

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 5

Civil Appeal No 228 of 2018 (Summons No 90 of 2021)

Between

TQU

... Applicant

And

TQT

... Respondent

In the matter of Divorce (Transferred) No 793 of 2015

Between

TQT

... Plaintiff

And

TQU

... Defendant

JUDGMENT

[Family Law] — [Ancillary powers of court] — [Division of matrimonial assets] — [Husband seeking to vary order in respect of division of matrimonial assets] — [Section 112(4) Women’s Charter (Cap 353, 2009 Rev Ed)]

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**TQU
v
TQT**

[2022] SGCA 5

Court of Appeal — Civil Appeal No 228 of 2018 (Summons No 90 of 2021)
Judith Prakash JCA, Belinda Ang Saw Ean JAD and Woo Bih Li JAD
26 November 2021

19 January 2022

Judgment reserved.

Woo Bih Li JAD (delivering the judgment of the court):

Introduction

1 On 25 February 2020, we issued a judgment, *TQU v TQT* [2020] SGCA 8 (“the Judgment”), on the division of matrimonial assets between the parties whom we referred to as “the Husband” and “the Wife”. About 20 months thereafter, the Husband filed the present application, CA/SUM 90/2021 (“the Application”) on 1 November 2021, for variation of certain aspects of the Judgment. After reading the lengthy affidavit of the Husband in support of the Application, the Wife’s affidavit in reply, as well as the Husband’s submission which largely repeats what was already stated in his affidavit, it is obvious to us that the Application is without merit and also an abuse of the process of the court for reasons we will elaborate below.

2 The Husband practised as a medical general practitioner. He is capable of understanding the importance of finality in litigation and that once a decision is made and there is no avenue for further appeal, the decision is to be complied with. Furthermore, although he is acting in person, he has had the benefit of legal advice as he is claiming costs of such advice from the Wife. Yet, he has chosen to seek a variation of certain aspects of the Judgment which effectively amounts to a backdoor appeal and an abuse of the process of the court.

Background

3 In the Judgment, we assessed the value of the disclosed assets of the parties, for which we could determine a value of \$13,667,860.72 (see the Judgment at [94]). We initially apportioned the assets 85:15 in the Husband's favour. We adjusted this ratio in the light of an adverse inference which we drew against him for failing to provide full and frank disclosure of his assets and further valuation in some instances. The adjustment resulted in a final ratio of 75:25 in favour of the Husband, *ie*, an increase for the Wife from 15% to 25%.

4 The Wife's share meant that she was entitled to 25% of \$13,667,860.72, *ie*, \$3,416,965.18. As the value of the assets held in her sole name amounted to \$1,123,657.45, we ordered the Husband to pay her the balance, *ie*, \$2,293,307.73 within six months from the date of the Judgment. He was allowed to set-off against this sum, \$20,000 which we awarded to him as legal costs of his appeal and two interlocutory applications. We ordered that he pay the net balance ("the Balance Sum") to her with interest at 3% per annum from 1 December 2018 until the date on which full payment is made.

5 We also ordered each party to remove caveats they lodged against any property owned by the other within 14 days from the date of the Judgment,

except for the one on a property which we referred to as the Lorong Pisang Raja property. The Wife was ordered to remove the caveat on that property within 14 days after receipt of the Balance Sum and interest.

- 6 In the Application, the Husband seeks the following primary reliefs:
- (a) That the sale proceeds of a property referred to as the Eng Kong Place property be used to satisfy the Balance Sum.
 - (b) That the amount he is to pay the Wife be reduced to take into account an alleged loss of \$1.1m arising from the sale of the Eng Kong Place property.
 - (c) That he be permitted to set-off a sum of \$14,399.40 being alleged outstanding legal costs said to be owing by the Wife to him against any sums he is to pay her.
 - (d) Waiver of interest that he was ordered to pay on the Balance Sum.
 - (e) That the Wife be ordered to transfer shares she holds in two private and family companies to him at an agreed consideration.
 - (f) That the Wife be ordered to transfer to him her interest in a property which we referred to as Liang Feng Mansion, Shanghai, China.
 - (g) That the award to the Wife of 25% of the matrimonial assets be reduced to 15% by rescinding the 10% award to her arising from the adverse inference drawn against the Husband.
 - (h) That the Wife is to remove the caveat on the Lorong Pisang Raja property within 14 days after receipt of the full Balance Sum.

7 The last relief for the removal of the caveat on the Lorong Pisang Raja property is unnecessary because it was already part of the orders we had made in the Judgment. The claim for a right to set-off whatever costs the Wife owes the Husband may be dealt with last. Although the Husband did not refer to any provisions in his affidavit or submission, the relevant provision governing the Application on the variation of an order for the division of matrimonial assets is s 112(4) of the Women’s Charter (Cap 353, 2009 Rev Ed) (“the Women’s Charter”), which reads:

The court may, at any time it thinks fit, extend, vary, revoke or discharge any order made under this section, and may vary any term or condition upon or subject to which any such order has been made.

The Eng Kong Place property

8 The main relief which the Husband seeks pertains to the Eng Kong Place property. His first claim that the sale proceeds of that property be used to pay the Balance Sum is meaningless. It is up to him how he raises the money to pay her. His real complaint is that he wants the Balance Sum to be reduced because of an alleged loss of \$1.1m when he sold that property.

9 In short, in the Judgment, we valued that property at \$3.5m. Importantly, we applied the valuation which the Husband himself had produced to the court. Now the Husband claims that because of COVID-19, he was unable to sell the Eng Kong Place property for a long time, despite strenuous efforts to do so. When he finally managed to sell it in February 2021, it was at a price of \$2.4m, thus resulting in the alleged loss of \$1.1m. His submission is that the Wife should bear 25% of that \$1.1m loss. The Husband also suggests that, at the appeal, he faced much difficulty in obtaining the valuation report for the Eng Kong Place property and that he had settled for a less than satisfactory report

because, according to him, the “major Singapore valuers” were not able to provide valuations in time due to tight schedules at the end of the year. At the appeal, he was also unable to obtain a valuation as at 1 September 2018, which was the date of valuation we directed the parties to obtain but both did not do so. He now explains that valuers had informed him that they would not be able to accurately assess the value of the Eng Kong Place property as at 1 September 2018 because of extreme volatility in the property market.¹

10 We do not accept the last reason, which is a poor excuse. Market volatility alone does not preclude valuers from valuing a property based on a past date. It would have been different if they had been asked to value the property as on a future date but, at the time we gave our directions, 1 September 2018 was in the past. The Husband could well have obtained a valuation as at that date if he had really wanted to. Furthermore, at the time, he did not inform the court that he had settled for a less than satisfactory valuation report and that he needed more time to secure a more “professional” valuation. Having failed to do so and having given the court the valuation of \$3.5m, it does not now lie in his mouth to complain when that valuation was adopted by the court.

11 On his alleged difficulty in selling the Eng Kong Place property and the eventual sale price of \$2.4m, the Wife suspects that this may not be the true price. Be that as it may, there are other difficulties in the Husband’s contention.

12 He emphasises repeatedly that the Eng Kong Place property was the only asset that he could use to pay the Balance Sum. That is untrue.

¹ Husband’s Affidavit dated 1 November 2021 (“HA”) at [57]–[58].

13 He owned three properties in Singapore as at the date of the Judgment:

- (a) The Eng Kong Place property;
- (b) The Lorong Pisang Raja property; and
- (c) A property referred to as the Bukit Batok HDB shophouse.

14 While it is his position that he and the adult children are staying at the Lorong Pisang Raja property and the shophouse is used to earn rent, the point is that it is up to him how he wishes to raise the Balance Sum to pay the Wife. He could have obtained a loan on any one or more of the three properties or sell any one or more of them. The Wife could be ordered to remove the caveat on the Lorong Pisang Raja property upon completion of the sale if he had chosen to sell that property. Further, he also owns other properties outside Singapore.

15 In addition, he also has shares in listed companies as well as his family companies which are of considerable value. He has received significant dividends from the shares in his family companies and according to him, the properties of the companies and dividends are “very substantial” in value.²

16 Insofar as the Husband also suggests that there is a lack of clarity as to how the Balance Sum is to be satisfied,³ this is not acceptable. There is no lack of clarity. It is up to him how he wishes to pay the Wife.

17 Ultimately, once the value of each property was ascertained and the assets divided, the risk of any increase or decrease in such value lies with the person who is given or is allowed to retain the property. If the value of the Eng

² HA at [142].

³ HA at [74].

Kong Place property had increased, the Husband would not have volunteered to pay the Wife a higher sum. The present case is distinguishable from a case which the Husband cites, *UGC v UGD* [2017] SGFC 118 (“*UGC v UGD*”). In *UGC v UGD*, the court order for division of matrimonial assets was for the Astoria Property to be sold, for the wife to be paid \$595,200 from the proceeds of sale (to make up her share of the matrimonial assets) and *for both parties to have joint conduct of the sale*. When the husband did not agree to the terms of the sale as the offered price for the Astoria Property of \$978,000 was at a significantly lower sum than the anticipated value of \$1.2m, the wife filed a variation application for the Astoria Property to be sold at \$978,000. Notably, the judge stated that he would have dismissed the wife’s application but for the fact that the husband also sought a variation of the order to bring finality to the matter (at [19] and [22]). It was in that context that the judge varied the order such that the Astoria Property was to be sold at no less than \$978,000 and the wife’s entitlement to the proceeds of sale be adjusted downwards to \$462,000, with liberty to apply if the sale price changed. This is not the case here.

18 It is not a question of unworkability as the Husband argues. It is simply a question of a lack of *bona fides* on his part. He is simply using the alleged loss in value as an opportunity to pay the Wife less. As this court has stated in *AYM v AYL* [2013] 1 SLR 924 (“*AYM v AYL*”) at [33] (referred to by this court as recently as *CDV v CDW* [2020] 2 SLR 1427 (“*CDV v CDW*”) at [83]), “[s]uch attempts to undermine the finality of orders with regard to the division of matrimonial assets are wholly undesirable as well as unmeritorious and are, indeed, the very antithesis of the rationale underlying such orders in the first place, and aptly demonstrate the dangers of a wide interpretation of s 112(4).”

19 In this regard, we also refer to the following observations of Aedit Abdullah JC (as he then was) in *Seah Kim Seng v Yick Sui Ping* [2015] 4 SLR 731 (at [42] and [43]) (also referred to by this court in *CDV v CDW* at [84]):

42 However, a change in economic conditions or circumstances cannot be a sufficient basis of unworkability. The whole approach in *AYM v AYL* is predicated on variations being rarely permissible. Economic difficulties are often cyclical, and the precise impact of any downturn or slump will depend on the means of each party. Allowing variation because of economic conditions would be far too liberal, and render the restrictions contemplated by in *AYM v AYL* illusory. Unworkability, at least in the sense of a change in circumstances, has to require much more than a change in financial position. It may be that unworkability *ab initio* may contemplate a broader approach, but even then, it cannot be taken too widely either as court orders should have an element of finality, save for exceptional circumstances.

43 *AYM v AYL* stands clearly for the proposition that a material change in circumstances would not be sufficient. The Court of Appeal required a radical change rendering the order quite different from what was originally intended. An improvement in conditions from an economic slump, a low market price or financial difficulties on the part of the parties would not be a radical change. Such variation in position is part of life.

Interest

20 We now come to the question of the 3% per annum interest. The Husband argues that the court should not have ordered that he pay interest on the Balance Sum from 1 December 2018 to the date of full payment to the Wife. In so arguing, he divides this into two periods. The first period is from 1 December 2018 to 24 February 2020, and the second period is from 25 February 2020 until the date of full payment.

21 The initial decision of the High Court was rendered on 15 November 2018, and we handed down the Judgment in the appeal on 25 February 2020. As the Wife had not received maintenance since December 2018, we ordered in

the Judgment that interest would run from 1 December 2018. Naturally, such interest should continue to accrue until the date of full payment.

22 The Husband argues that no interest should be ordered for the first period because it was not until the Judgment that he would know how much he had to pay the Wife. He further argues that the interest ordered was higher than the maintenance he might have had to pay her. As for the second period, he repeats his argument that it took him a long time to sell the Eng Kong Place property in view of the COVID-19 situation. Thus, waiving interest, he says, would be consistent with the government's policy pertaining to the COVID-19 relief framework.

23 First, we reiterate that there must be finality in litigation and the COVID-19 situation is merely an excuse raised by the Husband to achieve his self-interests. Whether or not the Husband is satisfied with the outcome or the reasons in support of the Judgment, the litigation must end. Otherwise, it will also be open to the Wife to file her own application to try and persuade the court to review its decision, which is exactly what the Husband is trying to do by this Application. The need for finality alone is sufficient to dispose of this aspect of the Husband's arguments. However, be that as it may, we elaborate as follows.

24 The Husband assumes that the maintenance that he might have been ordered to pay the Wife was a certain sum per month, but it might have been higher. Furthermore, while it is true that he did not know how much he had to pay the Wife on the division of matrimonial assets until the Judgment of 25 February 2020, the point is that the Wife had been out of pocket, so to speak, since December 2018. The Judgment meant that the division should have taken place earlier. It was not a question of penalising the Husband but compensating the Wife because, after all, the Husband had retained his assets until the

Judgment was issued. Furthermore, the statutory default interest rate post judgment was 5.33% per annum. We could have applied that rate for the two periods he mentioned. Instead, we reduced it to 3% per annum to balance the interests of the parties. The Husband is looking at things only from his own perspective.

25 As for his arguments about interest during the second period, we are not persuaded that the COVID-19 situation is a valid reason to absolve him from paying interest. As we mentioned, he has other assets. Furthermore, he sold the Eng Kong Place property in February 2021 (with completion of the sale in May 2021) but, before that, he was able to pay the Wife \$1.2m, according to him, between 25 December 2020 and 15 January 2021.⁴ No elaboration was given by him as to the source of those funds and why it took him so long from the date of the Judgment on 25 February 2020 to pay the \$1.2m.

26 Furthermore, since the sale of the Eng Kong Place property, he no longer has any excuse not to pay the Wife the remainder of the Balance Sum. If he had fully paid her, he would have stopped interest from accruing. It is plain to us that he has decided not to make prompt payment on the basis that he might be successful in this Application, and if so, could face subsequent difficulty clawing back part of what he has paid.⁵ He must have an idea whether he is likely to be successful and if he prefers to delay payment on the off-chance that he might succeed, then he fairly continues to bear the interest. Indeed, the very purpose of awarding post-judgment interest was to discourage the Husband from delaying his payment of the Balance Sum, and to compensate the Wife for as long as he fails to pay her.

⁴ HA at [48].

⁵ HA at [49].

27 As to the Husband's point that he had considered making payment into court, that is academic in the light of our present decision. In any event, while payment into court might appear to "discharge" his obligation to pay, the Wife would not have received the payment. It was a suggestion which might have addressed his concern but not hers.

Shares in private companies

28 The Husband now seeks an order for the Wife to sell her shares in private companies which he refers to as his "family companies". He complains that neither party had appealed against the decision of the High Court for the shares to be sold but surprisingly, the Court of Appeal varied the order of the High Court such that the Wife is to keep the shares in her sole name. He argues that it is unworkable for the Wife to hold the shares because of her disruptive behaviour as a shareholder. He also complains that the value of those shares was not included in the matrimonial pool to be taken into account in the division of matrimonial assets.

29 We have to take the Husband to task for these absurd and one-sided arguments which reflect how unreasonable he is. There is no point saying that the High Court ordered a sale, or that the value of the shares should be taken into account, when neither side provided a valuation of the shares. A court could have considered ordering a sale if there was a market value for the shares, or if the parties had provided a valuation or had agreed to their value. Here, there was no market value and parties did not provide a valuation or agree to a value. While the Husband previously complained that the Wife had not wanted to pay her share of the costs of valuation, he could and should have first obtained the valuation on his own if he had really wanted to, as we observed in the Judgment at [93]. The question of the Wife paying a share of the costs of valuation could

then be sorted out later by the court. He did not need the Wife's cooperation to provide access to the books of his family companies for a valuation to be done. Instead, he took a short-sighted position and chose not to provide a valuation for the shares, using the Wife's lack of cooperation as a flimsy excuse for this position.

30 Furthermore, at that time, he did not ask for an order for the Wife to sell her shares to him. All this was in the light of the fact that he must have known that it was in his own interest to obtain the valuation and ask for an order for her to sell her shares to him. Even now, he is proposing that the Wife transfers her shares to him "upon consideration to be paid to her equivalent to 25% of the value of the shares".⁶ In the Application, he mentions a transfer of the shares at "an agreed consideration". Such suggestions are unhelpful as he knows that he and the Wife have not and are unlikely to agree as to what the consideration should be without a valuation.

31 In any event, the court has already made an order for the Husband and the Wife to retain the assets held in their respective sole names (see the Judgment at [143]). The Wife is entitled to retain the shares in his family companies held in her sole name. If the Husband wishes to purchase the shares from the Wife now, he has to come to a commercial arrangement with her. This is outside the scope of the division of matrimonial assets, for which we have already given the Judgment.

⁶ HA at [149].

China Properties

32 The Husband seeks to persuade the court that two properties in China should not have been considered as part of the pool of matrimonial assets. These were referred to as Liang Feng Mansion, Shanghai, China and The Regalia, Shanghai, China. The first is held in the joint names of the parties. The second is held in his sole name.

33 The Husband already had his chance to persuade the court of his position, both before the High Court and then subsequently, the Court of Appeal. As we mentioned above, there must be finality in litigation and we see no valid reason to re-open this issue.

34 In so far as the Husband says that he could not provide a valuation of these properties at the time of the hearing before the Court of Appeal, this is a different argument. The court had directed that valuation reports be filed by 3 January 2020. The Husband now claims that this date clashed with a medical procedure for his third child and three scheduled overseas trips in October, November and December 2019. We do not accept this explanation. If that was really the problem, it was incumbent on him to highlight his difficulties and to seek an extension of time to provide the valuation. He did not do so.

35 The Husband also argues that valuers in China would require the legal owner to be physically present in China and with proof of ownership. Even if this were true, he did not elaborate as to why he could not be present in Shanghai with proof of ownership at the time of the hearing before us and, as we stress, he did not ask for an extension of time.

36 Instead, the reasons he gave to this court at that time were different. He said that he had lost track of the properties and did not wish to enquire about them because it would revive bad memories (see the Judgment at [74] and [77]). Now, he is singing a different tune because he has woken up to the possibility that if he passes away before the Wife, the entire title to Liang Feng Mansion may accrue to her under the rule of survivorship (if applicable) and he has suddenly become interested in this property again, which explains why he is now asking that she transfer her interest to him.

37 When we rendered the Judgment, we did not believe his previous reason that he had lost track of the property. The fact that he is now pursuing Liang Feng Mansion reinforces our view that his previous reason was untrue. This is one of the reasons why we drew an adverse inference against him for failure to fully and frankly disclose his assets and provide valuations (see the Judgment at [139]).

38 As mentioned, each party was to retain the assets held in their respective sole names (see [31] above). We did not make any further order in respect of Liang Feng Mansion, which was held in joint names, because neither party was seeking such order, much less an order on the terms as presently sought by the Husband. As mentioned, the Husband initially said that he had lost track of the property and when given an opportunity to provide a valuation, failed to tender any evidence in this regard. Similarly, the Wife did not provide further information about its value. In any event, we confirm that it would have been our intention for Liang Feng Mansion to continue to be held by the parties in their joint names in the absence of more information and that should be part of the Judgment.

39 We would add that if the Husband had wanted the joint tenancy to be severed, he should have addressed the High Court and the Court of Appeal much earlier on matters such as the value of Liang Feng Mansion and whether severance is permitted under the law applicable in Shanghai. Having failed to do so, we see no reason to grant a variation of the order on the terms sought by the Husband after we have already given the Judgment. If the Husband wishes the Wife to transfer her interest to him now, it is for him to come to a commercial arrangement with her, or seek relief from another court, perhaps in China. This is now outside the scope of the division of matrimonial assets.

Adverse inference

40 From what we have said above, there is no reason to vary the Judgment on adverse inference against the Husband.

Set-off

41 On the question of a set-off of costs owing to the Husband by the Wife (other than the one which we allowed in the Judgment), the Husband should have sought this order earlier. Based on the Application as it stands, we decline to grant a variation of the order under s 112(4) of the Women's Charter for this purpose as no new circumstance has arisen. Be that as it may, we hope that parties will reach some agreement on the set-off without having to resort to the court.

Conclusion

42 In sum, we dismiss the Application which was a waste of time and resources. As the Wife is also acting in person, the Husband is to pay the Wife her disbursements for filing her affidavit to object to the Application and for

extracting the order. This is to be agreed between them within 14 days from the date of this decision. If the parties have agreed on the disbursements and the Husband has settled the disbursements by direct payment to the Wife or an agreed set-off, his security for costs for this application may be released to him. If they are unable to agree, the Wife is to provide the details of the disbursements by correspondence to the Registrar of the Supreme Court within 30 days from the date of this decision for the court to fix the quantum of disbursements payable by the Husband to her and to make consequential orders in respect of the Husband's security for costs for this application.

43 In the circumstances, it is not necessary for us to address the Husband's allegations about the Wife's unreasonable conduct. Those allegations do not warrant the Application.

Judith Prakash
Justice of the Court of Appeal

Belinda Ang Saw Ean
Judge of the Appellate Division

Woo Bih Li
Judge of the Appellate Division

The applicant in person;
the respondent in person.