

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2025] SGHCF 32

Originating Application for Variation, Rescission, Setting Aside of other
orders in a Dissolution Case No 4 of 2025

Between

XNG

... Applicant

And

XNH

... Respondent

JUDGMENT

[Family Law — Consent orders — Variation]

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XNG

v

XNH

[2025] SGHCF 32

General Division of the High Court (Family Division) — Originating
Application DTV No 4 of 2025 and Summons No 696 of 2025
Choo Han Teck J
8, 21 May 2025

23 May 2025

Judgment reserved.

Choo Han Teck J:

1 This is an application to vary a consent order made on 21 March 2023 (the “Consent Order”). The applicant is a 46-year-old homemaker with a Bachelor of Commerce degree from the University of Delhi. She came to Singapore after marrying the respondent in India in 2004. The respondent is 50 years old and is a successful trader in scrap metals. According to the applicant, the respondent’s company had a revenue of US\$450m in 2023 alone. The respondent was also from India but came to Singapore before the applicant. They are now Singapore citizens, and they have a pair of 17-year-old twins studying here.

2 The applicant filed for divorce in February 2022 and interim judgment was granted on 20 September 2022. They reached a mediated settlement of the ancillary matters which was recorded in the Consent Order. The settlement left

a condominium flat (*ie*, the parties' matrimonial home) to the applicant and a bungalow to the respondent. The respondent was to restructure the mortgage of the matrimonial home to four years and pay the applicant the monthly mortgage of the matrimonial home for four years ("Mortgage Payment Clause"). In addition to that, the respondent was to pay the applicant a total of \$20m. The first \$1m was to be paid by 31 March 2023 and the next \$4m by 21 June 2023, with the remaining \$15m to be paid *via* a monthly transfer of \$312,500 to the applicant over four years ("Monthly Payment Clause"). The respondent was also to bear the reasonable costs of the applicant's personal and household expenses pending her receipt of her full entitlement of \$20m ("Reasonable Expenses Clause"). As for the applicant, she was to transfer all her shares in Company X, a property-holding company, to the respondent. Company X owns a flat in the same condominium complex as the parties' matrimonial home ("Property Y"). Pursuant to the Consent Order, the applicant removed the caveat that she lodged against the bungalow on 30 March 2023.

3 About a month later, the respondent asked the applicant if the Consent Order could be revised. He also marketed the bungalow for sale, and, consequently, the mortgagee lodged a caveat against it. The applicant then lodged a caveat of her own. The respondent only partially complied with his payment obligations under the Consent Order, and from August 2024 to January 2025, he stopped the monthly payments entirely and failed to make the mortgage payments several times. He also informed the applicant that he intends to relocate to Dubai in August 2026. This prompted the applicant to apply under this application, namely, HCF/OADTV 4/2025 ("OADTV 4"), on 25 November 2024 to vary the Consent Order.

4 The applicant's caveat was removed by the Singapore Land Authority after her application to maintain the caveat was dismissed by Kristy Tan JC on

9 December 2024. By 12 December 2024, the respondent was in default of \$1,671,246.87. The applicant thus obtained a garnishee order against the respondent for up to \$197,257.24 on 8 January 2025. On 17 January 2025, the respondent paid the overdue monthly payments but not the overdue mortgage payments for December 2024 and January 2025. It was only on 28 February 2025 that he paid the remaining overdue sums in full. In the meantime, he applied under HC/OA 1327/2024 (“OA 1327”) to restrain the applicant from lodging further caveats against the bungalow. The application was heard by Kristy Tan JC on 7 May 2025, and she made no order as the defendant in that application (*ie*, the applicant in OADTV 4) accepted that she was wrong to have filed the caveats.

5 What the applicant originally wanted in this application was to have the respondent sell the bungalow to pay the remaining money due to her under the Consent Order in one lump sum. Alternatively, under FC/SUM 696/2025 (“SUM 696”), that the bungalow be held as security for the payments due to the applicant under the Consent Order. There are about two years of monthly payments as well as mortgage payments amounting to about \$11m outstanding. The additional terms under SUM 696 were intended to give the applicant a fixed charge over the bungalow as security for the continued performance of the respondent’s obligations. She wanted to register the charge against the title of the bungalow and/or to lodge a caveat on the basis of the charge. SUM 696 also sought to impose conditions in the event that the respondent sold the bungalow. One of these conditions was that the sale should not be for a price below \$30m. Upon completion of such sale, the respondent would ensure that the remaining money owed to the applicant would be paid from the proceeds.

6 However, one day after the first hearing before me, the applicant’s counsel, Ms Carrie Gill, filed further submissions. She explained that the

applicant had discovered through a property title search in respect of the bungalow that the respondent had obtained a new mortgage loan on 29 April 2025 and redeemed the previous mortgage of approximately \$8m to \$9m. His new loan is \$29.5m and, as a result, the net value of the bungalow is now significantly diminished. Consequently, the applicant proposes several options to vary the Consent Order. Her preferred solution is for the combined balance under the Monthly Payment Clause and the Mortgage Payment Clause to be paid by the respondent to the applicant in one lump sum within one month. Alternatively, she wants to own Property Y without any encumbrance, and the respondent to pay the remainder due (*ie*, the balance under the Monthly Payment Clause and Mortgage Payment Clause less the value of Property Y) in one lump sum or in equal monthly instalments by May 2026. Her least preferred solution is to lodge a fixed charge over the bungalow, given that the net value of the bungalow is significantly lower now.

7 The respondent resists the application. His case is that they “had arrived at a negotiated settlement [*ie*, the Consent Order], and he should be allowed to rely on the sanctity of the agreement between the parties without interference from [the applicant]”. His counsel, Mr Sudhershén Hariram, submits that the applicant’s case is not founded on the unfeasibility of the Consent Order, and that the present applications are attempts to revise the Consent Order. Furthermore, counsel submits that the Consent Order allowing the respondent to retain the bungalow is unconditional with no term stipulating that it is held as collateral to his payment obligations to the applicant. At the second hearing on 21 May 2025, Mr Hariram claimed that the respondent has since been paying his dues under the Consent Order consistently. However, Ms Gill pointed out that the respondent has been defaulting on his payment obligations under the Reasonable Expenses Clause.

8 It is obvious to me that by withholding monthly payments to the applicant for a lengthy period of almost five months and taking out a new loan for the bungalow, the respondent caused the applicant to fear that she will not receive full payment under the Consent Order. This fear emanated from the respondent's attempt to revise the Consent Order barely a month after the court had endorsed it, and from his subsequent behaviour indicating a reluctance to comply with the Consent Order.

9 Technically, Mr Hariram is right in that these applications would result in changing the terms of the Consent Order. And he is correct in emphasising the sanctity of consent orders. That is why traditionally, terms of a consent order may not be changed unless the consent order has first been set aside. Presently, the court is permitted to vary the terms of consent orders without first setting aside the original order. This procedure is meant to facilitate the expediency of doing justice. This does not have the effect of rendering a consent order to the same level of force that an order determined by the court has. A consent order occupies a slightly higher elevation of authority because it is an order that both parties have forged together. It has the additional alloy of a contract and, therefore, more is required before a court will vary the order in question. It will not be enough to show that a consent order appears unjust. This is because justice between the parties is sometimes a matter between them, and a court may not be able to revise an agreement entered into between two parties who have decided in their wisdom how much to give and how much to take from each other.

10 In this case, the applicant claims that the Consent Order is unworkable. Nothing has been produced to satisfy me that it is so. What I can see is that the respondent does not want it to work. That is not the same as it being unworkable. The respondent clearly has the means to ensure that the money due to the

applicant under the Consent Order is paid. He should have no liquidity problem now that he has taken out a new loan in respect of the bungalow. Even if he does have liquidity problems, he has the assets to satisfy the order made. He has not revealed what his other assets are, and hence, it is reasonable to assume that the bungalow is the only asset that the applicant be comforted in knowing that the money due to her will be paid. However, the respondent intends to and has, in fact, diminished the value of the bungalow. Although it is entirely in his power to do so, his actions have given the applicant reasonable cause to question his commitment to fulfil his payment obligations under the Consent Order.

11 On its own, the applicant has no right to compel the respondent to pay the money due to her in one lump sum. Neither can she unilaterally vary the Consent Order by removing or amending clauses agreed by both parties. There is also no basis for the applicant to seek a charge over the bungalow, especially since parties did not contemplate including any form of security for payment in the Consent Order. And her application to maintain the caveat against the bungalow had been dismissed by Kristy Tan JC.

12 Although it appears that the respondent has been deliberately avoiding his payment obligations under the Consent Order, this does not constitute a material change in circumstances warranting a variation of the Consent Order. If the respondent fails to pay any instalment under the Monthly Payment Clause and Mortgage Payment Clause from the date of this order, the applicant is at liberty to apply for a Mareva injunction to prevent the respondent from disposing of his assets. This is without prejudice to the applicant applying for other reliefs (including committal proceedings) in respect of the other payment obligations such as the Reasonable Expenses Clause. In my view, the sensible time-saving and cost-saving approach is for the respondent to provide a satisfactory assurance, other than a simple promise, that he will comply with his

obligations under the Consent Order. Further, I can, and will order that the respondent does not dispose or spend the \$20.5m he has obtained from the re-mortgage without giving the applicant seven days' notice. It has been at least three weeks since he obtained the mortgage. If he had withdrawn the money and spent it or transferred it overseas, he is to render an account within seven days from the date of the judgment.

13 Parties are to submit on costs within ten days.

- Sgd -
Choo Han Teck
Judge of the High Court

Gill Carrie Kaur and Charis Sim Wei Li (Harry Elias
Partnership LLP) for the applicant/wife;
Khwaja Imran Hamid, Sudhershen Hariram and Tan Phoebe
(Tan Rajah & Cheah) for the respondent/husband.
