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Chong Siow Wei Denny Philemon

v

Goh Li Mei Caroline

[2017] SGHCF 24

High Court — HCF/DCA No 168 of 2016

Choo Han Teck J

2 October 2017

Family law — Consent orders — Variation

13 October 2017

Judgment reserved.

Choo Han Teck J:

1 The parties both work as cabin crew members in an airline. The Husband is 44 years old and the Wife is four years his senior. They were married in 2002 and have no children. The parties obtained interim judgment for divorce on 27 April 2015 and final judgment on 13 April 2016. In the ancillary matters proceedings, the parties came to an agreement and the terms of the ancillary matters were recorded in a consent order dated 27 April 2015 (“the 2015 Consent Order”). In 2016, the parties agreed to vary the terms of the 2015 Consent Order and an Order of Court dated 24 March 2016 was obtained by consent (“the 2016 Consent Order”). The Husband then applied to further vary the 2016 Consent Order. His application was dismissed by the District Judge. This is the Husband’s appeal against the decision of the District Judge.

2 The 2015 Consent Order declared that the Husband shall transfer his share and interest in the matrimonial flat to the Wife upon the Wife paying a cash sum of \$10,000 to the Husband and making a refund of \$40,000 to the Husband's CPF account. The Husband agreed to pay the Wife a monthly sum of \$475 as maintenance.

3 The 2016 Consent Order varied the 2015 Consent Order such that the Wife has to refund the Husband's CPF account a sum of \$60,000 in exchange for the Husband's interest in the matrimonial flat instead of \$40,000 as previously agreed. The monthly maintenance sum was reduced to \$350. All other terms of the 2015 Consent Order, including the cash sum of \$10,000 due to the Husband upon his transfer of his interest in the matrimonial flat, remained unchanged. The Husband then applied to vary the 2016 Consent Order. He asked

- (a) that he be entitled to 50% of the matrimonial flat or such amount as would be just and equitable;
- (b) for there to be no maintenance payable to the Wife;
- (c) for the Wife to pay him \$10,385.67, being 50% of the amount withdrawn from the parties' joint Hong Leong Finance Account; and
- (d) that the Wife pay him cost.

4 The basis of the Husband's application to vary the 2016 Consent Order was the material non-disclosure on the part of the Wife and her withdrawal of a sum of monies from a joint account. First, he alleged that the Wife did not disclose that she had savings of more than \$640,000 which he inadvertently

discovered upon opening letters from the bank addressed to her. He learnt that the Wife had withdrawn more than \$20,000 from a joint account which he claimed to have found out only in June 2016, after the Consent Order was entered into. In relation to maintenance, the Husband submitted that there was a change in the Wife's employer's work policy which now allowed the Wife to continue her employment for a longer period than he expected. He also emphasised that as a more senior cabin crew member, the Wife is earning more than him. As such, he argued that no maintenance should be awarded to the Wife, who, he said, is self-sufficient.

5 The 2016 Consent Order did not provide for the variation of the agreed terms. A consent order is made after negotiation with agreement. It should be varied, similarly, by consent. Hence, if a party thinks that he gave his consent in error, the proper application is to set aside that consent order rather than to vary the orders entered into by consent. The application must be supported by affidavit. The considerations for setting aside a consent order are not entirely the same as those for a variation of a contested order. In any case, even if the present application here for variation was proper, it would not have been granted on the evidence before me.

6 The principles pertaining to a variation of a division of matrimonial assets order under s 112(4) of the Women's Charter (Cap 353) were set out by the District Judge in the Grounds of Decision below. I do not propose to reproduce them in full. It is sufficient to note that the court will typically make the necessary variation to a division order only if the order was unworkable *ab initio* or has become unworkable due to new circumstances. Even if I find that there was a lack of full and frank disclosure on the part of the Wife, it does not

invariably necessitate a variation of the division order. In this case, it has not been shown that the Wife failed to disclose the full extent of her savings in the negotiations leading up to the 2015 Consent Order or 2016 Consent Order. There was no evidence that the Wife had deliberately hidden the existence of the two bank accounts from the Husband. The Husband's submission that he knew of these bank accounts but did not know the extent of the savings in those account was of no help to him. Both the 2015 Consent Order and 2016 Consent Order were entered into by consent of both parties after negotiations. The Husband was satisfied with not having parties disclose their respective assets in the course of negotiations. That he now regrets his position is not grounds for a variation of an order entered into by consent. This is especially so in the absence of evidence supporting his grounds for variation of the consent order. There must be some measure of finality in order to allow both parties to a divorce to move on with their new lives.

7 The evidence does not support the Husband's claim that the Wife withdrew monies from a joint account without his knowledge. The lower court accepted that text messages exchanged between the parties showed that the Wife had kept the monies in this joint account because he had taken the monies in their other joint account. The messages show that the Husband was aware of this. The Husband did not present any evidence that would justify overturning the District Judge's finding.

8 Significantly, I note that the Husband had in fact already completed the transfer of his interest in the matrimonial home to the Wife on 27 September 2017. The CPF monies and cash sum as stipulated in the 2016 Consent Order

were also paid by the Wife to the Husband. The 2016 Consent Order has therefore been complied with and executed.

9 For the reasons above, the appeal is dismissed.

- Sgd -
Choo Han Teck
Judge

Appellant in-person;
Hong May Leng (Lexton Law Corporation) for the respondent.
