

Restriction on the grant of anti-suit injunctions in multi-jurisdictional family litigation: *VEW v VEV* [2022] SGCA 34

I. EXECUTIVE SUMMARY

As families become more sophisticated and begin to own assets in different parts of the world, it brings into the spotlight complex legal questions in family law with regards to the division of matrimonial assets in a divorce. When family litigation goes international, the courts must remain sensitive to the complexities that arise from the interaction of local and foreign laws, while ensuring that the parties are not prejudiced due to the conflict of laws. There is a delicate process of balance that must be undertaken where potentially competing public policies are involved.

In *VEW v VEV* [2022] SGCA 34, a couple filed for divorce in two different jurisdictions: the wife filed for divorce in England while the husband filed for divorce in Singapore. As part of the proceedings in Singapore, the husband filed for an anti-suit injunction (“**ASI**”). An ASI is a court order compelling the other party to refrain from instituting or continuing with proceedings abroad in relation to the same matter. The ASI, if upheld, would prevent the wife from bringing a Part III claim under the Matrimonial and Family Proceedings Act 1984 (c 42) (UK) (the “**MFPA**”) in England. Part III of the MFPA allows for further financial provision to be made by an English court after divorce and financial orders have been made overseas.

The Singapore District Judge (the “**DJ**”) granted the ASI, and the Singapore High Court (“**HC**”) upheld that grant. The Singapore Court of Appeal (the “**CA**”) then had to decide whether to grant an appeal by the wife challenging the HC’s decision.

In coming to its decision, the CA noted that the public policy embodied in the MFPA is to relieve the financial hardship that results from a divorce, even if a matrimonial order has been handed down in a foreign jurisdiction. Conversely, the Singapore courts have to uphold the public policy of ensuring that finality is maintained in court decisions (here, with regard to the division of matrimonial assets), in this case through the ASI. There is also a further concern with regard to preventing court decisions being attacked and/or subverted by re-litigation of issues that have already been determined by the original court.

The CA then found in favour of the wife and set aside the ASI on the basis that there had been no re-litigation of any kind, nor had there been any vexatious or oppressive conduct on the wife’s part. This meant she could proceed with the Part III Proceedings in relation to the Property, to claim further financial relief under the MFPA in the English courts.

II. MATERIAL FACTS

The wife (appellant) and the husband (respondent) met in England in 2008. In March 2009, they moved into a property in London (the “**Property**”) which was solely owned by the husband. They got married in Italy in 2011 and then moved to Singapore in 2012.

In June 2018, the wife filed for divorce in England, after which the husband filed for divorce in Singapore. The wife had then applied to stay (i.e. suspend) the Singapore divorce proceedings on January 2019. When the court dismissed the stay, she filed the defence to the divorce proceedings in Singapore in February 2019. The divorce was finalised in December 2019 in Singapore.

There was also a dispute over ancillary (related) matters to the divorce in the Singapore courts, which included a dispute concerning the division of the Property between the husband and the wife. The court held that the Property was not a part of the pool of matrimonial assets that is to be divided between the

parties. Instead, the Property was to remain with the husband.

The wife then applied to the English courts to apply for financial relief under Part III of the MFPA, centering around the Property (the “**Part III Proceedings**”). In response, the husband filed for an ASI in Singapore, on the basis that there would be re-litigation of issues that had already been decided by the Singapore court, namely that the Property was not part of the pool of matrimonial assets.

The DJ granted the ASI on the basis that Singapore was the natural forum of the parties’ dispute, and that the wife was seeking a “second bite at the cherry” by commencing the Part III Proceedings. Since there was no objection against the ancillary matters orders, bringing a duplicate action in the UK was vexatious. Further, the wife would be raising the same arguments using the same factual matrix for her claims with regards to the Property in the UK. This would be considered as a re-litigation of matters which was already settled in the ancillary matters proceedings.

The wife appealed against the ASI in the HC. The HC upheld the DJ’s grant of the ASI on the basis the DJ had indeed considered all the relevant principles under Singapore law and that the Part III Proceedings would result in the parties having to relitigate matters in the UK. The wife then appealed this decision all the way to the CA.

III. ISSUES ON APPEAL

To determine whether the ASI should be set aside, the CA had to address three main issues:

- (a) The principles applicable to the grant of an ASI against the Part III Proceedings;
- (b) Whether an ASI be granted in this appeal; and
- (c) Did the husband come before this court with unclean hands.

For completeness, the CA also then addressed some further arguments raised below.

A. The principles applicable to the grant of an ASI against the Part III Proceedings

The CA noted that in granting the ASI, the DJ had relied on the factors laid out in *Lakshmi Anil Salgaocar v Jhaveri Darsan Jitendra* [2019] 2 SLR 372 (the “**Lakshmi factors**”). These are: 1) whether the defendant is amenable to the jurisdiction of the Singapore court; 2) whether Singapore is the natural forum for resolution of the dispute between the parties; 3) whether the foreign proceedings would be vexatious or oppressive to the claimant if allowed to continue; 4) whether the ASI would cause any injustice to the defendant by depriving the defendant of legitimate juridical advantages sought in the foreign proceedings; and 5) whether the institution of foreign proceedings was or would be in breach of any agreement between the parties.

However, the CA noted that such an approach was not appropriate in the context of the present proceedings, as the *Lakshmi* factors applied to typical ASI cases. The present case was not a “typical case” as i) it concerned a situation where the foreign proceedings were initiated under an *English statute* and ii) Singapore had enacted its own legislation in this regard: Chapter 4A of the Women’s Charter (Cap 353, 2009 Rev Ed) (the “**Women’s Charter**”), modelled after UK’s Part III of the MFPA. As such, the CA held that the present case should focus on whether the wife’s conduct was vexatious or oppressive.

The CA then analysed the significance of proceedings under Part III of the MFPA (UK) and Chapter 4A of the Women’s Charter (Singapore) and how they should be taken into consideration.

(i) Significance of Proceedings under Part III of the MFPA (UK)

Part III offers a statutory right to litigants who have obtained a foreign decree of divorce overseas that is also recognised in UK. The applicant would be granted permission to commence a Part III

proceeding in the UK courts, even if a court outside the UK has required the other party to make payment or transfer property to the applicant. Thus, on the face of it, there was nothing inherently vexatious or oppressive in the conduct of a party who commences a Part III proceeding.

However, the CA noted that not everyone who attained a decree of divorce outside the UK would be automatically eligible for relief under Part III. This is because the “filter mechanism” embedded in section 13 of the MFPA, which mandates that leave of court¹ should be obtained before application for financial relief could be made, presupposes that the English court would be able to diligently filter out unmeritorious cases. Through the process of granting leave, the English court will be able to sieve out those unmeritorious applications.

(ii) Significance of Singapore enacting Chapter 4A of the Women’s Charter

Chapter 4A of the Women’s Charter also provides an avenue for a party in Singapore to a divorce to seek financial relief resulting from foreign matrimonial proceedings recognised within Singapore. Here, Chapter 4A was modelled after Part III of the MFPA with regards to such financial relief.

The implication of Singapore having modelled Chapter 4A after Part III of the MFPA is that the CA must determine whether allowing the Part III Proceedings to proceed would contravene the public policy underpinning Chapter 4A. The CA noted that the public policy underlying Chapter 4A was to plug a gap in the law by allowing a Singapore court to order financial relief for an applicant pursuant to a foreign divorce.

Additionally, Singapore’s interpretation of Part III of the MFPA may affect how other jurisdictions interpret Chapter 4A of the Women’s Charter and will shape their readiness to grant their own ASIs if a Chapter 4A proceeding is commenced in Singapore.

(iii) The test of “vexatious or oppressive” conduct

Taking these differences into consideration, the CA then assessed the appropriateness of using the *Lakshmi* factors for this case. Out of the five, the CA held that the third factor of “vexatious or oppressive conduct” was considered the “heart of the analysis” in this case. Thus, the enquiry here should turn to whether the Part III proceedings would be vexatious or oppressive to the husband if allowed to continue and less on the other four *Lakshmi* factors.

The CA rejected the wife’s argument that the test of “vexatious or oppressive” conduct may be subsumed within the test of “unconscionable” conduct, holding that the two terms are not synonymous. The CA noted that unconscionability was a concept in equity that may be too vague and general in specific contexts. Further, in a number of cases where the concept of unconscionable conduct has been formally applied, it has merely served as a redundant, higher-level conceptual shell for the application of the underlying test of vexatious or oppressive behaviour.

The CA recognised possible scenarios where commencing Part III proceedings may be vexatious, such as where they were used to oppress or blackmail a former spouse to settle in a foreign court by causing them to incur additional expenses in a prolonged dispute. One could also attempt to “get a second bite of the cherry” and take advantage of the leniency of the English court, which the applicant may not have enjoyed in the foreign country.

However, the CA noted that it cannot be the case that the commencement of the Part III Proceedings will *always* result in vexatious and oppressive conduct. *First*, such a position would be an affront to

¹ A “leave of court” is the permission granted by the court for an applicant to initiate a specific action.

comity² as it would essentially render Part III ineffective: parties who get divorced in Singapore would effectively never be able to commence Part III proceedings. *Second*, it would undermine the rationale of enacting Chapter 4A of the Women's Charter and undermine its public policy: as Chapter 4A is modelled after Part III, foreign applicants who wish to apply for financial relief under Chapter 4A in Singapore may be denied an ASI in the foreign country from where the applicant had obtained a decree of divorce.

Further, characterising every Part III proceeding to be vexatious and oppressive would also be an affront to comity as Singapore courts would be taking the position that the Part III's "filter mechanism" does not provide sufficient safeguard unmeritorious applications. If Singapore granted an ASI against Part III proceedings by default, it would preclude the English court from undertaking its own analysis to determine on the merits of the leave application of the relief.

Notwithstanding, the CA stated that this does not mean that a Singapore court can never grant an ASI against a Part III proceeding. While the "filter mechanism" can serve as a supplementary aid, it should not be conclusive of whether Singapore court should grant an ASI. Singapore courts must retain the ability to intervene and safeguard their own public policy and integrity of court proceedings when Part III proceedings would amount to unwarranted interventions in Singapore's court processes. However, what constitutes an unwarranted intervention will be considered after a full assessment of the factual matrix of the case and taking into account factors such as whether the English court granted the leave, the stage of divorce proceedings and the nature of the claims in the Part III proceedings.

B. Whether an ASI be granted in this appeal

The CA held that the ASI should be set aside as there was not any vexatious or oppressive conduct on the wife's part, nor was there re-litigation of any kind.

(i) A good explanation for having same arguments in Singapore and UK

The DJ had previously reasoned that there would be re-litigation if the Part III proceedings did commence, as the wife would be raising the same arguments using the same factual matrix for her claim to the Property in the UK. However, the CA held that while there may be a re-litigation of the division of the Property in the literal sense, it does not mean that an ASI should be granted. The heart of the analysis lies on whether there was vexatious or oppressive conduct and not whether there was re-litigation. Re-litigation alone does mean that there is necessarily a vexatious and oppressive conduct.

An ASI would be granted when there was a lack of a good explanation for duplicative proceedings. In the present case, there was indeed a "good explanation" for the duplicative proceedings: there is an English statute that gives the wife the right to commence proceedings with respect to the Property.

(ii) There would be no conflicting judgements

The CA also considered the possibility that the English court might come to a different decision from the Singapore court in respect of the division of the Property. This is because the DJ had previously ruled that the Property solely belonged to the Husband and excluded it from the pool of matrimonial assets for division. However, if the wife were to succeed in the Part III proceedings for a share in the Property, the English courts would conflict with the DJ's orders as the Property would then be divided with the wife.³

² The principle of comity refers to when courts of one jurisdiction respect the laws and decisions of other jurisdictions out of deference and mutual respect.

³ The CA noted it might be possible to lower the incidence of such disputes in future similar cases involving Part III

The CA then held that there would be no conflicting judgements here. The DJ had held that the Property was *not* part of the pool of the matrimonial assets and there was no need to even consider the division of the Property as a matrimonial asset. The English courts were thus free to consider the Property for the Part III Proceedings. As such, the Part III proceedings could not constitute a “re-litigation” of the division of the Property as the question of division never even arose in the original Singapore judgment.

(iii) Singapore’s public policy would not be affected

The CA also noted that there would be an impact on Singapore’s public policy if the Part III Proceedings necessitated a conditional requirement that the wife should relinquish her claim to the matrimonial assets in Singapore to be granted financial relief. This would result in setting aside the DJ’s ancillary matters orders because in such a case, the English courts’ order would undermine the decision made by Singapore court to distribute the matrimonial assets in a particular way. This would affect Singapore’s public policy as it affects the finality of judgements in Singapore courts.

However, the CA considered such an argument to be a mere speculation as there was no such indication of such a condition being imposed when the wife was granted leave to commence Part III Proceedings. Regardless, the CA observed that such a question could arise for the courts to consider in future cases.

C. Not necessary to consider whether the husband came with unclean hands

Since, the CA would be setting aside the ASI due to lack of vexatious and oppressive conduct by the wife, it did not consider it necessary to address the argument that the doctrine of unclean hands⁴ applied and that the husband should not be entitled to the ASI.

D. Further arguments raised below

Although the above analysis was sufficient for the CA to dismiss the appeal, for completeness’ sake, the CA decided to address other points that had been raised by the DJ and the husband.

(i) DJ’s view that there was no appeal made in Singapore courts

The DJ decided that the wife’s actions in bringing duplicate actions in the UK, rather than bringing an appeal in the Singapore courts, was vexatious. However, the CA held that commencing Part III proceedings without first making an appeal in Singapore does not *automatically* lead to the conclusion that the applicant’s conduct is vexatious and oppressive.

This is because Singapore courts do not require a foreign applicant to exhaust remedies in the foreign court before applying under Chapter 4A. Since this is the position in Singapore, the Singapore courts should similarly not require a party to exhaust remedies in Singapore before applying in the UK under Part III of the MFPA and prevent the applicant from seeking relief through an ASI.

In this case, the wife was granted leave of court under Part III, and this application was confined to the Property which was *not* part of the pool of matrimonial assets for division and did not relate to the ancillary matters. Thus, it was not vexatious or oppressive to commence Part III proceedings rather

proceedings (or proceedings under similar foreign legislation) through active case management, for example, by inviting parties to confirm from the start of their divorce proceedings in Singapore all possible jurisdictions in which they intended to litigate the ancillary matters pertaining to the divorce, so that the Singapore court (and the parties themselves) could consider whether certain assets should be left to be divided by the courts of that particular jurisdiction after the parties had been divorced in Singapore (or whether it would be more prudent to commence divorce proceedings in that foreign jurisdiction instead).

⁴ The doctrine of unclean hands is a defence based on the notion that the claimant had acted in bad faith or engaged in unethical behaviour with respect to the subject of the claim.

than filing an appeal against the ancillary matters.

(ii) Husband's alternative arguments regarding the wife's vexatious or oppressive conduct

The husband argued that there would be “time, effort and expense” incurred in the English proceedings. However, the CA held that this did not itself show that the wife’s conduct was vexatious or oppressive. It also did not show that the wife was using Part III proceedings to exert improper pressure on the husband. This is because, as mentioned previously, the “filter mechanism” in section 13 of the MFPA would be able to diligently filter out unmeritorious cases.

The husband further alleged that the wife had made misrepresentations with regards to her Part III proceedings. The CA noted that if an applicant under Part III of the MFPA had made misrepresentations with regard to Part III proceedings, that could be a factor weighing towards the courts granting an ASI. However, it would count only to the extent that the Part III application was made in bad faith. The CA did not think that the wife’s statement in the Part III proceedings amounted to bad faith and hence, concluded that the wife had not made any misrepresentations with regards to the Part III proceedings.

IV. LESSONS LEARNT

This is one of the few cases that deals with the conflict of laws in the realm of family law. The CA’s reasoning is a reminder of the delicate balancing process that the courts undertake to respect the comity between the laws of their own jurisdiction and foreign jurisdiction. By considering the public policy considerations of both the Singapore and the UK, it serves as a reminder for practitioners to take a macro view on family litigation which cross multiple jurisdictions. Additionally, with the globalisation of families and couples owning assets around the world, *VEW v VEV* serves as a useful tool with regards to the division of a multi-jurisdictional pool of assets.

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