

Koh Bee Choo v Choo Chai Huah
[2007] SGCA 21

Case Number : CA 68/2006
Decision Date : 10 April 2007
Tribunal/Court : Court of Appeal
Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; Judith Prakash J
Counsel Name(s) : Mary Ong and Robert Yeong (Mary Ong & Co) for the appellant; Tan Yew Cheng (Leong Partnership) and Peter Tio (Cheo & Tio) for the respondent
Parties : Koh Bee Choo — Choo Chai Huah

10 April 2007

Judgment reserved.

Judith Prakash J (delivering the judgment of the court):

Introduction

1 Mdm Koh Bee Choo (“the Wife”) and Mr Choo Chai Huah (“the Husband”) were married in 1984. They had three children who were aged 16, 18 and 22 at the time of the proceedings in the court below. The eldest child, a daughter, studies architecture in Australia; while the two sons study here. In August 1996, the Husband purchased an apartment at 53 Hume Avenue #07-02 Parc Palais (“the Parc Palais flat”), which served as the home of the couple and their children. In July 2003, however, the Husband left the matrimonial home to live with Ms Sun Chang Yun. The Husband and Ms Sun and their two children currently reside at 346 Balestier Road #05-13 Ritz Mansion (“the Ritz Mansion flat”).

2 On 20 April 2004, a decree *nisi* was granted to the Wife. Thereafter, three hearings took place before the trial judge to divide the matrimonial assets of the couple and to determine what maintenance should be ordered in favour of the Wife. These resulted in the following orders (see *Koh Bee Choo v Choo Chai Huah* [2006] SGHC 177 (“the GD”) at [2]):

(a) The Husband was to continue to pay the Wife on or before the first day of every month, a monthly sum of \$3,000 as maintenance apportioned as to \$1,500 for the Wife and \$750 for each of the two sons.

(b) The Husband was to continue to bear the expenses of [the Parc Palais flat] for utilities (water, electricity and gas) and cable television, as well as the hire-purchase instalments for vehicle no SDZ302U (“the Wife’s car”) and its road tax and insurance charges. The Husband was to pay for the utilities until such time as the Parc Palais flat was disposed of which would be no earlier than October 2006 with completion [of the] sale to take place no earlier than the last day of the sons’ national examinations.

(c) The Husband was to continue to pay the fees and living expenses of the daughter until she completed her university course in architecture in Australia.

(d) The parties were to have liberty to apply to the Family Court on the issue of maintenance after the Parc Palais flat had been sold.

(e) The Wife was to have the entire net sale proceeds of the Parc Palais flat which she

would utilise to rent alternative accommodation for herself and the children at not more than \$2,000 rental per month (inclusive of maintenance charges) for a period not exceeding 24 months (but inclusive of an option to renew for 12 months).

(f) The Wife was to have 50% of the Husband's Central Provident Fund ("CPF") savings and would have a charge on the moneys in his ordinary and special accounts until such time as the CPF Board was able to release the charged moneys to the Wife.

(g) The Wife was to have 50% of the Husband's other assets, in particular, in all branches of Mandarin Dental Centre Pte Ltd ("MDC") which shares would be deemed to include the 60,000 shares transferred to the Husband's father.

(h) The Husband would authorise the Wife to write to all major local banks including, but not limited to, United Overseas Bank ("UOB"), Development Bank of Singapore Limited and/or Post Office Savings Bank, Overseas Chinese Banking Corporation ("OCBC"), Malayan Banking and the Bank of China, to ascertain if the Husband maintained any accounts or fixed deposits. If there were accounts (with credit balances) and fixed deposits with any bank, the Wife would be entitled to 50% of those balances. The Wife was to bear the banks' charges relating to her inquiries.

(i) The Husband would undertake to sell [the Ritz Mansion flat] by October 2006 and if he had utilised his CPF savings for the purchase, the Husband was to refund those withdrawals to his CPF account upon completion of the sale and render a statement thereof to the Wife's solicitors.

(j) The Husband was to transfer 1,000 City Development Ltd and 500 OCBC shares to the Wife.

(k) The parties were to have liberty to apply to the Family Court on the issue of procuring another property for the accommodation of the Wife and children after June 2008.

(l) The Husband was to pay costs fixed at \$3,500 to the Wife.

3 The trial judge also dismissed the Wife's claim for a share in a number of other assets ("the excluded assets").

4 Being dissatisfied, the Wife has appealed against orders (b), (e), (g) and (k) set out in [2] above and the dismissal of her other claims. She has asked this court to award her, in addition to what she has already received:

(a) a 50% share in the sum of \$483,478.91 from a fixed deposit account with OCBC Bank ("the OCBC fixed deposit account");

(b) a 50% share in the sum of \$6,780.22 from another account with OCBC Bank ("the second OCBC account");

(c) a 50% share in the rental received from the Husband's Johor Baru property at 45 Jalan Pinang 16, Taman Daya 81100 ("the Johor Baru property") from January 2002 to the present;

(d) an order for the sale of the Johor Baru property and a 50% share in the sale proceeds;

(e) a 50% share of \$78,000 deposited into an account maintained by MDC with United

Overseas Bank ("UOB");

(f) an order authorising the Wife to write to any local or foreign banks to ascertain whether the Husband had maintained an account with them and for a 50% share in any such accounts; and

(g) a 50% share in the surrender value of the following insurance policies:

(i) Prudential whole life with profit policy (no 08086078) with a surrender value of \$44,699.17;

(ii) Prudential whole life with profit policy (no 08093454) with a surrender value of \$11,316.63;

(iii) Prudential whole life with profit policy (no 17115857) with an unknown surrender value; and

(iv) AIA life plan (no L524952980) with a maturity value of \$30,000.

The trial judge's reasoning

5 The trial judge explained the reasons for ordering the immediate sale of the Parc Palais flat (at [20] to [25] of the GD):

(a) The Parc Palais flat was no longer an asset but a continuing liability, particularly in the light of the Husband having to pay \$6,743.00 per month in order to service the mortgage and overdraft loans secured against the flat.

(b) The Parc Palais flat had depreciated in value. Having been purchased for \$1.134m, a valuation adduced in evidence showed that, as of 2002, its value was only \$853,000.

(c) It appeared from the documents that the Husband had had difficulty servicing the loans since December 2003. This state of affairs could not continue indefinitely. It was also clear that the Husband (and the Wife) had been living on borrowed money for some time; he was spending more than his monthly income.

(d) It therefore made economic sense to sell the property even at a loss, so as to reduce his monthly expenditure and liability.

(e) In the meantime, the Wife could use the balance of the sales proceeds to procure alternative accommodation.

(f) This was not an ideal solution but it was the most pragmatic under the circumstances.

(g) If the maintenance sum ordered and/or the sales proceeds were insufficient, the Wife had liberty to apply after the matrimonial home was sold. By then, a clearer picture of the Husband's income and liabilities would have emerged. The Wife's expenses might also be adjusted because the older son would be serving national service while the daughter would be about to complete or would have completed her studies. This would reduce the Husband's expenses in respect of her education as well as the Wife's expenses because the daughter would be relatively self-sufficient then.

(h) Ordering the husband to buy another property for the Wife at that time would be pointless because neither the Wife nor the Husband could afford to make such a purchase. In June 2008, however, the parties would have liberty to apply if their financial circumstances had changed.

6 In addition, the trial judge's refusal to award the Wife any share in the excluded assets was justified at [35] of the GD, as follows:

Counsel for the Wife had cited *White v White* [2001] 1 AC 596 and *Yow Mee Lan v Chen Kai Buan* [2000] 4 SLR 466 to support her argument that the Wife's indirect contributions merited her entitlement to half the matrimonial assets. I did not disagree with the principles extracted from those cases. However, every case turns on its own particular facts. Unlike the wives in *White v White* and *Yow Mee Lan v Chen Kai Buan*, the Wife did not work and had not worked, since June 1984, which was almost the entire period of the marriage, let alone help the Husband in his work. As the Husband rightly pointed out, she could and should find a job. She should be taking up courses to improve and upgrade her skills instead of spending three to four nights a week doing line dancing.

In other words, the trial judge was of the view that whatever had already been apportioned properly reflected the total contributions of the Wife to the family and that it was unnecessary to award her any share in the Husband's remaining assets.

The Wife's contentions on appeal

7 The Wife's arguments in support of her appeal may be summarised in the following terms. As to the orders of the trial judge in relation to the Parc Palais flat (see sub-paras (b), (e), (g) and (k) of [2] above), the Wife's chief grievances are that:

(a) The trial judge had wrongly concluded that the Husband was in poor financial health and could not afford to continue paying the substantial instalments on mortgage and overdraft loans secured against the Parc Palais flat. Accordingly, the factual basis for ordering the immediate sale of the Parc Palais flat was misconceived.

(b) The overriding consideration in deciding on the disposal of the Parc Palais flat ought to have been the welfare of the children and their need for permanent shelter. As such, the trial judge should have delayed the sale of the Parc Palais flat at least until the youngest child reached 21 years of age.

(c) The balance of the proceeds of the sale of the Parc Palais flat should be given to the Wife without the condition imposed by the trial judge (*viz*, to use the moneys to secure alternative accommodation at not more than a monthly rental of \$2,000 for a period of 24 months) on the basis that she was entitled to that sum as her share of the matrimonial assets for being a dutiful wife and mother for 22 years. Furthermore, the shares awarded to her in the Husband's dental practice (see [2(g)] above) had only a nominal value since they were in MDC, a private company, and could not be sold in the open market.

8 As for the excluded assets, the Wife's central arguments justifying her right to a share in these are that:

(a) In so far as the Husband could not account for the moneys in the two OCBC Bank accounts (see [4(a)] and [4(b)] above), an adverse inference should be drawn against the

Husband and the moneys should be counted as part of the matrimonial assets.

(b) An adverse inference should also be drawn against the Husband to the extent that he could not account for the following insurance policies:

(i) the Prudential whole life with profit policy with an unknown surrender value; and

(ii) the AIA life plan with a maturity value of \$30,000.

(c) The Wife was entitled, by virtue of her indirect contributions to the household, to a 50% share in all the assets listed in [4] above. Furthermore, because the shares awarded to her in the Husband's dental practice (see [2(g)] above) had little value since they could not be sold in the open market, she should be entitled to share in more assets.

Our judgment

9 The questions arising in the appeal are as follows. First, should this court interfere with the trial judge's decision to order the immediate sale of the Parc Palais flat? Second, should the Wife have been given a share in the excluded assets? Third, should this court interfere in the trial judge's apportionment of the matrimonial assets? Finally, should this court vary the orders of the trial judge to take into account the fact that the shares awarded to her in the Husband's dental practice cannot be easily realised?

Whether the Parc Palais flat should be sold immediately

10 The trial judge's rationale for ordering the sale of the Parc Palais flat was that the Husband was bleeding financially, in part because of the substantial repayments that he had to make in respect of the mortgage and overdraft loans he had secured against the flat. Therefore, the trial judge found that it made economic sense to reduce the Husband's liabilities as much as possible by selling the Parc Palais flat. Indeed, it would be counterproductive to force the Husband to service the loans on the Parc Palais flat only for him to default eventually, leaving the flat to be sold by the mortgagee in a forced sale.

11 Having perused the evidence, we are not convinced that the trial judge erred in ordering the immediate sale of the Parc Palais flat. It was undisputed that the Husband's monthly expenses were substantial. By the Wife's own account, the Husband was incurring expenses of between \$25,000 and \$30,000 per month. The point of disagreement between the parties, however, lay in the Wife's persistent assertion that the Husband could only have afforded these expenses if he were earning at least as much, if not more. As the trial judge correctly pointed out, this need not be so.

12 Instead, there was evidence that the Husband was struggling to keep afloat. One indication was his income tax returns, which showed that he was earning, on average, only about \$10,000 per month. Even at the peak of his earnings in 2002, he was earning approximately \$14,000 per month. While the Wife implied that the Husband was not being truthful about the full extent of his earnings, there was no evidence before us that would entitle us to accept her view.

13 Another indication of the Husband's financial ill health was the fact that he had chalked up not insubstantial amounts of unpaid bills in relation to his credit cards, instalments on various loans, including two secured against the Parc Palais flat, and premiums relating to an HSBC insurance policy. These debts were in excess of \$39,000. Again, the Wife contended that because the Husband had been able to settle these debts eventually, he was not in financial hardship. This argument, in our

judgment, fails to recognise the simple but significant point that the Husband would not have defaulted on punctual payment had he been financially solvent in the first place.

14 Yet another piece of evidence supporting the Husband's position was the fact that he had taken on a larger loan liability by re-mortgaging the Parc Palais flat for \$400,000 and taking out a term loan of \$263,943.88 in April 2006. Contrary to the Wife's assertion, this demonstrated that the Husband was not able to keep on an even keel financially on the basis of his current income alone. Hence, he had a need to borrow substantial amounts of money.

15 In addition, the Husband had to close the Balestier branch of his dental practice in July 2004 as a result of declining business. Earlier, in 2002, he had to sell off property he had purchased in Australia because he could not afford the mortgage instalments.

16 Finally, we noted the Husband's explanation that he had lost a substantial amount due to the failure of his attempts to expand his dental practice into China (his estimate of the loss was between US\$400,000 and US\$500,000). While it is true that there was no documentation of the loss, the Husband explained that this was because he was unable to visit China due to the SARS outbreak in 2003 and his staff there had stolen his equipment. Moreover, the Wife was unable to adduce any proof to contradict the Husband's evidence that an outstanding loan of \$319,037.92 that he had taken from Lloyd's TSB Bank had been procured for the purpose of financing the unsuccessful business venture in China.

17 The trial judge's finding that the Husband was in financial difficulties was supported by the evidence and there are no grounds for us to set it aside.

18 This finding did not end the matter, however, for the court should also have regard to the welfare of the children, and, in particular, that they should have the security of accommodation: see *Chan Choy Ling v Chua Che Teck* [1995] 3 SLR 667 ("*Chan Choy Ling*") and *Tham Khai Meng v Nam Wen Jet Bernadette* [1997] 2 SLR 27. Even so, we are not obliged to give pre-eminence to any one factor (see *Yow Mee Lan v Chen Kai Buan* [2000] 4 SLR 466 ("*Yow Mee Lan*") at [32]). In *Chan Choy Ling*, this court held that it was proper to consider the practicality and justice of avoiding the sale of the matrimonial property (at 673, [18]):

We now turn to the factors which should be taken into account in effecting a division of the property. First, one of the factors to be considered as spelled out in s 106(2)(c) [of the Women's Charter (Cap 353, 1970 Rev Ed)] is the needs of the minor children. ... There is no doubt that the wife and the children need a roof over their heads. They have been staying in that house for the last 10 years. We should avoid, *if practicable and just to do so*, a disposal of the house and a division of the proceeds of sale between the husband and the wife. [emphasis added]

19 Thus, we have to consider whether a delay of the sale of the Parc Palais flat until the youngest child reaches 21 years of age, as the Wife requested, would be the practical and just thing to do in the light of the Husband's financial situation. In the cases cited above, and in the only case relied on by the Wife (*Susi Suryani Santoso v Lee Kong Eng* [1999] SGHC 247), the court did not have to grapple with a husband who was facing such severe financial difficulties that he was unable to service the mortgage loan.

20 In addition, there is no inexorable principle dictating that the only way to cater to the welfare of the children is to avoid the disposal of the matrimonial home. The trial judge had taken the needs of the children into account as she had made orders mandating the way in which alternative accommodation should be obtained.

21 In the circumstances, we affirm the trial judge's order that the Parc Palais flat be sold immediately.

22 The order relating to alternative accommodation was the direction that the Wife be given the net proceeds from the sale of the Parc Palais flat and that she use this money to acquire alternative rental accommodation for the family for a period of two years (at a rental of approximately \$2,000 a month) after which the question of accommodation for her and the children could be reconsidered by the Family Court. The Wife was not happy with this order. She wanted the proceeds of sale to be given to her outright and for the Husband to provide alternative accommodation. For the reasons given below, we agree that the proceeds of sale should be given to the Wife outright as part of her share of the matrimonial assets. We also agree with the Wife's submission that it would not be appropriate for her to go back to the Family Court in two years' time to sort out the issue of her accommodation as making an order for the Husband to provide alternative accommodation could only be done at the time of the divorce proceedings.

23 At the moment, the Husband is in no financial position to purchase alternative accommodation for the Wife and children. He will, however, find an improvement in his financial position once the Parc Palais flat and the Ritz Mansion flat have been sold as he will no longer have to pay the mortgage instalments for those two premises. He should, therefore, be in a position to assist the Wife to meet the expenses of alternative accommodation by paying her an extra \$2,000 a month as maintenance and we order that the monthly maintenance be increased by this sum. In line with the trial judge's original order, this additional maintenance amount will only be payable for a period of two years from the time that the Parc Palais flat is sold. By that time, the Wife may have been able to acquire property of her own as a home for the children and, in any case, her financial needs will be more clearly ascertainable. At the end of that period, therefore, the maintenance amount shall revert to the amount of \$3,000 per month ordered by the trial judge. Both parties of course will then be at liberty to apply for whatever variation of the maintenance order the circumstances may require and justify.

Whether the Wife should have a share in the excluded assets

24 We now turn to the various assets that the Wife claims she should have been awarded a half share in.

A sum of \$483,478.91 from the OCBC fixed deposit account

25 It was not in dispute that there was a fixed deposit account at OCBC Bank in the sum of \$483,478.91. This amount was withdrawn on 23 August 1999. The trial judge found that these moneys were "most probably" utilised to settle the Husband's OCBC overdraft facilities and loans in relation to the Parc Palais flat. The trial judge had called for the Husband's monthly statements from his banks in order to examine whether he had channelled the moneys to his other accounts. She found no evidence of any such movement. Furthermore, she observed that in 1999, when the withdrawal was made, there was no evidence of any problem in the relationship and thus there was no reason then for the Husband to have hidden away his money.

26 Unconvinced, the Wife argued that:

- (a) whilst the sum of \$483,478.91 was clearly utilised to extinguish an overdrawn sum of \$476,482.81 in the second OCBC account (see [4(b)] above) as at 23 August 1999, it was not explained what this latter sum had been utilised for;

(b) the overdrawn sum could not have been applied towards the Parc Palais flat since the Husband had always used facilities of UOB (and later on, RHB Bank) for that purpose; and

(c) the court should therefore infer that the sum was part of the matrimonial assets, had not yet been expended and should therefore be accounted for.

27 While it is true that the Husband was not able to adduce documentary proof of how the overdrawn sum from the second OCBC account had been used, or that he had an outstanding loan with OCBC Bank secured against the Parc Palais flat in 1999, there were documents showing that the UOB mortgage that the Wife referred to was taken out only in 2004. What this meant was that there was no evidence directly contradicting the Husband's position that when he first purchased the Parc Palais flat, he had used OCBC Bank as the mortgagee, and that the disputed moneys were applied towards the second OCBC account in order to pay for the Parc Palais flat.

28 In such a situation, the question arises as to whether it would be proper to draw an adverse inference against the Husband. We consider that the trial judge was correct in rejecting the Wife's plea to do so. It is well established that in order for a court to draw an adverse inference, there must, in the first place, be some substratum of evidence that establishes a *prima facie* case against the person against whom the inference is to be drawn. In addition, it must be shown that the person against whom the inference is to be drawn has some particular access to the information he is said to be hiding (perhaps because it is peculiarly within his knowledge). In other words, the court's ability to draw an adverse inference does not and cannot displace the legal burden of proof that continues to lie with the plaintiff, or, as in this appeal, the Wife.

29 In *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 3 SLR 405, this court observed at [50]:

Whether or not in each case an adverse inference should be drawn depends on all the evidence adduced and the circumstances of the case. There is no fixed and immutable rule of law for drawing such inference. Where, as was the case here, the trial judge is of the view that the plaintiffs themselves had not made out their claim to the requisite standard, then no drawing of an adverse inference against the defendants is necessary. *The drawing of an adverse inference, at least in civil cases, should not be used as a mechanism to shore up glaring deficiencies in the opposite party's case, which on its own is unable to meet up to the requisite burden of proof.* Rather, the procedure exists in order to render the case of the party against whom the inference is drawn weaker and thus less credible of belief. [emphasis added]

30 That a court does not lightly draw an inference against a party is illustrated by *Yow Mee Lan* ([18] *supra*), where the court drew an adverse inference against the wife for making no effort to account for certain funds in her hands, whereas it refused to draw a similar inference against the husband on the basis that, *inter alia*, there was no reason to suspect that he was not disclosing his assets.

31 In the present appeal, the Wife was only able to present a bare allegation that the moneys in the fixed deposit account were used for some nefarious purpose rather than to pay off a mortgage over the Parc Palais flat. Unlike the wife in *Yow Mee Lan*, the Husband in this appeal has attempted to explain what happened to the disputed moneys by adducing documents to show that they were applied towards discharging an overdrawn amount in the second OCBC account. While the documentary evidence may not show conclusively that the debt arose in connection with the Parc Palais flat and was secured by it, there would have been no motive in 1999 for the Husband to stash the moneys elsewhere. It was not asserted that problems had arisen in the marriage as early as 1999.

This is a situation similar to *Shih Ching Chia James v Kay Swee Tuan* [2002] SGCA 2, where this court refused to draw an adverse inference against a party in relation to moneys withdrawn three to four years before the breakdown of the marital relationship because it considered that, at that time, the parties would not have kept proper records of their transactions with a view to having to account for them later. Moreover, in the present case, the trial judge could find no trace of the moneys being funnelled to the Husband's other bank accounts. The Wife has not been able to convince us that the trial judge's findings on this point were not supported by the evidence.

Sum of \$6,780.22 from the second OCBC account

32 After the Husband had used the moneys from the OCBC fixed deposit account to pay off the overdrawn sum in the second OCBC account, there was a credit balance of some \$6,780.22 in the account. This account was closed on 20 April 2004 and the moneys transferred to yet another OCBC Bank account, to reduce a then existing overdraft of \$11,018.29. Whilst it might seem suspicious that the credit balance was depleted on the same day the decree *nisi* was granted, it must be remembered that as of that date, the Husband was already in debt to OCBC Bank to the tune of \$11,018.29, so in effect the sum of \$6,780.22 could not be regarded as a net credit balance. Additionally, as we have stated above, the Husband was living beyond his income and thus it was not surprising that he was in debt to OCBC Bank at the time of the divorce.

33 In our view, the Wife cannot make a claim to the sum of \$6,780.22 as it had already been spent at the time of the divorce. Moreover, even if we held that this sum should count as a matrimonial asset for the purpose of division, it would still have to be demonstrated why the trial judge was wrong in refusing to award her any share in it: on this point, see [45] to [51] below.

Rental received from the Johor Baru property from January 2002 to the present

34 The trial judge found that, contrary to the Wife's assertion, the Johor Baru property had not been tenanted since October 2003, as evidenced by a letter from a tenant terminating the lease. She also held that the rental proceeds had been spent, probably to set off the Husband's debts which started piling up in 2003.

35 While the Wife conceded that there was a letter suggesting that the tenancy was terminated as of October 2003, she insisted that it was "self-serving". By that, we understood her to imply that the letter was either forged or that the property had been rented out to another person but the tenancy had not been disclosed. No evidence was adduced, however, to support either contention. In respect of the rent collected from January 2002 to October 2003, the Wife was unable to substantiate her assertion that it had not already been spent. Accordingly, there is no basis on which we can reverse the trial judge's decision on this point.

Sale of the Johor Baru property

36 The Wife prayed for the Johor Baru property to be sold and half of the balance of the proceeds to be awarded to her. The trial judge refused to make an order in these terms for the reasons that the property was charged to RHB Bank to secure a loan of \$80,000 and that, in any event, the property would not be worth very much.

37 Before us, the Wife was unable to establish that the trial judge's finding, that there was no financial value in forcing the sale of the property given the "moribund state of the Johor property market" (see [31] of the GD), was against the weight of the evidence. We therefore have no reason to interfere with the decision of the trial judge.

The sum of \$78,000 deposited into the account of MDC

38 It was not disputed that the \$78,000 deposited into the account of MDC with UOB represented the proceeds of the sale of equipment from the closure of the Balestier branch of the Husband's dental practice. The question was whether the account in which the moneys were deposited was a personal or corporate account. In this regard, the trial judge was of the view that it was "absurd" for the Wife to ask for this sum, given that the account belonged to the Husband's dental practice – which was a limited company – and not to the Husband directly. To put it shortly, the account was not his and should not be considered part of the matrimonial assets. The Wife, on the other hand, claimed that the account was his, as shown by his using this account to pay some of his personal credit card expenses and his transfer of a sum of \$11,792.30 from this account to his daughter's account on 14 February 2005.

39 In our view, the evidence and, in particular, the bank documents clearly supported the trial judge's holding that the account was a corporate one, and that the Husband was not practising as a sole proprietor. In fact, his dental practice had been carried out under the aegis of MDC since that company had been incorporated in 1989. Therefore, we agree with the trial judge that the moneys in the account belonged to the company owning the dental practice and not to the Husband personally. The Husband's withdrawal of moneys from the corporate account to pay his personal expenses might have rendered him liable for a breach of fiduciary duties, but such actions did not convert the account into a personal one.

Moneys held in local and foreign bank accounts other than those already disclosed

40 The trial judge ordered the Husband to authorise the Wife to write to all major local banks, including, but not limited to, UOB, OCBC Bank, DBS/POSB, RHB Bank and Bank of China, to ascertain whether the Husband maintained any accounts or fixed deposits with these institutions. Despite having received responses from these banks, the Wife now seeks a court order authorising her to write to all the banks that she wants to, local and foreign, to check whether the Husband had any other accounts. She also wants half of the credit balance of any account she discovers as a result of this exercise.

41 In our view, there is no merit in this prayer. Given that the Wife has received responses from the local banks, which implies that the Husband has complied with the trial judge's order to authorise her to write to them, there is no reason why the Wife would need a further court order to write to the local banks again. The Wife has not put forward any basis to justify allowing her to extend her search to the foreign banks. She is fishing and should not be allowed to bother the banks with her queries.

Insurance policies

42 In the court below, the Wife claimed a half-share in the insurance policies listed at [4(g)] above but the trial judge refused to award her any share because "the policies had no named beneficiaries but would go to the Husband's estate, being policies that came under s 73 of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed)": see [34] of the GD.

43 With due respect to the trial judge, we do not see how the fact that the policies had no named beneficiaries was relevant. Rather, if the policies had had named beneficiaries, then there might have been an issue as to whether the Husband was the beneficial owner of the policies. In the present case, since no one else has been named as beneficiary, the Husband cannot deny that the policies belong entirely to him and only he or his estate can benefit from them. Thus, the only

relevant question in our view is whether the policies are still subsisting. To this end, while the Husband did not dispute the continued existence of Prudential policies nos 08086078 and 08093454, he deposed that he no longer held the other policies being claimed by the Wife.

44 In respect of Prudential policy no 17115857, we are satisfied that the policy has lapsed, as shown by its conspicuous absence from Prudential's premium notice dated 18 January 2005 in which the other two Prudential policies were listed as being in force. As for the AIA policy, there was no documentation regarding whether the premiums had been paid or were in force. In the absence of proof that the Husband does not still hold this policy, we draw an inference against the Husband in respect of this policy. Moreover, given that it is a two-year-premium policy (of \$11,003.40) with a payout of \$30,000 in 2016, it is likely that he may be keeping the policy for himself until it matures.

Apportionment of the matrimonial assets

45 As indicated above, the Wife has asked for the balance of the proceeds from the sale of the Parc Palais flat, as well as a half share in other assets, on the basis of her contribution to the welfare of the family.

46 Before assessing the specific arguments of the Wife, it is apposite to recall that the division of matrimonial assets involves the sound application of judicial discretion by the judge of first instance rather than any rigid mathematical formulae: see, *NI v NJ* [2007] 1 SLR 75 at [18]. Accordingly, an appellate court will seldom interfere in the orders made by the court below unless it can be demonstrated that it has committed an error of law or principle, or has failed to appreciate certain crucial facts. As was held in *Tay Ivy v Tay Joyce* [1992] 1 SLR 893 at 898, [12], and followed by *Lee Bee Kim Jennifer v Lim Yew Khang Cecil* [2005] SGHC 209 at [14], there is a presumption that the decision appealed against is correct. More recently, it was stated in *MZ v NA* [2006] SGHC 95 at [5] that:

It is true that the court has a duty to ensure a fair result, but it is just as important that there is a consistency in the key principles of adjudication because people must be able to anticipate the law and its application so that they can conduct themselves accordingly. If courts were to make minor adjustments for idiosyncratic reasons, that is one sure way of creating uncertainty. By idiosyncratic reasons I mean those circumstances in which one court might say \$40 is adequate pocket money for a 12-year-old child, and another might think that \$50 is more reasonable. *The privilege and duty of making that call lies with the judge at first instance. If the decision were to be disturbed it must be for a strong reason, for example, that the court misapplied a principle of law, or had clearly made an error of fact that was not only obvious, but also significant, and, thereby, rendered the consequence unfair to the parties.* [emphasis added]

47 Therefore, to succeed on her appeal, it was not sufficient for the Wife merely to repeat her assertion that she was entitled to a greater share of the assets. In our judgment, the Wife was unable to point to any concrete evidence showing that the trial judge had erred in not giving her a larger share of the matrimonial assets, particularly since the trial judge had already acceded to the Wife's request to be given half of the Husband's more substantial assets, including 50% of his CPF savings even though she had made no direct contribution to their acquisition. It is significant that the Wife made no effort to rebut the trial judge's findings that:

- (a) the Wife had not worked after June 1984, almost the entire period of the marriage;
- (b) the Wife did not help the Husband in his work; and

(c) the Wife should seek to improve her skills so as to gain employment.

48 In making this holding, we do not belittle the contribution that the Wife has made to the welfare of the family. Section 112(2)(d) of the Women's Charter (Cap 353, 1997 Rev Ed) ("the Charter") obliges the court to take into account the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family. In addition, s 112(2)(g) of the Charter considers relevant, in the division of the matrimonial assets, any assistance (including non-material assistance) provided by one party that aids the other party in carrying on his business or occupation.

49 This recognition of the importance of non-financial contributions to the welfare of the family does not, however, necessarily entitle a spouse who has made such contribution to a half share in all the matrimonial assets: see, for example, *Ng Hwee Keng v Chia Soon Hin William* [1995] 2 SLR 231 (where this court awarded the wife a 20% share in assets in respect of which she had made only non-financial contributions); *Tan Bee Giok v Loh Kum Yong* [1997] 1 SLR 153 (where this court awarded the wife approximately 35% of the value of the matrimonial assets); and *Ong Chen Leng v Tan Sau Poo* [1993] 3 SLR 137 (where this court awarded the wife a 35% share in the matrimonial property for her non-financial contributions). Moreover, the cases relied on by the Wife, namely, *White v White* [2001] 1 AC 596 and *Yow Mee Lan* ([18] *supra*) are not instructive because the wives in those cases had played active roles in their husbands' businesses – an element that is absent in the present appeal.

50 Indeed, even though the House of Lords in *White v White* considered that non-financial contribution to the family was an important factor in the division of matrimonial assets, and even thought that, in many cases, an equal division of the matrimonial assets would be an equitable resolution, it expressly repudiated any notion that there should be a presumption or starting point of equality. On the contrary, Lord Nicholls of Birkenhead said (at 599):

My Lords, divorce creates many problems. One question always arises. It concerns how the property of the husband and wife should be divided and whether one of them should continue to support the other. Stated in the most general terms, the answer is obvious. Everyone would accept that the outcome on these matters, whether by agreement or court order, should be fair. More realistically, the outcome ought to be as fair as is possible in all the circumstances. *But everyone's life is different. Features which are important when assessing fairness differ in each case.* [emphasis added]

51 In the present appeal, we are fully aware that the Wife has made an important contribution to the family in her role as a homemaker over a long period of time. The record, in fact, shows that the parties' children excelled in their academic and extra-curricular activities. Thus, even if she was unemployed for most of the marriage, did not assist in the Husband's business and made no financial contribution to the purchase of the various matrimonial assets, she is clearly entitled to a significant share of the assets. Undoubtedly, it was for this reason that the trial judge apportioned a half share of the more substantial assets belonging to the Husband to the Wife. For this court to vary the orders given by the trial judge such that the Wife would receive an equal share in respect of the excluded assets (some of which have already been spent or no longer exist) would require more than a bald assertion that she deserved more. It would require showing that the trial judge was wrong in law or in fact. The Wife did not meet this requirement. She made no attempt to explain how the trial judge had exercised her discretion improperly. As a consequence, we are not persuaded that the trial judge erred in her estimation of the Wife's total contribution to the family in the overall division of the matrimonial assets.

Whether the trial judge's orders should be varied to take into account the nominal value of the MDC shares

52 It will be recalled that one of the orders made by the trial judge was to award the Wife a 50% share in the Husband's share of the dental practice. In this regard, we accept the Wife's complaint that this was, in reality, a meaningless order in so far as the owner of the dental practice was a private limited company and thus the Wife would not be able to encash the Husband's shares in MDC in the open market when she wants to. In other words, even though on the evidence given by the parties the book value of the MDC shares awarded to the Wife ranges between \$29,436.375 and \$197,046.625 (depending on whose valuation is accepted), the Wife would have great difficulty in realising even the lower amount since the shares are not freely transferable. The trial judge obviously intended the Wife to gain substantial assets when she made the award in relation to the MDC shares. Since, as a matter of practice, this would be difficult to achieve, we are inclined to vary that order and to replace the award of the MDC shares with an award of other assets which would allow the Wife to realise a monetary return.

53 To achieve the foregoing, the following variations to the orders made by the trial judge would be appropriate:

- (a) The Parc Palais flat is to be sold immediately. The balance of the proceeds of the sale of the flat is to be given entirely to the Wife without any conditions imposed on its use.
- (b) The two existing Prudential policies (nos 08086078 and 08093454) and the AIA policy are to be immediately assigned by the Husband to the Wife and, so that the Wife shall obtain the full benefit of such assignment:
 - (i) the original policies are to be handed over to the Wife;
 - (ii) the Husband or his counsel shall give written notice to the insurance companies notifying them of the assignments effected pursuant to this order;
 - (iii) the Registrar shall have the power to execute the assignments and the notices of assignment in the name of and on behalf of the Husband pursuant to s 14 of the Supreme Court Judicature Act (Cap 322, 1999 Rev Ed) in the event of the Husband's failure to do so within 21 days of the date of this order; and
 - (iv) the Wife will be entitled, from the date of the assignment, to dispose of the insurance policies as she sees fit. In other words, she may choose to pay the premiums on the policies in order to keep them, or she may run down their value by using the proceeds of the policies to pay the premiums due, or she may encash them for their current surrender values.
- (c) The award to the Wife of a 50% interest in the Husband's share in MDC shall be rescinded and if the said shares have already been transferred to the Wife, she shall retransfer them to the Husband forthwith and return any scrip that she may have for cancellation.
- (d) There shall be liberty to apply for further orders.

For the avoidance of doubt, all other orders made by the trial judge which are not inconsistent with the orders set out above and the orders relating to maintenance made in [23] above will remain in force.

54 In our view, the balance of the proceeds from the sale of the Parc Palais flat as well as the surrender value of the two insurance policies listed above will adequately reflect the value of the Wife's share in the Husband's dental practice although they may not be exactly equivalent to the book value of those shares. Our decision will also ensure a clean break between the parties in so far as the Husband will be able to keep all of his shares in his business without interference from the Wife as a shareholder. We are also satisfied that the Husband will be able to afford the revised maintenance order once his liabilities are reduced upon the sale of the Parc Palais flat and the Ritz Mansion flat.

55 On these grounds, the appeal is allowed in part. The Wife has only been successful to a limited extent. In these circumstances it would not be correct to award her the full costs of the appeal. In our judgment, it would be fair for her to recover half the costs of her appeal, to be taxed if not agreed.

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