

Foo Ah Yan v Chiam Heng Chow
[2011] SGHC 202

Case Number : DT No 3864 of 2008
Decision Date : 12 September 2011
Tribunal/Court : High Court
Coram : Steven Chong J
Counsel Name(s) : Palmer Stuart Andrew (Straits Law Practice LLC) for the plaintiff; Moey Chin Woon Michael (Moey & Yuen) for the defendant.
Parties : Foo Ah Yan — Chiam Heng Chow

FAMILY LAW – Ancillary Matters – Maintenance of former wife

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 58 of 2011 was allowed by the Court of Appeal on 18 January 2012. See [\[2012\] SGCA 15.](#)]

12 September 2011

Steven Chong J:

Introduction

1 The plaintiff was 47 years old and the defendant was 58 years old when they were married on 11 October 1995. This was the defendant's second marriage and the plaintiff's first. The defendant's first wife passed away from cancer on 27 May 1994. The defendant has three sons from his first marriage. During their marriage, the plaintiff and the defendant resided at No 2 Li Hwan Close, Singapore 557126 which was their matrimonial home. The matrimonial home was a gift from the defendant's father and was where the defendant had been staying since 1974 when he married his first wife.

2 The defendant averred in his Defence and Counterclaim that he and the plaintiff had lived separate lives since 2000. There had been no communication between the parties and they had ceased having conjugal relations since 2000. The divorce was uncontested and the parties had obtained an interim judgment on 17 April 2009. The duration of their marriage was about 13.5 years.

3 At the hearing on 31 January 2011, the plaintiff's counsel, Mr Stuart Andrew Palmer ("Mr Palmer") confirmed that the plaintiff was not claiming any share of the matrimonial property or the defendant's assets. As there was no child arising from this marriage, the only remaining ancillary matter before me concerned the maintenance of the plaintiff. When the hearing resumed on 26 April 2011, Mr Palmer repeated the plaintiff's position that she was not claiming any share of the matrimonial property or any of the defendant's assets and that she was content with maintenance.

4 The plaintiff did not adduce any evidence of the monthly maintenance which the defendant had allegedly provided to her during the subsistence of the marriage. Instead, she pursued different amounts for her maintenance which were not supported by any evidence. In her amended Statement of Particulars ("Statement of Particulars (Amendment No 1)") filed on 27 February 2009, the plaintiff confirmed that the defendant has not been giving her *any* maintenance. In spite of the complete absence of any evidence to support her claim for monthly maintenance, the defendant nevertheless

offered a lump sum maintenance of \$75,000 to the plaintiff, payable in three monthly instalments, in order to achieve a clean break with the plaintiff. Given that the defendant is already 74 years old and has long since retired, I was of the view that this was a generous offer by the defendant. Faced with this offer, Mr Palmer had nothing to add other than to say that he had no instructions to accept or reject the offer. Under these circumstances, I ordered the defendant to pay the plaintiff a lump sum maintenance of \$75,000 payable in three monthly instalments subject to a condition which I will elaborate below. At the hearing, I made it quite clear that I would not have ordered the lump sum maintenance of \$75,000 but for the generous offer from the defendant.

5 As the plaintiff has since appealed against my order, I now state my full grounds for my decision.

The plaintiff's maintenance claim

6 In the course of her application, the plaintiff's stance on the maintenance paid by the defendant during the marriage underwent several changes:

(a) In her original Statement of Particulars filed on 1 August 2008 at paragraph 1(g), she initially claimed that the defendant "has not been giving the Plaintiff any monthly maintenance for the past five (5) to six (6) years. Prior to that, the defendant use (*sic*) to give the Plaintiff monthly maintenance of \$800 to \$1,000".

(b) In her Statement of Particulars (Amendment No 1), the reference to the allegation that the defendant had provided the plaintiff with monthly maintenance of \$800 to \$1,000 was deleted altogether with the result that paragraph 1(g) read that "The Defendant has not been giving the Plaintiff any monthly maintenance". The effect of the amendment was that the plaintiff claimed that the defendant had not been giving her any maintenance at all throughout the marriage.

(c) In the plaintiff's Affidavit of Assets and Means filed on 9 June 2009 ("plaintiff's Affidavit of Assets and Means" or "her Affidavit of Assets and Means" as the case may be), she, however, alleged that the defendant had provided her with monthly maintenance of about \$1,000 (see paragraph 16 of the plaintiff's Affidavit of Assets and Means).

(d) At paragraph 21 of the plaintiff's 3rd affidavit filed on 20 November 2009 ("plaintiff's 3rd affidavit" or "her 3rd affidavit" as the case may be), the plaintiff alleged that the defendant used to pay her monthly maintenance of \$800 to \$1,000 even after she stopped working.

(e) At the hearing on 31 January 2011, Mr Palmer submitted that the plaintiff was claiming for either a monthly maintenance of \$6,000 or alternatively, a lump sum maintenance of about \$290,000. Notwithstanding the affidavit evidence of the plaintiff, Mr Palmer submitted that the defendant had been giving the plaintiff monthly maintenance of \$1,800 from 1995 to July 2008.

(f) At the resumption of the hearing on 26 April 2011, Mr Palmer repeated the plaintiff's claim for a lump sum maintenance of \$292,000 which was the product of a monthly sum of \$1,800 and a multiplicand of 13.5 (*ie*, the length of the marriage).

7 From the above summary, it is clear that the plaintiff's case on the monthly maintenance which the defendant had allegedly provided to her during the marriage changed from \$800 to \$1,000, to \$1,800, to nothing at all.

8 Having identified the moving target for the plaintiff's maintenance claim, it is necessary to

examine the evidence adduced by the plaintiff in support of her claim. At the hearing on 31 January 2011, the plaintiff alleged that the defendant had paid her monthly maintenance in the sum of \$1,800 but when queried by the court, Mr Palmer confirmed that the plaintiff did not have any evidence to support the alleged maintenance payments by the defendant. Mr Palmer submitted that the alleged maintenance payments were by way of cash which were left by the defendant on a table in the matrimonial home. This was not stated in any of the plaintiff's affidavits. Owing to the complete lack of evidence, Mr Palmer then requested for an adjournment to attempt an amicable resolution to which the defendant readily agreed.

9 At the resumption of the hearing on 26 April 2011, the issue of the plaintiff's maintenance, unfortunately, remained unresolved. Mr Palmer repeated the plaintiff's claim for a lump sum maintenance of \$292,000. It was conceded by Mr Palmer that, other than the plaintiff's mere assertion, there was no evidence to substantiate any maintenance payment by the defendant during the marriage.

10 When further queried by the court as regards the plaintiff's position as evinced in paragraph 1(g) of the Statement of Particulars (Amendment No. 1), where she admitted that she did not receive any maintenance, Mr Palmer proffered an explanation that it was drafted in such terms in order to achieve a consensual divorce.

The defendant's position in respect of the plaintiff's maintenance claim

11 Originally the defendant's position was that no maintenance should be ordered for the plaintiff because the defendant did not provide her with any during the marriage as both parties kept their finances separate during the marriage. The defendant, however, submitted that if maintenance was ordered by the court, it should be no more than \$21,160 [\[note: 1\]](#) on a lump sum basis. The explanation provided by the defendant's counsel, Mr Michael Moey ("Mr Moey"), for this amount was as follows:

(a) At most, the defendant should only be required to provide the plaintiff with maintenance to rent a room. The defendant submitted that an average room rental in a Housing Development Board ("HDB") flat is about \$575 per month. [\[note: 2\]](#)

(b) Given that the defendant has since retired, the decision in *Yow Mee Lan v Chen Kai Buan* [2000] 2 SLR(R) 659 where Prakash J at [97] held that "the wife cannot expect to be maintained at the same standard after the husband retires", and that any maintenance should be halved after the husband's retirement, should be followed such that, in this case, the maintenance should be half of the monthly room rental, ie, \$287.50 which the defendant rounded up to \$300 per month.

(c) Given that the average life expectancy of an average Singaporean male was about 79 years, the appropriate multiplicand should, at best, be seven years since the defendant was already 72 years old when the application was first filed by the plaintiff. This would translate to a sum of \$25,200 (\$300x12x7). The defendant suggested a 20% discount for lump sum payment which works out to be \$20,160 and not \$21,160 as submitted by Mr Moey.

12 At the resumption of the hearing on 26 April 2011, Mr Moey informed the court that the defendant was prepared to offer a lump sum maintenance of \$75,000 payable in three monthly instalments provided the plaintiff transferred a property in Hainan registered in the plaintiff's name ("the Hainan Property") back to the defendant. The defendant's offer was more than three times his original submission to the court in the event that maintenance was ordered. It clearly demonstrated a

keen desire on the part of the defendant to bring closure to this chapter of his life. Unfortunately, this desire was not reciprocated by the plaintiff who insisted on maintaining her original claim of \$292,000 in spite of her complete lack of evidence. I should add for completeness that in the defendant's Affidavit of Assets and Means filed on 11 June 2009 ("defendant's Affidavit of Assets and Means" or "his Affidavit of Assets and Means" as the case may be) (at paragraph 19), he was initially prepared to allow the plaintiff to retain the Hainan Property without any maintenance as he had not given any to the plaintiff during the marriage. The defendant's offer of the lump sum maintenance payment of \$75,000 on condition that the plaintiff transferred the Hainan Property back to him was therefore a new and improved proposal altogether and was different from his earlier position as set out in his Affidavit of Assets and Means.

13 Although the defendant's offer was made subject to a condition, it was of no real consequence to the plaintiff. First, there was no dispute that the Hainan Property was paid for entirely by the defendant. Secondly, Mr Palmer also accepted during the hearing on 26 April 2011 that the registration of the Hainan Property in the plaintiff's name was not intended as a gift to her. Thirdly, the plaintiff in her 2nd affidavit filed on 26 August 2009 ("Plaintiff's 2nd affidavit" or "her 2nd affidavit" as the case may be) at paragraph 9 stated that the Hainan Property was of no value. Finally, Mr Palmer also confirmed that the plaintiff was not seeking any share of the defendant's assets or a division of the matrimonial assets and that all of his assets were acquired prior to the marriage. Accordingly, the condition which was attached to the defendant's offer was no more than a means to ensure that the plaintiff took the necessary steps to transfer the Hainan Property back to him.

Decision of the court

The court's power to order maintenance

14 The court's power in making a maintenance order can be found in s 113 of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Women's Charter").

15 Section 114 of the Women's Charter stipulates the matters that the court would take into account in determining the quantum of maintenance to be paid to the plaintiff:

Assessment of maintenance 114. —(1) In determining the amount of any maintenance to be paid by a man to his wife or former wife, the court shall have regard to all the circumstances of the case including the following matters:

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contributions made by each of the parties to the marriage to the welfare of the family, including any contribution made by looking after the home or caring for the family; and

(g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring.

(2) In exercising its powers under this section, the court shall endeavour so to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

Absence of proof of maintenance during the marriage

16 In assessing maintenance, the court shall endeavour to place the parties so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other. As Lai Kew Chai J aptly observed in *Quek Lee Tiam (mw) v Ho Kim Swee (alias Ho Kian Guan)* [1995] SGHC 23 ("*Quek Lee Tiam*") at [\[18\]](#) (albeit in the context of s 108(2) of the Women's Charter (Cap 353, 1985 Ed) [which is the predecessor of s 114(2) of the Women's Charter]):

In the light of its statutory context, the principle is confined to the preservation of her financial position in terms of her maintenance. She should therefore be financially provided so that she can continue to live at a level as she did immediately before the breakdown of the marriage.

17 In this factual inquiry, it is relevant to examine the level of maintenance which was provided by the defendant to the plaintiff during the marriage. In this regard, the plaintiff's evidence has been far from satisfactory. In the Statement of Particulars (Amendment No 1), the plaintiff, at paragraph 1(g), stated that the defendant had not been giving her any monthly maintenance. The plaintiff, however, alleged in her 3rd affidavit that the defendant had provided her with monthly maintenance of between \$800 to \$1,000 without any supporting evidence. This led Mr Palmer to submit that the alleged monthly maintenance was paid by the defendant by placing the cash on a table in the matrimonial home. Next, there was a contradiction in the plaintiff's affidavits as to when the defendant stopped providing her with monthly maintenance. The plaintiff, in her 3rd affidavit at paragraph 21, stated that the defendant stopped giving her maintenance in 2004. However, in the plaintiff's affidavit filed on 9 June 2010 (at paragraph 7), she alleged that the defendant had stopped giving her any maintenance since 3 July 2008. [\[note: 3\]](#)

18 The defendant, in his Defence and Counterclaim (at paragraph 2(h)), admitted that he had not given any regular monthly maintenance to the plaintiff from the inception of the marriage. He did, on occasion, give the plaintiff about \$200 to \$250. There was, however, no pattern to this. The defendant's explanation was that this was because he had since retired and the plaintiff was still working. He reiterated that both parties had supported themselves independently. He denied giving the plaintiff monthly maintenance of \$1,000 (see the defendant's 2nd affidavit filed on 15 July 2009 ("defendant's 2nd affidavit" or "his 2nd affidavit" as the case may be) at paragraph 22).

Financial arrangement of the parties during the marriage

19 It is pertinent to highlight, at this juncture, that the defendant reached retirement age a year after their marriage in 1995. The defendant in his Affidavit of Assets and Means at paragraph 32 stated that during the duration of the marriage when the plaintiff was still working, she kept all the money she earned for herself and did not contribute to the household, either directly or indirectly.

This is entirely consistent with the plaintiff's own admission at paragraph 1(f) of her Statement of Particulars, that from the outset of the marriage, both parties had kept "their finances distinct and separate from one another".

20 The financial arrangement between the plaintiff and the defendant during the course of the marriage was also not a typical one. Most couples would have a common fund, usually in the form of joint bank accounts, for the purposes of covering general household expenses. Although there was an OCBC account which was opened in the joint names of the plaintiff and the defendant, the defendant, in his 2nd affidavit at paragraph 4, stated that he had no access to the account as he did not have the account passbook. Furthermore, the absence of a common fund to pay for household expenses can also be attributed to the fact that at the time of the marriage, the defendant's three sons were already grown up. They were 28, 26 and 24 years old respectively and there was no question of the plaintiff looking after them (see the defendant's 2nd affidavit at paragraph 12).

Earning capacity and monthly expenses of the respective parties

21 Prior to the plaintiff's marriage to the defendant, the plaintiff was carrying out accounting work and earned a monthly income of about \$2,550. After the plaintiff married the defendant, she claimed at paragraph 19 of her Affidavit of Assets and Means that she "hardly continued with [her] accounting work as [she] became a housewife". In the later part of the marriage, she claimed that she started working part time as the defendant did not give her regular maintenance. The plaintiff is currently self-employed and works as a freelance accountant/book keeper with a monthly income of \$800 and a further monthly sum of about \$300 from her involvement in multi-level marketing (paragraphs 3 and 4 of the Plaintiff's Affidavit of Assets and Means).

22 Although the plaintiff claimed to have monthly expenses of about \$6,344.50 (as per paragraph 29 of her 2nd affidavit), by her own case, the defendant had at most provided her with maintenance of between \$800 to \$1,000. The plaintiff failed to produce any evidence to support her claim or to explain how she was able to bridge the difference over their 13.5 years of marriage.

23 The defendant is now 74 years old and has since retired. He enjoys a monthly income of \$2,150 which represents his share of rental from a shop in Far East Plaza which he had inherited with his siblings. [\[note: 4\]](#) The defendant's monthly expenses are about \$2,600. The difference between his monthly expenses and his monthly income is made up from the monthly allowances which he receives from his children. Although the defendant has other properties, they are either encumbered (in respect of the property which is situated along Oxley Road) or disputed (due to a disputed inheritance claim to a share of sale proceeds of 145 Killiney Road). As the defendant has retired, he does not have other financial resources. The defendant has an outstanding loan of \$204,386 (as at 6 May 2009) secured by a mortgage over the matrimonial home and a personal loan of \$200,000 which is owed to his sister (see paragraph 15 of his Affidavit of Assets and Means).

Maintenance for rental

24 I was of the view that given the lack of any evidence to prove the provision of any maintenance to the plaintiff, which was consistent with the plaintiff's own assertion that no maintenance was provided by the defendant during the marriage and that both parties kept their finances separate from each other throughout the marriage, the only amount which I was minded to award her was a monthly allowance for rental of a room. The loss of accommodation was the only "loss" suffered by the plaintiff following the dissolution of the marriage. In this regard, it should be pointed out that prior to the marriage, the plaintiff was staying with her nephew. The plaintiff drew

the court's attention to the fact that the nephew's current property was only purchased in 2008 and therefore, contrary to the defendant's assertion, she could not have been staying with her nephew at his current address prior to the marriage. However, the defendant merely stated at paragraph 24 of his 2nd affidavit that the plaintiff was staying with the nephew prior to the marriage without specifying any address. When the plaintiff left the matrimonial home in 2008, she returned to stay with her nephew which remains the position to-date. Although there is no evidence of any payment of rental by the plaintiff to her nephew, she claimed a monthly rental of \$1,500. There was also no suggestion in any of the plaintiff's affidavits that the nephew was not prepared to allow her to continue to stay with him. After all, by returning to stay with her nephew, the plaintiff was effectively reverting to *status quo*, as far as her living arrangement was concerned, prior to the marriage.

25 Nonetheless, I was prepared to award her an allowance for renting a room since it was unclear to me whether she would be permitted to stay at her nephew's place indefinitely. In doing so, I was in fact giving the plaintiff the benefit of any doubt as to whether she would be able to stay with the nephew indefinitely even though there was no assertion to the contrary. I accepted the amount of about \$575 per month for rental of a room was a reasonable figure. In fact, Mr Palmer accepted during the hearing on 26 April 2011 that the monthly rental for a room in a HDB flat would range between \$600 to \$650. Further, no submission was made by Mr Palmer that a rented HDB room was not suitable accommodation for the plaintiff.

26 In determining the appropriate quantum of maintenance to be paid to the plaintiff, Mr Palmer accepted, at the hearing on 26 April 2011, that the multiplicand should not be measured in terms of the length of the marriage. Instead, he accepted that it should be based on factors such as the defendant's age and his income.

27 I found that the plaintiff's monthly maintenance claim of \$1,800 over 13.5 years was plainly excessive. Based on the evidence before me, it was clear to me that the plaintiff had been financially independent even prior to the marriage and also prior to the breakdown of the marriage. There was no evidence that she had been receiving any maintenance from the defendant. Further, this was entirely consistent with the plaintiff's own assertion that both parties kept their finances separate and distinct during the marriage. Under these circumstances, I found the defendant's offer of \$75,000 to be generous. The defendant is already 74 years old (he was 72 years old at the time when the application was first filed) and his age is relevant in determining the number of years which the court would require him to maintain the plaintiff. Given that the life expectancy of an average Singaporean male is about 79 years, [\[note: 5\]](#) I agreed with Mr Moey that a multiplier of seven would be very fair. Accordingly, if it were left to me, I would have ordered a lump sum maintenance of no more than \$48,300 (\$575x12x7) even without factoring any discount for lump sum payment. Typically, a discount would be applied for lump sum payment. Viewed in this context, the defendant's lump sum offer of \$75,000 was indeed more than fair and reasonable to the plaintiff.

Conclusion

28 As the plaintiff was not claiming any share of the defendant's assets including the Hainan Property, I ordered the defendant to pay the plaintiff the lump sum maintenance of \$75,000 in three monthly instalments of \$25,000 commencing within 14 days after the plaintiff transfers the Hainan property back to the defendant. After all, according to the plaintiff, the Hainan Property has no value.

[\[note: 1\]](#) See Defendant's written submission at p 12

[\[note: 2\]](#) See Defendant's written submission at p 11

[\[note: 3\]](#) Affidavit filed on 9 June 2010 at p 2 at [7]

[\[note: 4\]](#) Written submissions at p 3

[\[note: 5\]](#) Written submissions p 8

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