

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2021] SGHCF 10

District Court Appeal No 51 of 2020 and Summons No 275 of 2020

Between

VJR

... Appellant

And

VJS

... Respondent

JUDGMENT

[Family Law] — [Matrimonial assets] — [Division]

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VJR
v
VJS and another matter

[2021] SGHCF 10

General Division of the High Court (Family Division) — District Court
Appeal No 51 of 2020 and Summons No 275 of 2020
Choo Han Teck J
12 January, 5 May 2021

21 May 2021

Judgment reserved.

Choo Han Teck J:

1 The appellant husband (the “husband”) appeals against the decision of the District Judge (the “DJ”) made on 19 June 2020, concerning the division of the matrimonial assets with the respondent wife (the “wife”). In Summons No 275 of 2020 (“SUM 275”), the husband seeks to adduce further evidence on appeal in order to show that certain classes of assets ought to be excluded from the matrimonial pool. On 12 January 2021, I adjourned SUM 275 to be heard together with the main appeal in DCA 51 of 2020 (“DCA 51”).

2 The husband and wife were married on 6 October 2013. There is a son from the parties’ marriage, born on 25 October 2014. This was the second marriage for both of them; the husband has two sons from his first marriage while the wife has a daughter from her first marriage. The husband’s first wife died in December 2012 (the “Late Wife”). At the time of the hearing before the

DJ, the husband was aged 53 and was working as a manager earning about S\$8,200 per month, and the wife was aged 39. She was working as a nurse earning about S\$4,400 per month. The husband filed for divorce on 6 September 2018 and an Interim Judgment was granted on 22 May 2019.

3 In her Grounds of Decision dated 21 August 2020 (“GD”), the DJ considered various categories of assets which the wife claimed to be matrimonial assets (GD at [14]). I will refer to the assets that form the subject of this appeal as the “Disputed Assets”.

4 There was no dispute before the DJ that the husband held shares totalling S\$319,808.00 (the “Shares”), but he claims that the Shares should be excluded from the matrimonial pool because they were acquired with money he and his sons had inherited from the Late Wife. In this regard, he said that 50% of the total value of the Shares belonged to him while the other 50% belonged to the two sons he had with the Late Wife. The husband relied on a CDP Account statement dated June 2019 and the Grant of Letters of Administration issued on 13 June 2014 showing that the Late Wife’s assets were valued at S\$364,355 (GD at [15]). The DJ, however, rejected this argument because it was unclear when the Shares had in fact been acquired and whether they had been really acquired using the inherited money from the Late Wife (GD at [16]). Further, not all the Shares had been acquired before the marriage. She therefore included the sum of S\$319,808.00 in the pool of matrimonial assets.

5 Next, the husband contended that a sum of S\$27,630.00 held in his Singapore bank account (the “Son’s Monies”) should be excluded as this belonged to the elder son of his first marriage. According to the husband, the son had received this from the Late Wife’s CPF account when he turned 18 and thereafter had given it to the husband for safekeeping (GD at [17]). The DJ

rejected this argument as the husband had not adduced any evidence other than an entry in his bank account statement showing the money had been paid into the account. Shortly after that payment, the husband had also made a series of transfers out of that same account in excess of the S\$27,630.00 transferred into the account, for which no explanation was provided.

6 Third, the husband wanted a sum of S\$11,220.00 (CAD11,000.00) in his HSBC Investment Funds Account in Canada to be excluded from the matrimonial assets (the “Investment Funds Monies”). He argued that this money came from an insurance payout in relation to the Late Wife’s death and was accordingly money inherited from the Late Wife. However, no evidence was provided for this, so the DJ also rejected this argument (GD at [19]).

7 The DJ valued the total pool of matrimonial assets at S\$1,672,918.00 (GD at [25]). After considering the parties’ direct and indirect contributions, the DJ decided on a ratio of 78.5% to the husband and 21.5% to the wife (GD at [38]). Finally, the DJ drew an adverse inference against the husband for his failure to make full and frank disclosure in relation to his ICBC bank account in China, his OCBC account (the “OCBC Account”), and three of his insurance policies (the “Insurance Policies”), and gave an uplift of 5.5% to the wife’s share. This resulted in a final ratio of 73:27 for the husband and wife respectively (GD at [39]–[40]).

8 On appeal before me, the husband’s counsel submits that the DJ’s decision on the parties’ direct contributions should be revised, in view of the voluminous additional evidence the husband now seeks to adduce in SUM 275:

- (a) The Shares: First, the husband wishes to adduce bank statements from the Late Wife’s POSB, DBS and Maybank bank accounts, as well

as from his own POSB and DBS bank accounts, in order to show that a sum of S\$295,000.00 was transferred from the Late Wife's bank accounts to the husband's bank accounts. S\$295,126.91 from the husband's POSB bank account was used for the purchase of the Shares between 2014 and 2015. The husband also wants to adduce his payslip for December 2012 to show that his monthly salary of approximately S\$5,500.00 prior to the Late Wife's death was not sufficient for him to acquire the Shares. He also wishes to adduce a copy of his Securities Account Movement recording the various share purchases, and a summary of his Central Depository transactions.

(b) The Son's Monies: Second, the husband wishes to adduce a Statement of Account from the Public Trustee, and bank statements for his elder son's (from his first marriage) and his own accounts. According to the husband, this will show that the sum of S\$27,630.00 is his elder son's inheritance, and should be excluded from the matrimonial assets.

(c) The Investment Funds Monies: Third, the husband wishes to adduce email correspondence between himself and the insurer's representative on the death claim payout, as well as HSBC bank statements showing the deposit of the insurance payout in his HSBC bank accounts and his purchase of the HSBC monthly income fund. He says that this will show that the units of the HSBC monthly income fund were bought with monies inherited from the Late Wife, and therefore the Investment Funds Monies should be excluded from the matrimonial assets.

(d) The OCBC Account and the Insurance Policies: Lastly, the husband wishes to adduce a letter from OCBC to confirm that the OCBC

Account was closed on 19 August 2015 as the account balance had fallen to zero. The husband also seeks to adduce a letter from Great Eastern to show that his insurance policy had been void from inception, an AIA response to his e-enquiry confirming that his insurance policy had lapsed on 29 April 2014, and a copy of his Prudential insurance policy information confirming the policy had lapsed sometime in 2014. Since the OCBC Account and the Insurance Policies were non-existent at the date of Interim Judgment, they should not form part of the husband's assets, and it is inappropriate to draw an adverse inference against the husband on the basis that he had not made full and frank disclosure.

9 A passing reference was also made in the Appellant's Case dated 19 February 2021 (the "Appellant's Case") to an investment in US land that the husband said he acquired pre-marriage. By this, it appears that the husband is referring to his investment of S\$49,908 which the DJ added into the pool of matrimonial assets (GD at [23]). However, it was not stated in the Appellant's Case or the husband's counsel's submissions what evidence he wanted to adduce in respect of this investment.

10 The husband says he was not able to adduce this additional evidence in the proceedings below because he was in Dubai for work from August 2018 to August 2020, throughout the course of the proceedings below. In the husband's affidavit dated 29 September 2020, he said his former solicitors in the proceedings below had not advised him that he needed to disclose all these documents in order to support his assertions, and that he was also unable to retrieve the documents from institutions which required his physical attendance at their offices.

11 The husband's counsel argued that this case is an appeal against final orders made by a District Judge in chambers on ancillary matters in divorce proceedings under the Women's Charter (Cap 353, 2009 Rev Ed) (the "Women's Charter") and that it therefore falls within O 55C of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"). Such O 55C appeals are not restricted by the equivalent of O 55D r 11(1) or O 57 r 13(2) of the ROC, which prescribes "special grounds" for the admission of fresh evidence on appeal. Thus, even if there was a lack of diligence on the husband's part, the primary consideration is the relevance and importance of the fresh evidence in influencing the outcome of the appeal (*ACU v ACR* [2011] 1 SLR 1235 ("*ACU v ACR*") at [18]).

12 The husband claims that if leave were granted to adduce this additional evidence, the total value of the matrimonial assets should be S\$1,269,992.00, and that it should be divided between the parties in the ratio of 75.5:24.5 in the husband's favour. The wife's share would therefore be S\$311,148.00 instead of S\$451,687.00.

13 The wife's counsel argues that the husband should not be granted leave to adduce this additional evidence. First, the husband was fully aware of the standard of disclosure during the divorce proceedings. He was also legally represented throughout the divorce proceedings, and, in a letter from his former solicitors dated 19 October 2020, they stated that the husband was advised to disclose all documents in support of his claims (and attached their correspondence with the husband to show this). In addition, the husband had not fulfilled the criteria set out in *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*") as the documents were either in the husband's possession or could have been obtained with reasonable diligence on his part. Further, the documents would not have an important influence on the result of the case as

they do not support the husband's assertions, and would not have resulted in a material change to the DJ's decision.

14 I summarise the wife's position on the additional evidence for the Disputed Assets as follows:

(a) The Shares: The Shares were funded using the monies in the husband's POSB account, and dividends and sale proceeds from the Shares were also credited into that account, along with the husband's salary, bonuses and other deposits. That account was also used to pay shared household expenses. As the inherited money was mixed together with the other money in the POSB account, it is unclear which monies were used for purchase of shares and which were used for household expenses. The additional evidence also shows that most of the Shares were not purchased with inherited money or directly inherited from the Late Wife.

(b) The Son's Monies: This sum was never included in the pool of matrimonial assets. One of the Singapore bank accounts listed in the husband's 1st Affidavit of Assets and Means dated 16 July 2019 was the husband's POSB account where the Son's Monies had been deposited. The value of the POSB account was agreed at S\$2,276.30 and part of the total value assessed by the DJ. It did not include the Son's Monies and excluding that sum now would be deducting it from the matrimonial pool twice.

(c) The Investment Fund Monies: It remains unclear from the bank statement that the amount of CAD 10,000.00 originated exclusively from the death claim monies, as the balance of the HSBC account on 22 July 2016 was significantly more than the death claim monies. In any

event, the value of the Investment Fund Monies is only a small fraction of the matrimonial assets.

(d) The OCBC Account and the Insurance Policies: The husband has still failed to make full and frank disclosure of his ICBC bank account in China and his Standard Chartered bank account. With regards to the OCBC Account, the letter from OCBC showed that the bank account had been closed with a zero balance, but the letter from Great Eastern stated that an amount of S\$30,000.15 was refunded to the same OCBC Account; the husband had not disclosed where this sum was transferred before the closure of the OCBC Account. He has still not made full and frank disclosure.

15 For completeness, the wife's counsel also submitted that if the court were to allow the husband to adduce the additional evidence, the additional evidence suggested that other matrimonial assets had not been disclosed by the husband during the divorce proceedings, and these should now be included in the matrimonial pool for division. Counsel referred to the husband's failure to account for the increase of CAD 58,201.24 in the HSBC Canada account during the marriage that had been dissipated by the time of the ancillary matters hearing, as well as the sum of S\$30,000.15 that had been refunded to the OCBC Account.

16 I first consider counsel's argument that the present matter falls within O 55C of the ROC. I am unable to agree with this submission. O 1 r 2(2) of the ROC stipulates that the ROC shall not apply to "family proceedings", which are governed by the Family Justice Rules 2014 (S 813/2014) (the "FJR"). Since the present case is an appeal to the Family Division of the High Court from an order for ancillary relief made pursuant to a writ of summons of divorce by a judge of

the Family Court, Division 59 of the FJR applies (Rule 821(a) of the FJR). Under Division 59, Rule 831(2) states that no further evidence may be given on appeal except on “special grounds”. This rule was derived from O 55D r 11 of the ROC, which also refers to “special grounds” (FJR, Table of Derivations). Thus, my view is that the criteria set out in *Ladd v Marshall* would apply to the present case. This interpretation was also adopted by the Court of Appeal in *UJN v UJO* [2021] SGCA 18 (at [4]).

17 In any event, *Ladd v Marshall* only permits evidence that could not have been obtained with reasonable diligence for use at the hearing below. The husband fails to satisfy this requirement. The husband had suggested that his former counsel was to blame for his omission to adduce the documents below. That was a disservice to his former solicitors because the letter from his former solicitors dated 19 October 2020, which encloses their email correspondence with him, shows that he had in fact been advised during the divorce proceedings of the need to adduce all this information. As for his assertions that he was working in Dubai at the time and was unable to access those documents, most, if not all, of these documents could have been obtained online without him needing to be physically present in Singapore, or could have been obtained by his lawyers from the various institutions on his instructions. In my judgment, the husband could therefore have obtained these documents with reasonable diligence in the hearing below.

18 I next consider whether the additional evidence, even if admitted, would probably have an important influence on the outcome of the case (though it may not be decisive), and whether the evidence is apparently credible (though it need not be incontrovertible).

19 I first consider the additional evidence with regard to the Shares. The husband's position is that the Shares were bought with money he inherited from the Late Wife's estate, and should therefore be excluded from the matrimonial assets (Section 112(10) of the Women's Charter). The husband, along with one [AB], was appointed co-administrator of the Late Wife's estate on 14 October 2013, and the Grant of Letters of Administration was extracted on 13 June 2014. As administrator of the estate, the husband has to keep the trust monies and his own monies separate. If there is any mixing of these funds, the law assumes that the whole is subject to the trust, in the absence of any proper accounting of the funds (*Ong Jane Rebecca v Lim Lie Hoa and Others* [2005] SGCA 4 at [35]).

20 However, the evidence adduced by the husband on appeal before me shows that the husband had not kept the trust monies and his own monies separate. A total sum of S\$189,521.50 was transferred from the Late Wife's bank accounts to the husband's POSB account respectively between 15 February 2014 and 14 March 2015. This was commingled with other money that was already present in the husband's POSB account.

21 There was also a sum of CAD 93,807.66 that was transferred from the Late Wife's bank accounts to the husband's DBS account on 19 and 22 July 2014 (which had a zero balance before the transfers). However, the husband only used the monies in his POSB account to buy the Shares and has not provided any documentation to show how this CAD 93,807.66 was disbursed from his DBS account (which had a remaining balance of CAD 3,645.61 as of 31 August 2015). I therefore do not include the CAD 93,807.66 in this analysis.

22 I have some doubts about the credibility of the additional evidence. First, the husband took the position in the proceedings below that he had invested the entire sum of S\$364,355.60 from the Late Wife's estate into the Shares. The

husband claimed in his 1st Affidavit of Assets and Means dated 16 July 2019 that the Shares were “purchased with trust fund comprising a sum of \$364,355.60 which came into my hand as Administrator for estate of my late wife’s estate”, and explained that he was investing both his 50% share of that sum (*ie* S\$182,177.80) as well as the other 50% belonging to his two sons with the Late Wife (another S\$182,177.80). However, on appeal, the husband now claims that he had spent S\$295,000 of the Late Wife’s monies on the Shares. The husband has not offered any explanation for why he is taking a contradictory position on appeal.

23 Second, there are gaps in the additional evidence adduced by the husband. For example, the husband has not disclosed his POSB bank statements for June 2014, September to October 2014, and February 2015. Further, some of the shares bought by the husband between 2014 to 2015 remain unidentified, and it is also not known what happened to the sale proceeds of some of the shares that were sold before Interim Judgment in 2019. Despite the voluminous documents adduced, the husband has still not presented the full picture of where all the inherited monies went.

24 I now turn to consider whether the additional evidence would have an important influence on the outcome of the case. In *UYP v UYQ* [2020] 3 SLR 683 at [14], Debbie Ong J declined to deduct any alleged inheritance sums in the wife’s bank account from the pool of matrimonial assets, as that bank account had been used to receive rental income, the inheritance money was commingled with the matrimonial assets and was no longer separately identifiable, and the wife in that case also had the intention to use the money for her family. In the present case, the facts are similar in that the alleged inheritance money has been commingled with the matrimonial assets *ie* the husband’s monies in his own bank account, and the husband’s bank account was also used

to receive dividends and other proceeds. Because the husband has commingled the inheritance money with his own funds, it is not possible to ascertain with certainty whether the Late Wife's monies were used in each and every purchase of the Shares, and at what juncture the Late Wife's monies were entirely depleted.

25 Nonetheless, while there are gaps in the evidence, the bank statements show that the sum of S\$189,521.50 was transferred from his Late Wife's bank accounts to the husband's POSB account, and that the monies from that POSB account were then used to buy the Shares. Since this money came from the Late Wife's bank accounts, it has to be either the husband's inheritance or the two sons' inheritance. Since the husband and the two sons were entitled to 50% of the Late Wife's estate each, my view is that the fairest solution is to deem half of the S\$189,521.50 as being the husband's inheritance. I therefore allow SUM 275 in respect of the additional evidence pertaining to the Shares and deduct the sum of S\$94,760.75 from the matrimonial pool, this being the husband's inheritance from his Late Wife's estate.

26 I recognise that this situation could potentially affect the two sons the husband had with his Late Wife, in that the other S\$94,760.75, which may rightfully be theirs, is now part of the matrimonial pool due to the husband having commingled trust monies with his own. However, while the husband may have to answer to his two sons for commingling trust monies with his own funds, the sons have not staked a claim, and the husband cannot claim to be holding the other 50% on trust for them and thus take it out of the matrimonial pool.

27 I now turn to the issue of the Son's Monies. Considering the Statement of Account dated 10 September 2020, the son's POSB passbook, and the

husband's bank statement for his POSB account, I am of the view that this does show the son's CPF monies from the Late Wife were transferred to the husband on 11 August 2016. However, the husband's bank statement shows that on 31 August 2016, the final balance in that POSB account was S\$2,765.48. It therefore appears that the S\$27,630.00 was never part of the matrimonial pool in the first place since most, if not all, of it had been disbursed from the POSB account by the end of August 2016.

28 Even if the remaining S\$2,765.48 belonged to the son, the husband has not properly accounted for what happened to that sum in the three years between 31 August 2016 and July 2019, when the husband indicated (in his 1st Affidavit of Assets and Means dated 16 July 2019) that the final value in this POSB account was S\$2,276.30. It is not apparent that the final value of S\$2,276.30 in the POSB account in July 2019 can be traced back to the S\$27,630.00 belonging to the son. I thus do not grant leave to adduce this additional evidence, as it will not have an important influence on the outcome of the appeal. The son might be dissatisfied that his father did not in fact "safekeep" his S\$27,630.00 from the Late Wife, but that is a matter for the son to pursue against his father, if he wishes.

29 Third, I consider the issue of the Investment Fund Monies. In my judgment, these documents do not show that the investment amount of CAD 10,000.00 originated exclusively from the death claim monies.

30 First, the email correspondence between the husband and the insurance company only discusses issues in processing the death claim payout and shows that the claim was finalised on 15 February 2013. But the correspondence does not show what is the amount of the payout, or when the cheque with the payout was actually received by the husband.

31 As for the 22 July 2016 bank statement, it does show that a sum of CAD 10,000.00 was transferred from the husband's HSBC account [A] to HSBC account [B] between 22 to 27 June 2016. However, it is not apparent that the sum of CAD 10,000.00 used to purchase the units of the HSBC Monthly Income Fund on 27 June 2016 even originated from HSBC account [B]. Even if the sum of CAD 10,000.00 had come from the husband's HSBC account [B], three years had transpired since the death claim payout in 2013 and the husband has not explained the increase from CAD 200,139.86 in 2013 (the quantum agreed on in the proceedings below for the death claim payout) to the sum of CAD 258,341.10 in 2016, nor has the husband detailed the transactions that took place in the interim. Thus, it is not evident that the CAD 10,000.00 used to buy the units of the HSBC Monthly Income Fund originated from the death claim payout initially deposited in the husband's HSBC account [A]. I therefore do not think this evidence will influence the outcome of the case.

32 Finally, I consider the additional evidence with regards to the OCBC Account and the Insurance Policies. In my judgment, the additional evidence does show that the OCBC Account and the Insurance Policies were not in existence at the date of Interim Judgment. However, as argued by the wife's counsel, the husband has still failed to make full and frank disclosure, even on appeal, with regards to his ICBC bank account and his Standard Chartered bank account. And, the additional evidence adduced by the husband has also raised other concerns. For example, the additional evidence shows an increase of CAD 58,201.54 in the husband's HSBC accounts during the marriage that had been inexplicably dissipated by the time of the ancillary matters hearing, as well as a sum of S\$30,000.15 refunded to his OCBC Account that remained unaccounted for. In the light of the above issues, I would not disturb the adverse

inference drawn by the DJ, given that the husband has not made full and frank disclosure – even on appeal.

33 Parties should ensure that they adduce all relevant information at first instance rather than taking out applications on appeal for leave to adduce further evidence. Had all these documents been adduced before the DJ, less time and costs would have been expended. One of the ways that the courts can discourage such conduct is to draw an adverse inference against the parties, and order costs against them for doing so. And furthermore, if a party wishes to adduce additional evidence on appeal, the least that he can do is produce a comprehensive suite of documents rather than selectively picking on certain items.

34 For the reasons above, I allow SUM 275 to adduce further evidence only for the additional evidence relating to the Shares. As for DCA 51, I uphold the DJ's order as to the ratio for division but deduct the sum of S\$94,760.75 from the value of the matrimonial pool. I will hear parties on costs at a later date.

- Sgd -
Choo Han Teck
Judge of the High Court

Khoo Meixin Clarisse and Khoo Ming Sang Kenny (Ascentsia Law
Corporation) for the appellant;
Ho Kin Onn (Hoh Law Corporation) for the respondent.