

ABP v ABQ (B, Third Party)
[2009] SGHC 192

Case Number : DT 2197/2004
Decision Date : 26 August 2009
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Anamah Tan and Jason Peter Dendroff (Ann Tan & Associates) for the petitioner; Winnifred Gomez (Gomez & Vasu) for the respondent; Chandra Mohan s/o K Nair (Tan, Rajah & Cheah) and Devi Haridas (Sim & Wong LLC) for the third party
Parties : ABP — ABQ — B

Family Law

26 August 2009

Judgment reserved.

Choo Han Teck J:

Introduction

1 The petitioner is a 52 year old biochemist. The respondent is 53 years old and currently unemployed. The parties were married on 6 February 1994. Their only child, a daughter, was born on 10 February 1995 and is now 14 years old. The petitioner filed for divorce on 8 June 2004. The ground for divorce was a separation for a period of four years. The divorce was granted on 23 July 2004. The third party is the mother of the petitioner. She was joined as a party by the respondent in order to claim against the house that was purchased in the third party's name.

2 The petitioner applied for custody of the child prior to the divorce under s 5 of the Guardianship of Infants Act (Cap 122, 1985 Rev Ed). The respondent obtained an interim order for sole custody, care and control of the child while the petitioner was to have reasonable access. The respondent also applied for maintenance for herself and the child under s 69(1) and 69(2) of the Women's Charter (Cap 353, 1997 Rev Ed) on the ground that the petitioner had neglected or refused to provide reasonable maintenance for both of them. Two maintenance orders were made. The first was a consent order dated 28 November 2000 and the second a variation order dated 30 January 2004. The second order required the petitioner to pay \$800.00 a month for the maintenance of the child and \$880.00 a month for the maintenance of the respondent.

The Present Proceedings

3 The respondent also sought sole custody, care and control of the child. She agreed to reasonable access for the petitioner. However, she deposed that there had been no contact between the petitioner and the child since July 2007 because the child did not want to see the petitioner. The respondent sought a monthly maintenance of \$3,000.00 and \$2,500.00 for her and her child respectively; she also sought \$5,000.00 a year for each of them in order to take holidays. She wanted the maintenance to be backdated to the time of commencement of the proceedings in 2004 on the basis of the proceedings having been unnecessarily protracted by the petitioner.

4 In the ancillary proceedings before me, the petitioner also sought sole custody, care and control of the child. Alternatively, he sought joint custody with care and control to him and liberal access to the respondent. The petitioner also sought to be discharged from his obligation to pay maintenance to the respondent. He argued that he had been paying maintenance to the respondent

for the past 10 years and she should be able to look after herself by now. The respondent is an NIE-trained teacher. She was not able to work in the past in order that she could take care of the child, but she can do so now because the child is 14 years old and manages well by herself. The petitioner contended that with her qualifications, the respondent could earn at least \$2,000.00 a month from tutoring and full time teaching. The petitioner argued that the sum of \$600.00 would be reasonable maintenance for the child if the respondent was given custody and control. He argued that the respondent, as the other parent, should also have to bear the child's expenses.

5 According to the "List of Petitioner's Assets and Respondent's Assets" that was filed by the parties on 17 September 2007, the petitioner's assets included:

- (a) A 99-year leasehold 3-storey terrace house at Serangoon Avenue 1, Singapore 556149 ("the Serangoon property");
- (b) Shares and interests in various companies/firms all over the world;
- (c) Money in bank and CPF accounts;
- (d) "The Thulasi Balasuramaniam Trust Fund"; and
- (e) Other items such as paintings and furniture.

The respondent's assets consisted mainly of the 4-room HDB flat at 16 Toh Yi Drive, Singapore 590016 ("the Toh Yi property") which was purchased at \$333,000.00 in June 1998 and registered in her sole name. One of the main disputes in the proceedings before me concerned the extent of the petitioner's wealth, including the extent of his interests in Campo Research Pte Ltd ("Campo Research") and its related companies. The evidence seemed to indicate that Campo Research was a profitable company. However, its true accounts have not been fully disclosed.

6 Citing the petitioner's extensive assets and alleged refusal to provide full and frank disclosure, the respondent sought the following orders:

- (a) That the Serangoon property be included in the pool of matrimonial assets;
- (b) That the Serangoon property be transferred by the petitioner and his mother to the respondent free of encumbrances;
- (c) In the alternative to (a) and (b), the petitioner be ordered to pay the respondent a sum equal to the value of the Serangoon property;
- (d) That the petitioner pay the outstanding mortgage loan (currently standing at \$160,000.00) on the Toh Yi property where the respondent and child are staying; and
- (e) That the petitioner pays the respondent a lump sum of \$500,000.00.

The petitioner claimed that he already made direct contributions of about \$50,000.00 being the HDB grant for the Toh Yi property in addition to six instalments of the HDB loan at \$1,212.00 per month. The respondent said he only paid four instalments. The petitioner offered to drop his claim for a share in the Toh Yi property if the respondent dropped her claims to the Serangoon property in (a), (b) and (c) above.

The Serangoon Property

7 The Serangoon property was purchased at \$700,000.00 in 2004, just two months before the petitioner filed for divorce. The petitioner purchased the house jointly with his mother, who is the legal owner of a 75% share in the house. The petitioner and mother claim that this 75% should not be available for distribution. In fact, the petitioner argued that the respondent should not even be entitled to any part of his 25% share in the Serangoon property because the respondent made no payments towards its purchase either directly or indirectly. It had been purchased 6 years after the respondent left him in 1998 from the vendor, who had leased the property to the petitioner's company Campo Research from March 2000 onwards. The petitioner, respondent, and their child only lived there as tenants prior to the purchase.

8 The respondent claimed that the entire Serangoon property should be considered a matrimonial asset made available for distribution under s 112 of the Women's Charter. She alleged that the petitioner used his mother's name as a co-owner in order to deprive the respondent of a share in the matrimonial asset. In reply, the petitioner claimed that he paid \$78,600.00 in CPF monies towards the purchase of the property, including stamp fees of \$8,600.00. He presently pays a sum of \$550.00 from his CPF monies and \$550.00 in cash per month from his salary towards repayment of the mortgage loan on the property. He claimed that the third party had also personally made significant contribution to the property using her own monies.

The Third Party's Contributions

9 According to the third party, she paid the option fee of \$7,000.00 in cash to the Vendor. The Option to Purchase states that UOB cheque number 127925 was received as payment of the option fee on 25 March 2004. The cheque number has been traced to the petitioner's account. The third party's oral evidence thus contradicted the affidavits filed by her and the petitioner. The third party also claimed to have paid \$63,000.00 as the balance amount for the deposit of the house. In her affidavit of 17 January 2006, she claimed that she paid the whole sum in cash to the vendor. In the same affidavit, she exhibited a cheque of \$63,000.00 signed by her and made payable to her lawyers for the purchase. It was not disputed that the cheque was issued from a joint account held in the names of the petitioner and the mother opened at the time they obtained the said mortgage loan from UOB. However, she later claimed in her affidavit filed on 4 July 2008 to have handed cash of \$63,000.00 to the petitioner who then issued a cheque of \$63,000.00 to the seller's lawyers. She also made CPF contributions of up to \$1,350.16 towards payment for the Serangoon property.

10 I am of the view that the third party did not have the means to make substantial financial contributions to the purchase of the house. She worked as a hospital attendant at Alexandra hospital for 26 years before retiring in September 2000. She testified under cross-examination that her net salary had been \$1,350.00 per month. She does not read or write English. During her cross-examination, she was unable to give a breakdown of the financial amounts she was alleged to have contributed. She was unable to say what the mortgage amount or the balance amount of the mortgage loan was. She claimed she had money belonging to her that she used to fund the purchase of the property: for example, money received from the sale of her HDB flat in Bukit Batok in 1999; her salary as a bookkeeper at Campo Research; lottery and 4D winnings; jewellery; land in India; monthly pension and gratuity; and contributions from the petitioner and her other children. However, I am of the view that she was a coached witness who testified in order to support the petitioner's claims.

11 There was no evidence to show that the third party's alleged various sources of income actually existed. Her only source of income appeared to be that from her job as a hospital attendant. She claimed to have worked as a book-keeper at Campo Research from May 1992, earning \$3,300.00

a month. However, the payments from Campo Research to her CPF account were so irregular that it seemed likely that her job as a bookkeeper at Campo Research, which was a company controlled by her son, was a mere sham. During her testimony before me she did not appear to me to be a person conversant with accounts at all. As for the proceeds from the sale of her Bukit Batok flat, she claimed to have given her third son, the co-owner, a token sum of \$3,000.00 from the sale proceeds and to have kept \$126,903.12 for herself. However, the records from HDB showed that a sum of \$35,210.97 was refunded into her CPF account upon completion of the sale while a sum of \$31,885.91 was refunded to her third son's CPF. Despite her claim that her portion of the sale proceeds were placed in a UOB account by her son and later withdrawn by her to keep at home, there was no evidence to show that she retained \$126,903.12. The lottery winnings were raised for the first time by the third party during cross-examination. She claimed to have won \$10,000.00 in lottery money but no evidence was adduced to support this claim. In re-examination, she also claimed for the first time to have possessed 100 to 200 sovereign gold pieces which she sold and used for the purchase of the Serangoon property. Again, there was no evidence to prove this.

12 The third party often contradicted the petitioner's version of events. Over the course of the proceedings, the petitioner initially claimed that the Serangoon property was the third party's rented house. When asked to produce a stamped copy of the tenancy agreement, the petitioner said that the house was actually rented by his company, Campo Research. He claimed to have moved into the Serangoon property on 10 February 2002. The property had been rented between March 2000 to June 2004 by Campo Research. He claimed that the third party initially resided at the Serangoon property in 1998 and had her own rental arrangements with the owner. Subsequently, the third party and the petitioner bought the house "so that they can have a roof over their heads" as they had been staying in rented premises, they also wanted to provide the child with a home when she came over for access. The property would also serve as a home for the petitioner's father, two brothers, their respective spouses and children. During cross-examination, the third party denied that she had her own rental arrangement with the landlord. She did not know what the rental was at any point in time while she was staying in the house, insisting instead that she gave various sums of money to the son to pay the rent. The address on her identity card had only been changed to that of the Serangoon property on 3 September 2003 despite her claim to have been staying at the property since 1999.

Campo Research

13 The petitioner claimed that he had no other assets. He portrayed himself as a failed entrepreneur. This might be true in a way. His companies were all \$2.00 companies and his overseas companies have either been struck off by the authorities in those countries or never started conducting business. The sole exception was Campo Research, which had a paid up capital of \$50,000.00. However, he sold his share in the company for \$1.00 in 2004, claiming that the company faced a hefty \$2.8 million dollar deficit. By selling the company, he claimed to have effectively assigned the company's debt to new shareholders and simultaneously relieved himself of the onerous task of being a director. The petitioner claimed that the shares in Campo Research had been sold to Teo Sian Heng ("Teo") and Shum Kim Hung ("Shum"). Teo and Shum subsequently transferred their shares to Low Ling Hwa ("Low") and Lim Swee Hee ("Lim") whilst retaining their positions as directors. Both Teo and Shum initially informed counsel for the respondent that they did not pay for the shares. By the time of the trial, however, their evidence had changed.

14 The story told at trial by all three men was incredible. I did not believe that Teo paid the petitioner \$25,000.00 for the 25,000 shares he claimed to have purchased from the petitioner. The three were not men of means. Teo and Shum were sharing a flat and seemed rather impecunious despite claiming to be in business. The three were also members of the same Ba'hai association. Counsel for the respondent applied to cross-examine all three men as shareholders and directors of

the company and I allowed the application. The result of the cross-examination was almost comic. The directors were more like paid actors: none of them had any experience, finance or knowledge of the company's finances and business. Teo and Shum only realised they had become shareholders of Campo Research when they conducted a company search for the purpose of applying for a cell phone in the name of the company. Lim also testified that he had different signatures for different purposes in order to prevent his signature from being forged. I am left in no doubt that the share transfer forms were forged. It was not clear who forged them, but I am of the view that the petitioner was clearly the person behind it all. The testimonies of Teo, Shum and Lim were utterly discredited and I reject their evidence as wholly unsatisfactory. I am persuaded that the petitioner dissipated his assets in order to prevent the respondent from getting a share of them pursuant to the court's powers of division.

Care, Custody and Control

15 I interviewed the daughter on 28 February 2007. She was then 12 years old. I found her to be intelligent and articulate. She was happy to remain with her mother and only visit her father on days of access. I will not repeat the evidence of the child as she was willing to talk only if her testimony was not reported to her father. I had to determine if hers was a genuine concern or if her fear arose from being discredited. I am of the view that it was the former. Taking into account the testimony of the daughter and the close relationship between the respondent and the child, I am of the opinion that the respondent should have custody, care and control of the daughter with reasonable access to the petitioner. I will hear parties on the issue of access at a later date if they are unable to agree as to the terms between themselves.

Matrimonial Assets

16 In view of my finding that the petitioner had utilised various ways of hiding his income and true assets and his conduct before and during these proceedings, I am of the opinion that the petitioner had not disclosed the true extent of his income and assets. Given his attitude and conduct, it seems unlikely that his assets can be fully ascertained. The petitioner had clearly been concealing his assets. Consequently, I am of the opinion that the respondent should be given a much higher share of the Serangoon property. I emphasize that this award is not intended as a punishment — that is not the court's concern in these proceedings. The award is premised upon my finding that the petitioner has assets which he refuses to divulge. The only asset which can realistically be apportioned is the Serangoon property, which according to my findings, belongs beneficially to the petitioner and not the third party. I therefore order that the Serangoon property be sold and the proceeds apportioned with 80% to the respondent and 20% to the petitioner.

17 The maintenance orders of 30 January 2004 will remain.

18 I will hear parties on the issue of costs at a later date.