

UDA v UDB and another [2018] SGCA 20

I. Executive summary

In a divorce, multiple parties – including the spouses and third parties – may claim ownership of an alleged matrimonial asset. In *UDA v UDB and another* [2018] SGCA 20, the Court of Appeal (“CA”) held that family justice courts, which hear disputes over matrimonial assets, had the jurisdiction (*i.e.* authority to hear and determine a dispute brought before it) to decide only the claims of the divorcing spouses. They did not have the jurisdiction to decide claims by a third party (*i.e.* anyone other than the divorcing spouses) over property which was alleged by one or both spouses to be a matrimonial asset. Instead, such third party claims had to be determined in separate legal proceedings.

In Singapore, divorce proceedings and any ancillary matters are presided over by the Family Courts and, on appeal, the Family Division of the High Court (“HC Family Division”); these will be termed the “family justice courts”. Any further appeal will be heard by the CA.

In this case, the Family Court was determining the division of matrimonial assets between a divorcing couple. The husband claimed that a house, which was legally owned by the mother of the wife, was in fact held by the mother on trust for the husband and wife (*i.e.* that the mother was only holding the house on their behalf). Thus, he claimed, the house was a matrimonial asset. The mother of the wife then intervened in the proceedings to dispute the husband’s claim (the mother shall also be referred to as the “intervener”).

During subsequent proceedings, the HC Family Division had to address the question of whether the family justice courts had jurisdiction to determine the intervener’s interest in the house in the first place, since she was a third party to the divorce proceedings. The HC Family Division decided that based on section 112 of the Women’s Charter (Cap 353, 2009 Rev Ed), the family justice courts did not have such jurisdiction. As such, the court stayed (*i.e.* suspended) the proceedings on the division of matrimonial property to allow the husband the opportunity to pursue a separate action regarding the ownership of the house. The mother appealed the HC Family Division’s decision.

The CA agreed with the HC Family Division. It held that section 112, which gave the family justice courts their jurisdiction to divide matrimonial assets in divorce proceedings, only permitted the family justice courts to determine the division of matrimonial assets as between the divorcing spouses. It did not confer on the family justice courts the jurisdiction to determine the rights of third parties in alleged matrimonial assets, or to affect a third party’s interest in such assets by ordering them to be sold or transferred. The CA further stated that despite the intervener’s arguments to the contrary, the Family Justice Act (No 27 of 2014) (“Family Justice Act”) did not widen the jurisdiction of the family justice courts under section 112.

The CA also provided guidance as to how third party claims to matrimonial assets in divorce proceedings should be approached. If the third party wished to actively assert his or her rights to the property, the CA suggested that he or she should (1) commence independent proceedings against either or both the spouses, and (2) apply to intervene in any ongoing section 112 proceedings, so as to request a stay of the section 112 proceedings pending determination of the independent proceedings. The family justice court should in turn allow such a stay. In fact, the current case clearly fell within this situation.

However, if the third party was not actively asserting his or her property rights, then the appropriate approach depended on whether the disputed property was (a) legally owned by a third party but one (or both) of the spouses claimed it was held on trust for them, or (b) in the name of one of the spouses, but such spouse claimed the asset was held on trust for a third party and hence could not be a matrimonial asset.

In situation (a), there were four possible options. *First*, the spouse claiming the property as a matrimonial asset could obtain confirmation from the third party legal owner that the property was indeed a matrimonial asset, and an undertaking from the owner to abide by any court order relating to his or her interests in the property. If the third party did not agree to do so, the *second* option was for either spouse to commence separate proceedings against the third party, in which case the section 112 proceedings would have to be stayed until the third party's property rights were determined separately. The *third* option was for the spouse claiming the property as a matrimonial asset to drop such claim. The *fourth* option was for the spouse to ask the family justice court to determine whether the property was a matrimonial asset, but without involving the third party or making an order directly affecting the property. If the court decided the property was indeed a matrimonial asset, it could adjust the division of other matrimonial assets accordingly to account for its value. However, this last option could result in complications if it was later determined (in separate proceedings) that the third party was both the legal and beneficial owner of the property, and neither spouse had any interest in it at all. Such a situation might prejudice the spouse who had to account to the other spouse for the value of an asset which turned out not to be a matrimonial asset. Thus the CA stated that this fourth option should only be taken if both spouses agreed to it. This option was also not viable if the asset was the main or only substantial asset available for division.

In situation (b), the court could also use the fourth option above. However, the same concerns applied. For instance, the spouse who legally owned the property, and who had been ordered to share the value of the property with the other spouse, could later find that he or she also had to account to the third party for such value, or transfer the property outright to the third party. This was because the third party was not bound by the court's decision in the section 112 proceedings on the ownership of the property.

II. Material Facts

A husband and wife were in the midst of divorce proceedings in the Family Court. At the relevant stage, the husband asserted that a house that was legally owned by the wife's mother was in fact held by her on trust for the couple, and was therefore a matrimonial asset. The wife's mother disagreed. She applied to the Family Court to intervene in the divorce proceedings to dispute the husband's claim.

The Family Court allowed the mother's application, and the husband's subsequent application to cross-examine the mother and the wife. The mother and the wife then appealed to the HC Family Division against the Family Court's order allowing cross-examination. On appeal, the HC Family Division decided that the Family Court, in exercising its powers under section 112, did not have jurisdiction to determine a third party's interest in matrimonial property and make orders against such third party.

III. Issues on appeal

The main issue before the CA was whether family justice courts, in exercising their powers under section 112 of the Women’s Charter to divide matrimonial assets between divorcing spouses, also had the jurisdiction to hear and determine a third party’s claim to be the legal or beneficial owner of any alleged matrimonial asset, and to make orders which would directly affect the third party’s interest in the said asset.

Section 112 states that a family justice court “shall have the power, when *granting or subsequent* to the grant of a judgement of divorce, judicial separation or nullity of marriage, to order the division *between the parties* of any *matrimonial asset*...”. Three key phrases in the provision informed the CA’s decision. First, the phrase “*when granting or subsequent to the grant of a judgment of divorce*” indicated that power is given to the family justice courts only in the context of matrimonial proceedings, which involve the spouses as the only possible parties to a divorce. Second, the phrase “*between the parties*” meant that the family justice courts had to exercise their section 112 powers in relation to only the parties to the matrimonial proceedings, *i.e.* the divorcing spouses and no one else, not even their children. Third, the phrase “*matrimonial asset*” means that the property concerned must have been acquired by one or both of the spouses during or before the marriage (under certain conditions). As such, the CA concluded that the family justice courts, in exercising their powers under section 112 to divide matrimonial assets between divorcing powers, had no jurisdiction to also decide the property rights of third parties regarding the said matrimonial assets.

The CA also rejected the mother’s argument that section 25 of the Family Justice Act gave the HC Family Division the general jurisdiction of the High Court (“HC”) to determine her claim.* The CA stated that section 25 was merely a gap-filling provision to assist the HC Family Division in exercising its primary jurisdiction, *i.e.* to deal with civil issues when they arose in the course of matters in which the family justice courts’ jurisdiction was properly invoked. In this case, though the HC Family Division had the HC’s general jurisdiction to determine property rights and order a sale of property, such jurisdiction could only be exercised if it was invoked by the appropriate parties through the appropriate law and process. The mother was not such an appropriate party, since she was not seeking to commence divorce proceedings in her own right, and in any case, her claim to the property had nothing to do with her husband. Furthermore, while her intervention in the section 112 proceedings was allowed under the procedural rules of court, such procedural action still did not confer on the court actual jurisdiction to determine the substance of her third party claim.

IV. Guidance on determining third party claims to matrimonial assets

The CA also provided guidance as to how the family justice courts should deal with alleged matrimonial assets in which a third party allegedly has an interest. The family justice courts should not determine the interests in such asset during section 112 proceedings (including making an order for the sale or transfer of the asset). Instead, how they should proceed depends on whether the third party is actively asserting his or her rights in the asset.

i. Third party actively asserting rights in asset

If the third party wished to claim an interest in a matrimonial asset, he or she should commence independent proceedings against either or both the spouses. He or she could also apply to the relevant family justice court to intervene in any ongoing section 112 proceedings, so as to

* The HC Family Division is part of the HC.

notify the court of his or her interest and to apply for a stay of the section 112 proceedings pending determination of the separate proceedings. The family justice court should then stay the section 112 proceedings. The CA further stated that prior cases where the family justice courts had actually determined the rights of third parties in matrimonial assets were wrongly decided.

In this case, the intervener (and third party) was asserting her rights to the house in question directly. The family justice courts, however, did not have the jurisdiction under section 112 to determine a third party's property rights. As such, the ownership of the property as between the spouses and the third party would have to be determined by a general civil court. It was also correct for the HC Family Division to stay the section 112 proceedings pending the outcome of the separate suit as the house, if determined to be matrimonial property, was a major matrimonial asset.

ii. Third party not actively asserting rights in asset

If the third party was not actively asserting his or her property rights, the appropriate approach depended on whether the disputed property was (a) legally owned by a third party but one (or both) of the spouses claimed it was held on trust for them, or (b) in the name of one of the spouses, but the spouse claimed the asset was held on trust for a third party and hence could not be a matrimonial asset.

(a) Asset legally owned by third party

If the property was legally owned by a third party but one (or both) of the spouses claimed it was held on trust for them, the following options were available to the court and the spouses:

1. The spouse who claimed the property as a matrimonial asset could obtain legally binding confirmation from the third party that the property was indeed a matrimonial asset, including a promise by the third party to respect and enforce any order that the court might make regarding the interests in the property;
2. If the third party did not agree to do so, either spouse could start a separate action for the courts to determine the respective parties' rights in the disputed property, in which case the section 112 proceedings would have to be stayed until such rights were determined;
3. The spouse could drop his or her claim that the property was a matrimonial asset; or
4. The spouse could ask the family justice court to determine whether the disputed property was a matrimonial asset, without involving the third party or making an order directly affecting the property. If the court decided the property was a matrimonial asset, it could include the asset in the matrimonial assets pool, and adjust the division of other matrimonial assets to account for its value (instead of making an order directly affecting the asset). For example, if the court determined that the asset was legally owned by a third party but was actually held on trust for the husband, the court could then effect a just and equitable division of the matrimonial property by ordering the husband to pay a larger proportion of his income to the wife, instead of giving her a share in his interest in the asset.

However, any such adjustments might prejudice the spouse who had to account to the other spouse for the value of an asset which the court treated as a matrimonial asset, if it was later determined (in separate proceedings) that the third party was both the legal and beneficial owner of the property, and neither spouse in fact had any interest in it. As such, the CA stated that this option 4 was viable only if both spouses agreed to it, and the asset was not the main or only substantial asset available for division.

(b) Asset legally owned by one of the spouses

Where the disputed property is in the name of one of the spouses, but the spouse claims the asset was being held on trust for a third party and hence could not be a matrimonial asset, the other spouse could also rely on option 4 above. However, the same concerns applied. For instance, the spouse who legally owned the property, and who had been ordered to share the value of the property with the other spouse, could later find that he or she also had to account to the third party for such value or transfer the property outright to the third party. This was because the third party was not bound by the family justice court's decision in the section 112 proceedings regarding the ownership of the property. That was the risk the spouse took by not seeking an order binding the third party; if the spouse(s) did seek such an order, this would be the same situation as option 2 above and separate proceedings would be required.

The CA recognised the appeal of dealing, in the same set of proceedings, with disputes between spouses and third parties regarding rights in alleged matrimonial property, due to convenience and time and cost savings. Nonetheless, the family justice courts could not claim jurisdiction where none was conferred by law.

V. Legal implications

This case has important implications for both the divorcing spouses in determining the division of their matrimonial assets, and third parties whose may have interests in such assets.

First, third parties may want to more closely observe divorce proceedings which might affect their property rights. Indeed, the better approach for the third party might be to promptly commence separate proceedings against the divorcing spouses so as to determine the respective parties' interests in the disputed property, and also to intervene in any section 112 proceedings to apply for a stay of such proceedings.

Secondly, divorcing spouses should be mindful of potential third party claims to their supposed matrimonial assets. Although the family justice courts cannot now determine the property rights of third parties under section 112 proceedings, the same courts have the power to take into account the value of the property (in which the third party may have an interest) and make adjustments to the division of matrimonial assets as between the divorcing spouses. This will be undesirable for the spouse who has to account to the other spouse for the value of the disputed asset, if the asset is later determined to belong (both legally and beneficially) to the third party. Thus, the spouse who does not wish to be prejudiced by such adjustments could also apply to the court to stay the section 112 proceedings, so as to initiate separate proceedings against the third party to determine the property rights of the respective parties.

Written by: Soo Ming Jie, 3rd-Year JD Student, Singapore Management University School of Law.
Edited by: Ong Ee Ing (Lecturer), Singapore Management University School of Law.