

WXG v WXH
[2024] SGFC 32

Case Number : Divorce No 4868 of 2022 (Summons No 1012 of 2024)

Decision Date : 27 May 2024

Tribunal/Court : Family Court

Coram : Soh Kian Peng

Counsel Name(s) : Tang King Kai (Tang & Partners) for the plaintiff; Ng Wen Wen (Grace Law LLC) for the defendant.

Parties : WXG — WXH

Civil Procedure – Discovery

Civil Procedure – Interrogatories

Civil Procedure – Interrogatories – Sufficiency of Answer

27 May 2024

Judgment reserved

Assistant Registrar Soh Kian Peng:

Introduction

1 Parties registered their marriage on 19 March 1998. A year later, they welcomed their son into the family. By all accounts, based on the Statement of Particulars (“SOP”) and the affidavits before me, it was a happy marriage.

2 This state of affairs, unfortunately, did not last. When the son was 18, he was taken ill. It was not a physical ailment from which he suffered, but one of the mind. It appears that the Wife did the best she could to support her son. Doctors were consulted, and treatment was sought. The Husband, on the other hand, appeared to have difficulty coming to terms with his son’s illness. As to why the Husband reacted in the way he did, we do not know – though the Wife’s Affidavit of Means and Assets (“AOM”) provides some clues. The Husband has, in any case, made no mention of this in any of his affidavits.

3 What we do know is that the relationship between Husband and Wife deteriorated to the point that the Husband filed for divorce on 19 October 2022. Interim judgment was obtained on 16 August 2023. Mediation was attempted but bore no fruit. This set parties on course for an ancillary matters hearing.

4 The next stage in this process was the exchange of parties' affidavits of assets and means ("AOMs"). The Wife, being dissatisfied with the extent of the Husband's disclosure, filed an application for discovery and interrogatories in SUM 1012 of 2024 ("SUM 1012").

5 I heard oral submissions from parties on 20 May 2024. I now give my decision in respect of SUM 1012.

Wife's Request for Interrogatories

6 This was the interrogatory that had been posed by the Wife:

The Plaintiff is to account for the sum of \$55,224.53 parties had in a fixed deposit account number x-x-xxx-xxxxxxx-4-702 under Hong Leong Bank. This sum was withdrawn by the Plaintiff upon the maturity of the fixed deposit in July 2022, without the Defendant's knowledge.

7 Counsel for the Husband, Mr Tang, argued that the Husband had already answered this question. This was the Husband's reply to the interrogatory in his Notice-in-Response:

The Plaintiff says that he has no account with Hong Leong Bank and he is not aware of the alleged fixed deposit of \$55,224.53 purportedly in his name. This is a frivolous and mischievous allegation and the Defendant is put to strict proof thereof.

8 In response, counsel for the Wife, Ms Ng, argued that the Husband's response was inadequate. She said that the Husband was feigning ignorance – given that this was a recent transaction, there was no reason why he could not recall it.

9 In considering the Wife's application for interrogatories, I am only concerned with the sufficiency, and not the truth of the response provided by the Husband. Although Ms Ng appeared to be contesting the truth of the response, I understood her point to be that the response given by the Husband, which could be characterised as a general denial, to be an insufficient answer to the interrogatory posed. Ms Ng confirmed that this was indeed her argument.

10 As to whether the Husband's response was sufficient, the case of *Earp v Lloyd* [1858] 70 ER 24 ("*Earp*") is instructive. The court in that case had noted:

The rule has always been that, where there is a specific averment, an interrogatory founded upon that specific averment must be specifically answered; **a general denial is not a sufficient answer to a specific averment.**

[emphasis added]

11 In *Earp*, the averment was that land was to be conveyed to one Smith. The interrogatory was whether "such land was not conveyed to one Smith, or to some and what person or persons". The answer which the plaintiff had given was that he "could not set forth whether the property was conveyed to Smith or to any person or persons". The court ruled that this answer was insufficient.

12 In the present case, the Wife has asked the Husband to account for the sum of \$55,224.53 that had been placed in a fixed deposit with Hin Leong bank. She had stated, specifically, in her AOM, that the Husband had withdrawn this sum.^[note: 1] She had even referred him to a statement of said fixed deposit from Hin Leong bank.

That statement showed that the fixed deposit had also been placed in the Husband's name.

13 I find that the Husband's response is indeed insufficient. The Wife had asked him a question that was founded on a specific averment in her AOM. Given this, it does not suffice for the Husband to simply respond with a bare denial that he had no account with Hin Leong, and that he is not aware of a fixed deposit for \$55,224.53 that was allegedly in his name.

14 I will therefore order that the Husband answer this interrogatory.

Wife's Request for Discovery

15 I come now to the Wife's request for Discovery. There were 12 items on the list. They could be categorised into the following two groups:

- (a) Full monthly statements of accounts in respect of each of the six bank accounts in the Husband's name (Items 1 – 6) for the period 1 January 2021 – 31 January 2024;
- (b) Documents evidencing account closure in respect of each of the same six bank accounts in the Husband's name (Items 7 – 12).

16 Ms Ng argued, both at the hearing and in her well-written skeletal submissions, that disclosure of these documents were relevant and necessary for the hearing of the ancillary matter because it appeared that the Husband had taken steps to dissipate assets that should rightfully belong to the matrimonial pool.^[note: 2] This is, according to Ms Ng, evident from the fact that all six accounts were closed over the span of a few months, in the time leading up to and shortly after the entering of the interim judgment.^[note: 3] The Wife would need these documents to determine exactly when these six accounts had been closed, and whether the Husband had indeed dissipated the money in these accounts, and if so, where the money had been transferred to.

17 In response, Mr Tang argued that the Husband had already made voluntary disclosure of the account balances in these six accounts.^[note: 4] In any event, the Husband had already stated, in his Notice in Response to the Wife's 2nd Request for Discovery ("NIR"), that he did not have, in his possession, the final statement in respect of these six accounts as he did not expect the Wife to ask for these documents, and in any case, the account had already been closed.^[note: 5]

18 I understood Mr Tang to be making the point that I could not make an order for the discovery of the bank account statements because those documents did not exist. It is true that "a prerequisite to the court's power to order discovery is that there must be some [*prima facie*] evidence that the document requested is or has at any time been in the respondent's possession, custody or power": *VTQ v VTR* [2021] SGFC 85 at [64] citing *Alliance Management SA v Pendleton Lane P and another and another suit* [2007] SGHC 133 (at [24]).

19 I am satisfied that there was such *prima facie* evidence. After all, it is not disputed that these six accounts were in the Husband's name. And if the Husband had these accounts, it also stands to reason that the banks would have provided these statements. There was, in any event, nothing in the Husband's reply affidavit, or the NIR, denying the existence of these documents.

20 Insofar as the principles relating to discovery are concerned, it is trite law that an order for discovery should only be made if the documents sought are relevant and necessary to the disposal of the ancillary matters: *UJN v UJO* [2018] SGFC 47 at [10] citing Rules 63 – 77 of the Family Justice Rules 2014.

21 There can, in my judgment, be no quarrel that the account statements (*ie*, Items 1 – 6) which the Wife sought were indeed relevant and necessary to the disposal of ancillary matters. If the Husband had withdrawn or transferred money from any of those six accounts, it would be reflected in the account statements.

22 However, I did not find that the request for the documents evidencing account closure was relevant or necessary. What the Wife was really after were the account statements – she wanted to know what had happened to the money in those six accounts. If the Husband’s position was that he had closed the accounts, and therefore could not provide the account statements, that was for him to show by way of documentary evidence that the accounts had indeed been closed.

23 I will therefore allow the request in respect of Items 1 – 6, and disallow the request in respect of Items 7 – 12.

Conclusion

24 It is therefore ordered that:

(a) The Husband shall state on affidavit, pursuant to Rule 63 of the Family Justice Rules 2014, in respect of each of the following documents listed in S/N 1 – 6 of Schedule 1 annexed to SUM 1012/2024, whether the same is in his possession, custody or power, and if not then in his possession, custody or power, when he parted with it and what has become of it;

(b) The Husband shall exhibit, in the affidavit, a copy of each of the documents that are in his possession, custody or power. If any of the documents are not in his custody, power or possession, he is to state the reasons why, together with supporting documentation for his explanation (if any).

(c) The Husband shall answer the interrogatory as set out in Schedule 2 annexed to SUM 1012/2024 on affidavit, to the best of his knowledge, information and belief, pursuant to Rule 69 of the Family Justice Rules 2014.

25 The Husband is to file his compliance affidavits by 18 June 2024.

26 Parties are to file and serve their costs submissions by way of letter by 12 June. The submissions should be no longer than 5 pages each.

27 It remains for me to thank both Mr Tang and Ms Ng for their able assistance.

[note: 1]Wife’s AOM at para 26(h).

[note: 2]Wife’s Skeletal Submissions in support of SUM 1012 at paras 18 – 22.

[note: 3]Wife’s Affidavit in support of SUM 1012 at pp 69 – 72.

[note: 4]Husband’s Affidavit in response to SUM 1012, Exhibit A.

[note: 5]Wife’s Affidavit in support of SUM 1012 at pp 69 – 72.

