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Understanding Third Party Civil Actions in Matrimonial Proceedings

Introduction

It would be common, and indeed expected, for the two markedly different regimes in civil and family law not to involve the other for a typical case commenced in Court. In fact, it is axiomatic of the dichotomy between the two that when filing a new case in eLitigation, the very first question posed is whether the case will be filed in the Family Justice Courts (an affirmative response results in users being re-directed to a separate filing system).

However, while a rarer and undoubtedly more complicated situation, the two regimes become intertwined when there are third-party interests implicated in assets which are asserted by one spouse to be a matrimonial asset, in the context of parties' divorce.

A. The Prevailing Law

As a general starting point, under the "deferred community of property" approach, any asset acquired by a spouse during marriage would be considered a matrimonial asset, included in the matrimonial pool, and subject to division between spouses.[1] Such 'quintessential' matrimonial assets include property purchased for the spouses to reside in, motor vehicles used as a 'family' car, and monies in joint bank accounts.

Envision this situation then: Annabel and Benedict are married. They live in their matrimonial home. During the marriage, Celine (Annabel's mother), purchases a property situated at 6 Glassim Road ("6 GR"). Celine pays up half of 6 GR, which she says is her wedding gift to Annabel. Nonetheless, 6 GR is held in Celine's sole name. Celine takes out a mortgage to pay for the remaining value of 6 GR; Annabel assists her mother by making equal payments of the mortgage instalments for 6 GR, despite not being a named borrower. Benedict does not contribute to mortgage payments on 6 GR. Benedict eventually files for divorce from Annabel. Would 6 GR form part of the matrimonial pool which Benedict is entitled to a share of?

The Court of Appeal's guidance in UDA v UDB and another [2018] SGCA 20 ("**UDA**") for a situation such as the above was this:

a) First, the spouse who claims the property to be a matrimonial asset may obtain legally binding confirmation from the third party that this is so and an undertaking that the third party would respect and enforce any order that the court may make relating to the beneficial interests in the property.

b) If this is contested, either that spouse or the other who is asserting that the property belongs beneficially to the third party would have to start a separate legal action to have the rights in the property finally determined, vis-à-vis the third party, in which case the s 112 proceedings would have to be stayed until the rights are determined. This would be Option 2.

c) The third possibility would be for the spouse to drop his or her claim that the property is a matrimonial asset and allow the s 112 proceedings to continue without it.

d) Alternatively, that spouse may ask the court to determine whether the asset is a matrimonial asset without involving the third party's participation at all or making an order directly affecting the property.[2]

In the context of a divorce, and where the third-party implicated is related to one of the spouses, it would be exceptional indeed for the issue to be resolved via either route (a) or (c). While (b) or (d) may be more logical in the context of the above, what exactly would this entail?

B. Practical Implications

Route (b) involves having "*either that spouse [i.e., Benedict] or the other who is asserting that the property belongs beneficially to the third party [i.e., Annabel] … start a separate legal action to have the rights in the property finally determined, vis-à-vis the third party*".

On a practical level, Annabel is unlikely to commence action against her mother, especially since it would be financially advantageous for her to have 6 GR excluded from the pool of matrimonial assets (which is to be divided with Benedict).

[1] s 112 of the Women's Charter 1961; exceptions to this general rule include pre-marital assets and inheritances

[2] UDA at [56]

After all, 6 GR is in her mother's name and does not de facto fall within the pool of matrimonial assets. That leaves Benedict with having to commence a civil suit against Celine and/or Annabel. Yet, such a suit also seems to sit uncomfortably within the typical civil regime – after all, Benedict is not asserting his own beneficial interest in 6 GR; rather, he asserts that Annabel has a beneficial interest in 6 GR, which ought to be included in the matrimonial pool. In addition, judicial pronouncements have also clarified that the:

32 … principles underlying property disputes in civil proceedings are distinct from those underlying proceedings under s 112 of the Women's Charter. In the former, the court determines the proprietary interests of the parties in accordance with areas of law such as property, equity and trusts or succession; in the latter, the court treats matrimonial assets as "community property", to be divided justly and equitably between the spouses according to the principles set out in s 112 of the Women's Charter…[3]

In that case, would Benedict even have locus standi to commence a suit against Celine and/or Annabel, when it would be arguable that he has no proprietary interest in 6 GR (from a civil perspective)? After all, it is trite that the general position is pithily summed up by the statement that: *"a plaintiff should not be able to commence proceedings seeking a declaration that A owed money to B, when the plaintiff was neither A nor B."*[4]

The answer appears to be yes. In Tay Amy v Ho Toh Ying [2021] SGHC 25 ("**Tay Amy**"), a wife (Mdm. Tay) commenced a civil suit against her husband's mother (Mdm. Ho), who had contributed the entire purchase price of a property held in the husband's sole name. The property, which was subsequently sold, was a matrimonial asset. Following the sale, the husband transferred the majority of the sale proceeds to Mdm. Ho. In the circumstances, Tay Amy was Mdm. Tay's application for the return of the monies transferred to Mdm. Ho to the matrimonial pool, on the basis that the monies used for the purchase of the property had always been intended by Mdm. Ho to be a gift to the husband.

[3] BUN and another v BUP [2018] SGHCR 17

[4] Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal [2005] SGCA 47

It is noteworthy that there were no discussions in Tay Amy of Mdm. Tay's standing to commence a claim against Mdm. Ho, especially as Mdm. Tay would have had no claim against Mdm. Ho vis-à-vis the property (or its sales proceeds) were it not for her marriage to Mdm. Ho's son. It is, perhaps, also unfortunate that both Mdm. Tay and Mdm. Ho appeared in person in the proceedings, without the assistance of legal counsel.

With that said, it is easier to rationalise and clarify this somewhat thorny issue when recourse is sought from the civil realm – in Lau Siew Kim v Yeo Guan Chye Terence and another [2007] SGCA 54 ("**Lau Siew Kim**"), the Court of Appeal made observations on the "deferred community of property" approach in relation to the determination of the property rights of spouses.

The "deferred community of property" approach generally entails that both spouses have a joint interest in property obtained during the course of their marriage, regardless of which spouse purchased or otherwise acquired it.[1] However, the said approach "to the property rights of spouses only operates where there are matrimonial proceedings terminating a marriage."[2] Before that, the usual "separation of property" principles would continue to apply.

Returning to the locus standi question, Benedict's basis for seeking a declaration of Annabel's and Celine's beneficial interest in respect of 6 GR, a property he had otherwise not contributed financially to, may be explained as such: while these are separate civil proceedings, they arose only as a result of, and consequent to, Benedict's filing for divorce from Annabel (which unequivocally signifies the breakdown of parties' marriage). Benedict's basis and standing for commencing a suit against Celine and/or Annabel would therefore be heavily rooted in the "deferred community of property" approach – as Annabel had utilised monies earned (while she was married to Benedict) to service the mortgage on 6 GR, Benedict would have a claim in respect of those monies, and consequently, the properties which Annabel had applied those monies towards (i.e., 6 GR).

What, then, is Benedict to do in relation to his civil application? Benedict would have to consider, under the framework set out in Chan Yuen Lan v See Fong Mun [2014] SGCA 36, whether he can establish a common intention constructive trust in a proportion which encapsulates Celine's intended gift of the half-share of 6GR to Annabel. There must be sufficient proof of the intended gift, and the claimed proportions.

[5] Lau Siew Kim at [80]
[6] Lau Siew Kim at [81]

Therein lies the practical difficulties. How is Benedict to show evidence of an intended gift when he is neither an owner nor a party to the arrangements between a mother (Celine) and her daughter (Annabelle)? Parties often face this quandary, especially if they have no direct evidence of the gift to mount a claim with reasonable prospects of success in the civil courts.

Nonetheless, and in this case, as Annabel had contributed to the mortgage on 6GR, it is somewhat inevitable that a finding would be made that Annabel has a beneficial interest in 6 GR. This beneficial interest would then be added to the matrimonial pool, and subject to division in the family courts.

C. Developments Since *UDA v UDB*

What about the option in (d)? If the value of 6 GR is low relative to the size of the matrimonial pool, could Annabel or Benedict ask that the Court determine whether 6 GR is a matrimonial asset, without involving Celine?

The Court of Appeal explained that the risks of doing so were as such:

57 In respect of [56(d)] above, the family justice court should only take Option 1 if both spouses agree to it, as this course could result in the disputed asset being treated as a matrimonial asset and adjustments being made in the division of other assets to account for its value when in separate proceedings later it may be determined that the third party was both the legal and the beneficial owner of the property and neither spouse had any interest in it at all. Thus, the result of taking Option 1 may be to prejudice the spouse [i.e., Annabel] who has had to account to the other for the value of an item of property which turns out not to be a matrimonial asset.

It thus appears that proceeding with (d) would be contingent on Annabel's agreement to this course of action. What happens then, if Annabel is agreeable to (d) but it is in fact Benedict who resists and refuses to provide his agreement?

This was the situation we were faced with in WWK v WWL [2024] SGFC 25 ("**WWK**"). In WWK, the husband had applied to lift the Riddick undertaking so as to enable him to use documents produced through the discovery process in the matrimonial proceedings in a separate civil suit. In arguing that a separate suit would be unnecessary, we highlighted that while the language used in UDA referred to agreement from "both spouses", the key and underlying concern was to protect the spouse in Annabel's position. With her agreement, there was no need for the spouse, in Benedict's position, to take out a separate action.

Ultimately, the Court in WWK held that:

54 … it should be noted that Option 1 does not involve the court making an order directly affecting the property. The risk, if any, lies with the Wife as the spouse who has to account for the value of the disputed asset. The Wife recognises as such and is prepared to proceed on such a basis.

55 As the Husband has a real enough choice of taking up Option 1, the AR was correct in her finding that the Related HC Proceedings are unnecessary…

This provided greater insight into the rationale undergirding [56(d)] of UDA, which is an option parties should seriously consider as an alternative to lengthy and costly civil trials.

D. Conclusion

We have come across many situations where parent(s) are considering making gift(s) to their children. There is nothing morally reprehensible or wrong in doing so. However, any well-intentioned parent in similar positions to Celine should be aware that:

a) Any properties used as a matrimonial home, and held in the sole or joint names of the spouses, will generally be included in the pool of matrimonial assets for division.

b) Generally, properties bequeathed to a spouse as an inheritance are not matrimonial assets, unless the property is substantially improved by the other spouse subsequently, or if the inheritance has been comingled with matrimonial assets. Similar principles apply to any pre-marital assets.

c) Gifts made to a child while they are married should be clearly delineated and ringfenced, if that parent intends to make a gift to their child alone.

d) Property which is improved (for example, through the payment of mortgage) by a spouse during marriage is more likely to be included in the matrimonial pool.

Third-party interests in (asserted) matrimonial assets can be a complex and multi-factorial challenge to tackle; spouses who anticipate such issues in a divorce should seek the appropriate legal assistance and advice.

If you have any questions about matrimonial matters, or comments on this article, please contact Wang Liansheng at **Lswang@bihlilee.com.sg** or Petrina Tan at **ptan@bihlilee.com.sg**

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