LAB's Case Digest (July - September 2024)

This digest features various High Court cases on family law and procedure, published since the April - June 2024 Case Digest, which LAB found to be of interest. Each case write-up only focuses on points which LAB has found to be of interest and does not cover every issue that was considered in the case.

1. Interlocutory applications – ancillary matters

1.1 WWG v WWH [2024] SGHCF 26

Interlocutory application for an injunction against sale of matrimonial property pending ancillary matters hearing

Forum: General Division of the High Court (Family Division)

Brief facts: The wife applied for an injunction against the husband selling one of their matrimonial properties, which was held in the husband's sole name ("the Property"), pending the ancillary matters hearing. The interlocutory application was dismissed. The wife appealed. The High Court dismissed the appeal.

Key points:

(a) The wife submitted that the husband planned to use the proceeds from the sale of the Property (approximately $354,000) to pay off his credit card debt (approximately $476,000), which arose from the husband's high risk stock trading activities. She also claimed that the husband had a gambling problem. The High Court was of the view that these were not relevant to whether the court should grant the injunction.

(b) The High Court dismissed the appeal as the wife could not show that the sale of the Property would prejudice her. An important consideration was whether there were adequate matrimonial assets remaining which could satisfy the likely division proportion a court would make in favour of the non-disposing party. In this case, the estimated value of the matrimonial pool was about $2,285,030, and the estimated net proceeds from the sale of the Property was about $354,000, roughly 15.5% of the matrimonial pool. Taking the wife's case at its highest, namely that she would be entitled to 70-80% of the assets, there would still be adequate assets remaining to satisfy her share.

2. Division of matrimonial assets; maintenance

2.1 WRX v WRY [2024] SGHC(A) 22

Division of matrimonial assets – giving effect to adverse inference for non-disclosure

Forum: Appellate Division of the High Court ("AD")

Brief facts: The parties were granted an Interim Judgment in July 2021. At the ancillary matters hearing, the High Court had found that the balance of the wife's disclosed bank accounts had "dropped significantly", by about $1,258,047, between June 2020 to June 2021. The wife claimed that the withdrawals were a return of monies that belonged to her extended family. The

High Court accepted that some of these monies belonged to various family members of the wife, but restored $444,784 to the pool of matrimonial assets, which were credited to the wife as her direct contributions. The High Court also drew adverse inferences against the wife for failing to comply with a court order to disclose, amongst other things, a significant number of bank statements (the "non-disclosure"). However, the High Court did not award a further uplift to the husband's final share because of the adverse inferences, on the basis that they would be best given effect by restoring the $444,784 to the pool of matrimonial assets. The husband appealed. The AD allowed the appeal.

Key points:

(a) The adverse inferences were properly drawn against the wife, given her non-disclosure. There are 2 approaches to giving effect to an adverse inference for the non-disclosure: (1) the "Quantification Approach" – estimating and including the value of the undisclosed assets to the matrimonial asset pool; and (2) the "Uplift Approach" – ordering a higher proportion of the known assets to the other party. The court is not restricted to adopting either of the approaches. In this case, both approaches were employed.

(b) The AD restored the entire $1,258,047 sum to the matrimonial asset pool, because the wife's non-disclosure meant that there was no evidence to support her case that any part of this sum belonged to her extended family members.

(c) Sums that the court notionally restores to the pool of matrimonial assets as a consequence of giving effect to an adverse inference should not be credited as the direct contributions of the party against whom the adverse inference was made. This is because these sums are added to give effect to an adverse inference rather than from that party's disclosure. The wife therefore ought not to have been credited with the $444,784 as her direct contributions, and the restored $1,258,047 sum would also not be credited as her direct contributions.

(d) The wife's non-disclosure made it a real possibility that she had concealed assets exceeding the $1,258,047 sum. Therefore, an uplift of 5% was given to the husband's final share (after applying the formula in *ANJ v ANK* [2015] 4 SLR 1043) to give full effect to the adverse inferences.

2.2 VRJ v VRK [2024] SGHCF 29

Division of matrimonial assets – dual-income marriage of ~15 years – equal weight given to direct and indirect contributions; club membership acquired before marriage

Forum: General Division of the High Court (Family Division)

Brief facts: This case involves an almost 15-year marriage, with two children (aged 16 and 12 respectively) at the time of the divorce proceedings. The parties had about S$3.5 million in matrimonial assets. This was a dual-income marriage as both parties worked for most of the marriage. The parties were separated on 5 September 2019. The wife commenced divorce proceedings on 22 January 2020 and the Interim Judgment was granted on 11 May 2022.

Key points:

(a) The husband had a club membership purchased for him by his parents before he married the wife. The children of the marriage had tennis and swimming lessons there. The High

Court held that this meant that the membership was ordinarily enjoyed by the children for recreational purposes, and was hence a matrimonial asset pursuant to s 112(10)(a) of the Women's Charter.

(b) During the marriage, the husband was responsible for making investments, buying insurance and other household expenses, while the wife was responsible for paying the children's expenses and saving the remaining money for the family. When the husband needed additional money, he would ask the wife for it, and she generally gave it to him. The High Court observed that this made tracing the parties' respective direct financial contributions for each asset exceedingly difficult. It also shows that the parties intended to treat their moneys as matrimonial moneys which belonged to each other, with each party having different responsibilities over the matrimonial moneys. Hence the losses and profits arising from the parties' exercise of their respective and agreed-upon responsibilities ought to be attributed equally to the parties. In the circumstances, the court found that the direct financial contributions ratio was 50:50. The court found the indirect contributions ratio to be 50:50 also, on the facts.

(c) The High Court stated that as this was a marriage of 12 years (until the date of separation), the starting point was that equal weight should be given to both direct and indirect contributions, and that there was nothing on the facts that warranted an adjustment from this. (Though the wife was given an additional uplift of 10% from the overall 50:50 ratio, because of the husband's non-disclosure in relation to certain companies that he invested in or was a director of, which led the court to draw an adverse inference against him.)

2.3 WWM v WWN and another appeal [2024] SGHCF 27

Division of matrimonial assets – affidavits filed by parties' children; CPF monies given to child for purchase of property; joint accounts between wife and child; no uplift to husband based on his medical condition

Forum: General Division of the High Court (Family Division)

Brief facts: This case featured a long dual-income marriage – the parties were married in 1981, and had two adult children. The wife filed for divorce in April 2022 and the Interim Judgment was granted in October 2022. The ancillary matters ("AM") were heard in the District Court, and went on appeal to the High Court, with husband and wife both appealing.

Key points:

<u>*Children's affidavit*</u>

(a) The wife said she should have been awarded more in indirect contributions (she was awarded 60%), based on affidavit evidence provided by the parties' children. However, these affidavits were struck out by the District Judge as they were filed without leave of court as required under r89(3) FJR 2014 (which states that parties can only file 2 AM affidavits each – the affidavit of means and a reply to the other party's affidavit of means). The wife argued that r89(3) provided for two *rounds* of affidavits (during which you could file multiple affidavits and affidavits by third parties) rather than just two affidavits. The High Court held that this was incorrect. Leave was required for any other affidavits aside from the affidavit of means and reply by the parties.

(b) The next issue was whether the children's affidavits ought to have been struck out or whether they should have been allowed as being relevant and necessary to the proceedings. The High Court held that they were not allowed, as the children's affidavits seemed to mostly provide additional support to the wife's claims and rebuttals against the husband's factual allegations. The District Judge did not seem to have placed less weight on the wife's allegations and rebuttals just because they were not corroborated by the children. In any event, based on the contents of the children's affidavits through the parties' written submissions, the High Court did not think that they warranted an increase of the wife's indirect contributions.

Wife's CPF monies given to daughter to purchase property

(c) The wife had received her CPF monies and gave about $118,000 to the daughter to help her buy a property. The husband accused her of dissipating this money. However, the High Court found on the evidence that he had agreed to the gift to the daughter, hence this was not added back to the matrimonial pool.

Joint bank accounts between wife and daughter

(d) The wife had two joint accounts with the daughter – and the wife had argued that these should be excluded from the matrimonial pool as her and the daughter's funds were co-mingled, and it was not possible to ascertain which monies belonged to whom. The accounts were also only operated by the wife and daughter. The High Court disagreed. The assets of parties to the marriage were generally treated as matrimonial assets unless a party could prove, on a balance of probabilities, that any particular asset was either not acquired during the marriage or was acquired through gift or inheritance and was therefore not a matrimonial asset. The wife could not prove this in relation to the joint accounts. She also admitted that the moneys in these accounts were used for the household expenses. Hence half of the monies in the joint accounts were considered matrimonial assets (i.e. the wife's share).

Whether there should be an uplift on the basis of husband's medical condition

(e) The husband had argued that he should have been given an uplift of at least 5% in the final division of the matrimonial assets on account of his prostate cancer and other medical conditions (hypertension, diabetes, coronary issue (stent in his heart), and high protein in the urine). The uplift would help him with the cost of cancer treatment and the need to employ a domestic helper or nurse to take care of him. The High Court refused to give the uplift, stating that the apportionment of matrimonial assets must generally be based on the contributions of the parties, not on account of their health unless exceptional circumstances were present. In any event, on the facts, it appeared that the husband had the financial means to maintain himself.

Other matters

(f) The pool of matrimonial assets was about $3.74 million. The direct financial contributions were 29.1:70.9 in the husband's favour, and the indirect contributions

were 60:40 in the wife's favour, with the final ratio as 45:55 (with rounding), in the husband's favour. Equal weight was given to the direct and indirect contributions.

(g) The court noted that after the appeal, the husband's entitlement was reduced by $27,127.70, and the wife lost only $22,240.32. The court stated that the parties should not have appealed to adjust the sums received by less than 1% of the original asset pool. The parties were ordered to bear their own costs in the appeals.

2.4 WVN v WVO [2024] SGHCF 32

Division of matrimonial assets – valuation of stock options (pro-rating); wife maintenance

Forum: General Division of the High Court (Family Division)

Brief facts: The parties were married in 2005 in the United States, and had one child (aged 10) to the marriage. Their marriage lasted about 17 years. Interim Judgment was granted on 3 March 2022 ("IJ date"). The wife appealed against the District Judge's decision on ancillary matters. The issues on appeal included the valuation of the husband's Performance Share Units (which had been valued at $0) ("PSUs"), and wife maintenance (she had been awarded $1,500 for 18 months). At the time of the appeal both parties were not working. The husband last worked in 2023, and the wife had never worked in Singapore. She was last employed overseas about 14 years ago.

Key points:

Valuation (pro-rating) of the husband's stock options

(a) The husband had been employed by Company A from February 2020 to 31 May 2023. Pursuant to company A's long term incentive plan, the husband was granted PSUs as follows:

(i) 19 March 2021 – vested in Feb 2024
(ii) 2 March 2022 – to be vested in Feb 2025
(iii) 21 February 2023 – to be vested in Feb 2026

These PSUs would be vested to the husband subject to him meeting a Performance Vesting Condition, which consisted of certain specified "financial, business, personal or other performance criteria".

(b) The court held that the PSUs were stock options – choses in action – and where such stock options were not yet vested on the IJ date, the time rule ought to be applied to determine what portion of the stock options was earned before the IJ date.

(c) The High Court referred to the time rule expressed in *Chan Teck Hock David v Leong Mei Chuan* [2002] 1 SLR(R) 76 ("*David Chan*") which suggested the following formula to determine the portion of stock options that should form part of the pool of matrimonial assets:

$$No.of\ stock\ options \times \frac{\text{No. of months from start of husband's employment to IJ date}}{\text{No. of months from start of employment to date when option was exercisable}}$$

(d) That said, the High Court held that this formulation of the time rule set out in *David Chan* was merely one non-exhaustive way of pro-rating such stock options. The type of time rule to be applied depended on the requirements of each case. In this case, unlike in *David Chan*, the period before the PSUs were issued were not relevant in pro-rating the number of PSUs. This was because in order to have the PSUs vest, the husband had to meet certain performance vesting conditions, which would be assessed from the date of grant (and not before) to the vesting date.

(e) Hence, the High Court used the period from the date of the grant to the IJ date as the numerator, and the period from the date of the grant of the PSUs to the vesting date of the PSUs as the denominator. This was for the PSUs vested in 2021. Using the formula, the court held that one third of the PSUs for 2021 should be included in the matrimonial asset pool. The PSUs granted in 2022 and 2023 were excluded since the duration of the date of the grant of the PSUs to the IJ date was zero months.

Wife maintenance

(f) On wife maintenance, the wife's reasonable expenses were about $5,000 a month. The High Court ordered the husband to pay wife maintenance of $2,000 per month without any time limit, taking into account the following:

i. the wife had not worked in Singapore and had not been working for 14 years;
ii. the husband was only unemployed for a year and was previously paid more than $26,000 per month, not including bonuses, and was more likely to find employment than the wife in the near future;
iii. the wife did not have her own property (although she was awarded about $1.3 million from the matrimonial asset pool); and
iv. she had to take care of the child as a single parent.

2.5 WUI v WUJ [2024] SGHCF 25

Division of matrimonial assets – Dual-income marriage of 8.5 years with no children; parties' indirect contributions

Forum: General Division of the High Court (Family Division)

Brief facts: This case featured a dual-income marriage with no children. Parties in this case were married in October 2011. The wife moved out of the family home in November 2020. Interim judgment ("IJ") was granted in June 2022. Parties only lived together for about 8.5 years, though the official length of marriage (from date of marriage to date of IJ) was longer. At the ancillary matters hearing, the District Judge ("DJ") used the structured approach in *ANJ v ANK, supra,* to divide the matrimonial assets. Amongst other things, the DJ found that the percentages of direct financial contributions for the wife and the husband were 6.67% and 93.33% respectively. DJ did not consider or calculate the parties' indirect contributions on the basis that it was a short dual-income (and childless) marriage. The wife appealed. The High

Court allowed the appeal in part. In particular, the case provides guidance on how the *ANJ v ANK* framework can be applied to relatively short dual-income childless marriages.

Key points:

Duration of marriage / Labels on duration of marriage

(a) In assessing the parties' indirect contributions and the weight to be placed on them, the High Court used the duration of the marriage from the commencement of the marriage to the date on which parties ceased to live with each other (i.e. total of 8.5 years). In this case, there was no evidence that the parties contributed to each other's life or the marriage in general after the wife left the family home.

(b) While the act of categorising marriages as "short", "moderate" and "long" was a heuristic tool, useful in many cases, and was especially useful in clear-cut cases, e.g., in extremely short or lengthy marriages, such labels should not be given undue weight and be allowed to take precedence over assessing the actual facts of the case.

Indirect contributions still relevant for "short" dual-income marriages with no children

(c) Indirect contributions were often assessed to be tangential or irrelevant in cases where marriages were of such brief nature that they did not even factually last the mandatory three-year period under section 94(1) of the Women's Charter. But even for such cases, this is not a hard and fast rule, and the court must still be cognisant of the actual facts. If the facts show that the partes had provided extremely substantial support to each other in a two- or three-year marriage, it should certainly be open to a court to decide to accord some weight to such indirect contributions.

(d) The general principle to accord some weight to indirect contributions in most circumstances should apply with equal force to marriages with no children. Therefore, for the present case, the High Court held that *ANJ* framework should apply in full such that indirect contributions should be considered. Applying a broad-brush approach, the High Court held that a 50-50 ratio for indirect contributions was appropriate in the present case.

Weight to be placed on the direct and indirect contributions ratios

(e) The High Court held that a 20:80 weightage in favour of direct financial contributions was fair in the present case based on the following considerations: (i) this was a marriage on the shorter side of around 8.5 years; (ii) parties relied heavily on domestic helpers so the collective indirect contributions in the homemaking and caregiving aspects should have been significantly tempered; and (iii) parties did not appear to have invested much in building a shared life together.

(f) Applying the *ANJ* framework, the overall ratio of direct and indirect contributions was 85:15 in favour of the husband.

2.6 WTS v WTR and another appeal [2024] SGHCF 33

Division of matrimonial assets – valuation of matrimonial flat; pre-marital assets; adverse inference for non-disclosure of jewellery; joint bank accounts with child; whether marriage was single-income or dual-income

Forum: General Division of the High Court (Family Division)

Brief facts: The parties in this case were married for about 15 years and lived together for nearly 12 years, before the husband left the matrimonial flat ("Flat") together with the child of the marriage. The child was about 12 years old at the time of hearing of the appeal. The District Judge ("DJ") gave his decision on the ancillary matters on 7 November 2023. The wife appealed against the DJ's decision, and the husband also cross-appealed.

Key points:

Valuation of Flat

(a) The husband argued that the Flat was overvalued, as it was in a state of deterioration. However, the High Court did not accept this argument. This was because the husband had failed to submit evidence on the state of the flat or the cost of repairs/renovations.

(b) The husband argued that the DJ's use of a valuation of a flat located on the 13th-15th floor to value the matrimonial flat was wrong, because higher floors commanded a higher price, and the matrimonial flat was on the 10th floor. The High Court disagreed, since the husband had limited his search for resale prices of flats similar to the matrimonial flats in the same estate to sales between $400,000 and $500,000 – and none of the flats in his search results were situated on the 10th floor.

(c) In contrast, the wife's search results (for a slightly different set of blocks of flats, though with some overlap) turned up a flat located on the 13th -15th floor which sold for $560,000, which was the most recent flat listed in the parties' search results to be sold. The High Court thought it was reasonable to rely on this, considering that neither party had provided any record of flats between the 10th-12th floor in the same estate, nor a valuation report for the matrimonial flat. The High Court upheld the DJ's valuation of the Flat.

Pre-marital assets

(d) The husband had argued that a $10,000 sum in one of his POSB bank accounts and his CPF balance as at October 2007 of $99,697.48 were pre-marital assets. However, the High Court held that they were matrimonial assets. This was because the husband had applied his CPF monies to purchase the matrimonial flat (so they became a matrimonial asset pursuant to section 112(10)(a)(i) of the Women's Charter 1961). Secondly, these pre- and post-marital assets were co-mingled, which made tracing them impossible.

Adverse inference for non-disclosure of jewellery

(e) The husband alleged that the wife had undeclared jewellery. The husband had taken photographs of some jewellery in the wife's possession. The wife did not dispute that this jewellery existed and was hers. Therefore, the High Court drew an adverse inference against her for non-disclosure of the jewellery. Using the broad-brush approach, the High

Court valued the jewellery at $10,000. This value was to be split 79-21 in husband's favour. The wife was ordered to pay $7,900 to the husband.

Parties' respective joint bank accounts with child

(f) Both parties had joint bank accounts with the child. The DJ had allowed the parties to be solely entitled to the funds in their respective joint accounts with the child, which decision the High Court upheld. It was not clear in this case that the parties had intended the money to form the child's savings.

Single-income marriage

(g) The wife argued that the marriage was a single-income one, but the DJ had treated it as a dual-income one. The High Court accepted the wife's argument. The wife's earning capacity of $1,800 (from conducting cooking classes and Little India tours) paled in comparison to the husband's earning capacity of $15,555 a month. The wife was a homemaker for most of the marriage – the cooking classes and tours were something she only did for about 3 years during the marriage.

(h) However, the High Court did not disturb the DJ's decision for the 79-21 split in the husband's favour. The duration of the marriage was around 11 to 12 years, where the wife had the help of the husband's parents in caring for the child, and also did not fully take care of the child for years, because of her postnatal depression and phone addiction. Hence her contributions to the household were not that significant.

Wife maintenance

(i) The High Court increased the wife's maintenance from $1,500 to $2,000 per month for a duration of 24 months, to be paid in a lump sum. Factors for consideration included: (a) the wife's lower earning capacity; (b) she had no CPF savings; (c) she had no permanent job history in Singapore; (d) she had a comparatively small amount of the matrimonial assets, i.e. $187,286.34; and (e) she could work in both Singapore and India with no need for a visa (as she was an overseas citizen of India), and was still young (42 years).

Child maintenance

(j) The High Court ordered the wife to bear 10% of the child's expenses (which the DJ found to be $1,700 a month), which represented the ratio of the parties' respective earning capacities, as a lump sum (in case the wife returned to India permanently). However, the wife did not have to pay backdated maintenance from the child's birth until November 2023 when the husband moved out, as sought by the husband, as this would *"wrongly imply that the parties' marriage was a calculative commercial relationship rather than a partnership of love and give-and-take"*.

3. Probate and Administration

3.1 WWI v WWJ [2024] SGHCF 28

Wills – Testamentary capacity

Forum: General Division of the High Court (Family Division)

Brief facts: This appeal case involved two siblings' dispute over their deceased mother's ("Mother") estate. The appellant (4th son) ("A") and the respondent (eldest son) ("R") were the 12th and the 3rd child of 14 children, respectively. The Mother had executed three wills:

(a) 1st Will was executed in March 2005, bequeathing her entire estate to R, with a testamentary disposition of $5,000 to each of the seven named daughters.
(b) 2nd Will was executed in April 2017, bequeathing her entire estate to A.
(c) 3rd Will was executed in June 2017, bequeathing her entire estate to R, with a testamentary disposition of $10,000 to each of the seven named daughters.

The Mother died in December 2019. In 2020, R obtained the grant of probate based on the 3rd Will. A (i.e. the appellant) commenced action to revoke the probate obtained by R. The District Judge ("DJ") found that the 2nd Will and the 3rd Will were invalid and only the 1st Will was valid. Grant of probate issued based on the 3rd Will was revoked. Leave was given to R to apply for grant of probate based on the 1st Will. A appealed against the DJ's finding that the Mother did not have the mental capacity to execute the 2nd Will. The High Court upheld the DJ's decision.

Key points:

(a) The Mother's health started to deteriorate in 2016, prior to the making of the 2nd Will and 3rd Will. In March 2017, she scored poorly in a Mini-Mental State Examination (14 out of 28 points) and was recommended by the doctor to undergo a full test. However, A proceeded to arrange for her to execute the 2nd Will in April 2017, which was witnessed by two estate planners. Shortly after, in June 2017, R made arrangements for the Mother to execute the 3rd Will. In July 2017, the Mother was examined by a doctor Dr FN who assessed that she had dementia of moderate severity. He opined that any decision made by the Mother during the past year should be considered invalid, which included the 2nd Will and the 3rd Will.

(b) The High Court found that A's arguments that the DJ had given undue weight to the Mini-Mental State Examination scores and insufficient weight to the evidence of the two estate planners lacked merits. The DJ was correct to rely on the overall testimony of Dr FN who seemed to carry out a more thorough examination of the Mother's mental capacity than the other doctors. The estate planners appeared to ask cursory questions and had no idea that some of the answers by the Mother were wrong.

(c) The High Court also found that it would seem obvious to any impartial observer that both the 2nd and 3rd Wills were made under suspicious circumstances. In particular, regarding the 2nd Will, the High Court rejected the argument that A was a layman and could not be expected or taken to understand the legal significance of a formal mental capacity assessment. Instead of taking the Mother for a full mental capacity medical examination after knowing that she had scored badly in the mental capacity assessment, A instead brought her to a lawyer to execute the 2nd Will.

LAB's comments: If there is any doubt about the testator's mental capacity to make a will, the person should be brought to undergo a mental capacity assessment first, rather than being brought to make a will.

3.2 XBW v XBX and another [2024] SGHCF 30

Probate and Administration — Special and limited grants of administration

Forum: General Division of the High Court (Family Division)

Brief facts: This case illustrates the court's power to appoint an interim administrator under section 20 of the Probate and Administration Act ("PAA") and sets out his powers. The Deceased, who was widowed in 2017, died in May 2023 at the age of 76. The deceased's son ("Plaintiff") sought to apply to be the administrator of her estate. However, 2 of the Deceased's 7 siblings ("Defendants") opposed this, claiming to be the executrices of the deceased's will (which they could not find the original of), and hence filed a probate action to propound a lost will. The Plaintiff opposed this, and sought an order that the will be declared destroyed with the intention of revoking it. The parties initially agreed to appoint an independent interim administrator (under section 20 of PAA) pending the hearing of these actions. However, the Defendants went back on the agreement, saying that it was not necessary to have an independent interim administrator, and that the Plaintiff was trying to expand the powers of this role, in bad faith. Hence, the matter ended up in the High Court.

Key points:

(a) Given the uncertainty of the existence of the alleged will, the substantial monies in the Deceased's bank accounts, there were also rental monies coming in, and the ongoing actions, the High Court found it prudent to appoint an interim administrator to maintain the status quo and to ensure that in the meantime, the movables of the estate were not moved to where they should not be.

(b) The High Court ordered that an independent interim administrator be appointed (i.e. not the Plaintiff or Defendants, but a neutral third party). The administrator was to keep a proper account of the monies in the deceased's bank accounts, to preserve the monies pending the outcomes of the main applications. The administrator would not be empowered to do anything else, such as sell immovable properties or distribute the estate.

3.3 Chan Wai Leen (in her personal capacity and as the administratrix of the estate of Wong Ching Fong, deceased) and another v Ho Dat Khoon [2024] SGHC(A) 24

Gifts – avoidance; Instrument of Transfer of Property; Wills; Rectification of the land register

Forum: Appellate Division of the High Court ("AD")

Brief facts: This case involves an elderly lady (aged 76) ("Plaintiff") who ended up executing an instrument of transfer ("Transfer") gifting her only property ("Property") to her grand-niece ("D2") sometime in 2016. On the same day, she also signed a will giving the property to D2 ("2016 Will"). D2 then applied for and became the registered proprietor of the Property.

The Plaintiff applied to set aside the Transfer and rectify the land register, on the basis that she did not understand the nature and effect of the Transfer she had signed. The High Court had agreed with her, and set aside the Transfer. She did not seek to invalidate the 2016 Will although she also took the position that she did not intend to make the bequest to D2 under the 2016 Will.

The Plaintiff's niece-in-law ("D1", the mother of D2) and D2 appealed. The AD upheld the High Court's finding that the Transfer was not validly executed. It was clear that the Plaintiff did not understand the nature and effect of the Transfer that she had signed, and she had not intended to give the Property to D2.

Key points:

Mental capacity

(a) The AD agreed with the High Court's finding that the Plaintiff had had the mental capacity to execute the Transfer and the 2016 Will. However, the AD noted that the Plaintiff (i) had a few falls in 2016, (ii) suffered from hearing loss when she executed the Transfer in 2016; (iii) had significant impairment of cognition, and she was susceptible to undue influence; and (iv) was more comfortable speaking in Hainanese or Mandarin.

Lawyer's conduct in respect of the Transfer / 2016 Will

(b) There was a history of the Plaintiff's nephew and his wife (D2's parents) arranging for the Plaintiff to sign various documents, including a will, where she did not seem to know what she was doing.

(c) For the 2016 Will, it was D2's mother (D1), who contacted the lawyer who prepared the will and gave him instructions on what to do. He spoke to the Plaintiff over the phone, but only kept a handwritten note, not a formal attendance note. He never saw the Plaintiff in person and alone before the date of the signing of the Transfer and Will, and seemed to take instructions mostly from D1.

(d) The Transfer and the 2016 Will were signed at a taxi-stand near the Plaintiff's workplace. The meeting was about 15-30 minutes long, and no attendance note was taken. The lawyer went through the Will speaking in a mixture of Mandarin and Cantonese (the Plaintiff later claimed during proceedings that she did not speak Cantonese). He told her that the Transfer had to be signed for stamp duty to be assessed.

(e) The AD was of the view that the lawyer did not appear to have acted in the best interest of the Plaintiff in respect of both the Transfer and the 2016 Will. The lawyer did not (i) ascertain from the Plaintiff herself as to whether she had other relatives and why she was giving the Property to D1 only, whether by way of an *inter vivos* gift or a will; or (ii) advise her on the prudence of such a course of action and the likelihood or possibility that it might invite litigation from other relatives. The lawyer also did not consider the possibility that the Plaintiff might not fully understand what she was doing or might be acting under the undue influence of someone else.

(f) The circumstances all pointed to the Plaintiff not understanding what she was signing – she had not intended to gift the Property immediately to D2.

Rectification of the land register

(g) On the issue of rectifying the land register – sections 160(1)(b) and (2) of the Land Titles Act ("LTA") state that the court can order the land register to be rectified if the registration has been obtained through fraud, omission or mistake, but only if the current proprietor was party or privy to the fraud etc, or has caused it or substantially contributed to it by act, neglect or default.

(h) The AD raised the issue of whose mistake it had to be, i.e. a mistake by the transferee only (in this case D2 - in which case the register could not be rectified), or whether it could be a mistake by the transferor (in this case the Plaintiff).

(i) The Court of Appeal in *United Overseas Bank Ltd v Bebe bte Mohammad* [2006] 4 SLR(R) 884 stated that it had to be a mistake by the transferee. The AD in this case said that hopefully this case could be clarified in future, as it seemed illogical that section 160(1)(b) of the LTA should be confined to a mistake by the transferee and would not extend to a mistake by the transferor.

(j) Anyway, it did not matter in this case, since the Transfer had been set aside, and D2 was not a purchaser who could assert indefeasibility of title against the Plaintiff under section 46(1) of the LTA. Since the Transfer had been set aside, the court could order rectification to reflect the title of the property before the Transfer was registered – as it would be illogical if the Transfer was set aside, but the land register could not be rectified to reflect this.

4. Child Law

4.1 WQY v Child Protector [2024] SGHCF 31

Family law – Children and Young Persons Act

Forum: General Division of the High Court (Family Division)

Brief facts: The mother in this case appealed against the Youth Court's decision to send her 2 daughters (aged 14 and 11 years respectively) to a place of safety for 12 months with a review in 6 months, pursuant to section 54(1)(b)(i)(A) of the Children and Young Persons Act ("CYPA"), as they were in need of protection under section 5(1) CYPA.

The Youth Court judge found that both daughters faced moral danger (under section 5(1)(c)(ii) of the CYPA) as they had been exposed to pornography under the mother's care. The daughters had also cut themselves and injured each other and their brother in fights. When the elder daughter told the mother she was being bullied at school, the mother encouraged her to bring a penknife to school. The mother had also emotionally abused the younger daughter by using degrading language and throwing handfuls of salt at her while saying "go away demon".

There was a Child Protective Service ("CPS") report and a Clinical and Forensic Psychology Service ("CFPS") report which had further evidence and views. The gist of the reports was that

there was no evidence suggesting the mother would cause immediate harm to the children, and the elder daughter did not have significant trauma or clinically significant depressive symptoms.

The High Court dismissed the mother's appeal.

Key points:

(a) The mother's first ground of appeal was that the Youth Court's decision was based on hearsay evidence given by a school counsellor whom the mother said was an unreliable witness and was "Satan". The High Court rejected this argument because section 53(2) of the CYPA provides that care and protection affidavits can contain hearsay evidence.

(b) The mother's second ground of appeal was that the daughters seemed to be worse off physically, mentally and academically after CPS' intervention, insinuating that the CPS officers had neglected and abused the children. The High Court rejected her arguments as there was no or hardly any evidence for the mother's assertions.

(c) In any event, the High Court noted from the evidence in the Youth Court that the mother herself was not able to properly care for or supervise her daughters, and her attitude towards parenting was dismal. The mother refused to acknowledge any criticism, and refused to attend counselling. Further, the younger daughter had apparently threatened to commit suicide if she were sent back home to the mother.

(d) Lastly, the mother said CPS had not made multiple attempts to engage her before removing the children. The High Court held that there was no legal requirement to engage the mother before removing the daughters. The CPS only had to be satisfied on reasonable grounds that the daughters were in need of care or protection (see section 11(1) of the CYPA).