

BWU and another v BWV and another matter
[2019] SGHC 128

Case Number : HC/Suit No 875 of 2018 and HCF/Divorce (Transferred) No 1027 of 2016
Decision Date : 16 May 2019
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Ng Jeanny (M/s Jeanny Ng) for the defendant in HC/Suit 875 of 2018 and plaintiff in HFC/DT 1027 of 2016; Jeffrey Lau See-Jin (Lau & Company) for the 1st and 2nd plaintiffs in HC/Suit 875 of 2018 and defendant in HCF/DT 1027 of 2016.
Parties : BWU — BWV — BWV

Land – Housing and Development Act – Constructive trust

Family Law – Ancillary Matters – Division of matrimonial assets – Maintenance of wife

16 May 2019

Judgment reserved.

Choo Han Teck J:

1 There are two proceedings before me. Divorce No 1027 of 2016 concerns the ancillary matters in divorce proceedings between the plaintiff (“Wife”) and the defendant (“Husband”). Separately, in Suit No 875 of 2018 (“Suit 875”), the plaintiffs are the Husband and his mother (“the Mother”) and the defendant is the Wife. Suit 875 was brought by the Husband to determine his Mother’s beneficial interest in the Ang Mo Kio HDB flat (“AMK Flat”), which is a matrimonial asset in the joint names of the Husband and the Wife (collectively referred to as “the Parties”).

2 On 5 June 1991, the Husband and the Mother applied to the Housing and Development Board (“HDB”) to approve the purchase of the AMK Flat in their joint names (“the Application”). At the time of the Application, the Mother and her husband (then a bankrupt but has since died) were the joint owners of a HDB flat at Owen Road (“Owen Road Flat”). The Application was approved by HDB on 4 January 1992 with two conditions:

- (a) that the Owen Road Flat be disposed within six months of taking possession of the AMK Flat (“the Disposal Condition”); and
- (b) to comply with the Official Assignee’s condition that half of the net proceeds of the sale of the AMK Flat is to be remitted to the Official Assignee for the benefit of the Mother’s late husband’s creditors.

The AMK Flat has not been sold, so only the Disposal Condition is relevant for present purposes.

3 The AMK Flat was purchased for \$178,000 in the Husband’s sole name on 1 June 1993 with the lease commencing from 1 December 1994. On 6 December 1994, the Owen Road Flat was transferred to Agnes and David, the Mother’s daughter and son (Husband’s brother), thus complying with the Disposal Condition. In February 1997, Agnes transferred her share of the Owen Road Flat by way of a gift to the Mother, who again became the joint tenant of the Owen Road Flat. In September 1999,

David also transferred his share to the Mother by way of a gift, who then became the sole owner of the Owen Road Flat until December 2017, when she transferred the Owen Road Flat to Agnes and her husband.

4 The Husband and Wife were married on 19 July 1994 and on 14 February 1997, the AMK Flat was transferred to a joint tenancy in their names in celebration of Valentine's Day and the third anniversary of their marriage, or so the Husband claims. Their marriage was a childless one of approximately 23 years. The Wife is 49 years old this year, and works as an assistant teacher earning a gross salary of \$1,400 per month. The Husband is 52 years old this year, and works as a site supervisor earning a nett salary of \$3,400 per month. The Wife filed a writ of divorce on 4 March 2016 and interim judgment was granted on 1 March 2017 on the grounds that both the Husband and Wife had behaved in a manner that they cannot reasonably be expected to live with each other. Thereafter proceedings in the Family Court stalled because the Husband claims that the Mother has a share in the AMK Flat. After a long delay, the Husband and Mother filed a writ of summons on 5 September 2018 seeking a declaration that the Mother owns a 50% beneficial interest in the AMK Flat. On hearing from counsel that the Wife is diagnosed with cancer, I directed Suit 875 and the outstanding ancillary matters to be heard before me at the same time to expedite the resolution of the matters that have been outstanding for too long. I will first deal with this issue, before the contested ancillary matters relating to the division of matrimonial assets and the maintenance for the Wife.

5 Sections 47(1)(a) and 51(10) of the Housing and Development Act (Cap 129, 2004 Rev Ed) ("HDA") provides as follows:

47(1) No person shall be entitled to purchase any flat, house or other living accommodation sold subject to the provisions of this Part if such person, his spouse or any authorised occupier –

(a) is the owner of any other flat, house, building or land or has an estate or interest therein;

...

51(10) No person shall become entitled to any protected property (or any interest in such property) under any resulting trust or constructive trust whensoever created or arising.

Section 47(1)(a) of the HDA prohibits a person from owning another HDB flat when he already has an existing legal or beneficial interest in a HDB flat. Section 51(10) of the HDA complements s 47(1) of the HDA by preventing ineligible persons from acquiring an interest in HDB flats via a resulting or constructive trust implied by law (*Tan Chui Lian v Neo Liew Eng* [2007] 1 SLR(R) 265 at [10]). It is this effect of conferring an interest in the HDB flat to an ineligible person that is disallowed, and not the underlying resulting or constructive trust (*Low Heng Leong Andy v Low Kiang Beng Lawrence (administrator of the estate of Tan Ah Kng, deceased)* [2013] 3 SLR 710 at [21]–[22]).

6 Mr Jeffrey Lau, counsel for the Husband and the Mother, submits that there was an oral agreement between the Husband and the Mother that each shall own a 50% beneficial interest in the AMK Flat regardless of their respective contributions. The crux of Mr Lau's submission is that the Mother became a person eligible to own the AMK Flat when she fulfilled the Disposal Condition by selling the Owen Road Flat to Agnes and David on 6 December 1994. As a result, Mr Lau argues that s 51(10) of the HDA did not operate to prevent the Mother from asserting an entitlement in the AMK Flat by way of a common intention constructive trust. Further, the Mother claimed in her affidavit dated 24 November 2017 that she "agreed that [the Wife]'s name be added in as joint tenant, but

limited to her having her share with [the Husband]'s 50% equitable interests in the [AMK Flat]".

7 Ms Jeanny Ng, Counsel for the Wife, submits that s 51(10) of the HDA prohibits the Mother from asserting any entitlement in the AMK Flat via a constructive trust as she had flouted the Disposal Condition when she became the joint owner of the Owen Road Flat once again in February 1997. Further, Ms Ng submits that even though the AMK Flat was eventually transferred to Agnes and her husband in December 2017, the Mother was still in breach of the Disposal Condition between February 1997 and December 2017. In response, the Husband and the Mother assert in their joint affidavit dated 31 March 2019 that:

[The transfer] was allowed by Singapore Land Authority and Housing Development Board. Could this then be flouting the HDB's requirements, if the rightful authorities allow or permit registration?

Between 6 December 1994 and February 1997, the Mother was not a registered owner but an occupier of the AMK Flat. The evidence did not suggest that the relevant authorities knew, or were informed about the Mother's alleged beneficial interest in the AMK Flat. Had the authorities been so informed, it was likely that they would not have allowed Agnes to transfer her share of the Owen Road Flat to the Mother in February 1997 pursuant to s 47(1)(a) of the HDA.

8 In *Cheong Yoke Kuen and others v Cheong Kwok Kiong* [1999] 1 SLR(R) 1126, referred to by Ms Ng, the respondent and his mother there were the joint owners of a HDB flat ("the HDB Flat") which was paid entirely by the respondent. The respondent subsequently transferred his legal interest in the HDB Flat to his mother after he bought another HDB flat in Serangoon ("the Serangoon Flat") with his family. Upon his mother's death, the respondent claimed that he became a beneficial owner of the HDB Flat by way of a resulting trust. The Court of Appeal held that when the respondent acquired the Serangoon Flat, he was no longer eligible to hold any interest in the HDB Flat. L P Thean JA held at [23]:

... It is apparent to us that in order to comply with s 47 the respondent transferred his entire interest in the [HDB Flat] to his mother. But having acquired the [Serangoon Flat] he is not eligible to hold any interest in the old [HDB Flat], and therefore the resulting trust arising in his favour would be against the policy consideration contended by counsel.

9 Similarly, even if I were to accept that the Husband here held a 50% beneficial interest in the AMK Flat on a constructive trust for the Mother, the Mother was no longer eligible to hold any beneficial interest in the AMK Flat when she became a joint owner of the Owen Road Flat in February 1997. Consequently, s 51(10) prohibits the Mother, an ineligible person, from being entitled to any interest in the AMK Flat by way of a constructive trust. For the avoidance of doubt, the Mother's eventual disposition of the Owen Road Flat on December 2017 did not revive her eligibility to own the AMK Flat.

10 For the reasons above, I declare that the Mother is not entitled to any beneficial interest in the AMK Flat. I will now deal with the contested ancillary matters — the division of matrimonial assets and the maintenance for the Wife.

11 The total value of the agreed matrimonial assets and their corresponding valuation is \$214,242.90 ("Agreed Matrimonial Assets"). This consists of the following assets:

- (a) Wife's CPF monies: \$160,871.53.
- (b) Wife's POSB Bank Account No ending with 6911: \$2,582.38

- (c) Wife's Malaysia Great Eastern Life Policy No ending with 9563: \$13,000.
- (d) Husband's NTUC Income Vivolife Policy No ending with 2603: \$24,500.
- (e) Husband's AXA Life Policy No ending with 8735: \$13,288.99.

12 The main dispute relates to the valuation of the AMK Flat. Relying on recent transacted prices, the Husband submits that the AMK Flat should be valued between \$640,000 to \$650,000, while the Wife submits that a fair valuation is \$758,000. Reviewing the latest transacted prices as of February 2019 provided by the Husband, I am of the view that a fair valuation of the AMK Flat should be about \$700,000. This is also an approximate average of the valuations proposed by the Parties.

13 The next dispute relates to the Husband's CPF monies. The Husband submits that only the increment in his CPF account from 19 July 1994 (date of the Parties' marriage) to 1 March 2017 (date of interim judgment) should constitute matrimonial asset. The Wife demurs and submits that the full sum in the Husband's CPF accounts should constitute matrimonial asset. It is undisputed that the courts have pro-rated parties' CPF contributions according to the duration of their marriage (see for example, *Lam Chih Kian v Ong Chin Ngoh* [1993] 1 SLR(R) 460 at [16] and *Yeo Gim Tong Michael v Tianzon Lolita* [1996] 1 SLR(R) 663 at [7]), but it would not be just and equitable to pro-rate the Husband's CPF contributions in this case because:

(a) First, the Husband submits that only the difference in his CPF accounts between 19 July 1994 and 1 March 2017 should constitute matrimonial assets, but he could only produce his December 2008 CPF accounts at the earliest. This difference of 14 years between 19 July 1994 and December 2008 is significant and prejudicial to the Wife if that difference was not taken into account.

(b) Secondly, the Husband, who was only 27 years of age when he was married in 1994, was likely to have been earning a much lower income before his marriage. The Husband himself admitted in his joint affidavit dated 11 March 2019 that when he was 24 years old, he had "just started his career" and "had little cash savings". Consequently, his CPF contributions before the marriage would not have been considerable and the bulk of it would have been contributed through his earnings during his marriage of 23 years (see for example, *Ng Hwee Keng v Chia Soon Hin William* [1995] 1 SLR(R) 819 at [26]).

The starting position for the valuation of matrimonial assets is at the date of the ancillary matters hearing, on 15 April 2019 (*TND v TNC and another appeal* [2017] SGCA 34 at [19]-[20]). For the reasons above, I hold that the Husband's CPF accounts are valued at a total of \$409,100.12, adopting the latest figures closest to the ancillary matters hearing date as at 21 July 2018.

14 The last dispute relates to the Husband's alleged debt to his 'aunty', the Mother's sister. The Parties have accepted that the Husband has credit card debts of \$1,035.75, but the Wife submits that she could not accept (without providing any reasons) that the Husband owed his 'aunty' a sum of \$55,000. The Husband's affidavit dated 28 August 2018 exhibited an 'IOU' stating that he owed this 'aunty' a sum of \$46,489 mainly for legal fees paid on his behalf. There is no evidence supporting the Husband's claim that this sum had increased to \$55,000, and I therefore determine the figure to be \$46,489.

15 Counsel for the Husband also submits that an adverse inference should be drawn against the Wife for her failure to make full and frank disclosure in relation to her following assets:

- (a) OUB Savings Account;
- (b) Malaysia Employment Provident Fund Account No ending with 9276 ("Malaysian EPF"); and
- (c) POSB Account No ending with 1735 ("POSB Account 1735"). The Husband alleged that he transferred \$500 per month into that account, and that it contained a sum of \$22,333.77 as at 31 March 2014.

Belated disclosures alone are insufficient to ground an adverse inference because "parties to a functioning marriage do not keep records of their transactions with a view to building a case should a divorce occur" (see *TXW v TXX* [2017] 4 SLR 799 at [46]). In the Wife's latest affidavit dated 7 September 2018, she states that she has no records of the OUB Savings Account. Further, she referred to a bank statement exhibited in the Husband's affidavit dated 28 August 2018 showing that both Parties were the joint owners of this OUB Savings Account, which contained a sum of \$165.55 as at 31 May 2002. I will disregard the OUB Savings Account because it appears to be dormant and any money remaining in the account after 31 May 2002 is likely to be negligible. In the same affidavit, the Wife also admitted that she was "ignorant and never informed [her] solicitor that [she] maintained [POSB Account 1735]", and exhibited a bank statement showing that as at 31 July 2018, she had \$1,473.74 in POSB Account 1735. This is a difficult situation to ascertain the plausibility of the Wife's assertion given the state of her well-being, but the Husband and the lawyers from both sides ought to have asked for confirmation because a POSB account is an extremely popular account here, but in any event, the balance in that account is not very much by comparison.

16 Although the Wife made no mention of her Malaysian EPF, mere suspicion alone is insufficient to ground an adverse inference (*BOR v BOS and another appeal* [2018] SGCA 78 at [75]). Furthermore, the Wife has been resident and working in Singapore since 1994. Any contributions towards her Malaysian EPF while she was working as a Chinese Language Teacher in Malaysia is likely to be negligible for that period of time, and I therefore decline to draw any adverse inference in this regard.

17 For the reasons elaborated at [11]–[16], I determine the total net asset value of the matrimonial pool to be \$1,277,292.01 consisting of the following assets and liabilities:

- (a) Agreed Matrimonial Assets: \$214,242.90.
- (b) AMK Flat: \$700,000.00.
- (c) Husband's CPF monies: \$409,100.12.
- (d) Wife's POSB Account 1735: \$1,473.74.
- (e) Husband's credit card liabilities and debt to 'aunty': \$47,524.75.

18 The Parties accepted the propositions in *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ v ANK*") for the division of their assets. *ANJ v ANK* involves, first ascertaining the Parties' direct contributions, then an inquiry into their indirect contributions, before determining the weighted average of the parties' overall contributions expressed as a ratio. Although I had previously expressed my reservations against the rigid adherence to the mathematical approach in *ANJ v ANK* (see *UQP v UQQ* [2019] SGHCF 7), this case is not one where any deviation is necessary to achieve a just and equitable outcome between the Parties.

19 The Mother is not entitled to any beneficial interest in the AMK Flat, and the Parties' direct

contributions are 74:26 in favour of the Husband as set out in the table below:

Asset	Husband's Direct Contributions (\$)	Wife's Direct Contributions (\$)
AMK Flat	173,493.21 (CPF)	39,000.00 (CPF)
Wife's CPF	0	160,871.53
Wife's Malaysia Great Eastern Life Policy No ending with 9563	0	13,000.00
Wife's POSB Bank Account No ending with 6911	0	2,582.38
Wife's POSB Account 1735	0	1,473.74
Husband's CPF	409,100.12	0
Husband's NTUC Income Vivolife Policy No ending with 2603	24,500.00	0
Husband's AXA Life Policy No ending with 8735	13,288.99	0
Total	621,382.32	216,927.65
Percentage (%)	74.12 ≈ 74	25.88 ≈ 26

20 Counsel for the Husband submits that the indirect contributions ought to be 80% in the Husband's favour, 20% in favour of the Mother and nothing for the Wife. The court is concerned only with the Husband and Wife's indirect contributions relative to one another, and not that of the Mother (*ANJ v ANK* at [22]). If the Husband believes that the Wife made no indirect contributions towards the family, counsel should have argued that there was no contribution from the Wife, but in this case, that argument would have failed.

21 In support of his submission, counsel for the Husband asserts that the Husband provided for all the household expenses, and paid for the Wife's insurance premiums, phone bills, credit card bills and their holidays. These are undisputed by the Wife. The Husband also claims that he paid for the Wife's medical bills, and performed the household chores when she was unwell. On the contrary, counsel for the Wife submits that the indirect contributions ought to be 65% in her favour, as she was the one who bought the groceries, cooked the evening meals, managed the household chores, assisted the Husband's parents at their 'yong tau fu' stall and took care of the Husband's grand-niece "till she went to school".

22 In *Zhou Lijie v Wang Chengxiang* [2015] SGHC 316, Belinda Ang J analysed the trend for moderate length (approximately 10 years) childless marriages where the wife made little direct financial contributions, and found that a just and equitable division for the wife ranged between 10% to 20% of the matrimonial pool. I incline to follow suit. This was a long childless marriage of 23 years where the Husband provided for the majority of the Parties' indirect financial expenses and assisted in the household chores. The Wife's indirect contributions came largely in the form of household chores, buying the groceries, cooking the evening meals and helping out at the Husband's parents' 'yong tau fu' stall.

23 The ratio proposed by the Parties are overly generous. I am of the view that an indirect contribution ratio of 65:35 in favour of the Husband is just and equitable. This results in an average ratio of 70:30 (rounded off) in favour of the Husband, and it is not necessary to adjust the relative weight of direct to indirect contributions. I should mention that had I applied a broad brush approach to the division of matrimonial assets instead of the mathematical approach, I would have inevitably arrived at the same conclusion that the Wife is entitled to 30% of the matrimonial pool. Accordingly, the Parties' respective entitlement to the matrimonial pool are as follows:

- (a) Husband: 70% of the matrimonial pool at \$894,104.41.
- (b) Wife: 30% of the matrimonial pool at \$383,187.60.

24 I order Parties to keep the assets in their own name, which amounts to a total of \$399,364.36 (after deducting liabilities) for the Husband and \$177,927.65 for the Wife. With the only major matrimonial asset available for satisfying an order of the division of the matrimonial pool being the AMK Flat, I provide the following two options:

- (a) the Wife to transfer her interest in the AMK Flat to the Husband for a consideration of \$205,259.95 (\$383,187.60 — \$117,927.65), being her remaining entitlement of the matrimonial pool within two weeks from the date of this order; or
- (b) for the AMK Flat to be sold within six months of this order. The Wife and the Husband shall be entitled to 29.32% and 70.68% of the net sale proceeds respectively arising from my determination of \$205,259.95 for the Wife. Any refund to the Parties' respective CPF accounts shall be made by each party from his or her own share of the net proceeds of sale.

25 The final issue concerns the maintenance for the Wife. Section 113 of the Women's Charter (Cap 353, 2009 Rev Ed) sets out the power of the court to order maintenance for the Wife. The purpose of maintenance is to enable the Wife to maintain a standard of living commensurate with the standard of living she had enjoyed during the marriage. The Wife had her womb removed and underwent chemotherapy for cancer up to October 2018. She is now in remission and working full time as an assistant teacher. The Wife has sought social welfare assistance, and is asking for a lump sum maintenance of \$10,000 from the Husband. The Husband argues that the Wife does not require any maintenance since she works full time and is self-sufficient. Further, he alleged that she had taken monies and jewellery with her when she left the AMK Flat.

26 I must take into account the Parties' share of the matrimonial asset upon division before deriving at an appropriate maintenance sum (*ATE v ATD and another appeal* [2016] SGCA 2 at [33]). In this case, the Wife earns \$1,400 (gross) per month and is awarded 30% of the matrimonial assets. On the other hand, the Husband earns \$3,400 (nett) per month and is awarded 70% of the matrimonial assets. He is therefore able to provide a lump sum maintenance of \$10,000 for the Wife, which is a reasonable sum.

27 I encourage parties to agree on the issue of costs, including the option of each of them bearing their own costs. If there is no agreement, I will hear the issue of costs at a later date. I recapitulate my findings below:

- (a) I declare that the Mother is not entitled to any beneficial interest in the AMK Flat.
- (b) The total net asset value of the matrimonial pool of the Husband and Wife is \$1,277,292.01. The Husband and the Wife are respectively entitled to 70% and 30% of the

matrimonial pool.

(c) I order Parties to keep the assets in their own name. I provide the following two options in relation to the AMK Flat:

(i) the Wife to transfer her interest in the AMK Flat to the Husband for a consideration of \$205,259.95 within two weeks from the date of this order; or

(ii) the AMK Flat to be sold within six months of this order. The Wife and the Husband shall be entitled to 29.32% and 70.68% of the net sale proceeds respectively. Any refund to the Parties' respective CPF accounts shall be made by each party from his or her own share of the net proceeds of sale.

(d) I award the Wife a lump sum maintenance of \$10,000.

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