

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2024] SGHCF 12

District Court Appeal No 103 of 2023

Between

WRP

... Appellant

And

WRQ

... Respondent

JUDGMENT

[Family Law — Consent orders — Variation]

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WRP
v
WRQ

[2024] SGHCF 12

General Division of the High Court (Family Division) — District Court
Appeal No 103 of 2023
Choo Han Teck J
7 February 2024

14 February 2024

Judgment reserved.

Choo Han Teck J:

1 The appellant (the “Wife”), aged 50, was a homemaker throughout the marriage but was employed by the respondent merely to give her a salary, without her actually working. The respondent (the “Husband”), aged 50, is a businessman. He worked as a middleman in the electronics industry and is now unemployed. Counsel is unable to say when his unemployment started. The parties married on 24 September 1997, and have three daughters, now aged 20, 17, and 14 (together the “Children”). The Wife filed for divorce on 11 March 2013. On 28 March 2013, a consent order was filed in court. Interim judgment (“IJ”) was granted on 22 April 2013, and final judgment on 24 July 2013. The consent order (the “Consent Order”) is central to the dispute in the present proceedings. The Consent Order contains three main terms:

- (a) Parties would have joint custody of the Children, with care and control going to the Wife, and reasonable access to the Husband.
- (b) The Husband would pay the Wife a lump sum maintenance of \$1m for the Wife and \$1m for the Children (total of \$2m) within seven days of IJ date.
- (c) Parties would continue to reside at the matrimonial home which was to be sold in the open market after the youngest daughter reaches the age of 21 years. Next, after deducting the expenses incident to the sale, the balance sale proceeds would be divided equally between them. The Husband would refund his own Central Provident Fund (“CPF”) account from his own share of the proceeds.
 - (i) Parties would wholly retain their own assets which are not specifically mentioned in the Consent Order. No claim can be made in respect of these assets.

2 Ten years later, in 2023, the Husband applied to vary the Consent Order, and the Wife applied for Children’s maintenance. The Husband now wants to sell the matrimonial home forthwith. He wants the Wife to reimburse him for payments he made for her and the Children’s living and household expenses from IJ date till the date the matrimonial home is sold (FC/SUM 994/2023). He also wants refunds to the parties’ CPF accounts to be made before the sale proceeds are divided equally between them (FC/SUM 2120/2023). The Wife wants the Husband to pay her \$1,050,000, as unpaid maintenance to be paid by the Husband under the Consent order (FC/SUM 1269/2023).

3 The district judge (“DJ”) below allowed the Husband’s summonses in part. He ordered that the matrimonial home be sold forthwith, and that parties

were to bear the mortgage loan repayments and the property tax for it equally from the date of his order. The Wife's CPF refund from the sale proceeds was to come from her own share. Her summons was dismissed. This is her appeal.

4 The main issue is whether the Consent Order should be varied. The court has the power, pursuant to s 112(4) Women's Charter (Cap 353, 2009 Rev Ed) ("Women's Charter"), to vary orders, including consent orders relating to the division of matrimonial assets. This power is sparingly exercised because of the "fundamental importance of finality in the context of the division of matrimonial assets". The court may vary an order if it is "unworkable or has become unworkable" (*AYM v AYL* [2013] 1 SLR 924 ("*AYM v AYL*") at [22]-[23]). An order may become unworkable when circumstances have changed radically such that implementing the original order would "be to implement something which is radically different from what was originally intended". It is "very rare and very extreme" for such subsequent changes in circumstances to be radical enough to justify variation because "the nature of an order for the division of matrimonial assets demands that finality and certainty are of paramount importance" (*AYM v AYL* at [25]-[26]).

5 It will require even more to vary a consent order. In addition to the finality requirement, there is a policy objective of freedom of contract (and the related concept of sanctity of contract) "which ought to be given effect to (as far as is possible) by the court". As such, in relation to consent orders, vitiating factors such as fraud, mistake, and a lack of full and frank disclosure, may operate to unravel the consent order (*AYM v AYL* at [15], [29]-[31]). Although the idea of sanctity of contract is not applied directly in matrimonial proceedings as if they were commercial enterprises, weight is given to the negotiated settlement of the parties. Much give and take are involved in reaching such settlements, and the court should keep this in mind lest it gives more to the taker

by taking more from the giver, contrary to the parties' intentions. In the Consent Order, the Husband agreed that the matrimonial home can only be sold after the youngest daughter turned 21, with proceeds to be divided equally. The Wife benefits by having a roof over her head (at no additional costs), she gains a share of the capital appreciation earned (if any), and she gains more value from the Husband being responsible for paying off the mortgage (explained more at [12]-[14] below). In return, the Husband receives material benefits as well. He retains all other assets in his own name, and the Wife agrees not to lay claim to them. It is not disputed that the Husband owns at least one other condominium around the central business district (the "Shenton Way Property") which he purchased during the marriage. The Husband also managed to pay the Wife \$2m shortly after final judgment was granted (per the terms of the Consent Order). It is unknown what other assets the Husband may have had, but that is the benefit he received. He did not have to provide disclosure of his other assets, and the Wife did not share in their division. That was what they agreed.

6 By varying the Consent Order, the DJ eliminated much of the benefits the Wife was entitled to, and gave them back to the Husband (by freeing him of his obligations) — without making other adjustments to the Wife's benefit. Contrary to the agreement of 2013, she is now disadvantaged. This is not equitable. The DJ should have taken into account the assets (such as the Shenton Way Property) that the parties had deliberately excluded as part of their bargain in finalising the Consent Order. The exclusion of such other assets, which the Husband has material holdings of, forms the very heart of that bargain. It is not fair to vary the Consent Order to let the Husband sell the matrimonial home before the youngest daughter turns 21 years old.

7 In any event, when it comes to an early sale of the matrimonial home, I do not agree with the DJ that there was unworkability with the Consent Order

in the present case. A consent order may be unworkable where new circumstances radically change the situation such that “something which is radically different from what was originally intended” will be implemented instead. (*AYM v AYL* at [25]). The DJ considered the common intention of parties when deciding how to vary the Consent Order. In the present case, the Consent Order is clear and unambiguous. The Husband and Wife would reside in the matrimonial home until it is sold after the youngest daughter turns 21 years old. The Consent Order cannot be clearer. I do not agree with the DJ’s finding that there was a common intention between the parties to “defer the sale [of the matrimonial home] for a few years and not for such a long time until the youngest child turn[s] 21-year[s]-old” to avoid potential financial losses of selling the then recently purchased matrimonial home. Such a common intention is in stark contrast to what parties have agreed to record in the Consent Order, that is for the matrimonial home to be sold almost two decades later. Both parties were represented by lawyers at the material time. This is not an endorsement of the Wife’s position that the Consent Order was to provide a roof over the Children’s head — which the DJ had rejected due to the inconsistencies in her evidence. It is sufficient that the common intention that the Husband has put forth, and which the DJ had accepted, is not sustainable in the light of the clear and unambiguous Consent Order.

8 Mr Siow, counsel for the Husband, submitted before me that this is a good time to sell because the property market may be facing a slump soon. This argument will fail even in a commercial agreement, and in a matrimonial settlement, it should be rejected outright. I accept that the parties had jointly tried to sell the matrimonial home, but the Wife changed her mind in going ahead. Her change of mind is irrelevant to her endorsing the Consent Order. Her intentions and obligations, just as the Husband’s, became mutually immutable

upon the recording of the Consent Order. The records from the Wife's previous lawyers are also not helpful. From the contemporaneous communications adduced, the parties had substantially negotiated the terms between themselves before getting lawyers involved. Crucially, when advised by her lawyer to provide a date for the sale of matrimonial home, the Wife instructed her lawyer to proceed with the date on which the youngest daughter turns 21 years old. Even when advised by her lawyer that a later date could be used, she preferred this date. It is thus clear that the term restricting sale of the matrimonial home was proposed by the Wife (on advice from her lawyer), and this was accepted by the Husband (presumably on advice from his lawyer). Short of saying that there was fraud, mistake, or other vitiating factors present then, which the Husband is not saying, he cannot now claim that parties had a different common intention at the time the Consent Order was agreed on.

9 Therefore, in my view, the original intention of the Consent Order must be what it provides for, that the Husband and Wife would reside in the matrimonial home until it is sold after the youngest daughter turns 21 years old. For the purposes of assessing unworkability, the relevant inquiry is where the DJ found that the Consent Order was unworkable because the Wife's unpleasant conduct at home of harassing the Husband and his father (the "Grandfather") amounted to new circumstances that radically changed what was intended by the Consent Order. I do not agree with the DJ's findings on the Wife's behaviour towards the Grandfather. Mr Siow says that the Husband has moved out, but the Grandfather remains in the matrimonial home. It is strange that the Husband would be comfortable leaving his elderly father in the matrimonial home, if, as he claims, the Wife would harm the Grandfather. Although there is some evidence of the Wife using the threat of harm to the Grandfather (in phone communications to the Husband) to get the Husband to respond, this is quite

different from the Wife actually threatening the Grandfather with harm. Materially, counsel confirmed that the Grandfather has not filed an affidavit in these proceedings. Without hearing from him firsthand, it is not fair to the Wife to conclude that she had in fact behaved improperly towards him. The Consent Order does not provide that the Grandfather has a right to live in the matrimonial home. If the Husband has moved out, he might take his father along, or, let him remain, which the Wife has not raised any objection to.

10 Of course, the Wife should not harass the Husband or threaten him with a knife, but to vary the Consent Order, there has to be a radical change in circumstances. The acrimony in the present case is not long and drawn out, nor is it severe where physical injury was inflicted. The Wife's conduct has not met the high threshold of a radical change in circumstances. This is especially so because the fact that the Husband remarried on 29 March 2023 is material. Mr Govintharasah, counsel for the Wife, submits that the uncanny timing in which the first application for variation was filed on 29 March 2023 suggests that the Husband's remarriage influenced his decision not to continue to live in the matrimonial home. I accept that the Husband's remarriage played a part in his moving out of the matrimonial home. Mr Siow has said that the Husband wants to sell the matrimonial home because he has "found a new partner".

11 As for the other parts of the Husband's application to vary the Consent Order which relates to how refunds should be made to the Wife's CPF account, I agree with the DJ that the Consent Order is unworkable "in the practical sense" because it "did not provide for how the [W]ife's CPF payments towards the mortgage of the flat is to be refunded". Both parties dispute the way the CPF refunds are supposed to be done, and this would result in deadlock over how the sale proceeds of the matrimonial home are to be applied. Both the Wife and the Husband have made substantial CPF payments towards the property, with the

Wife needing to refund to her CPF account around \$462,753.23 as of July 2023, whilst the Husband needs to refund his CPF account around \$590,783.29 as of September 2023. The Consent Order provides for the Husband to refund his CPF account from his own share of the sale proceeds, but remains silent as to the Wife's part. The latter situation would be advantageous for the Wife. In the circumstances, I agree with the DJ that it is fair for the Wife's CPF refunds to be treated the same as the Husband's CPF refunds. That is, the Wife should make the refunds to her CPF account from her own share of the sale proceeds. This is in line with the spirit of the Consent Order which provides for the sale proceeds of the matrimonial home to be divided equally.

12 The Husband also asks for the Wife to bear an equal share of the mortgage, expenses and outgoings of the matrimonial home moving forward. I agree with the DJ that it would be appropriate to provide clarity on this issue of how the ongoing mortgage, property tax and expenses are to be borne. This is because the Consent Order does not expressly provide for parties' responsibilities, and they are currently disputing these items. Prompt payment needs to be made, lest the matrimonial home is taken away by the bank, rendering the Consent Order unworkable. I accept that as a present owner-occupant of the matrimonial home, the Wife should be responsible for an equal share of the property tax and expenses related to the matrimonial home. Afterall, these are the costs associated with her utilisation of the matrimonial home. However, I do not agree with the DJ's application of *TIC v TID* [2019] 1 SLR 180 ("*TIC v TID*") (at [20]), with respect to making the Wife responsible for an equal share of the mortgage payments on the basis that she would eventually own an equal share of equity in the matrimonial home. I am of the view that the present case is different from *TIC v TID* which does not involve a consent order. Here, the Husband and Wife made a bargain (at [5]-[6] above).

The Wife had been given an equal share of the matrimonial home because she had (in part) given up her claims to the Husband's other assets, and cannot now be made to contribute to the mortgage payments.

13 The Consent Order is silent as to who pays the mortgage. It is undisputed that the Husband is the sole mortgagee. As Mr Govintharasah argued before the DJ below, this means that “the ultimate obligation falls on [the Husband] to clear the loan”. He is “the only one taking the loan”. Although the Wife had used her CPF monies towards equal repayment of the mortgage prior to the divorce, and for some time after the divorce and Consent Order, she was not obliged to have done so. She stopped contributing equally to the mortgage payments some time in 2015 because “she was not gainfully employed to contribute to the payment”. Mr Siow conceded before the DJ that he was “not aware of any objective evidence paper wise” as to whether the Husband had asked the Wife to pay for the mortgage prior to 2020. Mr Siow explained that the \$1m of maintenance monies which the Wife had given to the Husband to offset her and the Children's expenses were used to defray this expense. Counsel conceded that there was no evidence that the \$1m from the Wife was used for the “loan”, presumably, the mortgage.

14 In the circumstances, I am of the view that there is no agreement or obligation that the Wife pays a share of the mortgage. She might have made voluntary payments in the past, just as the Husband had voluntarily contributed to her (and the Children's) expenses (as at [15] below), but, she was not obliged to continue doing so. As the sole mortgagee for the matrimonial home, the Husband remains responsible for the loan, and for fulfilling the terms of the Consent Order which provide that the matrimonial home is only to be sold after the youngest daughter turns 21 years old. This is not unfair to the Husband, who has retained his other assets (which are not fully known) in line with what was

agreed to in the Consent Order. It is equitable that if the only matrimonial asset the Wife receives is an equal share in the matrimonial home, that she is not made to pay for her own share as well — absent terms for her to do so.

15 Finally, in relation to the Wife's claim for the Husband to pay her \$1,050,000, being the balance of the lump sum maintenance order to be paid by the Husband under the Consent order, and the Husband's application for the Consent Order to be varied to provide for the Wife to reimburse him for all payments he made towards her and the Children's living and household expenses from IJ date till the date the matrimonial home is sold. There is no basis for these matters to be sought for in the present proceedings because the maintenance obligations under the Consent Order have long been fulfilled by the Husband. It is undisputed that the Husband had already paid to the Wife a lump sum of \$2m for maintenance (for herself and the Children) pursuant to the Consent Order. There is thus no basis for the Wife to claim a further \$1,050,000 in maintenance (under the Consent Order) from the Husband. If she had lent the Husband that sum, and it remains unpaid, her claim lies in a separate action. The same applies for the Husband's claim for reimbursement of all the monies he had expended on the Wife and Children since IJ date. He had already fulfilled his maintenance obligation pursuant to the Consent Order. His decision to go above and beyond that does not mean that he has a claim against the Wife. If he had done so pursuant to an understanding or agreement with the Wife, which has been breached, his claim lies in a separate action as well. As for future expenditure on the Wife and Children, the Husband is free to spend his money as he sees fit. There are no grounds for a variation of the Consent Order to be made here.

16 For completeness, I had allowed the Wife's application to adduce a further affidavit containing evidence from two of the daughters, and the

Husband's application for an extension of time, and to amend his case. The Wife's appeal is allowed in part. The Husband's applications for variations are dismissed, save that the Consent Order be varied to provide that the Wife's CPF refunds are to come from her own share of the sale proceeds, that she is responsible for an equal share of the property tax and expenses related to the matrimonial home, and that the Husband is solely responsible for the mortgage repayments (at [11]-[14] above). The Wife's application for maintenance is dismissed in full.

17 No orders as to costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Govintharasah s/o Ramanathan (Gurbani & Co LLC) for the
appellant;
Siow Itming (Temple Counsel LLP) for the respondent.
