

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2022] SGHCF 16

District Court Appeal 68 of 2021

Between

VUG

... Appellant

And

VUF

... Respondent

FOUNDATIONS OF DECISION

[Family Law — Matrimonial assets — Division]

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VUG
v
VUF

[2022] SGHCF 16

General Division of the High Court (Family Division) — District Court
Appeal No 68 of 2021
Lai Siu Chiu SJ
30 November 2021

20 July 2022

Lai Siu Chiu SJ:

Introduction

1 This appeal arose from a hearing of ancillaries between the parties in the court below. The District Judge’s (“the DJ’s”) grounds of decision can be found at *VUF v VUG* [2021] SGFC 86 (“the GD”).

2 The parties were married in Singapore on 8 June 2013. They have two children (daughters) from the marriage.¹ VUF (“the Wife”) commenced divorce proceedings against VUG (“the Husband”) in December 2018 after leaving the matrimonial home on 1 February 2018 with both the children.²

¹ GD at para 1.

² GD at para 3.

3 Interim judgment on an uncontested basis was granted on 9 May 2019 based on both parties' unreasonable behaviour towards one another ("the Interim Judgment").³

4 The two daughters were born on 3 September 2014 and 25 August 2016 and were aged five and three respectively as at the date of the Interim Judgment and even younger, when the Wife left the matrimonial home in February 2018.⁴

5 By an order of court granted on 14 May 2021 ("the Ancillaries Order"), the court below decided issues pertaining to (i) division of matrimonial assets; (ii) custody, care and control and access to the children; and (iii) maintenance for the children and for the Wife.⁵

6 The Husband was unhappy with the Ancillaries Order and by way of HCF/DCA 68/2021 ("the Appeal") appealed against the orders (i) awarding the Wife the sum of \$422,000 as her share of the matrimonial assets, (ii) directing him to pay the Wife \$2,000 in monthly maintenance for three years from 1 June 2021 to 30 May 2024 and (iii) directing that the children spend the eve, first and second days of the Chinese New Year with the Wife.

7 The Appeal came up for hearing before this court. The appeal was allowed and the Court *inter alia* made an order that the Husband's shares in the two companies, Company [A] and Company [B], and the Husband's membership of the Singapore Island Country Club were not matrimonial assets.

³ GD at para 6.

⁴ Appellant's submissions ("AS") at para 6; Respondent's submissions ("RS") at para 7.

⁵ GD at paras 6–7 and Annex A.

8 Dissatisfied with the court’s decision, the Wife applied⁶ and was granted leave to appeal against the court’s order in [7], limited to the question of the applicability of ss 112(10)(a)(ii) and 112(10)(b) of the Women’s Charter 1961 (2020 Rev Ed) (“the WC”) in relation to the Husband’s shares in the two companies. Pursuant thereto, the Wife filed a Notice of Appeal in AD/CA 34/2022 (“the Wife’s Appeal”).

9 In the light of the Wife’s Appeal, the Court now sets out the reasons for excluding the Husband’s shares in the two companies from the pool of matrimonial assets that were divided between the couple.

The relevant facts

The two motor companies

10 According to the Husband’s first affidavit of means (“the Husband’s first AOM”), Company [A] was incorporated on 22 November 2002 and he was allotted one share. Company [A] is in the business of selling vehicles. On 29 November 2002, he was allotted another 99,999 shares. On or about 18 April 2005, a further 50,000 shares were transferred to him, bringing his total shareholding to 150,000 shares.⁷

11 Around 16 June 2013, the Husband requested a loan from his parents to buy out his business partner in Company [A]. His parents lent him \$100,000

⁶ AD/OS 63/2021.

⁷ Husband’s first AOM filed on 31 July 2019 at para 28, 2AROA16.

which enabled the Husband to buy over the 50,000 shares belonging to his business partner.⁸

12 On or about 18 June 2013, the 50,000 shares of the Husband's business partner were transferred to him. On the same day, he transferred one share to the Wife without any consideration from her.⁹

13 For the ancillary hearing below, chartered accountants Mann & Associates PAC ("Mann & Associates") jointly appointed by the parties valued the Husband's shares in Company [A] at \$454,222.17¹⁰ as at 31 December 2018.

14 On or about 25 June 2018, the Husband transferred two shares in Company [A] to his father. This was after the Wife had left the matrimonial home in February that year and he needed another shareholder/director to help him to run the company's business smoothly and to comply with statutory requirements. Because of the Wife's refusal to attend the Annual General Meeting ("AGM") of Company [A] despite notices being sent to her, the Husband was unable to hold an AGM in compliance with the Companies Act (Cap 50, 2006 Rev Ed) due to a lack of quorum. Making his father a shareholder by transferring him two shares in Company [A] enabled the Husband to overcome the problems caused by the Wife's uncooperative conduct.¹¹

⁸ Husband's first AOM filed on 31 July 2019 at para 29, 2AROA16–2AROA17.

⁹ Husband's first AOM filed on 31 July 2019 at para 31, 2AROA17.

¹⁰ Exhibit MKN-1 of the Husband's second AOM filed on 1 September 2020, 2CROA6–2CROA32.

¹¹ Husband's first AOM filed on 31 July 2019 at para 31, 2AROA17.

15 In the Husband's first AOM, he deposed that Company [B] was incorporated on 9 September 2005, with the Husband holding one share. The other shareholders are Seh Huan Tong ("Seh") and Company [A].¹² Seh (who is the son of the landlord of the premises occupied by Company [B]) holds 33 shares.¹³ Company [A] holds 66 shares.

16 Company [B] is in the business of servicing vehicles and retailing of spare parts. The Wife is a director of Company [B]. Mann & Associates valued the Husband's shares in Company [B] at \$388,802.99 as at 31 December 2018.¹⁴

17 The Husband disclosed that although the Wife did no work for either company, she was paid \$2,800 per month by each company.¹⁵ The Husband qualified this statement in his second affidavit of means filed on 1 September 2020 ("the Husband's second AOM"), where he stated that the Wife would occasionally help him with bank deposits and other "minor tasks".¹⁶ The Husband claimed that one of the reasons why the Wife would assist him with making bank deposits was because this allowed her to take his car for her own use after dropping him off at work. Although the Wife claimed in her first affidavit of means filed on 31 July 2019 ("the Wife's first AOM") that she was initially employed as a personal assistant to the Husband and tasked to send and

¹² Husband's first AOM filed on 31 July 2019 at para 32, 2AROA17–2AROA18.

¹³ Exhibit MKN-1 of the Husband's second AOM filed on 1 September 2020, 2CROA141 at para 1.1.6.

¹⁴ Exhibit MKN-1 of the Husband's second AOM filed on 1 September 2020, 2CROA140–2CROA162.

¹⁵ Husband's first AOM filed on 31 July 2019, 2AROA18 at para 35(c).

¹⁶ Husband's second AOM filed on 1 September 2020, 2BROA465 at para 23.

fetch the Husband to and from work;¹⁷ the Husband disagreed and stated that she was listed as personal assistant in *name* only and that it was not part of her tasks to send him to and fetch him from work.¹⁸

18 He added that he had employed an “administrative person” since 2002 to do the administrative work in Company [A]. He deposed that around 2012 or 2013 he had two employees in Company [A] and about seven employees in Company [B].¹⁹

19 The Husband added that out of the total sum of \$5,600 received by the Wife every month, \$2,800 was meant for the children’s savings and was to be paid into their savings accounts. He found out in January 2018 that the Wife failed to pay the full sum into the children’s savings account.²⁰

20 The Husband added²¹ that the Wife had no accounting background or knowledge. She had no experience in the motor industry having previously worked as a model and (according to the Wife’s first AOM)²² as an air-stewardess for Jetstar for one year.

21 By order of court dated 27 September 2018 made pursuant to the Wife’s application for an interim maintenance order in FC/MSS 965/2018, the Wife

¹⁷ Wife’s first AOM filed on 31 July 2019, 3AROA10 at para 37.

¹⁸ Husband’s second AOM filed on 1 September 2020, 2BROA465 at para 23.

¹⁹ Husband’s second AOM filed on 1 September 2020, 2BROA465 at para 23.

²⁰ Husband’s first AOM filed on 31 July 2019, 2AROA18–2AROA19 at para 35(c).

²¹ Husband’s second AOM filed on 1 September 2020, 2BROA466 at para 25.

²² Wife’s first AOM filed on 31 July 2019, 3AROA9 at para 33.

was removed from the payroll of Company [A] with effect from 1 October 2018 by consent.²³

The parties' affidavits

22 In the Wife's first AOM she claimed²⁴ that she worked as the Husband's personal assistant in the two companies since 2008 and stopped in 2014 after their elder child was born in September 2014. She continued to receive \$5,600 per month from the companies until December 2017 which she considered her "cash allowance".

23 In the Wife's affidavit filed on 2 September 2020 in reply to the Husband's first AOM ("the Wife's second AOM"), she deposed²⁵ that the Husband's shares in Company [B] were worth \$388,802.99 according to the valuation provided by Mann & Associates. She further stated that as Company [A] owned 66 shares out of the 100 shares in Company [B] and Company [A] was wholly owned by the Husband who held one share in his personal name in Company [B], it meant that he owned 67% of Company [B].

24 The Wife denied that she did no work to earn her salary of \$5,600 from both companies of which she held directorships since 2013. She further denied that there was ever an agreement to divert part of her salary to the children's savings accounts; the Husband had made the suggestion but she did not agree.

²³ Prayer 4 of FC/MSS 965/2018, 2AROA217.

²⁴ Wife's first AOM filed on 31 July 2019, 3AROA12 at paras 46 and 49.

²⁵ Wife's second AOM filed on 2 September 2020, 3CROA24 at paras 45–48.

However, of her own accord, she would deposit \$2,000 into the children's savings accounts as savings for herself and the children.²⁶

25 The Husband refuted the Wife's contention that she worked in both companies to earn the \$5,600 she was paid. In his affidavit filed on 2 July 2018 in relation to application in FC/MSS 965/2018 ("the Husband's July 2018 affidavit"),²⁷ the Husband exhibited²⁸ an email from the Wife dated 19 November 2015 where she acknowledged that she "did nothing [for the company] and added, "I didn't ask u for the money, u gave it to me willingly". He deposed that when he discovered that the Wife had not deposited \$2,800 into their children's savings accounts every month as agreed, he transferred \$1,400 per month to each of their savings accounts between February and April 2018.²⁹

26 The Husband deposed that he had reduced the Wife's salary to \$1,000 per month on or about 1 March 2018 but was unable to credit the sum to her UOB account either in March or April 2018 as the account appeared to be closed. Similarly, he was unable to credit the \$1,000 to her DBS account for the same reason. After he read the Wife's affidavit filed on 4 June 2018 and noted therefrom that she had opened a new UOB account, he deposited into that account \$800 per month (being her net salary of \$1,000 less deduction of CPF contributions) between March and May 2018.³⁰

²⁶ Wife's second AOM filed on 2 September 2020, 3CROA25 at para 54.

²⁷ Husband's July 2018 affidavit, 4CROA616 at para 12.

²⁸ Exhibit KNM-2 of the Husband's July 2018 affidavit, 4CROA653.

²⁹ Husband's first AOM filed on 31 July 2019, 2AROA18–2AROA19 at para 35(c).

³⁰ Husband's July 2018 affidavit, 4CROA621–4CROA622 at paras 23–24.

The decision of the court below

27 The combined value of the Husband's shares in the two companies was \$843,025.69.³¹ The DJ added that sum into the matrimonial pool as part of the Husband's assets approximating \$1,458,535.³² In the final analysis, the Husband was ordered to transfer to the Wife \$422,000 as her entitlement to the parties' pool of assets.

28 The Husband appealed against the DJ's orders on the basis that the DJ erred³³ as the entire value of his shares in both companies should not have been taken into account in the division of assets. Rather, it should be the difference in value between 31 December 2018 (the date of the valuations) and 8 June 2013 (the date of the marriage) or a date closest to the marriage date as this would more accurately reflect the values of the Husband's shares in the companies during the marriage; the court agreed.

The law

29 The relevant law on the division of matrimonial assets is to be found in s 112 of the WC. Section 112(1) of the WC states:

Power of court to order division of matrimonial assets

112.—(1) The court has power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable.

³¹ GD at para 34.

³² GD at para 55.

³³ Husband's case dated 23 September 2021 at paras 20–22.

30 Section 112(10) of the WC elaborates on s 112(1) as follows:

(10) In this section, “matrimonial asset” means —

- (a) any asset acquired before the marriage by one party or both parties to the marriage —
 - (i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or
 - (ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and
- (b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,

but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

31 The court had to determine if the Husband’s shares in either company or in both companies came within the definition of “matrimonial asset” under s 112(10) of the WC.

32 The court deals first with Company [A]. As noted at [10] above, this company was incorporated on 22 November 2002, before the marriage of the parties on 8 June 2013. Only the last tranche of 50,000 shares transferred on 18 June 2013 from the Husband’s business partner to the Husband, ten days *after* the marriage could possibly be considered a matrimonial asset. The Husband’s remaining 100,000 shares were acquired by him *prior* to the marriage and were therefore not assets acquired during the marriage under s 112(10)(b) of the WC.

33 In the case of Company [B], as noted at [15] above, the company was also incorporated prior to the marriage (on 9 September 2005). Accordingly, the Husband similarly acquired his one share as well as his other shares (indirectly) through Company [A] before the marriage.

34 The court therefore had to determine whether the Wife managed to establish that the Husband's shares in the two companies were matrimonial assets within the ambit of ss 112(10)(a) or 112(10)(b) of the WC. In particular, the burden was on the Wife to show that the Husband's shareholdings in the two companies acquired prior to the marriage came within s 112(10)(a)(ii). The court could not see how the shareholdings could possibly fall within s 112(10)(a)(i) as an item that could have been used or enjoyed during the marriage. If at all, the Wife's entitlement would come under s 112(10)(a)(ii) in that she had substantially improved the business of both companies or either company during the four years and eight months of the marriage (counting from date of marriage on 8 June 2013 until the Wife left the matrimonial home on 1 February 2018). The parties' cohabitation since 2008 did not count towards the duration of the marriage.

35 No evidence was presented before the court as to the Wife's direct contribution towards the business of either or both companies. It was not disputed that the Wife had made no financial contribution to either company. While the Wife was made a director of both companies by the Husband, nothing was said of her contribution as such. All that was presented before the court were bald statements from the Wife (and the Husband) that she was made a director of both companies in 2013. It was not said that she was a working

director. The Husband had deposed³⁴ that she was uncooperative as a director of Company [A] and he had to rope in his father as another director to enable the company to function.

36 As a director, did the Wife improve the business of Company [B] by bringing in customers to service their motor vehicles? There was no evidence in that regard. Neither was there evidence that she increased the sales of motor vehicles for Company [A].

37 What was in evidence was that she was on the payroll of both companies and was paid \$2,800 by each company until she was removed therefrom by an order of court on 1 October 2018 (see [21] above). Whether she “earned” her keep (as the Wife insisted) or she did “nothing” or minimal work (as the Husband contended), the fact remains that the Wife received a salary and a substantial one at that, in the period before she left the Husband, for the better part of her employment by the two companies. Her tenure as an *employee* cannot therefore be taken into account under s 112(10)(a)(ii) of the WC. Otherwise, it would amount to double recovery as she had already received payment/recognition for her services in both companies.

³⁴ See [14] *supra*.

The decision

38 Consequently, the court did not consider that the Husband's shares in either Company [A] or Company [B] were matrimonial assets to which the Wife was entitled to any share, ruled accordingly and allowed the (Husband's) Appeal.

Lai Siu Chiu
Senior Judge

Yap Teong Liang and Tan Hui Qing (T L Yap Law Chambers LLC)
for the appellant;
Sunil Singh Panoo and Jasjeet Singh s/o Harjindar Singh (Dhillon &
Panoo LLC) for the respondent.
