

Lee Chi Lena v Chien Chuen Chi Jeffrey (Qian Jie, co-defendant)
[2011] SGHC 91

Case Number : Divorce No 4447 of 2010 (RAS No 4 of 2011)
Decision Date : 12 April 2011
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Randolph Khoo and Johnson Loo (Drew & Napier LLC) for the plaintiff; Koh Tien Hua and Yvonne Foo (Harry Elias Partnership LLP) for the defendant.
Parties : Lee Chi Lena — Chien Chuen Chi Jeffrey (Qian Jie, co-defendant)

Family Law

12 April 2011

Choo Han Teck J:

1 This is an appeal by the plaintiff ("the wife") against the decision of the District Judge ("the judge"). The judge refused to grant an injunction which the wife prayed for. Pending the wife's divorce with the defendant ("the husband") and the ancillary matters, she sought by way of a summons to restrain the husband from selling, transferring or in any manner disposing or dealing with a piece of real property in Shanghai ("the property"). The property is registered in the husband and the co-defendant's names.

2 The judge rightly acknowledged that the wife was entitled to apply for and the court to order injunctive relief in relation to the property if matrimonial proceedings are pending, pursuant to s 132 of the Women's Charter (Cap 353, 1997 Rev Ed) ("the Charter"). She, however, dismissed the wife's application on two grounds. First, she held that the wife merely had "an inchoate expectation in regards to the property", and this was presumably an insufficient interest to be protected by way of an injunction. Secondly, even if the wife had a sufficient interest in the property, there was no proof of a "*real* risk of dissipation" [emphasis in original].

3 With respect to the first ground, it is incorrect to hold that a wife has no sufficient interest in a particular matrimonial asset, prior to the hearing and decision of the ancillary matters, because she did not contribute directly or indirectly to the acquisition or enhancement of that particular asset. One must not confuse the existence and nature of an interest with its quantum or scope.

4 In the typical case, after a just and equitable proportion of division of the matrimonial assets is arrived at by applying the "global approach" (see *NK v NL* [2007] 3 SLR(R) 743 at [30]-[33]), the court will allocate certain pieces of matrimonial assets amounting to that proportion's value to the individual parties. Hence, while the particular assets from the pool of matrimonial assets which will be allocated to a wife may be uncertain, it is clear that as long as a wife is awarded a proportion of the assets which is greater than zero, then the possibility of her receiving a particular matrimonial asset exists. Even if the "classification approach" is applied the possibility of a wife receiving a share in a particular asset cannot be ruled out.

5 Hence, although the nature of a wife's interest in relation to that particular matrimonial asset prior to the division being performed may be *sui generis* and may be insufficient to support desired

consequences in other legal contexts (eg, to register a caveat), it must be of a type which is sufficient to satisfy s 132(1) of the Charter which states:

S 132. – (1) Where –

(a) any *matrimonial proceedings* are pending;

...

the court shall have power on application –

- (i) if it is satisfied that any disposition of property has been made by the husband ... within the preceding 3 years, with the object on the part of the person making the disposition ... of depriving his wife ... of *any rights in relation to that property*, to set aside the disposition; and
- (ii) if it is satisfied that any disposition of property is intended to be made with any such object, to grant an injunction preventing that disposition.

[emphasis added]

The phrase “any rights in relation to that property” must be interpreted to include a wife’s interests in claiming a share of the matrimonial property. That interest is a basic and recognised legal right. Any other interpretation renders the provision nugatory.

6 The judge held in her second ground that the wife failed to show that there is a real risk that the husband will dissipate the asset in question, *ie*, the property. This ground should be understood by reference to the *effect* of the dissipation instead. The focus should not be primarily on whether there is a “*real* risk of dissipation”.

7 Given the time lag between the initiation of matrimonial proceedings and a final judgment of divorce, disposing matrimonial assets and translating them into new assets by the parties in the ordinary course of living and investment is frequently necessary, especially when each of them are seeking to begin a new life. Thus it cannot be that every decision to dispose of a matrimonial asset by one spouse is susceptible to injunctive intervention by the other spouse. A balance must be struck. Therefore, whether or not an injunction will be granted depends on whether the other spouse will be prejudiced by such a disposition. In determining whether there is prejudice in this context, the court should take into account whether there are adequate matrimonial assets which will remain to satisfy the likely division proportion a court will make in favour of the non-disposing party. Hence, in a case where there is only one matrimonial asset of substantial value and a husband wishes to dispose of it, a court should allow a wife’s application for an injunction because there are no adequate remaining assets to satisfy a likely award in her favour in those circumstances. On the present facts, however, that is not the case. There are other properties of substantial value available. Counsel for the husband estimated that the matrimonial home which is located in Singapore has a net value of \$1.6m, and there are unquantified cash assets to take into account. Counsel for the wife pointed out that there are no firm figures at this point in the proceedings. However, it is undisputed that the matrimonial home is unencumbered, and although there is no formal valuation conducted for it, the estimated value is not unreasonable. Hence, in my view, there are adequate matrimonial assets apart from the property which are available to satisfy a likely division proportion in favour of the wife. Her appeal was therefore dismissed with costs.