

Lee Chung Meng Joseph v Krygsman
[2000] SGHC 277

Case Number : Div 2123/1999
Decision Date : 21 December 2000
Tribunal/Court : High Court
Coram : Tay Yong Kwang JC
Counsel Name(s) : Stephanie Hong (Tan Peng Chin & Partners) for the appellant; Lim Shui Yi (Hoh & Partners) for the respondent
Parties : Lee Chung Meng Joseph — Krygsman

Family Law – Divorce – Division of matrimonial assets – Maintenance – Whether judge's assessment and division of matrimonial assets sensible and fair – Whether husband at liberty to apply for variation of maintenance order should wife's income increase in the future

: This is an appeal against the decision of District Judge Koh Juat Jong of the Family Justice Division, Subordinate Courts, given on 17 August 2000. I shall refer to the parties individually as the husband and the wife.

The decree nisi and the ancillary matters

The parties were married on 19 December 1987 in Singapore. On 16 August 1999, the wife filed this petition for divorce on the ground of four years' separation in that she and the husband had been leading separate lives since 1994 despite staying in the same room in the matrimonial property. The wife prayed for dissolution of the marriage, that she be given the sole custody, care and control of their son with reasonable access to the husband, that the matrimonial property at 19 Jalan Tarum, Singapore 576738 be sold in the open market at a price equal to or above valuation within six months from the date of the order to be made, that she be given a share of the sale proceeds and that the husband pay maintenance for her and their son. Their son, Jason Lee, was born on 17 September 1989.

On 21 January 2000, a decree nisi was pronounced in the uncontested petition.

On 16 August 2000, the judge heard the ancillary matters and made the following orders the next day:

(a) By consent, the parties shall have joint custody of the child with care and control to the wife and access to the husband as follows:

(i) overnight access every alternate Friday at 8pm to Sunday at 8pm;

(ii) on the husband's birthday, on the alternate birthday of the child, on alternate public holidays and half of Chinese New Year holidays;

(iii) half of the school holidays with liberty to take the child overseas;

(b) the matrimonial property shall be sold and the proceeds of sale after repayment of the housing loan and the overdraft facilities (limited to the balance as at the date of the order or the sum of \$160,000, whichever is the lower) and the deduction of all costs and expenses of the sale, be divided in the proportion of 60% to the wife and 40% to the husband; each party shall refund their CPF

account of moneys withdrawn for the purchase of the property with accrued interest; the husband is at liberty to purchase the share of the wife in the property by paying a sum equivalent to that stated above;

(c) the husband shall pay the wife the amount of \$1,500 per month with effect from 1 September 2000 for 18 months and \$2,000 per month thereafter for the maintenance of the wife and the child;

(d) liberty to apply; and

(e) no order as to costs.

The husband appealed against the judge's orders relating to maintenance and the division of the matrimonial assets. I dismissed his appeal with costs fixed at \$1,500.

The factual background

In 1986, the husband bought a terrace house at Margaret Drive for about \$68,000. After the marriage in December 1987, the parties moved into this terrace house after living with the wife's family for a short stint. When this property was sold in 1994, the housing loan had been paid up in full. It fetched a sale price of some \$325,000, which, according to the husband, went towards the purchase price of the matrimonial property at 19 Jalan Tarum, the investment property at Walmers Drive (more on this later) and the housing instalments.

In 1994, the parties jointly purchased 19 Jalan Tarum for \$1.1m as their matrimonial home. The husband took a housing loan of \$770,000 from the Far Eastern Bank, paying the remainder of the price with cash and with money from his CPF account. The wife contributed only \$1,000 from her CPF savings. To pay the monthly mortgage instalments of \$4,728, the husband utilised \$1,200 per month from his CPF account and the sale proceeds of the terrace house as his net monthly salary of \$3,200 was insufficient to pay the balance of the mortgage instalments. When the sale proceeds had been used up, he used an overdraft account to make up the difference. As at 11 March 2000, the husband had utilised \$139,179 (inclusive of interest) of his CPF money for the payments on the matrimonial home.

As at December 1999, the outstanding housing loan was \$683,527. When the ancillary matters were heard in August 2000, the loan was estimated to be \$670,000. In addition, the matrimonial home secured an overdraft of \$147,000 as at the end of April 2000. The three bank statements produced by the husband for February 1999, January and April 2000 showed that the outstanding overdraft had grown from \$29,000 in February 1999 to \$146,000 by the end of January 2000. The husband claimed that this overdraft was used to finance the family expenses, the mortgage payments and his investment properties in Walmers Drive and Berwick Drive. I will elaborate on these investment properties shortly.

The wife claimed that not more than \$40,000 of the overdraft would have been used for the family expenses and instalment payments. She asserted that she had contributed \$17,165.47 for the furniture and fittings in the matrimonial home. The husband acknowledged that the wife had bought some furniture but claimed that he had reimbursed her a sum of about \$17,000 at her request. However, the wife said that the reimbursement was only \$6,343, relying on an acknowledgement note that he had made her sign. The husband denied that the note was an acknowledgement of the said reimbursement. The husband also claimed that the wife worked as a housing agent and, at times, as a hairdresser, and not only did not contribute to the house and the household expenses (which came up

to \$1215 monthly) but took \$800 to \$1,000 per month from him as well. The wife said he gave her \$750 monthly for groceries and for their son's expenses.

The matrimonial home, a single-storey semi-detached house on some 3,200 square feet of land, was assessed by the husband's valuers to be worth \$1.2m. Although the wife asserted that it was worth \$1.4m, she was contented to accept the valuation of \$1.2m in her arguments.

In late 1994, the husband, his brother-in-law, the wife's father and one other person purchased a property at Walmers Drive for \$2.35m with each purchaser having a quarter share therein. Each contributed \$165,001, the husband paying for his share from the sale proceeds of the terrace house at Margaret Drive. A revolving facility of some \$1.76m was obtained from Tat Lee Finance together with a construction loan of some \$558,541.

A pair of semi-detached houses was then constructed on the property at Walmers Drive. One of these was sold in late 1997 for \$1.66m. The remaining loan was then converted into a fixed term loan of \$800,000. As at the end of May 2000, the loan amount outstanding was \$778,911.

The other semi-detached house, now designated 29 Lichfield Road, was tenanted at \$2,200 per month from March 1998 to March 1999. It was valued at \$1.75m.

The husband claimed that the above development project resulted in a loss of \$682,255, a quarter of which he would have to bear.

In September 1999, the husband, two of his sisters and a brother-in-law bought a property at Berwick Drive for \$1.44m. He drew \$14,400 from his overdraft account to contribute to the down payment. The rest of the 20% down payment was paid by the other three and the remaining 80% of the purchase price was paid for through a bank loan. The husband claimed that the value of this property remained constant and that his stake was only the \$14,400 he had paid.

General United Construction and Merchandising Co Pte Ltd was a company incorporated in 1989. The husband was a director and a 50% shareholder thereof. The other 50% had devolved to his sister from his deceased brother-in-law. The company's main asset was a leasehold property in Jalan Jentera which was acquired by JTC in 1999 for \$750,000. The company's financial statements for 1997, 1998 and 1999 showed net profits of \$5,872, \$14,928 and \$21,078 respectively. The retained profits for 1997 and 1998 were \$85,915 and \$100,842 respectively. Curiously, for 1999, a retained loss of \$71,495 appeared.

The wife claimed that this company was worth between \$10m to \$20m bearing in mind the turnovers of \$7.9m (1997), \$4.1m (1998) and \$5.1m (1999), the profits, the goodwill and the potential. The directors' remuneration for the three years amounted to \$115,200 for 1997, \$115,200 for 1998 and \$105,600 for 1999.

The company's draft accounts for 1999 showed that it owed the directors \$712,405 for their drawings as at 31 December 1999. A computation, allegedly prepared by the company's auditors, showed that some \$212,000 was owing to the husband and \$529,000 was owing to the sister. The husband could not offer any explanation for this computation but said it was unlikely that the directors would receive any payment.

The husband had a Honda Civic car bought in 1992 with an estimated value of \$20,000. The wife had a Suzuki SWIFT bought in 1993, a large portion of the purchase price of which was, according to the husband, paid by him. From 1994, he gave her the monthly instalments for the car in cash and from

1996, he gave her cheques. The cheque amounts totalled \$11,386. He also had to pay about \$7,000 from his overdraft account to forestall re-possession of the car. The wife did not dispute that the husband had helped in the payments of her car but claimed she had paid some \$63,682. The husband estimated the value of the Suzuki SWIFT at \$25,000.

The husband had little in his POSB and his CPF accounts. He said he owed \$45,000 to the tax authorities, a large portion of which comprised a penalty imposed as a result of his failure to declare certain director's fees in his income tax returns for the years 1991 to 1994 and would be paying \$2,980 per month to the tax authorities until August 2001.

The wife had \$1,384 in her bank account and \$9,630 in her CPF ordinary account. She had, however, purchased about \$22,000 worth of jewellery.

Insofar as indirect contributions were concerned, the wife claimed that she had looked after the husband, their son and the home and performed various household chores. The husband retorted that they had a maid since the birth of their son who was looking after the household needs. He claimed that the wife only brought their son out or spent her time with friends. He allowed the wife's mother, who was suffering from mental illness, to live with them for four to five years before she passed away. He also brought the mother and the wife's sister to hospital frequently.

Based on the above, the wife asked that the matrimonial home be sold and that she be awarded half of the sale proceeds after discharging the housing loan but before the reimbursement of the respective CPF accounts and the repayment of the overdraft. She also wanted a share of the husband's other assets. The husband estimated his net worth at \$132,903 and that of the wife at \$57,945. He said that the wife ought to be given 20% of the \$130,00 (or \$26,000).

For maintenance, the wife asked for \$3,000 per month for herself and their son. She had been working as a housing agent since 1991 except in 1997. She was now working part-time and had not been able to close any property deal from September 1999 to March 2000. She also worked as a part-time hair stylist for three months in 1999. Her income for 1995 was declared as \$26,725 for tax purposes although the real estate agency she worked for certified her commission as \$50,400 for that year. She earned an average monthly commission of about \$3,600 from 1993 to 1995. She also claimed to have used her savings and the amount of \$30,000 left to her by her late sister and to have encashed her insurance policies for her monthly expenses which she estimated to be \$4,700 (including \$900 for a maid, \$900 for payments for a car and \$100 for pets). The son's monthly expenses were estimated by her to be \$1,110. She explained that her present car was old and would need to be scrapped soon. She needed a car to fetch their son for his classes and various activities. She had an operation for a slipped disc in 1998 and would therefore require the help of a full-time or a part-time maid.

The husband's response was that the wife's and their son's reasonable monthly expenses ought to be \$2,050 and \$780 respectively. As the wife could work, she should not be awarded any maintenance. He was willing to bear half of the expenses of the son or \$390 per month.

The husband's gross monthly salary was \$4,000 and his net monthly salary was \$3,200. He had also received a director's fee of \$17,000 in 1990, \$20,000 in 1991, \$100,000 in 1992 and \$150,000 in 1993. The two directors' remuneration for 1997 to 1999 has been mentioned earlier as \$115,200, \$115,200 and \$105,600. He estimated his current expenditures at \$8,738 monthly.

The district judge's decision

The judge considered that the marriage lasted some 13 years with the husband as the main breadwinner supplemented by the wife's income from her commissions in real estate and the wife as the main care-giver in respect of the husband, the son and the house, assisted by a maid. Although the parties were leading separate lives since 1994, they continued to live in the same house and the wife continued to look after the house and their son.

The judge worked out the husband's total assets to be \$511,700 using the following computation:

Jalan Tarum	value	[equals]	\$1.2m
	outstanding housing loan	[equals]	\$670,000
	outstanding overdraft	[equals]	\$150,000
	net value	[equals]	\$380,000
value of company	\$114,000 (half of the net assets)		
Berwick Drive	\$14,400		
29 Lichfield Road	(\$170,000)		
amount due from company	\$212,000		
Income Tax liability	(\$38,700) (being \$2,980 for 13 months till August 2001)		
Total	\$511,700		

She awarded the wife 60% of the net value of the matrimonial home at Jalan Tarum which amounted to \$228,000. This worked out to be some 44.55% of the said total assets of the husband.

The judge justified the division in those proportions in the following manner:

This was a reasonable share taking into account all the relevant circumstances of the case. Although her direct financial contribution to the matrimonial home was not significant, she had made substantial indirect contribution to the family during the marriage. She would also have contributed in part to the expenses of the family. Moreover, the needs of the child whom she had the care and control of would have to be taken into account. I also recognised that the book value of the company which I had accepted was also likely to be lower than the real value as it did not take into account the goodwill of the company and other non-tangible assets of the company. On this basis, the actual share of the wife was smaller than the stated 45%.

36 For efficacy, I felt that the share of the wife should simply be carved out of the net sale proceeds of the matrimonial home leaving other assets of the husband intact for him. Hence the division worked out to be about 60% of the net value of the matrimonial home. The husband wanted an option to purchase the share of the wife and I allowed that flexibility.

37 I had decided to allow the entire overdraft balance to be deducted against the submission of the wife. The amount withdrawn for the period February 1999 to January 2000 was \$117,000. \$14,400 was the property at Berwick Drive. The balance of \$102,600 over the period of 12 months worked out to be \$8,550 per

month. He also received a net salary of \$3,200 a month. The total amount withdrawn each month would thus be \$11,550. This seemed high as the highest amount the husband claimed for his monthly expenses was only \$10,515. However, I nonetheless gave the husband the benefit of the doubt. The last balance known was about \$147,000 as at end of April 2000. I accepted that there would be further withdrawals since then and thus allowed the limit of \$160,000 as the maximum amount that could be deducted.

38 The property at Margaret Drive was sold in 1994, a good six years ago. I accepted the husband's evidence that the net proceeds had been used up to finance Jalan Tarum, his investment at Walmers Drive/Lichfield Road and family expenses.

39 I felt that the amount of \$212,000 due from the company to the husband had to be considered as part of his assets. The amount was already deducted as a liability of the company when the net value of \$228,505 of the company was computed. Whether it would eventually be paid or capitalised into shares entitlement, it was a sum due to the husband.

40 Each party owned one car. Other bank accounts they disclosed showed minimal balance. The wife also had some moneys in her CPF accounts and probably some jewellery. I decided not to further divide such assets.

On the question of maintenance, the judge had this to say:

Decision on maintenance

41 After the house was sold, there would be no further instalment payments and overdraft interest. The income tax liability had been taken into account in the division of assets. Based on the computation provided by the husband, his monthly expenses would thus be about \$2,170. I noted that if he purchased a place to stay or retained the present matrimonial home, he could also use \$800 from his CPF account monthly to repay any housing loan.

42 The husband had said that the amount of reasonable expenses for the wife would be \$2,050 and the child \$780. This made the total of \$2,830. If the husband claimed \$1,000 for his housing needs, then the wife was not unreasonable to claim \$1,800 for the housing needs of herself and the child, especially bearing in mind that she would not have any monthly CPF contributions. The husband had claimed \$400 for expenses of the car. The same could be given to the wife. If so, her total expenses would be \$3,780. I also think that it was reasonable for her to retain the services of a maid. She was expected to work and the child's needs would have to be considered. In addition, the family had a maid since the child was born. The total expenses would then be \$4,500.

43 The earnings of the parties were insufficient to match their estimated expenses.

44 The wife earned an average commission of \$3,600 per month for 1993 to 1995. For 1995, the letter from the real estate agency addressed to the Comptroller of Income Tax certified her commission to be \$50,400. However, the Inland Revenue returns showed her declared income to be \$26,725. The discrepancy was not explained. There was no information on whether the difference was due to any deduction of expenses incurred in earning the commission. The wife tendered a letter from the real estate agency stating that she did not earn any commission from September 1999 to March 2000. It was widely known that the property market was sluggish. The prospect of the wife earning a substantial amount of commission would thus not be high. It was reasonable to assume that she would not earn more than \$1,500 to \$2,000.

45 The husband`s net income a month was \$3,200 with a possibility of the payment of a director`s fees. The fees approved ranged from \$17,000 in 1990 to \$150,000 in 1993 although no more payment was approved thereafter.

46 Under the circumstances, they both had to scale down their standard of living and make do with lesser amounts. On the basis that the expected income was only about 70% to 80% of their estimated expenses, I thus ordered the amount of \$1,500 per month for the next 18 months. The wife and child would then have about \$3,000 to \$3,500 to spend a month while the husband would have \$1,700. During the period, parties should make financial adjustments and the amount of \$2,000 per month could be paid thereafter.

The appeal

The husband contended that the net sale proceeds of the Jalan Tarum house should be divided in the proportion of 80% for him and 20% for the wife. By net sale proceeds, he meant the sale price less the outstanding mortgage loan, the overdraft facilities, the repayment to both parties` CPF accounts and all costs and expenses incidental to the sale. He also reiterated his stand before the District Court that the wife should receive no maintenance while the 11-year-old son should have \$390 per month from him. In addition, he would like to make direct payments for his expenses such as school or tuition fees instead of through the wife whose `extravagant spending habits` were of concern to him.

Bearing in mind the `just and equitable` principle in s 112(1) Women`s Charter and all the circumstances of the case, particularly ss 112(2)(a), (d) and (g) of the Charter, the husband submitted that the district judge erred in finding that the wife had made substantial indirect contribution to the family and the son. The marriage lasted effectively seven years only. As was apparent in the wife`s petition, the parties led separate lives since 1994. Further, the wife had not alluded in her affidavits to having been the main care-giver. They had a maid since the birth of their son and the wife was a housing agent and not a homemaker.

The husband also argued that the judge failed to consider that 19 Jalan Tarum was purchased at about the time that the parties separated. The wife had also sought reimbursements for expenditure on furniture although earning an average monthly income of \$3,600. The husband was able to estimate that the wife had bought about \$17,000 of furniture even before she disclosed the receipts therefor which came up to roughly that sum. His assertion that he had fully reimbursed her for those expenses should therefore be believed.

The husband relied on **Hoong Khai Soon v Cheng Kwee Eng** [1993] 3 SLR 34, **Lau Loon Seng v Sia Peck Eng** [1999] 4 SLR 408 and **Jaspal Singh v Marie-Anne Melville** [2000] 4 SLR 639 for guidance as to the proportions of division of matrimonial assets between erstwhile spouses. It was argued that the wives in those three cases made far greater contributions and yet received only 30% to 35% of the matrimonial assets.

On the other hand, the husband said, his significant contributions had not been given due regard by the judge. He had incurred debts for the benefit of the family, running up substantial amounts in overdraft as his net monthly salary of \$3,200 was insufficient to meet the high expenses of his family. He was extremely frugal and sacrificial, foregoing plans to buy a Mercedes and settling instead for two cheaper cars for the parties' convenience. He took care of the wife's mother and sister. He also established a close relationship with his son despite his work commitments. He gave \$800 to \$1,000 per month to the wife during the marriage, paid more than \$7,000 for the premiums on her insurance policies and made substantial payments for her car while the wife spent \$22,000 on jewellery and \$3,000 on clothes and cosmetics. Further, the wife had not assisted the husband in any way in his career and in building up the company.

The husband also submitted that the shares in the private company were not easily marketable and it was therefore wrong for the judge to have found that his 50% stake in the company was worth \$114,000. It was a small family business and there was no evidence to support the existence of goodwill and non-tangible assets. The company was in fact operating at a loss in 1999. The judge was also said to be in error when she considered the \$212,000 due to the company as part of the husband's assets as the company was unlikely to pay any part of the amount and was likely to capitalise the amount due into shares in order to qualify the company for tenders in large projects. He had not received any director's fees since 1993 and the fee of \$212,000 was merely declared but not paid.

Leaving the husband to repay the amounts utilised from his CPF account from his share would leave him with no cash whatsoever to purchase alternative premises. He would not be eligible to buy a HDB flat since he did not have custody, care and control of the son.

Where maintenance was concerned, the judge was said to be wrong in her assumption that the wife could not earn more than \$1,500 to \$2,000 per month or that the property market would remain sluggish indefinitely. It was also argued that she had failed to consider the husband's financial obligations and liabilities, particularly his compulsory payments to the IRAS until August 2001. The wife should not be allowed to have a maid when the parties could ill afford one. The son could be taken care of by the husband's family and the wife would in any event have flexible working hours as a housing agent.

It was also contended that the judge, in giving the wife 60% of the net value of the matrimonial home, had already taken the needs of the son into consideration and should not therefore factor in another \$1,800 as rent to be incurred. Further, it was wrong to increase the maintenance to \$2,000 after 18 months as the husband's income was likely to be stagnant while the wife's would increase over time. The judge's order would result in the husband having only \$1,200 while the wife would have up to \$4,000 per month even on the assumption that she would earn only \$2,000 per month as commission. On top of that, she would receive a large amount of cash from the sale of the matrimonial home.

In ancillary matters, after removing the parties' hyperbolic self-serving statements and hypercritical denigrating remarks, a judge is often left to perform an arduous, qualitative exercise in converting

intangibles into monetary value. Looking at the way the judge approached the issues, it was clear that she was very much alive to the principles governing the division of matrimonial assets and maintenance for the wife and the child and had applied them to the case before her faultlessly. Indeed, she was magnanimous towards the husband, giving him the occasional benefit of the doubt and accepting that he had only a 1% interest in the Berwick Drive property.

Whether the wife was the main care-giver was an inference that the judge could rightly draw from the evidence before her. Having a maid in the household, or a number of maids for that matter, does not mean abdication of parental responsibility towards the child. Further, as accepted by the husband's counsel, housing agents like the wife do have rather greater flexibility in their working hours. They could also have a choice in where they work, even from home.

The husband appeared adept in real estate investment and development. The loans and overdraft facility that he had taken were essentially for his business and investment. He was certainly not drowning in debt in order to feed his family. On the contrary, he seemed well on top of his financial arrangements.

The company that he had started with his late brother-in-law and which he now co-owned with his sister was very much his alter ego despite his 50% share. Whether the company decided to pay him the \$212,000 or not was a matter he could decide easily and unanimously with his sister. I agree entirely with the judge that the said amount was part of his assets whether it would be paid in cash or capitalised into shares eventually. If the latter happens, the company would have an enhanced value and it was obviously viable enough to have survived and thrived for 11 years and for the husband to be looking forward to tenders for bigger projects.

If and when the real estate industry shifts out of the doldrums into high gear, and the wife's income as an estate agent soars, the husband will be at liberty to apply for a variation of the present orders under s 118 Women's Charter. However, it would be somewhat surprising and anomalous if the husband's construction company and investments do not also benefit from any upsurge in the property market.

On the whole, I found the judge's assessment and division sensible and fair and saw no reason to interfere with her decision. I therefore dismissed the husband's appeal and awarded costs fixed at \$1,500 to the wife.

Outcome:

Appeal dismissed.