

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 46

District Court Appeal No 79 of 2023

Between

VUG

... Appellant

And

VUF

... Respondent

JUDGMENT

[Family Law – Consent orders – Variation]

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

VUG

v

VUF

[2023] SGHCF 46

General Division of the High Court (Family Division) — District Court
Appeal No 79 of 2023
Choo Han Teck J
30 October 2023

1 November 2023

Judgment reserved.

Choo Han Teck J:

1 The appellant (the “Husband”) is 48 years old and has a business in the automobile industry (“MB Ltd”). The respondent (the “Wife”) is 43 years old and works for the Grab delivery service. They were married on 8 June 2013, and have two daughters, aged nine and seven. The Wife commenced divorce proceedings on 3 December 2018. The interim judgment was granted on 9 May 2019, and final judgment on 10 August 2021. The district judge (“DJ”) below made the ancillary order on 14 May 2021 (the “AM Order”). The Husband appealed against the AM Order to the High Court (HCF/DCA 68/2021), and on 30 November 2021 Lai J, in HCF/ORC 322/2022, varied the AM Order (“Lai J’s Order”). The Wife filed an appeal (AD/OS 63/2021) to the Appellate Division of the High Court (“AD”) and was granted leave to appeal on limited grounds (on 15 March 2022). The Wife’s appeal was limited to issues relating to the Husband’s shares in his companies,

including MB Ltd. She then filed her appeal (AD/CA 34/2022) on 24 March 2022.

2 In the meantime, the parties settled and obtained a consent order (FC/ORC 5736/2022 dated 6 December 2022) varying Lai J's Order. Thereafter, on 12 December 2022, the Wife withdrew her appeal to the AD. The present dispute involves this consent order (the "Disputed Consent Order"). Lai J had reduced the overall amount of money the Wife was to receive, namely from \$422,000 to \$86,000. After accounting for deductions (refunds to children's bank accounts and costs award for the Husband), parties agreed that the Wife was to receive \$78,957.83 under the consent order. The consent order was made because the Wife wanted to receive cash and not have to pay the \$78,957.83 into her Central Provident Fund ("CPF") account. The Legal Aid Bureau ("LAB") representing the Wife, then sent a draft summons of the consent order to Mr Yap Teong Liang ("Mr Yap") on 17 October 2022. On 18 October 2022, Mr Yap asked LAB whether they had sought the CPF Board's approval and confirmation that the Wife does not need to pay the \$78,957.83 back into her CPF account (as was directed by Lai J). He had previously (on 6 September 2022) told LAB that the Husband had no objection to the Wife's wish to receive cash, provided approval was obtained from the CPF Board, and that the Husband would "not be liable nor responsible for any refund [the Wife] has to make to the CPF Board". He also amended the draft summons and inserted:

In the event the CPF Board requires the [Wife] to refund to her CPF account, the [Wife] shall be solely responsible for refunding to her CPF account monies utilised towards the purchase of the matrimonial home plus accrued interest and shall be responsible for any shortfall to be refunded to her CPF account...

3 LAB wrote to the CPF Board on 19 October 2022, enclosing their original draft without Mr Yap’s amendment. Mr Yap was not copied on LAB’s letter and thus did not know that his draft was not sent. The CPF Board replied favourably to LAB on 2 November 2022. Upon receiving this reply, LAB wrote to Mr Yap on the same day, forwarding CPF Board’s reply and sending across an amended draft and confirming that “the revised draft is compliant with CPF’s reply”. Unfortunately, LAB’s letter to Mr Yap now enclosed a copy of the draft summons that Mr Yap had amended, leading Mr Yap to understand that his client’s concerns had been addressed, namely, that he would not have to pay any money into his CPF account because of the Wife’s shortfalls in refunding her own CPF account, should the CPF Board require her to do so. On 3 November 2022, Mr Yap accepted LAB’s draft, with some other changes that are not relevant for our purposes, and attached a signed copy indicating the Husband’s consent, and with that the parties obtained the Disputed Consent Order.

4 On 3 February 2023, the CPF Board informed the Husband that in the event of any disposal of the matrimonial property, he was responsible for refunding to his CPF account any CPF money withdrawn (by him and the Wife), including interest, for the purposes of payment towards the matrimonial property. The Husband then realised that the Disputed Consent Order was different from the agreement he thought had been reached. He then filed an application to vary the Disputed Consent Order (FC/SUM 904/2023) to be consistent with the terms of the agreement reached. The DJ dismissed the Husband’s application, and he now appeals before me.

5 The CPF Board does not require the \$78,957.83 to be paid into the Wife’s CPF account because it was paid to a spouse in exchange for the transfer of that spouse’s share of the matrimonial property. But the Wife had withdrawn

\$179,995.07 as payment towards the matrimonial property and this has to be repaid should the property be sold. The Husband who is now the owner of the matrimonial property, will have to pay it. The Husband says that it is unfair to have him refund money which the Wife had earlier withdrawn to make payment towards the matrimonial home that she had not refunded to her CPF account. Throughout the AM proceedings he had maintained that “he would only pay to the Wife the amount due to her into her CPF account and that he would not be responsible for any shortfall”. According to the Husband, if he were to be responsible for refunding such money to his CPF account, he would be prejudiced by having to tie up funds amounting to an additional \$179,995.07, which he would otherwise have in cash. This was on top of the \$78,957.83 in cash which he had already paid to the Wife as part of the Disputed Consent Order. He consented to the Disputed Consent Order on the basis that the Wife was responsible for her own CPF refunds, and he was only to pay her \$78,957.83 in cash.

6 Mr Yap argues that the Husband only entered into the Disputed Consent Order, despite it not actually reflecting what he had agreed to, because of misrepresentations on the part of the Wife’s previous solicitors, from LAB. Mr Yap refers to the correspondence between himself and the LAB, as well as previously undisclosed correspondence between LAB and the CPF Board as evidence of LAB’s misrepresentations to the Husband (at [2]-[3]). Mr Yap only discovered that LAB sent the unamended draft to the CPF Board, and then the amended draft to him with CPF Board’s approval, after LAB forwarded the correspondence to Mr Yap in February 2023 at his insistence.

7 Mr Yap submits that the correspondence set out above with LAB and the CPF Board makes it clear that LAB had given him the impression that the amendments he had proposed had been conveyed to the CPF Board, and the

CPF Board had seen his amendment when they replied favourably. Counsel argues that he, and his client, were misled into accepting the final draft put forward by LAB.

8 Miss Amelia Ang (“Ms Ang”), the solicitor taking over from the LAB for the Wife, disagrees and says that the Husband has no grounds to justify his variation application. Ms Ang submits that the Husband had been legally represented throughout the proceedings and was therefore fully aware of or had the relevant resources available to ascertain the applicable legal principles in relation to CPF Board’s practices. Ms Ang argues that on the day LAB had sent CPF’s response to Mr Yap (on 2 November 2022), the consent order had yet to be entered, and Mr Yap could have raised the Husband’s concerns then.

9 She submits that the alleged inaccurate assertions and non-disclosure by LAB were not material because the Husband’s CPF ordinary account had insufficient funds to make up the payment to the Wife’s CPF ordinary account, and the AM Order had to allow him to use money in his CPF special account to do so. Ms Ang also submits that the LAB solicitors were not aware of the Husband’s concerns “regarding the quantum of CPF refunds on future sale” and that since LAB was representing the Wife, LAB was “not obliged to consider the lenses in which” the Husband may have chosen to read the statement. According to Ms Ang, LAB was not obliged to copy Mr Yap in their correspondence with the CPF Board. In any event, since LAB had forwarded the CPF Board’s reply on 2 November 2022, which referred to LAB’s 19 October 2022 letter, that ought to have put Mr Yap on notice and he could have sought a copy from LAB had he so wanted.

10 Moreover, Ms Ang submits that LAB had explained in their letter of 21 February 2023 that Mr Yap’s additional clause (at [2] above) was only

relevant if the CPF Board disallowed the arrangement under the draft consent order — whether the Wife “could transfer her share in the matrimonial property to [the Husband] for cash consideration without making any CPF refunds (principal sum and accrued interest) used for the said property to her CPF account”. Since the CPF Board had confirmed that there was no bar against such an arrangement, it was reasonable for LAB to conclude that Mr Yap’s additional clause was irrelevant.

11 Ms Ang urges that court to take into account the Wife’s concern with the refund of her CPF account. She says that the Wife needs cash and would have financial problems if the \$78,957.83 was refunded to her CPF account. She submits that the Husband had not suffered “even a real or substantive prejudice” by having to now make CPF refunds to his own account. First, the Husband may not even sell the matrimonial property at all. Second, he can still use his CPF money to purchase another property, or withdraw them when he reaches the statutory age for withdrawal. In Ms Ang’s words, the “prejudice allegedly suffered by the Husband is therefore hypothetical”.

12 Finally, Ms Ang submits that the Wife would be further prejudiced if the Husband’s appeal is allowed because she had withdrawn her appeal to the AD as the parties had settled the terms for the consent order. Ms Ang submits that the Wife may no longer be allowed to argue the broader terms of the DJ’s order which had given her a much larger share, namely, \$422,000 instead of the \$86,000 that Lai J ordered.

13 In my view, the present situation is unsatisfactory. On one hand, maintaining the current Disputed Consent Order is prejudicial to the Husband through no fault of his (or his counsel) because the series of events (at [2]-[4] above) clearly show that the Husband (and his counsel) had been misled. This

is because the Disputed Consent Order was not what the Husband had consented to in substance. It was material that Mr Yap's amended draft, which included the clause (at [2] above) was not shown to the CPF Board when it was asked to comment on the proposed arrangement. Without the full context, there remains a risk that the CPF Board's reply is not comprehensive enough (as it turns out) for a properly considered negotiation between the parties. There is no reason why the latest draft, with the most updated amendments by both parties was not sent to the CPF Board, nor why an outdated draft, which Mr Yap had clearly taken issue with and indicated was deficient, was sent instead.

14 Secondly, although LAB was not representing the Husband and was not obliged to copy Mr Yap on their correspondence to the CPF Board, as a matter of fairness, they ought to have attached the most updated draft which included Mr Yap's proposed amendments. Having failed to do so, it cannot now be argued that Mr Yap ought to have seen it coming and ought to have proceeded with the list of checks now being suggested. This is not reasonable.

15 Thirdly, I disagree with Ms Ang's submission that it was reasonable for LAB to take the position that Mr Yap's additional clause was irrelevant. It was not reasonable for LAB to do so. In Mr Yap's letter to LAB (dated 6 September 2022), he had stated to LAB that:

As to paragraph 3 of your letter, whilst our client in principle has no objection to your client seeking a waiver from the CPF Board to refund to her CPF account monies utilised from her CPF account towards the property plus accrued interest from her share of \$119,767.53, this is subject to the CPF Board's approval and the order to be made by the court.

For the avoidance of doubt, if the CPF Board does not grant your client a waiver or any part thereof, your client shall make the necessary refunds to the children's POSB accounts and the costs at the time of the transfer of the property to our client. Further, our client shall not be liable nor responsible for any refund your client has to make to CPF Board.

From the outset, it should have been clear to LAB that the Husband's acquiescence to paying the Wife in cash, was subject to the condition that the Husband "not be liable nor responsible for any refund your client has to make to the CPF Board". That was what Mr Yap's proposed amendment was supposed to protect the Husband from (at [2] above).

16 Fourthly, I do not accept Ms Ang's submission that the Husband would not be prejudiced by having to refund money into his CPF account. Ms Ang submits that the Wife would be prejudiced if she had to now refund money to her CPF account (at [11]), The same must apply to the Husband. Both the Husband and the Wife clearly want cash in hand rather than having their money in their CPF accounts.

17 On the other hand, varying the Disputed Consent Order to reflect the Husband's own understanding is equally unsatisfactory. It offends the principle of consent that is central to a consent order. The present version of the Disputed Consent Order is the version that the Wife had consented to. I accept that she had withdrawn her appeal to the AD on 12 December 2022 because of it. Once material alterations are made, and the substance of the consent order changes, the Wife cannot be bound to the new version without her consent. Certainly, the basis on which she agreed to withdraw her appeal to the AD would be different — and it would be unrealistic to assume that the Wife would remain amenable to withdrawing her appeal to the AD. She may well think that the benefits of proceeding with her appeal outweighs the benefits of any new order. In this vein, I accept that this would be prejudicial and unfair to the Wife.

18 We now have an unfortunate situation through no fault of the Husband, the Wife and present counsel, but leaving the Disputed Consent Order in its current form is not an option because the Husband had not been able to consent

to it. Likewise, varying the Disputed Consent Order to a form which the Husband asks for (that is materially different from the current one) is not an option as well because the Wife cannot be said to have consented to the proposed version put forth by the Husband. Either way, there can be no true consent between parties to give rise to a consent order (in whatever form) at this juncture between parties. I am thus of the view that the only fair way out of this dilemma is to set aside the Disputed Consent Order pursuant to the court's discretion under r 831(3) and (4) Family Justice Rules 2014 to "make any order which ought to have been... made", notwithstanding that "any ground for... affirming or varying the decision of" the court below is not specified, in order to "ensure the determination on the merits of the real question in controversy between the parties" (*WGE v WGF* [2023] SGHCF 26 at [86]-[88]).

19 Setting aside the Disputed Consent Order is appropriate in the circumstances and will free the parties to negotiate a fresh consent order, or to apply to rekindle the appeal process — although I think that this is the least desirable option. The appeal before me is therefore dismissed and the Disputed Consent Order is set aside with no order as to costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Yap Teong Liang (T L Yap Law Chambers LLC) for the appellant;
Ang Yu Wen Amelia and Ee Hui Ying Samantha (Lee & Lee) for the
respondent.