

UNE v UNF
[2019] SGHCF 9

Case Number : Divorce (Transferred) No 1855 of 2016 (Summons No 391 of 2018)
Decision Date : 17 April 2019
Tribunal/Court : High Court (Family Division)
Coram : Debbie Ong J
Counsel Name(s) : Foo Soon Yien and Seah Kiat Hong (BR Law Corporation) for the plaintiff; See Chern Yang (Premier Law LLC) for the defendant.
Parties : UNE — UNF

Civil Procedure – Judgments and orders – Enforcement

Contempt of Court – Court’s powers

17 April 2019

Debbie Ong J (delivering the oral judgment of the court):

1 In the present summons for an order of committal (“SUM 391/2018”), the plaintiff (“the Wife”) alleges that the defendant (“the Husband”) breached a clause in the Ancillary Matters (“AM”) Orders made on 27 June 2018.

2 The clause which the Wife alleges the Husband to have breached is the order that (“the Order”):

The Defendant shall return the Plaintiff her personal photographs and photograph album in the Toh Crescent property.

Legal Principles

3 In *PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd* [2018] 4 SLR 828, the High Court observed that:

41 The law on contempt of court is now found in the Administration of Justice (Protection) Act 2016 (Act 19 of 2016) (“the AJPA”). Section 4(1) of the AJPA provides that any person who “intentionally disobeys or breaches any judgment, decree, direction, order, writ or other process of a court” commits a contempt of court. ...

...

44 The basic principles at common law and under the AJPA are similar. ...

45 At common law, an action for civil contempt is directed at a party who is bound by an order of court but is said to have breached the terms of that order. It is directed at securing compliance with the said order, to specifically and generally deter contemptuous behaviour and to protect and preserve the authority of the Singapore courts ...

46 ... The court will, in determining whether the alleged contemnor's conduct amounts to contempt of court, adopt a two-step approach ...

(a) First, the court will decide what exactly the order of court required the alleged contemnor to do. In determining what the order of court required, the court will interpret the plain meaning of the language used. It will resolve any ambiguity in favour of the person who had to comply with the order.

(b) Second, the court will determine whether the requirements of the order of court have been fulfilled ... To establish that there has been a contempt of court, the complainant will need to show that in committing the act complained of or omitting to comply with an order of court, the alleged contemnor had the necessary *mens rea*.

4 In *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 ("*Mok Kah Hong*"), the Court of Appeal held that:

85 First, it is well-established that the applicable standard of proof to *both* criminal and civil contempt is that of the *criminal* standard of proof beyond reasonable doubt ...

86 Secondly, as regards the issue of the requisite *mens rea* to establish contempt for disobedience of court orders, it is accepted that it is only necessary to prove that the relevant conduct of the party alleged to be in breach of the court order was *intentional* and that it *knew* of all the facts which made such conduct a breach of the order ...

Application to the present case

5 The issue in this case is whether there was non-compliance with the Order and if so, whether the non-compliance was intentional.

What exactly does the Order require the Husband to do?

Context of the Order in question

6 During cross-examination, a question posed by the Wife's counsel to the Husband included an assertion that the Court had made a finding that the Husband had in his possession the Wife's personal photographs and photograph album ("the Items") and therefore ordered the Husband to return the Items. I made it clear at the hearing that there was never any finding by the Court that the Husband had the Items in his possession or had kept them. The Order was made upon the Wife's repeated requests at the AM hearing, and on the basis that the Husband was not seeking to keep the Items but was willing to let the Wife have all her personal belongings, including the Items. In the spirit of cooperation, the Husband's counsel had not objected and told the Court that the Husband would want the Wife to have whatever is hers. In that context, I made the Order.

Stipulated time frame

7 There is no time period specified in the Order to return the Items.

8 The Husband's main submission is that, relying on *QU v QV* [2008] 2 SLR(R) 702, there is a general principle that an order must state in unambiguous terms what the defendant is to do for committal proceedings to lie against that defendant. He submits that as there is no date stated for compliance in the Order, SUM 391/2018 must be dismissed.

9 An important rationale for the decision in *QU v QV* is that the power to punish a person for contempt of court is quasi-criminal in nature and it would be contrary to all notions of justice that a person should be punished for omitting to do an act when he does not know or is not certain when such omission constitutes a breach of the order. Chan Sek Keong CJ (as he then was) said that “to commit a person to gaol or to a fine for breaching an order of court that lacks certainty is contrary to established notions of justice” (*QU v QV* at [21]).

10 This does not mean that an order without a stipulation of time can never be made certain and clear for purposes of committal proceedings; an application can be made for the Court to order that the act must be done within a certain time after the service of the order. This is provided in O 45 r 6(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) and r 695(2) of the Family Justice Rules (S 813/2014). In *Mok Kah Hong*, the Court of Appeal held (at [46]):

In our judgment, there must be sufficient material before us to warrant the exercise of our discretion under O 45 r 6(2). We should emphasise that the exercise of the court’s discretion under O 45 r 6(2) will necessarily turn on the precise facts of each case. The type and nature of material to support such applications is likely to differ, depending on the subject matter of the substantive case. In most cases, evidence demonstrating some form of contumelious conduct, as in the present case, will likely suffice. In contrast, a one-off failure to comply with an order for the payment of money is unlikely to be a sufficient basis for the court to exercise its discretion.

11 In the present case, the Wife had earlier sought in SUM 301/2018 a prayer, amongst other prayers, that:

... the timeframe within which the Defendant is to return to the Plaintiff her personal photographs and photograph album in the Toh Crescent property be specified within the 27 June Order at paragraph 2 therein as “from the date of this Order”.

12 I declined to grant this prayer sought because doing so would render the Husband in immediate breach of the Order. Given the context of how I came to make the Order, and the difficult and acrimonious relationship that the parties continue to have, I refused to grant that prayer.

Mode of compliance

13 I note the letter dated 3 December 2018 from the Wife’s solicitors which records that when the Wife “visited the Toh Crescent property today to retrieve her photograph album, she was appalled to discover that the property was in complete shambles” and that the Wife “was unable to find the photograph album at the location which she recalled last having left it”. I must add my observation that I find this entire letter rather inflammatory. This letter confirms that there is no dispute that by 3 December 2018, the Wife had been given access to the Toh Crescent property to collect the Items.

14 Given that the Wife had been given access to the property by 3 December 2018, I asked the Wife’s counsel at the hearing what the alleged non-compliance was in the context of this committal action. I noted that in committal proceedings, a court may even allow the alleged contemnor more time to purge his contempt. I asked if her case was that the Husband had deliberately hidden or disposed of the Items before giving her access on 3 December 2018.

15 The Wife argues in written submissions filed after the hearing that:

... [I]n a situation where Defendant granted Plaintiff access to the Toh Crescent property and Plaintiff obtained the return of the Photograph Album, there is no breach of the AM Order.

... However, this is not the case here. When Plaintiff regained access to the Toh Crescent property on 3 December 2018, she did not obtain the return of the Photograph Album. Defendant is therefore in breach ...

...

... [T]he Photograph Album is no longer on the Toh Crescent property for Plaintiff to collect. The key factor to determine compliance by Defendant with the AM Order then is whether his actions enabled the retrieval of the Photograph Album by Plaintiff.

16 Returning the Items to the Wife can be done in a number of ways, and one must take a sensible view of how things work in real life, especially life after divorce, considering also the context of how the Order came to be made.

17 The Husband deposed that he had given the Wife the keys to the Toh Crescent property and that she did enter the property on 3 December 2018. He stated that he had asked his daughter about the Items as she had helped to pack and collate the Wife's items in the matrimonial home. He also stated that he understood that their daughter did come across some items she identified as belonging to the Wife, including a yellow photo album. However, as she was aware of neither the updated divorce proceedings nor the Wife's specific wish to keep the photo album, she then disposed of some of the Wife's belongings, including the album. In court, the Husband reiterated that he did not want to involve his children in the divorce proceedings, which have hurt them.

Decision

18 First, I do not think the Order is sufficiently clear for the purpose of enabling this Court to punish a person in quasi-criminal proceedings. There is neither a stipulated time nor sufficient clarity on how the return of the Items is to be effected. The Husband interpreted the Order to mean that he was not to keep the Items and that the Wife could retrieve them as she had access to the Toh Crescent property. I have already stated the context in which my order was made and I do not think that his interpretation is unreasonable.

19 The Wife, as the complainant in these committal proceedings, must show that in omitting to comply with the order of court, the alleged contemnor had the necessary *mens rea*. I am not persuaded that the Wife has discharged her burden of proof.

20 I also accept that it is more likely that the Husband has been unable to locate the Items and it is possible that their daughter has disposed of them. The Husband has given the Wife access to the Toh Crescent property. I am unable to find that the Husband intended to breach the Order.

21 I am aware that the divorce has deeply affected the Wife. I add for context that at the AM hearing, the Wife submitted that the marriage certificate is a matrimonial asset and sought to have the marriage certificate awarded to her, because she submitted that receiving it would assist her in recovering from the trauma of the failed marriage. I held that the marriage certificate is not a matrimonial asset and made no orders with respect to it. I added that the matter on the marriage certificate should not be a cause for further acrimony between the parties. I had also hoped that the matter of the Items would not be yet another matter causing further issues, and as the Husband had no objections to the Wife retrieving all her personal items including the Items, her request was included in the AM Orders.

22 It is unfortunate that an order intended to facilitate the resolution of various issues has become

a source for further conflict resulting in these committal proceedings. The requirement for leave prior to commencement of committal proceedings essentially serves as a procedural safeguard and the threshold for the grant of leave is that of a *prima facie* case of contempt; in hearing the leave application, the court must be mindful not to venture into or purport to decide the substantive merits of the committal application (see *Mok Kah Hong* at [57]–[58]). Leave was granted in this case as there was a *prima facie* case of contempt, given that, factually speaking, the Items had not been returned to the Wife. However, considering the context of how the Order came to be included in the AM Orders and the facts surrounding the whereabouts of the Items, the Wife’s action in bringing these committal proceedings has undermined the original intent and spirit of the Order.

23 SUM 391/2018 is dismissed.

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