

UNE v UNF
[2018] SGHCF 15

Case Number : Divorce (Transferred) No 1855 of 2016 (Summons No 291 of 2018 and Summons No 301 of 2018)
Decision Date : 31 October 2018
Tribunal/Court : High Court
Coram : Debbie Ong J
Counsel Name(s) : Foo Soon Yien and Hayden Seah (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 – Civil contempt – Penal notice – Leave of court

31 October 2018

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

Background

1 These applications arise from consequential orders which I had made in *UNE v UNF* [2018] SGHCF 12. I will use the same references to the parties which I had adopted in those written grounds. I delivered my decision on the ancillary matters on 27 June 2018. I ordered that the matrimonial assets were to be divided equally, but left it to parties to work out the consequential orders. As they were unable to agree on all the terms, each party submitted their proposals for my consideration. I made the consequential orders on 30 July 2018, providing in clause 5 that the Upper Bedok property “shall be sold in the open market at or above their gross values as used in the Judgment, within six months from the date of this order. Alternatively, the properties shall be sold to the highest offerors”. The latter sentence was proposed by the Wife, and I accepted that the properties could be sold below the gross values to the highest offerors if no offer at or above the gross values could be obtained in the six-month period. I also ordered that parties were to have joint conduct of the sale. Parties then extracted the order on 6 August 2018 (“the Order”).

The present applications

2 The Upper Bedok property remains unsold. The Wife claims that this is because of the Husband’s “obstructive conduct” – while there have been several offers, the Husband had failed to respond even after her solicitors had written to him. The Husband points out in response that the Wife had appointed professionals and accepted the option fee for the sale of the Upper Bedok Property without consulting him, even though parties were ordered to have joint conduct of the sale.

3 The Wife took out two applications.

SUM 291

4 In HCF/SUM 291/2018 (“SUM 291”), the Wife applies for an order empowering the Registrar or

Assistant Registrar of the Family Justice Courts to execute, sign or indorse all necessary documents relating to the sale of the Upper Bedok property. The Wife submits that clause 5 of the Order should be interpreted to mean that the property must be sold to an offeror at or above their gross values in the six-month period. She argues thus that the Husband is in breach by refusing to accept an offer made at \$3.48m, which is above the gross value fixed by the court at \$3.3m.

5 As I have said earlier, I accepted that the properties could be sold below the gross values to the highest offerors if no offer at or above the gross values could be obtained in the six-month period. The gross value was to be the minimum sale price during the six-month period, unless the parties agreed otherwise. There is no obligation on either party to accept the first offer that is above the gross values. Thus I do not accept the Wife's interpretation of clause 5.

6 I also clarify that the six-month period referred to in the order cited at [1] above started running from 30 July 2018, when I delivered my decision on the consequential orders. Thus, parties still have three months to ensure that the Upper Bedok property is sold in the open market. Hence, even if I were to include the clause sought by the Wife, it will not come into effect until the expiry of the six-month period.

7 The Husband does not object in principle to such a clause. He only disagrees with the Wife's submission that the Registrar's empowerment clause should take effect immediately on the ground that he has already breached clause 5.

8 The following clause is allowed:

The Registrar or Assistant Registrar of the Family Justice Courts under section 31 of the Family Justice Act 2014 is empowered to execute, sign, or indorse all necessary documents relating to matters contained in this order on behalf of either party should either party fail to do so within seven days of written request being made to the party.

9 This clause is subject to the condition that it can only be exercised after the deadline for the sale of the properties has passed, *ie*, six months from 30 July 2018.

SUM 301

10 In HCF/SUM 301/2018 ("SUM 301"), the Wife applies for a penal notice to be inserted in the Order. I am of the view that it is not necessary for the Wife to apply to the court for the endorsement of a penal notice. The Husband in fact also takes the view that the application was unnecessary, and has agreed in principle that a penal notice may be endorsed, but submits that there has not been a breach of clause 5 of the Order.

11 First, I observe that r 696(4) of the Family Justice Rules 2014 (S 813/2014) ("FJR"), which sets out the prerequisites to the enforcement of court orders, only requires that the order sought to be enforced be "endorsed with a notice in Form 136 [*ie*, the penal notice]". It does not expressly state that the notice must be endorsed by the court or that the court's leave is required. Second, parties are expected to comply with court orders, regardless of whether those orders have been endorsed with a penal notice. In other words, the endorsement of a penal notice does not impose any fresh legal obligation on either party. Rather, it only serves to provide notice. Rules 696(2) and 696(4) provide that an order must not be enforced under r 694 unless a copy of the order endorsed with the requisite notice has been served personally on the party required to comply with the order. If a party is a corporate legal entity, a penal notice must be served personally on the officer of the company against whom an order of committal is sought, rather than the legal entity itself: r 696(3). These rules

ensure that the relevant person is given notice of the order and the consequences of non-compliance. The court even has the power to dispense with such notice for mandatory and prohibitory orders when it is clear that the alleged contemnors are aware of the terms of the orders and are also alive to the consequences of non-compliance: *OCM Opportunities Fund II, LP and others v Burhan Uray (alias Wong Ming Kiong) and others* [2005] 3 SLR 60. Since the rationale behind the penal notice is to put a party on notice, there is no reason to require a party to apply to court for the endorsement of a penal notice; an endorsement by a party or his solicitors will have the same effect. Notice is given by the parties; it need not be part of a court order.

12 An argument may be made that since an order of committal may result in the loss of liberty for an individual, the court should afford the maximum procedural safeguards for the individual. However, safeguards already exist: r 759 of the FJR requires an applicant to obtain leave of court before applying for an order of committal. Further, r 763 empowers the court to suspend the execution of a committal order by giving the contemnor a further chance to purge his or her contempt by complying with the order.

13 There is also authority for the proposition that since a penal notice is not part of an order of court, the party who extracts the order may endorse it without leave: see *Anglo-Eastern Trust v Kermanshahchi* [2002] All ER (D) 296 (Oct), applied in *Deery v Deery* [2016] NICH 11. These authorities are consistent with r 696(4) of the FJR, which states that the *copy* of the order served must be endorsed with the penal notice.

14 I note that in *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1, the Court of Appeal allowed a penal notice to be inserted in the order of court: [27]–[29]. The Court of Appeal also stated at [43] that “the wife’s application in SUM 201/2015 [for the insertion of the penal notice] was a necessary precursor to any commencement of committal proceedings against the husband”. The Court of Appeal was stating the established position that such a notice is a precursor or a requirement to the commencement of committal proceedings. Further, the parties in that appeal appear to have proceeded on the basis that a penal notice should be endorsed by the court; the Court of Appeal was not asked to consider whether that assumption was correct and no submissions were made on that issue. This observation also applies to *APC v APD* [2014] SGHC 260, another case which the Wife relies on. In both cases, the court considered whether the requirements for the commencement of committal proceedings were satisfied. This enquiry should not be confused with the separate question of whether the court must grant leave before an order may be endorsed with a penal notice.

15 All court orders must be complied with. A litigant is entitled to receive what he or she is entitled to under a court order. If she seeks to enforce the order by way of committal proceedings, there are a number of steps which she must take. She will need to serve on the other party a copy of the order endorsed with the penal notice. She will then have to seek leave to commence committal proceedings. If leave is obtained, she may file an application for committal.

16 Whether an alleged contemnor ought to be committed for any breach is a question for the court hearing the committal application to decide. There is generally no reason for the court determining the substantive orders to decide at that stage whether a potential breach should or should not entitle a litigant to pursue enforcement remedies. But a court may insert a penal notice as part of its orders upon an application by either party if it considers such an inclusion just in the circumstances of the case.

17 Since both parties in this case are represented by counsel and clause 5 of the Order has not been breached, I leave it to the Wife to endorse the Order with a penal notice if this is the course she wishes to pursue. I therefore make no orders on SUM 301.

Conclusion

18 For the above reasons, I allow SUM 291 on the terms set out above and make no orders on SUM 301. I also make no order as to costs. The Wife's application in SUM 301 is not unreasonable as there is no previous High Court or Court of Appeal authority on whether a penal notice needs to be endorsed by a court. As for SUM 291, neither party fully prevailed in their respective positions taken.

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