approximately $1.365m to be added to the pool. Since the value was known and could be divided between the parties as part of the division exercise, there was no need to draw an adverse inference.

10 We now move on to the second set of issues which deal with the calculation of the ratio. The husband's first contention in this regard is that since the Judge added the 19,000 RSUs to the pool, she ought to have considered the value of this asset as forming part of the husband's direct contribution. The Judge's reason for not doing so was to give effect to the adverse inference. As we have stated that there was no need to draw that adverse inference, it follows that the husband should be credited with the acquisition of the 19,000 RSUs. We deal below with the consequence of this conclusion.

11 Next, the husband took issue with the Judge's determination of the appropriate indirect contribution ratio as 60:40 in the wife's favour. The husband submitted it should be 55:45 in his favour to reflect his greater contributions as a caregiver and gave examples of what he had done. We have considered the arguments carefully but are unable to accept them. A judge assessing the contributions of parties to a marriage in areas like parenting and homemaking applies a broad-brush approach because the court is necessarily an outsider to the intimacies of a marriage and only has the parties' accounts –

which are given much later – as to what had happened during the marriage. As has been said in *ANJ v ANK* [2015] 4 SLR 1043 at [24], what values to give to the indirect contributions of the parties is necessarily a matter of impression and judgment of the court. The court exercises its discretion in this regard with a keen appreciation of the facts of the particular case before it. From the judgment here, it is clear that the Judge duly considered all matters undertaken by the husband as well as the undisputed fact that the marriage had been a cooperative one before it broke down, but balanced these considerations against the fact that the wife had, for a period, singlehandedly taken care of the household chores and shopping; and, secondly, had invested much time and effort over the years coaching the children and organising their enrichment classes. In arriving at the ratio of 60:40, the Judge fully considered the husband's arguments which he has re-hashed before us. In our judgment, he has not been able to show that the Judge's final assessment was inequitable.

12 There were two classes of assets in this case: immovable properties (Category 1) and all other remaining assets (Category 2). The Judge adopted the classification method which the parties do not dispute. The third argument proffered by the husband is that the parties' direct contributions should be ascribed greater weight than the parties' indirect contributions in relation to the Category 2 assets (though not in relation to the Category 1 assets). This was a fairly long marriage of 16 years and the husband has not put forward cogent reasons, as the case law requires, for the court to depart from the normal approach. Furthermore, in the case of *AYQ v AYR and another matter* [2013] 1 SLR 476, this court said (at [22]):

> Returning to "the classification methodology", we would emphasise the fact that indirect contributions must be factored into – and *its weightage to remain constant in relation to* – each class of assets. [emphasis added]

As the husband's proposed approach would result in the parties' indirect contributions being assigned different weights in Categories 1 and 2 respectively, this ground of his appeal cannot succeed.

13 From the discussion so far, it is clear that the husband's appeal has been successful only in relation to the drawing of the adverse inference in respect of the 19,000 RSUs and the consequential adjustment that needs to be made to the assessment of the husband's direct contributions. Crediting the husband with the 19,000 RSUs means that the Category 2 calculations would have to be adjusted in accordance with the following table (with the necessary changes bolded and underlined):

	Wife	**Husband**
Direct Contributions to assets in their sole names, including the 19000 RSUs (except for POSB Account xxx1)	$750,547.66	$2,257,467.52 + **<u>$1,365,528.57</u>** = **<u>$3,622,996.09</u>**
Direct Contributions to the Joint Standard Chartered Account, Joint DBS Account and POSB Account xxx1 (*ie,* $102,472.31 + $3,529 + $19,935.41 = $125,936.72).	$62,968.36	$62,968.36
Total Direct Contributions	$813,516.02	~~$2,320,435.88~~ **<u>$3,685,964.45</u>**
Ratio	~~26~~ **<u>18</u>**	~~74~~ **<u>82</u>**

14 Consequently, the new overall percentages of the parties' direct and indirect contributions will be as follows and will give rise to amended figures for distribution as shown:

	Wife	**Husband**
Category 1: Glendale Park Property and Jalan Gumilang Property ($2,625,749.77)		
Direct	50	50
Indirect	60	40
Average Ratio	55	45
Entitled Sum (Category 1)	$1,444,162.37	$1,181,587.40
Category 2: All remaining quantified assets + unquantified assets (Joint Standard Chartered Bank Account $102,472.31, Wife's unexplained withdrawals $58,000, Husband's endowment funds $20,000, Wife's undisclosed insurance policies $200,000 and Husband's 19,000 RSUs) = $4,777,480.47		
Direct	~~26~~ **18**	~~74~~ **82**
Indirect	60	40
Average Ratio	~~43~~ **39**	~~57~~ **61**
Entitled Sum (Category 2)	~~$2,054,316.60~~ **$1,863,217.38**	~~$2,723,163.87~~ **$2,914,263.09**
Total Entitled Sum (Combined)	~~$3,498,478.97~~ **$3,307,379.75**	~~$3,904,751.27~~ **$4,095,850.49**

15 We now come to the question of costs. The Judge directed that the matter of costs should be agreed between the parties and if not agreed they were at liberty to write to the court for directions in respect of costs. The husband wants us to fix the costs and has suggested the figures which he says he should be awarded. The wife contends that as the Judge has not made any order for costs, the husband's arguments are premature. In our view, while the Judge did not make costs orders, this does not mean that the husband is entitled to appeal on costs when he has not followed her directions. The Judge's directions were that parties should try and agree and if they could not agree they had liberty to apply to her. The parties have not yet applied to the Judge. This is the course that they should take instead of asking us to fix the costs that were incurred below. This is especially because, in the first instance, the Judge is best placed to decide what costs order should be made in respect of the ancillary matters hearing.

16 The husband also wants us to make consequential orders for the division of the matrimonial assets. Here again, the Judge's direction was for the parties to work this out, failing which they were given liberty to apply to the High Court for directions. Once again, the husband has no basis to ask us to make any consequential orders. He or the wife or both of them should apply to the Judge in the first instance.

17 In conclusion, the husband's appeal is dismissed in part. His appeal is allowed to the extent that the total amounts to which he and the wife are entitled in respect of Category 2 assets are varied to $3,307,379.75 (wife) and $4,095,850.49 (husband) as explained in the table in [14] above. As the husband has only been partially successful in his appeal, we direct that each party bear his/her own costs and disbursements incurred in relation to the appeal. The security deposit shall be released to the husband.

Judith Prakash
Justice of the Court of Appeal

Belinda Ang Saw Ean
Judge of the Appellate Division

Quentin Loh
Judge of the Appellate Division

The appellant in person;
Lum Guo Rong and Chiu Hsu-Hwee Bernard
(Lexcompass LLC) for the respondent.