

UQP v UQQ
[2019] SGHCF 7

Case Number : HCF/District Court of Appeal No 91 of 2018
Decision Date : 26 March 2019
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Foo Soon Yien and Foo Bei Ying (BR Law Corporation) for the appellant/wife; Tan Yew Fai (YF Tan & Co) for the respondent/husband
Parties : UQP — UQQ

Family Law – Matrimonial assets – Matrimonial home

26 March 2019

Judgment reserved.

Choo Han Teck J:

1 The appellant (wife) is appealing against the order to pay the respondent (husband) 18% of the net asset value of their matrimonial home, a flat in the condominium known as The Esta (“the Flat”). This is the only issue in dispute before me.

2 The appellant is now 40 years old. She married the respondent (now 46 years old) on 15 August 2012. Their only child, a boy, was born a year later, on 11 August 2013, and he will be 6 years old this year. The appellant works as an administrative officer and earns about \$6,838 a month. The respondent is an insurance salesman earning about \$3,000 a month. Their marriage lasted only a little over four years. This was the respondent’s second marriage.

3 Their Flat was purchased by the appellant six years and seven months before her marriage; her counsel, Miss Foo Soon Yien (“Miss Foo”) made sure every month was counted. The purchase price of the Flat was \$834,550 and this was financed by the appellant and her father. Even after she married, the monthly mortgage was paid by them as before as if nothing had changed. By the time of the marriage, \$444,000 of the purchase price had been so paid. The Flat is now fully paid, and the value of the Flat as at 21 August 2018, the date of the judgment below, was \$2,050,000 with an outstanding mortgage of \$28,000. The court below ordered the appellant to pay the respondent 18% of the net asset value of the Flat. This amounts to the sum of \$363,960.

4 The appellant has care and control of the child of the marriage. There is no dispute regarding all other assets because both parties had kept their own assets in their respective names and the court below ordered that they each retain all assets as are in their own names. Both parties accept that order.

5 Miss Foo submitted that the Flat was paid entirely by the appellant and her father, with at least half the amount of the purchase price having been paid even before the appellant married the respondent. She submitted that the respondent contributed nothing whether financially or otherwise towards the purchase of the Flat. She submitted that their child had been looked after by the appellant’s parents most days, and on Tuesday, the child stayed overnight with them. This arrangement started from the time the child was an infant. When the child was not with the appellant’s parents, both appellant and respondent would be present and so, the care of the child

was equally carried out by both parties.

6 Mr Tan Yew Fai ("Mr Tan"), counsel for the respondent, accepted that the Flat was paid for entirely by the appellant and her father. The only way in which the respondent might be awarded a share in the Flat was to show that he had made substantial non-financial or indirect contributions. However, all that Mr Tan could refer me to were the sofa set bought by the respondent from the furniture retailer Courts, a car which he says was used as a family car, and his efforts in raising their child, which was equally carried out by both parties. The car, being purchased by the respondent would be taken solely by him under the present orders from the court below.

7 The question is whether the two items above and his efforts in caring for the child justified an award of 18% or \$363,960 in absolute terms. All the other arguments made by Mr Tan concerned what might have been. First, he submitted that because the Flat was in the appellant's sole name, the respondent could not have used his CPF monies to pay any part of the mortgage loan. Secondly, that the respondent's CPF monies lay unused when he could have used it to purchase a HDB flat together with the appellant, and therefore, the loss of this opportunity to buy a HDB flat together with the appellant meant that they had lost the value of appreciation of the HDB flat for which he would have had a share.

8 On the annulment of marriage with his first wife, the respondent sold the HDB flat they had bought and made a gain of \$171,641.52 of which the respondent was awarded half of it, making a personal gain of \$85,820.76. It was this experience that led the respondent to believe that had the appellant bought a HDB flat with him, he would similarly have made a gain this time round.

9 Both counsel referred me to the case of *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ v ANK*") which, they submitted, was the basis upon which the judge below applied and obtained the 18% award for the respondent. Applying the approach in *ANJ v ANK*, Mr Tan submitted that the ratio of the parties' percentage contribution should be; direct contributions – 90% in favour of the appellant, indirect contributions – an equal ratio of 50%, and the weightage of direct to indirect contributions to be 30:70 respectively. Mr Tan submitted that this entitled the respondent to 25% of the Flat, which is the only matrimonial property in dispute.

10 Applying the same approach, Miss Foo submitted that the ratio of the parties' percentage contribution should be; direct contributions – 100% in favour of the appellant, indirect contributions – 80% in favour of the appellant, and the weightage of direct to indirect contributions to be 75:25 respectively. This entitled the respondent to approximately 5% of the matrimonial pool, which consists of the total net asset value of both the appellant and the respondent. Miss Foo calculated this 5% of the matrimonial pool to be \$37,743.76, and submitted that as the respondent was able to retain the assets in his own name amounting to a total sum of \$82,806.18, this far exceeded his entitlement to 5% of the matrimonial pool, and he should hence not be entitled to any share in the Flat. I arrived at the same conclusion, albeit for very different reasons which I will explain below.

11 First, I do not think that *ANJ v ANK* is a rule in every case requiring every division of matrimonial assets to proceed first into a consideration of actual financial or direct contribution, and then an inquiry into the non-financial or indirect contribution, and lastly, a determination of the weighted average of direct to indirect contributions, using the language of this approach. The Court of Appeal in *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 at [44]–[46] for example, further qualified *ANJ v ANK* by stating that this approach is inappropriate for single-income marriages. Furthermore, *ANJ v ANK* does not detract from the objective of achieving a just and equitable division since any valuation of non-financial or indirect contribution is "necessarily a matter of impression and judgment of the court" (See *ANJ v ANK* at [23]–[24]). In addition, *ANJ v ANK* is best applied where it

can be seen that the non-financial or indirect contribution of one spouse, even in equal proportion, enabled the other to pay for the purchase of the matrimonial assets as in that case itself, but there are unusual cases, such as the present, in which the formula should not be applied.

12 Second, the underlying rationale for the court's power to order a division of matrimonial assets pursuant to s 112 of the Women's Charter (Cap 353, 2009 Rev Ed) was explained by Andrew Phang JA in *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 at [40]:

[M]atrimonial assets are not to be viewed as belonging to the husband or the wife exclusively, to be dealt with accordingly upon a divorce. On the contrary, the legislative mandate to the courts is to treat all matrimonial assets as community property ... to be divided in accordance with s 112 of the Act.

"Community property" refers to property that is acquired by the co-operative efforts of the spouses, financial or otherwise, during the course of their marriage (See *BPC v BPB and another appeal* [2019] SGCA 3 at [50]–[51]). This co-operative acquisition of property relates to the efforts made by one party (other than the payment of money) that enables the other party to earn the money to pay for the assets. In this case, even assessing the contributions along the approach in *ANJ v ANK* will yield the finding that the respondent contributed nothing financially to the Flat. As to the respondent's non-financial or indirect contribution, his efforts in caring for the child and being the family's chauffeur are contributions towards the marriage, that should not go unnoticed or unrecognised. However, to justify his claim for a share in the Flat, he has to show how such efforts directly or indirectly assisted or enabled the appellant to earn the money to acquire the Flat. This, he has not done.

13 If the appellant and the respondent made no special non-financial or indirect contribution, we can, of course, mathematically say that their contributions (or non-contribution) to be equal, and then express that equality in the mathematical symbol of 50-50 under the *ANJ v ANK* approach. In this way, one spouse contributed nothing towards the acquisition of the matrimonial asset and yet, applying *ANJ v ANK* strictly, he would have been given credit for 25% of the acquisition (assuming an equal weightage of direct to indirect contributions). Can this be right? I do not think that in a situation such as the present, *ANJ v ANK* should apply in this way, but even if it did, the nil non-financial contribution must be given its due — nil.

14 Mathematical formulations sometimes create deeper conundrums instead of solutions when they are stated in their pure logical forms, unconnected to the lives the formulae were intended to benefit. "The village barber cuts the hair of every man who does not cut his own hair" is the famous statement that is completely logical until one asks, "does he cut his own hair?". When Oliver Wendell Holmes Jr said that "the life of the law has not been logic: it has been experience", he too was warning against ignoring the facets and circumstances of life as seen in human form and not in mathematical digits. The respondent contributed nothing to the acquisition of the Flat, and as for the remaining assets, he is keeping all that he has contributed. The choice between letting the appellant keep the Flat that she acquired by her own efforts alone, and giving \$363,960 to the respondent by means of a mathematical calculation, to me seems clear — he should not be entitled to that money.

15 For the reasons above, this appeal is allowed and the appellant is awarded 100% of the value of the Flat.