

UMM v UML
[2018] SGHCF 13

Case Number : HCF/District Court Appeal No 24 and 25 of 2018
Decision Date : 02 October 2018
Tribunal/Court : High Court
Coram : Debbie Ong J
Counsel Name(s) : Narayanan Vijay Kumar (Vijay & Co) for the appellant; Shen Luda Genesis (Templars Law LLC) for the respondent.
Parties : UMM — UML

Family Law – Consent orders – Setting aside

Family Law – Consent orders – Variation

2 October 2018

Debbie Ong J (delivering the judgment of the court *ex tempore*):

Introduction

1 There are two appeals before me. The first is an appeal by the defendant-husband (“the Husband”) against the decision of the District Judge (“the DJ”) to dismiss his application to set aside ancillary orders made by consent (“the AM Orders”). The second is an appeal, also by the Husband, against the DJ’s decision to allow the plaintiff-wife’s (“the Wife”) application to vary the AM Orders. The DJ’s written grounds can be found at *UML v UMM* [2018] SGFC 54.

Background facts and issues

2 The parties were married in 1986 and have two adult children. The Wife commenced divorce proceedings in March 2016, after a marriage that lasted for about 30 years.

3 On 7 April 2016, the Husband signed a draft consent order (“the 1st DCO”) detailing the terms of the parties’ agreement on the ancillary matters (“AMs”) before a Commissioner for Oaths. The 1st DCO provides that the Wife shall not be required to refund the Husband’s CPF account, the CPF monies used for the purchase of the matrimonial home (“the Flat”) and the accrued interest. Further, in lieu of such refund, the Wife shall waive her entitlement to claim for her maintenance. The transfer was made subject to HDB and CPF’s approval. There is also a provision that the Wife shall, on a goodwill basis, allow the Husband to remain in the Flat after the transfer of the Flat but may revoke such goodwill upon receiving any notices or harassment from the Husband’s creditors.

4 The divorce subsequently proceeded on an uncontested basis, and interim judgment (which included the AM Orders) was granted on 23 May 2016 on the terms of the 1st DCO.

5 In March 2017, the CPF Board sent a letter to the Wife informing her of its objection to the transfer of the Flat with no refund to the Husband’s CPF account on the terms of the interim judgment. The CPF Board explained that the transfer of property with no refunds applies only to orders for division of matrimonial assets. As the AM Orders expressed the transfer to be “in

consideration of the transfer arising from the Maintenance Order”, the necessary refunds are required. The CPF Board further advised as follows:

If you wish to proceed with the transfer of Flat with no refund to [the Husband’s] CPF account, the Order has to be varied such that the transfer of the flat with no refund is made under section 112 of the Women’s Charter.

6 On 1 June 2017, the Husband signed a second draft consent order (“the 2nd DCO”), containing a variation to the AM Orders by removing the express link between the Wife’s waiver of her maintenance claim and the division of the Flat. This was done in accordance with the advice of the CPF Board. Apart from this amendment, the 2nd DCO is otherwise substantially the same as the 1st DCO. The Wife then proceeded to file an application to vary the AM orders, enclosing the 2nd DCO.

7 On 21 June 2017, the Husband wrote to the court seeking a “review” of the AM Orders. Thereafter, on 27 July 2017, the Husband engaged counsel to contest the validity of the 1st and 2nd DCOs. He then filed an application to set aside the AM Orders. He argued below that: (1) his consent to the 1st DCO (encompassed in the AM Orders) was vitiated; (2) the AM Orders are oppressive and unfair; and (3) the CPF Board’s objection to the AM Orders renders them invalid. The DJ dismissed the Husband’s application.

Decision

8 The power to set aside or vary a consent order on the division of assets under s 112(4) of the Women’s Charter (Cap 353, 2009 Rev Ed) (“the Charter”) is to be exercised narrowly. An applicant must prove one of the vitiating factors, or that the order was or has become unworkable: see *AYM v AYL* [2013] 1 SLR 924 (“*AYM*”) at [22]–[23]; *BMI v BMJ and another matter* [2018] 1 SLR 43 at [3]–[5]; *Lee Min Jai v Chua Cheow Koon* [2005] 1 SLR(R) 548 at [5]. While it is possible that unworkability may be due to a fundamental misunderstanding, it must be a fundamental misunderstanding on the face of the order: *AYM* at [29].

Whether the AM Orders should be set aside

9 The Husband makes several arguments in an attempt to have the AM Orders set aside. He submits that he was under duress exerted by the Wife and their two children when he signed the 1st DCO. He also argues that they had “misrepresented” the contents of the 1st DCO to him. He further points out that he had only “glance[d] through the documents without the requisite mental focus” because he was “in a despondent state of mind” and “reeling from emotional turmoil”. He also complains that he cannot be expected to understand legal jargon.

10 Starting with the arguments on the Husband’s capacity to appreciate the documents before him, if the Husband genuinely did not understand the terms of the 1st DCO, he could have sought assistance or expressed that he needed more time to consider them. As noted by the DJ, the Husband is educated, and held the rank of First Warrant Officer in the Singapore Armed Forces before his retirement. I also observe that more than a year elapsed between his signing of the 1st and 2nd DCOs. I emphasise that it is a serious matter for one to sign a legal document before a Commissioner of Oaths or before a lawyer.

11 As for the other vitiating factors, there is insufficient evidence to persuade me that any of them applied. As the DJ had noted, no particulars of the alleged duress or misrepresentation (such as words used, or the specific conduct of the Wife and the two children) were provided. It is clear from the words of the 1st DCO that the parties had then intended for the Husband not to receive any CPF

refund of monies utilised for the purchase of the Flat. Without more, there is nothing to suggest that the Husband was labouring under duress or misrepresentation when expressing this intention.

12 I note further the Husband's submission that the terms of the AM Orders operate oppressively against him and that the grant of the AM Orders do him injustice. I emphasise that it must not be forgotten that consent orders are the end of a process of "give-and-take" to harmoniously resolve a dispute between parties. There is another party, the Wife in this case, who has participated in negotiations towards an agreement and who has relied on the resolution process to move on from this dispute. The need for finality is a significant consideration: see *AYM* at [12].

13 The DJ was thus not wrong in refusing to set aside the AM orders.

Whether the AM Consent Orders should be varied

14 The second issue is whether the DJ was wrong in granting the Wife's application to vary the AM orders on the account of the 2nd DCO. The Husband argues that the act of seeking a variation itself means that both parties have withdrawn their earlier consent on the matter. Further, he had written to court requesting for a review of the AM Orders thereby nullifying his consent. His argument is that since consent was withdrawn prior to the variation hearing, the DJ should have directed parties to file and exchange affidavits on ancillary matters ("AOMs") for the case to be heard on its merits. His submission is essentially that the DJ was in error for not proceeding to hear the matter as if it were a contested AM proceeding from the start. Thus, he submits that the DJ should not have relied on the 2nd DCO in allowing the Wife's application for variation.

15 The Husband's submission is misconceived. When the court determines a variation application, it does not re-open the original orders with the effect of disregarding the original order which is the subject of the variation application. The Wife's application for variation does not confer on the Husband a licence to re-litigate the AMs. Instead, in the context of varying a prior *consent* AM order, the court is generally limited to considering whether the order was unworkable or has become unworkable. The DJ was not wrong in hearing the parties based on the affidavits and submissions before him and proceeding to reach the orders he did, without directing parties to exchange AOMs.

16 The variation is necessitated by the CPF Board's objection to the terms of the AM Orders: see [5]–[6] above. The effect of the amendment in the 2nd DCO is to remove the express link between the Wife's waiver of maintenance and the division of the matrimonial home. This amendment was necessary to give effect to the 1st DCO which would otherwise be unworkable. No other variation was sought.

17 There was nothing substantive in the variation. Contrary to the Husband's submissions, the CPF Board did not object to the Husband not receiving any CPF refund as long as the AM Orders were varied to address the issue it had raised. The 1st DCO, encompassed in the AM Orders, continues to substantively govern the parties, and the variation will enable it to be carried out. The variation clarifies that the transfer of the Flat will be pursuant to s 112 of the Charter and is not a payment of lump sum maintenance. Nothing inconsistent with this is apparent on the face of the 1st DCO.

Conclusion

18 For the above reasons, I dismiss the appeals.