Oh Choon *v* Lee Siew Lin
[2013] SGCA 60

Case Number	: Civil Appeal No 162 of 2012
Decision Date	: 08 November 2013
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; Andrew Phang Boon Leong JA; Judith Prakash J
Counsel Name(s)	: Aye Cheng Shone (A C Shone & Co) for the appellant; Teh Yoke Meng Christopher (Teh Yip Wong & Tan) for the respondent.
Parties	: Oh Choon — Lee Siew Lin

Family Law – matrimonial assets – division

Family Law – maintenance – wife

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2013] SGHC 25.]

8 November 2013

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

Introduction

1 This was an appeal by the husband against the decision of the High Court judge ("the Judge") in Divorce Transferred No 5661 of 2010. The Judge's grounds of decision may be found at *Lee Siew Lin v Oh Choon* [2013] SGHC 25 ("the GD").

2 On 4 September 2013, having considered the written submissions filed by the parties as well as the oral submissions of counsel, we allowed the appeal with regard to the division of matrimonial assets and consequently also varied the maintenance order made by the Judge. We now give the detailed grounds for our decision.

Facts

3 The appellant–husband Oh Choon ("the Appellant") and the respondent–wife Lee Siew Lin ("the Respondent") were married on 2 August 1993. The marriage did not produce any children.

4 The matrimonial home at 15A Kalidasa Avenue ("the Matrimonial Home") was purchased in 1989 in both parties' names as joint tenants. In June 1999, the Appellant moved out of the Matrimonial Home and on 10 May 2006, he severed the joint tenancy. However, the Appellant continued to hold a set of keys to the Matrimonial Home. The Matrimonial Home was valued at $640,000 with no outstanding liabilities charged against it.

5 It was largely undisputed between the parties that they lived in a state of separation after the Appellant moved out of the Matrimonial Home in June 1999. This was so save for the monthly instances until October 2010 when the Appellant would return to the Matrimonial Home. The purpose of these monthly visits was in dispute: the Appellant said that he returned only to give the Respondent a monthly maintenance of $1,200, while the Respondent said that on top of doing so, his

monthly visits were also for the purpose of having sexual intercourse with her. In November 2010, when divorce proceedings were commenced by the Appellant, he stopped the monthly visits. Until April 2011, he paid the Respondent's monthly maintenance via mailed cheques. Interim judgment of divorce was granted on 20 October 2011 on the factual basis that the parties had been living separately for 4 years.

6 Between the Appellant moving out of the Matrimonial Home in 1999 and the filing of divorce proceedings, several developments relevant to the present appeal transpired. First, he started a new life with a mistress. Second, in April 2010, he purchased a property, 63 Thong Soon Green ("the Property"), in the joint names of himself and his mistress. The Property was valued at $2,480,000 and was subject to an outstanding mortgage loan of $673,650.10. Additionally, he acquired a Mercedes E250 ("the Car"), valued at $179,000, in January 2010. However, it was his contention that when he moved out of the Matrimonial Home in 1999, he was facing financial difficulties and his lot only improved subsequently, such that the Property and the Car were purchased using funds acquired after 1999.

The decision of the court below

7 The proceeding below was the Respondent's application for ancillary relief, *viz*, an order for the division of the matrimonial assets and an order for maintenance pursuant to ss 112 and 113 of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Act"), respectively. The Respondent's case was that the Property and the Car fell into the pool of matrimonial assets to be divided. The Appellant disputed this, and argued that the operative date to determine the pool of matrimonial assets was the date of separation, *ie*, 1999. Accordingly, because the Property and the Car were purchased *after* the date of separation, they did not fall within the pool to be divided.

8 The Judge used the date of interim judgment (being 20 October 2011) as the operative date for determining the pool of matrimonial assets (see the GD at [13]). The Judge reasoned that since the parties were content with leaving the state of affairs as they were and neither took steps to end the marriage by commencing divorce proceedings, there was no clear indication or agreement that the pool would crystallise at the date of separation. In the absence of such an agreement or common understanding between the parties, the date of separation was not an appropriate date to employ. The Judge considered the parties to have continued to accumulate assets on the basis that the marriage was still subsisting even though they were separated. It was therefore not unjust to adopt the date of interim judgment as the point at which to determine the pool of matrimonial assets. Accordingly, the Property and the Car were included as matrimonial assets liable to be divided.

9 The Judge considered (see the GD at [22]–[24]) that the Appellant had paid for the purchase, renovation, furnishing and maintenance of the Matrimonial Home, while the Respondent had paid for some household and grocery expenses. The Judge then considered that the Respondent had contributed by assisting the Appellant in the kitchen of his commercial catering business (though this must have been only before the parties separated). She also carried out household chores and looked after the Matrimonial Home. The Judge concluded, on a broad brush approach, that the Respondent was entitled to a 26.29% share of the matrimonial assets. To effect this division, the Judge ordered the Appellant to transfer his share of the Matrimonial Home to the Respondent. The parties were to keep all other assets in their respective names.

10 Finally, the Judge ordered the Appellant to pay to the Respondent lump sum maintenance of $5,000.

The issues before us

11 On the division of the matrimonial assets, the arguments before us were framed by counsel for the Appellant, Mrs Aye Cheng Shone ("Mrs Shone"), as engaging two issues. The first issue pertained to the operative date for determining the matrimonial assets to be divided. In this regard, Mrs Shone argued that assets acquired after the Appellant moved out of the Matrimonial Home ought to be excluded from the pool to be divided. The second issue was the question of the share of the assets the Respondent should be awarded by reference to her indirect contributions.

Division of matrimonial assets

Determining the pool of matrimonial assets

Using the date of separation as the cut-off date

12 As already noted, Mrs Shone sought to argue that the marriage was, in substance, a short one of some six years' duration (until the Appellant moved out of the Matrimonial Home in June 1999) and that, in the circumstances, the Property and the Car (which were acquired *after* the Appellant had moved out of the Matrimonial Home) ought to be excluded altogether from the pool of matrimonial assets to be divided between the parties. This was a *de facto* argument which we could not, with respect, accept – not least because there continued to be contact (albeit only at monthly intervals) between the Appellant and the Respondent after the former had moved out. Indeed, it was an undisputed fact that the Appellant continued to provide $1,200 in monthly maintenance to the Respondent during these monthly visits to the Matrimonial Home. This itself demonstrated that there was a *continuous (albeit clearly attenuated) relationship* between the parties throughout. By contrast, a marriage might itself be a meaningless one even if husband and wife were living together under the same roof if they treated each other as total strangers. Given the myriad of possible factual situations different marriages may entail, we do not think that the Appellant's argument should be allowed to find general legal traction. A moment's reflection will reveal that to take the Appellant's argument as one of general application would lead to unnecessary complications in the particular cases that the courts might have to deal with in future.

13 In strict legal terms, the marriage between the parties in the present case had lasted almost three times the duration claimed by the Respondent, *viz*, 18 years instead of just six. However, we hasten to add that the approach we adopted was not an excessively technical one. This was because the nub of the matter appeared to us to lie, instead, in ascertaining (in particular) the actual contributions (of both a direct and indirect nature) by the Respondent (if any) to the total pool of matrimonial assets. This was an exercise which would in any case take into account the relevant circumstances arising from the fact that the marriage was a short one when viewed from a *de facto* perspective. In particular, if indeed the Appellant could make good his argument that the Respondent had contributed little – if anything at all – to the pool of matrimonial assets after he had left the Respondent following the first six years of marriage, that would reduce in a corresponding fashion the proportion of the pool of assets the Respondent would be entitled to upon division. This appeared to us to be a more objective approach which was simultaneously true to legal principle. We would note that this approach of having regard to all such circumstances of the marriage to determine the just and equitable division of the matrimonial assets is consistent with the approach adopted by Assoc Prof Debbie Ong ("Prof Ong") in Debbie Ong, "Family Law" (2011) 12 SAL Ann Rev 298 ("*Ong*") at para 15.22. More importantly, this approach would lead precisely to a just and equitable result which was not only what the Appellant was arguing for but is also consistent with the very pith and marrow (and also, language) of s 112(1) of the Act itself (reproduced below at [15]; and this being in fact the *second issue* raised by the Appellant in the present appeal). As we shall elaborate upon below, acceptance of the Appellant's original argument would have led to the opposite result inasmuch as it would have entailed this court omitting to properly credit the Respondent for the Appellant's

acquisition of the Property and the Car after he left the Matrimonial Home (see below at [14]). However, the rejection of the Appellant's original argument did not mean that he was unsuccessful in the context of the present appeal. On the contrary, as we in fact held, the adoption of the abovementioned approach resulted in the Appellant's *success* in the present appeal.

14 Given our analysis thus far, it follows that we would respectfully reject the Appellant's argument (that is, the *first issue*) that the operative date for determining the pool of matrimonial assets in the present case ought to be the date of "separation" (*viz*, the date at which the Appellant left the Respondent which was, as already noted, six years after the marriage between the parties in June 1999). Indeed, as the relevant case law makes clear, there is no hard and fast cut-off date for the determination of the pool of matrimonial assets and everything would, in the final analysis, depend on the precise facts of the case itself (see, for example, the decision of this court in *Yeo Chong Lin v Tay Ang Choo Nancy* [2011] 2 SLR 1157 ("*Yeo Chong Lin*") at [32]–[36]). In *Yeo Chong Lin*, this court noted (at [36]) that "[m]ultiple dates are distinctly possible, depending on the nature of the assets and the circumstances surrounding their acquisition". This court also observed (see *ibid*) that "[u]ltimately, perhaps the adoption of an operative date or dates *may not really be that critical as compared to arriving at a just and equitable division*" [emphasis added]. In the circumstances, we would agree with the Judge that the operative date for the determination of the matrimonial assets in this case should be the date of the interim judgment (*viz*, 20 October 2011). After all, despite the Appellant's claim that the Property and the Car were purchased with funds acquired after the date of *de facto* separation, this was at the end of the day an assertion which he could not substantiate. Notably, the evidence disclosed that in August 1999, 15 Kalidasa Avenue, the shophouse below the Matrimonial Home ("the Shophouse"), which was also jointly owned by the parties (and which undoubtedly was a matrimonial asset which would have been liable to be divided) was sold for $780,000. It was not disputed that the Respondent did not receive any share of the sale proceeds. On the Appellant's part, he said that after the mortgage on the Shophouse was discharged, not much of the proceeds were left and what was left was used to pay off his business debts. Besides producing an e-mail from a bank saying that it could not reproduce his banking records at the relevant time, nothing was put forward to prove his assertion. At the lowest, the Appellant could have, and in our view should have, produced documentary evidence of these business debts which he said exhausted whatever sale proceeds were available. In the light of the uncertainty as to the destination of the sale proceeds of the Shophouse, a part of which the Respondent was entitled to by reason of her contributions to the marriage, the reasonable inference was that some of these monies were used in some way or form for the acquisition of the Property or the Car. To have excluded the Property and the Car would therefore have been to ignore those contributions of the Respondent to the marriage. The Property and the Car therefore fell within the pool of matrimonial assets to be divided between the parties.

Declining to exercise the power of division over the matrimonial assets

15 However, the Appellant was, in our view, on somewhat firmer legal ground when Mrs Shone argued on his behalf that, even if it was assumed that the Property and the Car formed part of the pool of matrimonial assets, they nevertheless ought not to be divided as the court still retained the discretion to exclude specific matrimonial assets by declining to exercise its powers of division over them. This would appear to be the approach preferred by Prof Ong (see *Ong* at para 15.22), who suggests that the court can decide to award an entire share or a large share of an asset to the party who acquired it after separation. That this is so is clear from the language of ss 112(1) and (2) of the Act itself, which read as follows:

> (1) The court shall have power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, to order the division between the parties of *any*

matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable.

(2) It shall be the duty of the court *in deciding whether to exercise its powers under subsection (1)* and, if so, in what manner, to have regard to all the circumstances of the case...

[emphasis added]

16 In the decision of this court in *Ong Boon Huat Samuel v Chan Mei Lan Kristine* [2007] 2 SLR(R) 729, for example, it was held that, although the property concerned technically formed part of the pool of matrimonial assets, it was clear that the wife had – on the *facts* – refused to have anything to do with the purchase of the said property, thus placing all liabilities with respect to that property solely on the husband. As Prof Leong Wai Kum aptly put it, this was a "solo venture" embarked on by the husband (see Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2nd Ed, 2013) at p 561). In the circumstances of that case, the court held that the property in question ought to be *excluded* from the pool of matrimonial assets to be divided. Given the precise facts of the present case, a similar situation could be said to have existed. However, we were of the view that, in the interests of justice and fairness (which, as already mentioned, are consistent with the spirit and purpose of s 112(1) of the Act (reproduced above at [15])), account ought also to be taken of the (*proportionate*) amount which the Respondent ought to be taken as having contributed towards the purchase of the Property and the Car having especial regard to the fact that the Appellant could reasonably be assumed to have utilised funds which would have been due to the Respondent for her contributions to the marriage in part payment for the Property and the Car (see above at [14]). Accordingly, we also declined to adopt this facet of Mrs Shone's submissions (inasmuch as they were premised on the rubric of total exclusion).

17 We would however observe, parenthetically, that this approach is also consistent with (as well as similar to) that adopted in a situation where a particular matrimonial asset is considered by the court to fall *outside* of the relevant cut-off date and, hence, the pool of matrimonial assets concerned (see *Yeo Chong Lin* at [33], analysed above at [14]). This also illustrates the point made by this court in *Yeo Chong Lin* (at [36]) as well as above (at [13]) that, regardless of the methodology utilised, the crucial objective is to ensure a just and equitable division of the pool of matrimonial assets.

The Respondent's contributions

18 This would be an appropriate juncture to turn to the second issue raised by the Appellant, *viz*, the proportion in which the matrimonial assets should be divided between the parties, notwithstanding the fact that the Appellant phrased this particular issue somewhat more narrowly by reference only to the percentage of the pool which should be attributed to the Respondent for her indirect contributions.

19 It was clear to us that, despite the relatively short period of time the parties were actually together (and the fact that there were no children from the marriage), the Respondent had made both direct as well as indirect financial and non-financial contributions to the marriage which were by no means insubstantial in nature. In this regard, we note that the Judge had found, in particular, as follows (see the GD at [24]):

> … I decided on a balance of probabilities that the wife had provided substantial assistance to the husband's catering business. Even though the couple had no children, I did note that the wife had carried out household chores and had looked after the matrimonial home.

20 In the circumstances, it seemed to us only right that the Respondent should have some share of the total pool of matrimonial assets. Even though the Property and the Car were acquired by the Appellant some time later, it could (as we have noted above at [14]) be reasonably assumed that what would have otherwise been due to the Respondent for her contributions to the marriage (at least for the first six years thereof) would have been utilised by the Appellant in part payment for these assets. On the other hand, as also noted above, we acknowledge the fact that the parties had little to do with each other following the first six years of their marriage. During the period after June 1999, therefore, the Respondent's contributions to the marriage were – at best – negligible (or perhaps even non-existent). Taking all the circumstances into account, we were of the view that the award by the Judge in the court below of 26.29% of the total pool of matrimonial assets of $2,894,874.60 did not, with respect, correctly reflect a just and equitable division of this pool of assets. We were of the view that a just and equitable division would, instead, be 15% of the total pool of matrimonial assets. Hence, we awarded the Respondent a share of the pool of matrimonial assets amounting to $434,231.19 instead. As she already held some of this amount, she would obtain only the difference.

Maintenance

21 Given our decision on the issue relating to the division of matrimonial assets, we were of the view that the lump sum maintenance of $5,000 awarded by the Judge to the Respondent ought to be varied. That this was legally permissible is clear from the provisions of the Act itself (see, in particular, s 114(1)(*a*)). After all, courts regularly take into account each party's share of the matrimonial assets when they assess the appropriate quantum of maintenance to be ordered (see, for example, the observation made by this court in *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506 at [26]). Indeed this was exactly what the Judge in the court below did when he made his order for lump sum maintenance in the quantum he did. He had observed that the "lump sum maintenance [he awarded] would have been significantly higher had the proportion of matrimonial assets given to the wife been any lower than the percentage allocated to her of 26.29% of the total pool of matrimonial assets" (see the GD at [26]). Consequently, as we had in fact *reduced* the proportion of matrimonial assets given to the Respondent, it was only fair that we *varied upwards* the maintenance awarded to her. Furthermore, it was clear that a lump sum maintenance was eminently appropriate in the interests of both parties so that a clean break between them could be effected. Taking into account all the circumstances, we awarded the Respondent lump sum maintenance for five years using a multiplicand of $1,200 per month. The Respondent was therefore awarded lump sum maintenance of $72,000 (being $1,200 × 12 months × 5 years), instead of the $5,000 awarded by the Judge below.

Conclusion

22 For the reasons set out above, we allowed the appeal with regard to the issue of the division of matrimonial assets and varied the quantum of the lump sum maintenance payable by the Appellant to the Respondent. As the Respondent would not be obtaining complete ownership of the Matrimonial Home, we also ordered that it be sold, with the sale to be conducted within six months by a person appointed by both parties' solicitors.

23 We also awarded the costs of the appeal to the Appellant fixed at $5,000 (inclusive of disbursements). The usual consequential orders also applied.