

Tan Khye Hua v Hong Chor Luan
[2000] SGHC 6

Case Number : D 513/1996
Decision Date : 11 January 2000
Tribunal/Court : High Court
Coram : Goh Joon Seng J
Counsel Name(s) : George Lim Teong Kin (Wee, Tay & Lim) for the petitioner; Margaret Wan / Raymond Tan (H L Wee & Co) for the respondent
Parties : Tan Khye Hua — Hong Chor Luan

JUDGMENT:

GROUNDS OF JUDGMENT

1 The parties were married at the Singapore Marriage Registry on 12 May 1975 under the provisions of the Women's Charter (Cap 353).

2 They have two children, namely:

(i) Tan Keng Ann, female, born on 4 February 1977 ('the daughter').

(ii) Tan Teng Luck, male, born on 15 January 1980 ('the son').

3 On 28 February 1996, the Petitioner filed the petition for divorce on grounds of unreasonable behaviour on the part of the Respondent. The Petitioner's complaints of unreasonable behaviour on the part of the Respondent included that of the latter's adultery with one Majid and her assault on him with a belt.

4 On 28 October 1998, I granted the Petitioner a decree nisi dissolving the said marriage with ancillary issues relating to custody, care and control of the two children, division of matrimonial assets and maintenance adjourned for hearing in chambers

5 On custody, when the ancillary issues came before me for hearing, the daughter was already over 21 years old and had chosen to live with the Petitioner. Accordingly, no order on custody was made regarding the daughter. In the case of the son, I made an order of joint custody. Pending his 'O' level examination, the son will continue to live with the Respondent at Block 8, Ghim Moh Road, #05-277, Singapore ('the matrimonial flat') because it is nearer to his school than 46B Holland Grove Road, Singapore where the Petitioner lives. I gave the parties liberty to apply.

6 On division of matrimonial assets, I made the following orders:

(i) The Respondent is to transfer her interest in the matrimonial flat to Petitioner.

(ii) The Respondent is to transfer her interest in Block 1, Jalan Bukit Merah, #01-4518, Singapore ('the Bukit Merah Clinic') to the Petitioner with the Petitioner assuming responsibility for the outstanding balance of the mortgage loan.

(iii) The Petitioner is to retain his business of 'Khye Hua Chinese Physician' and other assets in his sole name.

(iv) The Respondent is to retain the following:

- (a) Block 21, Ghim Moh Road, #01-181, Singapore ('Ghim Moh Shophouse').
- (b) No. 20, Jalan Timah 8, Johore, Malaysia.
- (c) No. 63, Jalan Timah 8, Johore, Malaysia.
- (d) #02-07, Batam Square, Batam, Indonesia.
- (e) #02-25, Batam Square, Batam, Indonesia.
- (f) Monies withdrawn by her from the DBS accounts.
- (g) The business of Volks Florists and Gifts.
- (h) All shares and insurance policies in her sole name.
- (i) Whatever other assets in her sole name. This includes balances in the bank accounts in her name.

7 On maintenance, the Petitioner is to pay the Respondent \$400 a month for her maintenance and upkeep with effect from 1 October 1999. The Petitioner is also to pay \$350 a month to the Respondent with effect from 1 October 1999 for the maintenance and upkeep of the son so long as he resides with her. In addition, the Petitioner is to pay for the son's education and his personal expenses with a daily allowance. These may be paid direct to the son.

8 On costs of the ancillary proceedings, I awarded the Petitioner two-thirds of the taxed costs.

9 The Respondent has appealed to the Court of Appeal against my orders on division of the matrimonial assets, maintenance and costs. I now give my reasons. To avoid confusion, the Respondent, now the appellant in the appeal, will continue to be referred to as the Respondent and the Petitioner will continue to be referred to as the Petitioner.

The background

10 The Petitioner is the holder of a Higher School Certificate. The Respondent obtained a certificate in art from the Baharuddin Vocational Institute.

11 After leaving school, the Petitioner worked as an assistant manager from 1970 to 1971 in Mono Trading Company, which was his uncle's sole proprietorship firm. He was paid \$400 a month. When Mono Trading Company was converted to a private limited company known as Mono Trading Company Pte Ltd, the Petitioner was promoted to manager. He left Mono Trading Company Pte Ltd sometime in 1979. His last drawn salary was \$800 a month. From the date of the marriage in 1975, the Petitioner's salaries went into the pool from which drawings were made for the family's expenses, investments and savings.

12 While working for his uncle, the Petitioner learned from his younger brother who was the section

lead of the Anglo Chinese School band that the band needed uniforms for its members. Through the introduction of his brother, the Petitioner obtained the order from the band's teacher in charge to supply the uniforms. The order was subcontracted and satisfactorily fulfilled. From this, the Petitioner saw the potential in starting a family business to supply uniforms and costumes to schools. This led to the Petitioner setting up Volks International Enterprise after discussions with the Respondent.

13 Volks International Enterprise was registered in 1975 with the Respondent as sole proprietress. I accepted the Petitioner's explanation that this was because he was still working for Mono Trading Company Pte Ltd. The registered address of the firm was 73 Ming Teck Park, Singapore, which was his father's home. It was later changed to 72 Circular Road which was his father's clinic and medicine shop. His father is a Chinese physician. It was the Petitioner who came up with the name and who arranged for the firm's letterhead to be designed by one of his friends. It was through the efforts of the Petitioner that the firm obtained orders from the Extra-Curricular Activities Centre of the Ministry of Education for supplying uniforms and costumes to schools for the Youth Festival. Having had her training in art, the Respondent worked as the designer, with the Petitioner overseeing the management and business aspects of the firm.

14 The Petitioner's participation in the business is confirmed by invoices with the Petitioner's handwritten notes on them. The Petitioner also signed off as Manager.

15 Although the Respondent was the designer, not much creative designing for uniforms and costumes was required, especially for uniforms as the designs were pre-determined by the schools. When they went to the schools to obtain the orders, the Respondent would take the measurements and the Petitioner would do the recording. He would then sort out the measurements, obtain samples of textiles, confirm orders for materials and purchases, make arrangement to subcontract the orders, collect and deliver the uniforms and bank in payments received.

16 In 1979, they decided to go into the garment business as well. So they set up Volks Fashion House. It was also registered with the Respondent as sole proprietress because the Petitioner was still working for Mono Trading Company Pte Ltd. Shortly thereafter, the Petitioner resigned from Mono Trading Company Pte Ltd to attend fulltime to the two family businesses. His responsibilities included taking orders, pricing the goods, displaying the goods, attending to customers, sales and purchasing, supervising staff, stock-checking and finance. He even typed some of the invoices.

17 The activities of both businesses were largely seasonal. In order to have an even spread throughout the year, the Petitioner set up Aya Business Company in 1981 with himself as sole proprietor. Its business was in wholesale supply of garments imported by Volks International Enterprise.

18 The profits from these family businesses were drawn to maintain the family, and the excess channeled into savings and investments.

19 In the meantime, although the Petitioner had resigned from Mono Trading Company Pte Ltd, he remained a guarantor for the company's bank facilities at his uncle's request. When his uncle became ill with cancer, the company was unable to pay its debts. The Petitioner as the guarantor for its debts was accordingly made a bankrupt in 1983. Because of his bankruptcy, Aya Business Company closed down.

20 From 1984 to 1986, the Petitioner took up a part-time job at Robert & Stanley Credit Corporation while he continued to manage Volks International Enterprise and Volks Fashion House. He was paid by Robert & Stanley Credit Corporation a salary of \$1000 with commission averaging \$500 per month. He

paid monthly \$70 to the Official Assignee and the balance was deposited into the Respondent's bank account and/or went towards helping to pay for the family's expenses.

21 For two years from 1984, he also helped out at a bean sprout factory at night between 11.00 pm and 1.00 am. His earnings of about \$2000 to \$3000 a month were paid to Volks International Enterprise because he was still a bankrupt.

22 In 1990, the Petitioner started working at his father's clinic as a Chinese physician. At the same time, he took a part-time course in Chinese medicine, attending classes three nights a week. He was paid \$2000 a month by his father. He maintained his family with his salaries while continuing to help in the two family businesses on a part-time basis.

23 From 1993 to 1995, the Petitioner set up his own practice as a Chinese physician under the name and style of 'Tan Khye Hua Chinese Physician'. Because he was still a bankrupt, the business was registered with the Respondent as the sole proprietress. His earnings as a Chinese physician also went into the pool from which funds were drawn for the family's expenses and investments or accumulated as savings.

24 In 1995, after his discharge from bankruptcy, the Petitioner requested the Respondent to transfer to him the business name registration of 'Tan Khye Hua Chinese Physician', the Respondent refused. The Petitioner then registered his own sole proprietorship 'Khye Hua Chinese Physician' under which he now practises as a Chinese physician.

Assets held in joint names

25 The matrimonial flat. It was purchased on 1 October 1976 for \$35,500 plus \$1089 for stamp fees. It was paid for with a cash payment of \$2190, a sum of \$9399 from the Petitioner's Central Provident Fund ('CPF') account and the balance with a loan of \$25,000 from the Housing & Development Board ('HDB'). The loan has been fully repaid. The Petitioner values it presently at \$450,000. The Respondent values it at \$380,000.

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26 Assets held in Petitioner's name:

<u>Description</u>	<u>Value</u>
(i) Furniture, fittings and herbal stocks at Khye Hua Chinese Physician at the Bukit Merah Clinic	\$5,000.00
(ii) Car (15 year-old Mercedes)	\$9,000.00
(iii) Monies in bank accounts as at July 1999	
- POSB A/c No. 178-07748-1	\$2,757.82
- DBS A/c No. 008-011270-3	\$1,064.59

(iv) CPF A/C	\$2,950.62
(v) 2 insurance policies	
	\$3,000
(1) Agreed surrendered value	
	\$5,650
(2) Agreed surrendered value	
	\$4,500.00
(vi) 1500 Singapore Telecom shares (at \$3 per share)	
	<u>\$33,923.03</u>

27 **Assets held in Respondent's name:**

(i) No. 20, Jalan Timah 8, Johore. It is valued by Petitioner at S\$180,000 and by Respondent at S\$88,000. It was purchased in 1991 or 1992. It is fully paid for. According to the Respondent, it has been let out for RM750 per month. The rentals have all along been collected and retained by her and for which she has not given an account.

(ii) No. 63, Jalan Timah 8, Johore. It was purchased at or around the same time when No. 20 was purchased. It has been fully paid for. According to the Petitioner, its present value is S\$120,000. According to the Respondent, its present value is S\$79,000. The rentals from this property have also all along been collected and retained by the Respondent and for which she has not given an account.

(iii) The Bukit Merah Clinic at Block 1, Jalan Bukit Merah, #01-4518, Singapore. The first storey is currently being used by the Petitioner as his clinic. It was purchased in 1993 for \$456,000 with a loan from the Development Bank of Singapore Ltd ('DBS') taken in the name of the Respondent. Its present value is about \$750,000 with an outstanding mortgage loan of \$331,015.11 as at 31 August 1999. The Petitioner has been repaying the mortgage loan with his earnings from his clinic paid into the Respondent's DBS savings account no. 008-004906-8. The Petitioner was an authorised signatory. The rentals from the second storey were deposited into the Respondent's POSBank account no. 072-29873-0. Payments for outgoings relating to this property and family expenses came from this account.

(iv) The Ghim Moh Shophouse at Block 21, Ghim Moh Road, #01-181, Singapore. It was purchased in 1994 from the HDB for \$420,000 with a loan from the DBS taken out in the name of the Respondent. Part of the first storey is used by the Respondent for her business under the name of Volks Florists & Gifts. The rest of the first storey and the second storey were let out and the rents collected by the Respondent. Its present value is \$750,000 with an outstanding mortgage loan of \$378,535.52 as at April 1999.

(v) #02-25 and #02-27, Batam Square. The purchase of these two properties was not disclosed until specific requests for information were made by the

Petitioner's solicitors. According to the Respondent, these were purchased in 1991 for \$61,000 with a balance of \$3050 due to the developer.

(vi) The Respondent has the following bank accounts:

<u>Account Nos.</u>	<u>Balance</u>	<u>As at</u>
a DBS A/c No. 008-002554-1	\$6,851.15	Apr 1999
	OD	
b DBS A/c No. 008-004906 -1	\$10,026.27	Mar 1999
	OD	
c DBS Fixed Deposit	\$36,130.42	Dec 1998
A/C No. 008-006573-14		
- total principal :		
\$34,777.44		
- total interest :		
\$1,352.98		
d Hong Leong Bank Berhad	RM4,365.85	Jan 1999
A/c No. 00500047783		
e Hong Leong Bank Berhad	RM5,571.21	Jan 1999
A/c No. 00500071481		
f Hong Leong Finance Ltd	\$404.58	Dec 98
A/c No. 112-8010257-2		
g Maybank	\$3,777.10	Jan 99
A/c No. 301011002885		
h POSBank A/c No. 057-06210-0	\$401.00	Mar 96
i POSBank A/c No. 072-29873-0	\$256.97	Feb 96
j POSBank A/c No. 531-20305-4	\$10,932.59	Jun 96
k POSBank A/c No. 837-15039-6	\$0	May 96
TOTAL	\$35,025.24	

+
RM9,937.06

The Respondent refused to give up-to-date information on the bank accounts in her name. But she has made large withdrawals from time to time amounting to \$309,448.86 and RM14,000. Except for \$46,193.24 which were double entries, the Respondent has not satisfactorily accounted for the balance and the large withdrawals made by her over the years.

(vii) Shares. Even though the Respondent had admitted to withdrawing \$79,440.01 for the purchase of shares, the only shares disclosed was one lot of Eng Wah Ltd shares worth \$735.

(viii) Volks Florists & Gifts, value not known.

28 In division of matrimonial assets the factors that have to be taken into account are set out in s.112 of the Women's Charter. Matrimonial assets are assets acquired or improved upon by the parties during the marriage. To have an equitable division of the matrimonial assets, I must have regard to the contribution of the parties to their acquisition.

29 The Respondent claimed that the assets were acquired by her from the profits she made from Volks International Enterprise and Volks Fashion House. It is quite clear from the evidence that the Petitioner was actively involved in the running of the two firms. They were registered in the name of the Respondent because of the Petitioner's employment with Mono Trading Company Pte Ltd. The bank accounts were operated and all the assets except the matrimonial flat were registered in the Respondent's name because of the Petitioner's bankruptcy. In any case, the profits from the two businesses would not have enabled her to acquire so many properties. From 1979 to 1994, the average monthly profits was only \$1273.09. Quite clearly, the payment for these assets were supplemented by contributions from the Petitioner's salaries and his other earnings from the various jobs he took on.

30 I was therefore of the view that in the absence of clear evidence to the contrary, the property should be treated as having been acquired by them jointly with equal contribution from each party. On this basis, I found the contributions of each party to the acquisition of the matrimonial assets to be as follows:

(i) Matrimonial flat

	<u>Petitioner</u>	<u>Respondent</u>
(a) Initial capital payment	\$9,399.00	-
(b) Downpayment (cash) (taken on joint basis)	\$1,095	\$1,095
(c) Initial renovations	\$10,000	-

(d) CPF (towards loan)	\$24,161	-
(e) Cash contribution (estimated, taken on joint basis)	\$7,326	\$7,326
(f) Subsequent renovations (taken on joint basis)	\$16,000	\$16,000
(g) Property Tax (23 years at about \$100 per year)	\$2,300	-
	\$70,281	\$24,421
	(~ 74.21%)	(~ 25.79%)

(ii) Bukit Merah Clinic

From the monthly payments evidenced by the cheques issued by the Petitioner in favour of the Respondent and the bank-in slips of the same into the Respondent's DBS account no. 008-4906-8, the contribution of the Petitioner came up to 88% and that of the Respondent 12%.

(iii) The remaining matrimonial assets were acquired from the joint earnings and savings and hence financial contribution of the parties was 50:50.

31 On non-financial contributions, there is no doubt that the Respondent would have played a bigger role in the care of the children and the home. This is usual in a family in which the spouses come from traditional Chinese backgrounds. The Petitioner also would have less time to devote to the family because of the various jobs he held to supplement the income from the two businesses.

32 Based on the financial and non-financial contributions of the parties, the Petitioner should be entitled to at least 50% of the matrimonial assets. But taking into account the needs of each party and to avoid dislocation due to disposal of the matrimonial assets on a 50:50 division, I made the orders appealed against. In the case of the matrimonial flat, I ordered that the Respondent transfer her interest to the Petitioner so that he and the daughter and the son, if he later chooses to stay with the father, could have a home to live in.

33 I also ordered the Respondent to transfer the Bukit Merah Clinic to the Petitioner because he needs it to carry on his practice as a Chinese physician. The Respondent was given the Ghim Moh Shophouse so that she could continue her business of Volks Florists & Gifts on a portion of the first storey and let out the remaining portion as before. The second storey could be her residence.

34 The Respondent was allowed to retain whatever else was in her name including her unexplained vast cash withdrawals from her bank accounts into which their joint earnings were paid.

35 On this basis, without taking into the account the rentals from the Ghim Moh Shophouse and the Johore properties appropriated by her, the award worked out to a division in the region of 45:55 per cent to the Petitioner and the Respondent respectively.

36 On maintenance for the son, the Petitioner was ordered to pay to the Respondent \$350 a month with effect from 1 October 1999 as long as the son resides with her. In addition, the Petitioner is to pay for the son's education, and his personal expenses with a daily allowance. For the Respondent's maintenance and upkeep, the Petitioner was ordered to pay her monthly \$400 with effect from 1 October 1999. I made this award bearing in mind her own income from Volks Florists & Gifts and the rentals that she will continue to receive from the properties that she is to keep.

37 On costs, these ancillary proceedings were as acrimonious as the divorce proceedings because of the stand taken by the Respondent. She relied on the Petitioner's bankruptcy to belittle the financial contribution of the Petitioner in the acquisition of, and to deny him a share in, the assets registered and paid for with funds from bank accounts in her name. This was what she stated in her affidavit of 24 August 1999:

"His salary throughout was not enough to maintain the family and himself [indeed from day 1 of the marriage he never gave me any maintenance for the family until 19 years later (in June 1994) when he paid maintenance of \$2500/- for the 1st time]. He was a bankrupt for more than 12 years during which I gave him financial assistance and moral support. During his bankruptcy, he studied part-time and helped in his father's shop and did not earn the kind of money which could help him acquire any of the matrimonial assets (except part of the matrimonial flat as admitted). If not for my hard work and efforts, there would be no matrimonial assets (except the flat) to fight over."

It was however clear to me these matrimonial assets were acquired and the bank accounts operated in the Respondent's name, because of the Petitioner's bankruptcy. But when it came to maintenance, she claimed a sum of \$103,800 as amount short paid over the years, dating her claims back to June 1994 when the Petitioner was still a bankrupt. As these ancillary proceedings had been unnecessarily protracted by the stand taken by the Respondent, I ordered her to pay two-thirds of the Petitioner's taxed costs.

GOH JOON SENG

JUDGE

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