IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC(A) 8

Civil Appeal No 107 of 2021

Between

(1) Safie bin Jantan

… *Appellant*

And

(1) Zaiton binte Adom
(2) Nafsiah bte Wagiman

… *Respondents*

Civil Appeal No 108 of 2021

Between

(1) Zaiton binte Adom

… *Appellant*

And

(1) Safie bin Jantan
(2) Nafsiah bte Wagiman

… *Respondents*

EX TEMPORE JUDGMENT

[Family Law — Ancillary powers of court]

[Family Law — Muslims — Issues within jurisdiction of civil court]
[Muslim Law — Syariah Court — Jurisdiction]
[Restitution — Unjust enrichment]
[Trusts — beneficiaries]

Safie bin Jantan
v
Zaiton bte Adom and another and another appeal

[2023] SGHC(A) 8

Appellate Division of the High Court — Civil Appeal No 107 of 2021; Civil Appeal No 108 of 2021
Debbie Ong Siew Ling JAD, Aedit Abdullah J and Quentin Loh Sze-On SJ
8 February 2023

8 February 2023

Debbie Ong Siew Ling JAD (delivering the judgment of the court *ex tempore*):

Background

1 Mr Safie bin Jantan ("S") is the appellant in AD/CA 107/2021 ("AD 107") and the first respondent in AD/CA 108/2021 ("AD 108"). His present wife, Ms Zaiton binte Adom ("Z") is the appellant in AD 108 and the first respondent in AD 107. Mr Safie's ex-wife, Ms Nafsiah bte Wagiman ("N"), is the second respondent in both AD 107 and AD 108.

2 We dismiss the appeals in AD 107 and AD 108. These are the brief grounds of our decision.

3 S and N married in 1985 and divorced in 2018. S then married Z in 2019. In 2015, on S's request, Z handed S a cheque made out to "CPF" and a cashier's

order made out to "CPF BOARD" totalling $205,359.80 (the "Moneys"). S was still married to N at that time. S handed the cheque and cashier's order to N, who deposited the Moneys into her Central Provident Fund ("CPF") account on S's instructions. N then withdrew $125,717.15 from her CPF account to repay the loan on their matrimonial home, a Housing and Development Board flat ("the Flat").

4 In May 2017, N commenced divorce proceedings against S in the Syariah Court. The Syariah Court granted a divorce decree on 4 December 2018 (the "2018 Order") which included an order in paragraph 5 that the Flat was to be sold and N was to receive 100% of the net sale proceeds. Ten days after the 2018 Order, on 14 December 2018, S applied for variation of paragraphs 5 and 6 of the 2018 Order. Z intervened in those variation proceedings, seeking a claim of $205,359.80 for herself. In October 2019, the Syariah Court varied part of the 2018 order – it ordered that N was to pay Z the sum of $138,917.15. On appeal, the Appeal Board constituted under the Administration of Muslim Law Act (Cap 3, 2009 Rev Ed) (the "Appeal Board") set aside that variation order and restored the 2018 Order. Z then commenced a civil action in Originating Summons No 1014 of 2020 ("OS 1014") claiming $205,359.80 from S and/or N.

Decision of the Judge

5 In OS 1014, the Judge of the General Division of the High Court (the "Judge") held that S was personally liable to pay Z the sum of $205,359.80 as restitution for unjust enrichment. He noted that S conceded that in 2015, S owed a personal obligation to return Z the sum of $205,359.80. The Judge found that S and Z had shared a common intention for either S or Z to become the sole owner of the Flat in exchange for Z's Moneys. He found that once the Moneys

were handed over to S, the funds were at S's free disposal and S was enriched. S's choice to direct N to deposit the cashier's orders into her CPF account did not detract from his enrichment. This enrichment was at Z's expense and it was unjust as there was a failure of basis, which was the common intention for S to become the sole owner of the Flat. As the Appeal Board's decision would result in the Flat's entire net sale proceeds going to N, the basis had failed.

6 The Judge dismissed all the other claims made by Z against S and N.

Analyses and Observations

7 A main contention of the appellants is that it was N who has been unjustly enriched and her conduct was unconscionable as she now refuses to return the Moneys after initially acknowledging that they should be returned to Z. We observe that two facts are of critical importance here. First, N is now entitled to the entire net proceeds of the Flat *due to a Syariah Court order*. Second, we accept that N did not know until 2016 that the source of the Moneys was Z, nor did she know before then of the plans and common intention of S and Z. These facts are fatal to the appellants' cases.

8 As a third party to the divorce proceedings between S and N, Z can only pursue her purported interest in the Flat by way of independent civil proceedings. The Appeal Board referred to the principles in the Court of Appeal ("CA") decision of *UDA v UDB and another* [2018] 1 SLR 1015 ("*UDA*") and the High Court decision of *UDA v UDB* [2018] 3 SLR 1433. It applied the same reasoning in these decisions and held that the Syariah Court exercising matrimonial jurisdiction over divorcing parties had no jurisdiction to determine the substantive rights of a third party to the divorce proceedings.

9 What then, could someone in Z's position have done? In *UDA*, the CA explained (at [54]):

> A third party claiming an interest in any property alleged to be a matrimonial asset is entitled to have his rights ruled on by the court and is, further, entitled to the benefit of a final ruling which he can assert against the rest of the world. If the third party wants to directly assert those rights, what should he do? He can, of course, and should commence independent civil proceedings against either or both the spouses (depending on the factual situation) for a declaration as to his interest and other relief. The question is whether he can do anything in relation to the ongoing s 112 proceedings. Given that the third party cannot participate in those proceedings, whilst he may ask for leave to intervene in the proceedings, the only purpose of such intervention would be to notify the court of his interest and apply for a stay of the s 112 proceedings pending determination of his separate civil suit.

10 Thus where a court is apprised of a third party's intended claim to property which a spouse asserts is a matrimonial asset, the court should "stay the s 112 proceedings in order to allow the property dispute to be separately determined first" (*UDA* at [55]).

11 Z could have intervened in the Syariah Court proceedings to seek a stay of the divorce proceedings until her rights could be determined in the civil court. At the first hearing of the divorce proceedings, N informed the court of the use of moneys from Z to repay the loan on the Flat. The Syariah Court held the divorce proceedings in abeyance to allow Z the opportunity to apply to intervene in the divorce proceedings. Z did not intervene then and instead intervened later to bring a claim before the Syariah Court in the subsequent variation proceedings filed by S. The Appeal Board held that the Syariah Court did not have the jurisdiction or power in the variation proceedings to determine Z's claims and restored the 2018 Order. Consequently, N remains entitled to the entire net proceeds of the Flat. Had Z been *successful* in a claim in a civil action that she had beneficial ownership over certain assets *before* the 2018 Order was

made, the Syariah Court might then not have included those assets in the pool of matrimonial assets to be divided between the divorcing parties. No such steps were taken and it is not appropriate now to speculate what the outcome might have been had there been civil proceedings then.

Decision

12 We agree with the Judge that on the facts and circumstances of this case, S had been unjustly enriched by the Moneys and is liable to return the moneys to Z. S had requested the Moneys from Z, and Z had intended to transfer the Moneys to S. In 2015, Z was already in a relationship with S, described by Z as an "unregistered marriage". To Z, S was her husband and they were acting as a team planning to acquire ownership over the Flat. S then used the Moneys in ways he thought would benefit him. Perhaps he had not considered that upon a divorce, the Flat could be divided by the court in a way that gave him no interest in it. But even if he had not considered that, he still had the opportunity to run his case as he thought fit during the divorce proceedings. Whether he could have benefitted or been "enriched" from his use of the Moneys by asking the Syariah Court to treat them as his direct contributions in dividing the matrimonial assets, was for him to pursue. The Appeal Board had held at [78] of its Grounds of Decision (Appeal Case No. 32/2019) that:

> As to whether the relevant considerations in the present case have been properly canvassed at the hearing leading to the Decree (namely, whether the money is to be treated as an asset or a form of direct financial contribution by either of the parties to the marriage; and if it is an asset, whether it is a matrimonial asset or not), this is an argument for appeal and not variation.

13 The Moneys have gone into the equity of the Flat which has been found to be a matrimonial asset and divided by the Syariah Court. According to N, the Syariah Court had ordered that she was to receive 100% of the net sale proceeds

of the Flat to account for the shortfall of *nafkah iddah* and *mutaah* that should be awarded to her. Theirs was a marriage that lasted 33 years. The Syariah Court had given Z the opportunity to intervene in the proceedings, applied the law to the facts before it and reached its 2018 Order. This court cannot go into the merits of the Syariah Court order nor re-open its decision.

14 The Judge's order that S was personally liable to pay Z the sum of $205,359.80 was a "risk" to S that eventualised as S did not take steps earlier to assert his claim that not the full equity in the Flat was a matrimonial asset. In *UDA*, the CA observed that where the property is in the name of one of the spouses who claims that the third party has an interest in the property, but where no order is sought by or against this third party directly, the court may make an order exercising its powers as the only parties directly affected by the order will be the spouses in question. The CA noted that this bears the attendant risks that an order obtained is not binding upon the third party (*UDA* at [58]):

> … the spouse in whose name the property stands, having been ordered to share the value of the property with the other spouse, may later find he or she has to account to the third party for such value or to transfer the property outright to the third party. This is because the determination of the ownership of the disputed property in the s 112 proceedings will not bind the third party who may challenge it in separate proceedings. But that is the risk the spouse takes by not seeking an order that will bind the third party.

15 Instead of taking active steps in respect of his position on the Moneys, S was absent at the hearing on 4 December 2018 when the divorce decree and orders for division of assets were made. S did not file any documents in the divorce proceedings. He now has to account to the third party, Z, for the Moneys. We observe in the Notes of Evidence of 16 September 2021 that S's counsel conceded that S owed an obligation to repay the sum to Z but as "the Syariah Court order deprived him of all interest in the flat and also in the sale

proceeds", he submitted that S subsequently no longer had the obligation to do so. The Syariah Court's 2018 Order does not alter S's personal obligation to Z.

16 We find no merit in the appellants' arguments against the Judge's conclusions in respect of the other claims. We do not find any error in the Judge's conclusions that Z fails in her claims based on institutional constructive trust, remedial constructive trust, presumed resulting trust, *Quistclose* trust, proprietary restitution and equitable lien.

17 In brief, in respect of Z's claim against N on imposing an institutional and remedial constructive trust (if applicable in Singapore), Z's case fails as N's conduct has not been unconscionable on the facts. N did not know that the Moneys were from Z when she used them to redeem the loan on the Flat. Subsequently, her entitlement to retain the proceeds rests on the Syariah Court's 2018 Order. As for Z's claim for a resulting trust in her favour, her claim fails as she intended to hand over the Moneys to S to be used by S, in ways he chose to, to carry out the plan for him to acquire ownership of the Flat. For this reason as well, a *Quistclose* trust does not arise as Z had handed over the Moneys for S to use, albeit in ways that would further their broad aim.

18 We observe that the ultimate outcome of the Judge's order in fact favours Z. Z has sought the return of the sum of $205,359.80 and she has been successful in obtaining an order for the return of that sum. Despite this, she may still not be satisfied with the outcome because S is her husband with whom she "shares" financial gains and losses as part of married life, but that is a separate and different lament. The situation has partially come about because her husband had undergone divorce proceedings where his assets held to be matrimonial assets have been shared with N, and neither Z nor her husband S

took the opportunity given to assert their claims in civil actions before the conclusion of the divorce proceedings.

Conclusion and Costs

19 We dismiss the appeals, AD 107 and AD 108.

20 S has failed in his appeal against Z, while Z has failed in her appeal against S. No costs are ordered for these two parties *vis-à-vis* each other.

21 Both S and Z have failed in their appeals against N. S and Z shall each pay $15,000, inclusive of disbursements, to N (N will receive costs of $30,000, inclusive of disbursements, in total).

22 The usual consequential orders will apply.

Debbie Ong Siew Ling
Judge of the Appellate Division

Aedit Abdullah
Judge of the High Court

Quentin Loh Sze-On
Senior Judge

Chishty Syed Ahmed Jamal (A C Syed & Partners) for the appellant in AD/CA 107/2021 and the first respondent in AD/CA 108/2021;
Mohamed Hashim bin Abdul Rasheed and Sofia Bakhash (A Mohamed Hashim) for the appellant in AD/CA 107/2021 and the first respondent in AD/CA 108/2021;
Mohammad Shafiq bin Haja Maideen (M Shafiq Chambers LLC) for the second respondent in AD/CA 107/2021 and AD/CA 108/2021.
