

VOC v VOD
[2021] SGHCF 14

Case Number : Divorce (Transferred) No 3470 of 2018 (Summons No 96 of 2021)
Decision Date : 04 June 2021
Tribunal/Court : General Division of the High Court (Family Division)
Coram : Choo Han Teck J
Counsel Name(s) : Foo Siew Fong and Ho Shing Kwan Marcus (Harry Elias Partnership LLP) for the plaintiff; Lee Leann, Linda Joelle Ong, Teh Guek Ngor Engelin and Teh Yi En Iain (Zheng Yi'en) (Engelin Teh Practice LLC) for the defendant.
Parties : VOC — VOD

Civil Procedure – Stay of proceedings – Stay of execution

4 June 2021

Judgment reserved.

Choo Han Teck J:

1 Summons 96 of 2021 (“SUM 96”) is an application by the defendant husband (the “husband”) for a stay of execution of certain orders made by JC Tan Puay Boon (“JC Tan”) on 28 January 2021 and 22 February 2021 in HCF/DT 3470/2018, pending the determination of the husband’s appeal against those orders.

2 The parties were married on 3 January 2015. Their son, who was born in November 2015, will be 6 years old this year. The plaintiff wife (the “wife”) is 36 years old this year and is a dentist at a private clinic. The husband is presently 37 years old and is acting Chief Executive Officer and a managing director of Company [X], a publicly listed company operating a business related to the oil and gas sector. At the start of the marriage, the parties lived together in a property at Third Avenue in Bukit Timah (the “Property”), which the husband owns jointly with his mother and brother. The wife and child moved out of the Property after 28 September 2017, and the wife filed for divorce on 25 July 2018. An Interim Judgment was granted on 25 January 2019, and a Final Judgment was granted on 8 March 2021.

3 On 28 January and 22 February 2021, JC Tan made, *inter alia*, the following orders:

(a) The pool of matrimonial assets is to be divided in the ratio of 73:27 between the husband and wife respectively. The husband is to transfer a total of S\$1,128,957.62 to the wife in two tranches: S\$564,478.81 within 3 months of the date of the judgment, and another S\$564,478.81 within 6 months of the date of the judgment (“Order 1”).

(b) The husband is to pay S\$3,000.00 as maintenance for the child by the first of each month into an account of the wife’s choosing. The first payment shall be made by the first day of the month following the release of the order (“Order 2”).

(c) The husband is to pay the wife the costs of the ancillary matters of HCF/DT 3470/2018 (including the costs of FC/SUM 1669/2020), fixed at S\$25,000.00, all in including GST (“Order 3”).

4 JC Tan held that the total pool of matrimonial assets was worth S\$5,416,252.84. He valued the wife’s assets at S\$333,430.65 and the husband’s assets at S\$5,082,822.19. He decided that the husband’s assets included:

- (a) The husband's 1/3 share of the Property, which JC Tan valued at S\$1,744,000.00;
- (b) Dividends of S\$2,073,247.27 from shares in Company [Y], which the husband received when he was a shareholder from August 2016 to March 2019 ("Y Dividends");
- (c) S\$48,815.93 the husband transferred to his father in December 2017/January 2018 ("Father's Money");
- (d) S\$105,000.00 withdrawn by the husband from his Standard Chartered Bank Account from 13 October 2017 to 30 October 2018 ("Bank Account Money"); and
- (e) S\$128,518.72 spent by the husband on wine from November 2017 to June 2018 ("Wine Money").

(collectively, the "Disputed Assets")

5 On 26 February 2021, the husband filed a Notice of Appeal against Orders 1 to 3 and against JC Tan's findings on the matrimonial assets. On 1 March 2021, the wife filed an appeal against Order 1 and JC Tan's decision not to backdate the maintenance order. On 16 April 2021, the husband applied in this summons before me, in SUM 96, for a stay of execution of Orders 1 to 3.

6 The husband's counsel first admits that he does not have enough money to pay the wife the full sum of S\$1,153,957.62 under Orders 1 and 3 (the "Ordered Sum"). The husband says in his affidavit that JC Tan erred in finding that he had assets worth S\$5,082,822.19. He disputes the inclusion of the Disputed Assets in the pool of matrimonial assets. He claims that he has only S\$3,454,971.95 worth of assets, which includes S\$114,463.17 in his bank accounts as of 13 April 2021 and his 1/3 share of the Property (the value of which he disputes). As the money in his bank accounts is not sufficient, the husband would have to sell his assets to pay the Ordered Sum. This would cause him "grave prejudice" and lead to him "suffering from losses which could not be compensated by costs". Apart from his 1/3 share in the Property, the sale of all his other assets would not even enable him to raise the Ordered Sum. I summarise the husband's position on his other assets as follows:

- (a) Two AIA Insurance Policies ("AIA Policies"): The value of these policies as of February 2021 was S\$60,501.75 and S\$69,349.22, but if the husband surrenders them now, he will only receive S\$58,384.19 and S\$66,922.00 (the current surrender values) respectively. He would not receive the death benefit of at least S\$75,000.00 each and the maturity benefit when each policy matures in 2083. In any event, there is limited value to him surrendering these policies because "it would not add up much relative to the Ordered Sum".
- (b) Tokio Marine Insurance Policy ("TM Policy"): The husband paid a premium of S\$1,385,434.80 in September 2014 for this policy. Taking into account the outstanding loan he took to pay the premium, he will make a "huge loss" if he surrenders the policy now, as he will receive the net value of only S\$320,003.18. He would also lose the death benefit of S\$10,000,000.00 under the policy and the benefits that have accrued under the policy since its purchase.
- (c) Maserati Car ("Maserati"): It does not make financial sense for the husband to sell the Maserati. It is of limited value and would not add much relative to the Ordered Sum. It has also depreciated in value since the husband filed his Affidavit of Assets and Means in March 2019, from S\$300,000.00 to approximately S\$280,000.00. The husband will also be "greatly

inconvenienced" as he would not have the use of his car.

(d) Club Membership: If the husband were to sell his Club Membership (worth S\$225,000.00 as of 31 March 2021), he would incur transfer fees of S\$42,800.00 on two occasions by selling it now and buying it again after a successful appeal, which reduces its net value to S\$139,400.00. In any event, there is limited value to him selling the Club Membership because it would not add much relative to the Ordered Sum.

7 Even if the husband sells these assets, it will be insufficient to meet the Ordered Sum. Thus, the only way he can pay the Ordered Sum is to sell his 1/3 share of the Property. This cannot be done because his mother and brother, the two other joint owners, object to the sale. In any event, forcing a sale now would result in grave losses to the husband, his mother, and brother "which cannot be compensated by costs", and cause a "perverse, irreversible outcome" that cannot be remedied even if he succeeds on appeal. First, the husband's mother and brother would be left without a home. If the husband succeeds in his appeal, his family cannot "reverse the situation and retain their home". Second, the Property would be sold at a "grossly low price", S\$10,319,872.00 below the valuation figure of S\$44,000,000.00 used by JC Tan at the ancillary hearing.

8 Second, the husband says that, from June 2021, he will stop receiving his monthly salary and will not be able to pay the S\$3,000.00 monthly maintenance for the child. This is because of a restructuring proposal at Company [X], which, if approved, would result in payment of the husband's salary being deferred. There is a possibility that the husband may not get any salary even after three years. He is not able to leave Company [X] to find another job as the restructuring arrangements require him to remain in the company. Without a salary, he will not be able to pay maintenance or obtain a loan to pay the Ordered Sum.

9 Third, the husband's counsel submits that the wife cannot be said to be deprived of the fruits of litigation, because she had also filed an appeal and is "subjecting herself to changes in the Orders following the appeal". Nor has the wife said she will face financial hardship if the husband does not pay her the Ordered Sum within the prescribed timelines. The husband's appeal against JC Tan's inclusion of the Disputed Assets into the matrimonial assets is not "weak or hopeless". Finally, counsel submits that the husband's non-payment of the monthly maintenance sum will not have an impact on the child's welfare as the husband would pay for the child's expenses during his access, the wife is able to afford the child's expenses, and the husband continues to contribute to the child's school fees, enrichment lessons and healthcare expenses.

10 The wife's counsel submits that the wife should not be deprived of the fruits of litigation, especially when this litigation had gone on for almost as long as the parties' marriage. Second, the husband's claim that he cannot afford to pay the Ordered Sum "appears to spring from his view that JC Tan had erred" in finding that the value of the husband's assets amount to S\$5,082,822.19, but this is not relevant or appropriate to consider in a stay application, and the court cannot operate on the assumption that JC Tan had erred. The list of assets set out by the husband in his affidavit "completely omit" the Disputed Assets included by JC Tan, as well as S\$1,000,000.00 which JC Tan found to be a gift from the husband's parents to him alone. The value of the husband's assets "easily cover" the value of the Ordered Sum, and he is attempting to "pull the wool" over the court's eyes as he had done throughout the ancillary matters proceedings. Finally, the husband is able and willing to pay the private investigator costs, as ordered by JC Tan, but not the ancillary matters costs. The reason for this is that he "simply refuses to satisfy the orders which he disagrees with and has appealed against".

11 As for the husband's claim that he will not be able to pay S\$3,000.00 for the child's monthly

maintenance due to Company [X]'s restructuring proposal, counsel submits that this is "completely speculative". This supposed deferment of salary is merely a proposal made by Company [X]. There is no guarantee that the proposal will indeed be accepted on those terms and there is no fixed period prescribed for the deferment of income as it is "contingent on the company reaching certain milestones". Even if the husband will not receive any income for the next three years, it is his responsibility to seek alternative employment commensurate with his earning capacity. In any event, he continues to draw a monthly salary of USD1,300 from his other role as a director of Company [Z], and his spending habits are not consistent with that of a man "concerned about being able to meet his future financial obligations".

12 Lastly, the wife's counsel submits that the husband's appeal will not be rendered nugatory if a stay is not granted. In respect of his claims about loss of investments and benefits from his insurance policies, the husband has not provided evidence to show what these losses would be, and previously had no hesitation in liquidating his entire share portfolio to repay an alleged loan to his father. Any prejudice the husband claims to suffer from terminating his investment would be outweighed by the prejudice suffered by the wife, given the "significant opportunity cost" of her not receiving the funds. As for the husband's claim that he would need to sell his 1/3 share in the Property to pay the Ordered Sum, that is untrue given the other assets JC Tan found to be in the husband's name. Lastly, JC Tan's order does not mandate the husband selling any of his assets. The husband can raise the funds however he pleases, and could even take a loan, with any of his assets as collateral. The husband has not provided any evidence that the wife will not be able to repay him these sums if he succeeds on appeal.

13 Rule 700 of the Family Justice Rules 2014 (S 830/2014) ("FJR"), which concerns stays of execution, is derived from O 45 r 11 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (see FJR, Table of Derivations). The principles concerning a stay of execution pending appeal are set out in *Strandore Invest A/S and others v Soh Kim Wat* [2010] SGHC 174 ("*Strandore*") at [7] and [10], and I summarise them as follows:

(a) As a general proposition, the court does not deprive a successful litigant of the fruits of his litigation pending an appeal. There is no difference whether the judgment appealed against was made on a summary basis or after a full trial.

(b) When a party is exercising his undoubted right of appeal, the court ought to see that the appeal, if successful, is not nugatory. Thus, a stay will be granted if it can be shown by affidavit that, if the damages and costs are paid, there is no reasonable probability of getting them back if the appeal succeeds.

(c) An appellant must show special circumstances before the court will grant a stay. The likelihood of success is not, by itself, sufficient. The special circumstances must be circumstances which go to the enforcement of the judgment and not to its validity or correctness.

14 The husband has to show that there are special circumstances justifying a stay of execution of the judgment. In this case, there was no suggestion that the wife was impecunious, such that any money paid over to her would be irrecoverable if the husband succeeds on appeal (*Strandore* at [13]). In fact, the husband says that the wife earns a "high income".

15 The husband says he does not have enough money to pay the Ordered Sum because he disputes the inclusion of the Disputed Assets into the pool of matrimonial assets, as well as the valuation of his 1/3 share of the Property. But these are precisely the issues to be considered and

determined on appeal. If I grant the husband a stay of execution on the basis that he does not have the Disputed Assets and cannot afford to pay, I would be accepting the husband's position before his appeal is even heard. In my judgment, the husband's claim that he does not have enough money to pay, based on his own assessment of his assets, is a circumstance that goes to the validity or correctness of JC Tan's judgment, rather than its enforcement (*Strandore* at [10]). It does not justify granting a stay of execution. Given the complexities of the issues of fact, it is not for me to analyse them in the light of counsel's arguments and take over the function of the Appellate Division of the High Court, save to say that I do not find any of the husband's case sufficiently compelling for the purposes of granting a stay.

16 Second, I also note that the husband's counsel says he has filed an application for leave to adduce fresh evidence in relation to the Disputed Assets, to show that he did not receive Y Dividends. In my judgment, this, if anything, casts doubt on the likelihood of the husband's success, as it depends on whether the appellate court will allow the fresh evidence to be adduced (*Lee Sian Hee (trading as Lee Sian Hee Pork Trader) v Oh Kheng Soon (trading as Ban Hon Trading Enterprise)* [1991] 2 SLR(R) 869 at [9]).

17 For completeness, however, I will consider the situation if the husband's position that he does not have enough money to pay the Ordered Sum is to be accepted. First, JC Tan's order does not compel the husband to sell his assets in order to pay the wife. As the wife's counsel submitted, he could take a loan to do so, using his assets as collateral. Second, even if JC Tan's order does result in the husband having to sell his assets, I do not think that the husband will suffer "grave prejudice" or suffer losses "which cannot be compensated by costs", thus rendering the appeal nugatory. With regards to the AIA Policies and TM Policy, even if the husband were to surrender these policies now and lose money on them, this could be compensated by an appropriate order for costs later so that he can buy these insurance policies, or their equivalent, again. With regards to his Maserati, I do not see how the Maserati's depreciation in value thereby renders it "of limited value". In any event, this can be compensated by an appropriate order for reimbursement so that the husband can buy a Maserati or similar car should he succeed on appeal. Finally, even if the husband has to incur transfer fees twice if he sells his Club Membership now and buys it again after a successful appeal, this can be taken into account by the court when ordering costs to enable him to buy the Club Membership (or its equivalent) again.

18 I note that the husband's counsel stated it was of "limited value" for the husband to sell these assets as they would not "add up much relative to the Ordered Sum". I am unable to follow this submission. According to the husband's counsel, the total value of these assets is S\$950,309.37. That is a significant proportion of the Ordered Sum, and the husband could take a loan for the rest if he needs to.

19 I now turn to the issue of the husband's 1/3 share of the Property. In my judgment, the husband would suffer grave prejudice that cannot be compensated by an order for costs if he were to sell his 1/3 share in the Property to pay the Ordered Sum. The Property is a large bungalow at Third Avenue (30,953.78 square feet) and it would be difficult for the husband and his family to find an equivalent home if the husband succeeds on appeal. I agree that his appeal would be rendered nugatory because he (and his family members) would not have that same home to live in even if he gets his money back. However, JC Tan did not order the husband to sell his 1/3 share of the Property, and it is unnecessary for the husband to sell his 1/3 share of the Property in the first place, given JC Tan's finding that the husband has other assets to pay the wife.

20 Next, I consider the husband's claim that he will soon have no more salary and therefore cannot afford to pay monthly maintenance for the child. I agree with the wife's counsel that this claim is

"completely speculative". It depends on whether the restructuring proposal is approved and when Company [X] achieves the objectives in the proposal. Even if the husband is no longer paid a salary at Company [X], he is young and healthy, and capable of taking on another job. In addition, the wife has pointed out that the husband also earns a monthly salary of USD1,300 from Company [Z], as evidenced in the husband's bank statements in his affidavit. Thus, it is not correct that he will have no income at all even if the restructuring proposal is approved.

21 The husband's counsel also submitted that the husband's non-payment of the child's maintenance would not impact the child's welfare as the wife is able to afford the child's expenses, and the husband will continue to contribute to the child's other expenses. This argument is beside the point. The husband's counsel is really saying that the wife does not need the husband to assist her in maintaining the child, but this contradicts JC Tan's decision that the wife requires S\$3,000.00 maintenance for the child, and that is an issue to be determined on appeal. Therefore, this is a circumstance that goes to the validity or correctness of JC Tan's judgment, rather than its enforcement (*Strandore* at [10]), and it does not justify a stay of execution.

22 The husband's counsel had argued that the wife is not deprived of the fruits of litigation because she has also filed an appeal and is "subjecting herself to changes in the Orders following the appeal". In my judgment, this does not amount to "special circumstances" that justify granting a stay of execution. The wife is appealing against JC Tan's decision on the division of matrimonial assets and his order for the husband to transfer her S\$1,128,957.20, as well as JC Tan's decision not to backdate maintenance for the child. The wife is appealing because she wants to receive a larger share of the matrimonial assets and to have the maintenance for the child backdated. But she seeks this in addition to what is due to her from the husband now, as a result of JC Tan's orders. Just because she has appealed does not mean she should be precluded from receiving what has already been awarded to her.

23 For the reasons set out above, I dismiss SUM 96 and order that there shall be no stay of execution pending the determination of the appeal. I will hear parties on costs at a later date.