

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 21

District Court Appeal No 8 of 2023

Between

WJW

... Appellant

And

WJX

... Respondent

JUDGMENT

[Family Law — Matrimonial assets — Division]

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WJW

v

WJX

[2023] SGHCF 21

General Division of the High Court (Family Division) — District Court
Appeal No 8 of 2023
Choo Han Teck J
4 April 2023

12 April 2023

Judgment reserved.

Choo Han Teck J:

1 The parties married on 27 August 2010. The appellant (“the Wife”) is 42 years old and works as a senior staff nurse. The respondent (“the Husband”) is 45 years old. He sustained a spinal cord injury in 2017 and has been unemployed since. He is certified as disabled. Interim judgment of divorce was granted on 10 May 2021, and was subsequently made final on 22 June 2022. The parties have two daughters, born in 2014 and 2015 (“the Children”).

2 Orders for the ancillary matters were made by District Judge Jason Gabriel Chiang (“the DJ”) on 20 May 2022 in FC/ORC 2844/2022. The relevant order in this appeal is Order C, regarding the division of the matrimonial home. The DJ granted the Wife two options — the Wife could either buy out the Husband’s share for a sum of \$188,318.72 within two months from the date of

the order, or, sell the matrimonial home in the open market within six months from the date of the order.

3 The Wife opted for the first option, under which she had two months to complete the transfer, namely, by 17 July 2022. A transfer of any interests in a Housing Development Board (“HDB”) flat between Husband and Wife must be approved by the HDB. The HDB requires an order of court granting care and control of the Children to the Wife. However, because of counsel’s oversight, when FC/ORC 2844/2022 was extracted, it contained no order granting care and control of the Children to the Wife, although that order was made. The HDB informed the Wife on 26 June 2022 that approval would not be granted until the order was amended. On 17 July 2022, the Wife filed a summons by consent of the Husband to vary FC/ORC 2844/2022. An order in terms was granted for the summons on 28 July 2022.

4 On 17 August 2022, the Wife, having obtained the requisite documentation, attempted to effect the transfer of the matrimonial home again. By then, the deadline of 17 July 2022 had already lapsed by a month. The Husband refused to agree to the transfer, demanding that the flat be transferred to him at the prevailing market price as at 17 August 2022. The Wife then applied, by FC/SUM 2017/2020, to vary the DJ’s order. In essence, she sought to extend the 17 July 2022 deadline so as to compel the Husband to transfer the matrimonial home to her. The DJ dismissed the Wife’s application because the order remained a workable one that did not require variation: *AYM v AYL* [2013] 1 SLR 924. At the time when FC/SUM 2017/2020 was heard, the second option of a sale in the open market remained viable. The DJ took the view that the Wife’s non-compliance with the deadline disentitled her from the first option, but left her with the second option of a sale on the open market.

5 Counsel for the appellant, Mr Rajendran, submitted that the DJ failed to recognize and exercise the power, found in s 112(4) of the Women’s Charter 1961 (2020 Rev Ed) (“the Charter”), to vary the order of court. Mr Rajendran refers to the DJ’s oral grounds of decision where the DJ held:

Ct: So, because the order of court was for transfer within a certain timeline and it was breached, so it has to be for sale in the open market by 20 January 2023.

Parties also have the power to extend the time of sale by agreement in writing. But in this case, there has been no evidence provided that parties agreed or would not agree to an extension of time for the sale for the issue of unworkability to come into play.

So, unless there is an agreement between parties to vary, I cannot change any of the previously made orders.

6 Mr Rajendran submitted that the “DJ appears to be of the view that if there is no agreement in writing to extend time for the transfer or sale, the Court had no power to extend time”. I do not think that the DJ misunderstood his powers given him under s 112(4) of the Charter. The DJ declined to exercise this discretion under s 112(4) of the Charter because the only reason given for the variation was a breach of the court ordered deadline. Under the order, the Wife had two options — to buy over the Husband’s share in the matrimonial home within two months, or to sell it in the open market within six months. The Wife breached the deadline under the first option, thus forfeiting her rights under it. The second option might have been less desirable, because that will compel her to look for another place to live with the Children. But it remained, nevertheless, an option under the order, the first option having lapsed. I am of the view that the DJ did not err in dismissing the Wife’s appeal.

7 The DJ’s reference to the extension of time was a reference to the order that “[p]arties shall be at liberty to extend the time for the sale of the Matrimonial Home, by agreement in writing”. This order was reasonable and

correct. Where a sale of property is concerned, the market conditions of the day are significant. Although parties may sometimes agree that a sale be deferred to a later date when the value of the matrimonial asset might be higher, but unless they had agreed to a floating value, they may not be bound to a fixed value when that value had changed beyond the date that they were reasonably expected to complete the transfer. Thus, the Wife is not entitled to buy over the Husband's share in August 2022 based on a valuation done in May 2022.

8 I see no merit in the Wife's appeal. However, the deadline for the second option, 20 January 2023, has passed, and the division of matrimonial home has not yet been disposed of — whether by transfer or by sale in the open market. It is now unfair to compel the Husband to transfer his share on the valuation as of May 2022. Yet the Wife also requires a place to stay with the Children. In my view, the fairest way forward is to amend the original order so that the Wife buys over the Husband's share of the property in the ratio of 62% (Wife): 38% (Husband) according to the valuation as of this judgment, which the Husband says is \$582,000.00. This appears to be a reasonable figure. And since there is no evidence to show that the current value is lower, I will use this value rather than order another round of valuation.

- Sgd -
Choo Han Teck
Judge of the High Court

Kanthosamy Rajendran and Jeyabal Athavan (RLC Law Corporation) for appellant/wife;
Respondent/husband in person.